

CRUELTY AGAINST WOMEN

Cruelty against women has been age-old phenomenon, where women have been subjected to brutality and inexplicable exploitation for one reason or the other.

In the male-dominated world, she has been treated not better than a commodity, a mere puppet in the hands of her so-called protector, be in the form of father, brother or subsequently her husband for the rest of her life.

Her position has been reduced next to nothing to the extent that she cannot take a decision of her own. By virtue of this pathetic plight, she has been enduring cruelty meted out with her at the hands of her husband and his relatives.

In the wake of such widespread violence and cruelty inflicted upon women, section 489A has been inserted in the Indian Penal Code, which specifically deals with cruelty towards a woman by her husband or his relatives.

This provision brought some relief to women, whose life has become miserable because of torture and violence perpetrated against her by her husband or his relatives and at the same time, the impugned provision pays a tribute to those, who chose to commit suicide after being frustrated by persistent harassment causing them to suffer from mental as well as physical agony.

It was for the first time that the impugned provision made it punishable for a husband or his relatives to subject a woman to cruelty. The law explicitly recognized mental cruelty and mental health as well.

Cruelty was defined as any conduct likely to cause grave injury or danger to life, limb, and the mental or physical health of a woman or to drive her to commit suicide.

Harassment or coercion of a woman or her relatives to fulfill demands for money or property was included within the definition of 'cruelty'.

Since its inception, this provision has drawn flaks from various quarters in a quite systematic and sustained manner. The opponents to this provision termed it as unfair and responsible for the victimization of husbands by their wives and her relatives.

The constitutionality of section 498A has also been challenged in **Girija Shankar v. State of Madhya Pradesh, 1989 Cr LJ 242 MP**, where it was declared that the impugned provision was constitutionally valid and not volatile of Article 14. Again in **B.K. Moghe v. State of Maharashtra, (1998) Cr LJ 4496**, similar question was put to test with similar observation by the court.

In 2005 the Apex Court in **Sushil Kumar Sharma v. Union of India, AIR 2005 SC 3100** upheld the constitutionality of section 498A, IPC. The Supreme Court observed that mere possibility of abuse of a provision of law does not per se invalidate a law. Thus, the provision of section 498A of the Indian Penal Code is not unconstitutional.

However, there is no doubt, the object behind the provision is prevention of the dowry menace, but some Stances have come to light, where complaints are lodged under the garb of this statutory protection to settle their personal score.

Thus, merely because the provision is constitutional and intra virus, does not give a license to unscrupulous persons to wreck personal vendetta or unleash harassment. It is in this background the legislature is at task to look for ways to deal with frivolous complainants.

But the sad part of this institutionalized atrocity is that women themselves play a vital role in trivializing violence against their own folk. Despite Inadequate data to capture the statistics, it is reasonably believed that the total number of separated and divorced women in our country is alarmingly increasing and may even touch 10 per cent of the total population.

Marital breakdown and desertion are disconcertingly on the increase. For a great majority of females it is safe to be on the

streets outside, than to be in the bosom of their own family, for, it is there that violence of the worst order awaits them. Domestic violence is the most common but least reported crime in India. Indisputably, it is a facet of human rights violation. Many women suffer the atrocities in silence for fear of graver offences that may be committed on them if they were to muster sufficient courage to divulge to others the acts of cruelties done to them during overture. Separation or divorce between the connubial partners can never be the solution for this intra-mural atrocity mostly taking place at the matrimonial habitat.

Indian women do not want a divorce since they have realized that they have no means of survival once they are alone. Separated or divorced women constitute the most vulnerable section in this male-dominated society. The problem of preventing, curbing and eradicating all forms of violence against women is a major concern of the nation.

With the pronouncement of the Apex Court in **Visaka v State of Rajasthan AIR 1997 SC 3011** occupational violence against women in their workplaces stands, by and large, abated even though there are shortcomings, in that area also. It is not the dearth of adequate legal framework which is the cause for the escalating crimes against women but it is the disinclination of the victims to come out with complaints against the perpetrators of the crimes.

To a woman who is bold enough to complain, offences like sections 354, 294, 509, 498A and 376 etc. of the Indian Penal Code and even attempts to commit the said offences and punishable under sec. 511 of I.P.C. are sufficient to take care of almost every situation. But to a timid and non-complaining woman, even Visakas case may not provide sufficient protection. What is lacking is the bold and courageous disposition among the victims and the preparedness to shed all their fears and to boldly prosecute the wrongdoers by lodging complaints before persons in authority and relentlessly pursue the same.

The words of **Pandit Jawaharlal Nehru** that success always goes to those who dare and act and seldom it goes to the timid should motivate every Indian woman in distress. Thus, the mindset of the Indian woman should change. What we need is a fearless class of women who will not take the disgrace silently.

It was after taking note of the increasing prevalence of domestic violence in this country that the Parliament came out with this piece of legislation namely **The Protection of Women from Domestic Violence Act, 2005** to combat this particular species of violence mainly occurring within the four walls of the home. This law has been enacted keeping in view the rights guaranteed under Articles 14', 15 and 21 of the Constitution of India and provides for a speedier remedy under the civil law through the instrumentality of the Magistracy. Every person in authority dealing with victims of domestic violence has to approach the problem with a spirit of gender sensitivity.

There is nothing wrong in the repositories of powers showing empathy towards women in distress except in cases where the provisions of the Act are abused for self-aggrandizement or for obtaining undue advantage over the opposite party.

Even though by providing for very strong remedies to the victims of domestic violence, amelioration of the weaker sex and women empowerment have been uppermost in the mind of the Parliament, everyone concerned should not forget that violence is not to be met by violence. It is very easy to misuse the provisions of the Act and gain an unfair advantage over the adversary. Such tendencies will ultimately turn out to be counterproductive” — **Sunitha v State 2011 (99) AIC 668 (Ker).**