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Gender Sensitization with Special Reference to Indian Law

Sanjeev Kumar

Research Scholar, Centre for Social Work, Panjab University, Chandigarh, India

Viney Dhiman

Research Scholar, Centre of Social Work, Punjab University, Chandigarh, India

Abstract:

The position of women in India is changing fast. The Law has come to the aid of women with changes in laws, relating to marriage and divorce soon after independence. There have also been many woman-oriented legislations such as the Dowry Prohibition Act, 1961, the Indecent Representation of Women (Prohibition) Act, 1986 and the Protection of Women from Domestic Violence Act, 2005. Apart from these enactments, the Constitution of India also provides for certain fundamental rights which, though not specific to women, are interpreted as and when required to protect the interests of women.

Against this scenario, it appears that women are guaranteed equality, equal protection of laws, equality of status and opportunity. It appears that justice: social, economic and political is guaranteed to women. While it is true that the position of women has improved considerably, the mainstream Indian society continues to fall short in the realization of full equality for women. A number of studies show that the laws have not been entirely successful and women are still in need of attention. At the same time, there is a need to be careful while conferring special status on women for ensuring a 'level playing field' for them because these laws can create more inequality than equality. Instances of cruelty by married women in recent years are a testament to this fact. The need of the hour is to focus on enforcement of laws already made, and to also guard the interest of males against abuse. It is also necessary to make efforts towards gender sensitization of public servants, especially the police.

1. Position of Women in India

It is an accepted fact that the position of women in India, as in most parts of the world, has been inferior to that of men. The status of women in India was inferior than men in the practical life. However, they had a higher status in the scriptures. Not only have Hindus believed in a large number of female deities (which continue to be worshipped today), but the 'Shakti' is the female aspect of the divine. She is the female counterpart without whom the male aspect, which represents consciousness or discrimination, remains impotent and void. As the female manifestation of the supreme lord, she is also called 'Prakriti', which literally means 'nature'. Shakti is the mother goddess, the source of all, the universal principle of energy, power or creativity. In the two Epics, women have been portrayed in a positive light.

In ancient Hindu Law, the wife was regarded as the half of her husband¹. Marriage has always been taken to be a pious sacrament under Hindu Law. Women enjoyed better, if not equal status in marriages as well.

However, during the course of history, women lost their honoured place due to social, economic and political factors. Evil customs like Sati, child marriage, enforced widowhood and dowry system arose and led to decline in women's status inside and outside the home. Traditions such as Sati, Jauhar and Devadasi have been banned and are largely defunct in modern India. However, some cases of these practices are still found in remote parts of India². During the last few years, increasing number of cases of sexual harassment at workplace, eve teasing, abduction and female foeticide give an indication of the behaviour patterns prevailing in the society. Majority of the women live a life of dependency. Struggle for equality, justice and parity between women and men continues with more and more literature appearing on the subject on empowerment of women.

¹Dr. Diwan, Paras – *Family Law*, 9th Ed. At p. 24

² Mishra, Sujata – *Women's Health and Social Issues*, 1st Ed. At p. 3

2. Law for Protection of Women's Interests

The Law has come to the aid of women with changes in laws, relating to marriage and divorce soon after independence. The Hindu Marriage Act, 1955 amended and codified the law relating to marriage and divorce between Hindus. Before this Act was passed, polygamy had legal recognition. It is shocking to realize that it was only in the past century that Hindu men were compelled to marry only one woman.

A proposed Amendment³ proposes to make divorce easier on the ground of irretrievable breakdown of marriage. It also provides a better safeguard to wife by inserting section 13D by which the wife may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would in all the circumstances be wrong to dissolve the marriage.

There have also been many woman-oriented legislations such as the Dowry Prohibition Act, 1961, the Indecent Representation of Women (Prohibition) Act, 1986 and the Protection of Women from Domestic Violence Act, 2005. Apart from these enactments, the Constitution of India also provides for certain fundamental rights in Articles 14, 15 and 16 which, though not specific to women, are interpreted as and when required to protect the interests of women. Article 15(3) provides that the State may take special measures to guarantee equality of women and children.

3. The Present Scene

Against this scenario, it appears that women are guaranteed equality, equal protection of the laws, equality of status and opportunity. It appears that justice: social, economic and political is guaranteed to women. While it is true that the position of women has improved considerably, the mainstream Indian society continues to fall short in the realization of full equality for women. A number of studies show that the laws have not been entirely successful and women are still in need of attention. Four out of ten women in India still have no say in their marriage, eight out of ten need permission to visit a doctor, six out of ten practise some form of head covering, and the average Indian household gives over Rs. 30,000 in dowry⁴.

4. Crimes against Women

A total of 2,44,270 incidents of crime against women (both under IPC and SLL) were reported in the country during the year 2012 as compared to 2,28,650 in the year 2011 recording an increase of 6.4% during the year 2012. These crimes have continuously increased during 2008 -2012 with 1,95,856 cases in the year 2008, 2,03,804 cases in 2009 and 2,13,585 cases in 2010 and 2,28,650 cases in 2011 and 2,44,270 cases in the year 2012⁵.

It is to be noted that these figures show the number of registered cases only. There are, undoubtedly, a large number of cases which go unreported. Also it has been increasing in recent years, as is clear from the figures released by the National Crime Records Bureau. The crime against women during the year 2012 has increased by 6.8% over the year 2011 and by 24.7% over the year 2008. It is submitted that the increasing figures may also be a positive sign as it means that more and more crimes against women are being reported and registered. More such crimes being registered is a deterrent in itself. But, this does not mean that crimes against women are actually decreasing.

Efforts are being made to strengthen the existing legislation and develop institutional mechanisms. The support services are, inter alia, helplines for women in distress, Legal Literacy and Legal Awareness Camps, earmarking of Fast Track Courts, increased recruitment of women police officers, etc. In addition to these, efforts are being made to sensitize judiciary, police and civil administration⁶. The 12th Five year plan aims at lowering gender gap in literacy rate to 10%, reduce maternal mortality and ensure that 33% of beneficiaries of government schemes are women and children. But, despite these efforts, crimes against women continue to increase.

It is very disturbing that in recent years, there have been many cases of 'honour killing' viz., homicides committed in the name of protecting family or community honour. Many such actions follow when women try and change the old, narrow and regressive social norms, such as inter-caste marriages.

5. Special Status for Women: Detrimental to the Interests of Men

There is a need to be careful while conferring special status to women for ensuring a 'level playing field' for them because these laws can create more inequality than equality. Instances of cruelty by married women in recent years are a testament to this fact. For instance, the Calcutta High Court in 2006 rightly granted a decree of divorce at the instance of a man whose wife made false and baseless allegations of cruelty to her employers as well as the police⁷. Some women have also misused special laws and made complaints against husbands which amount to cruelty. In another such case, the Himachal Pradesh High Court granted a man a decree of divorce on the ground that his wife had made false allegations against him and gone so far as to say that he was leading an immoral

³ Marriage Laws (Amendment) Bill, 2013, as passed by the Rajya Sabha on August 26, 2013

⁴ The Hindu, March 19: "Many Women Have No Say in Marriage": <http://www.thehindu.com/news/national/many-women-have-no-say-in-marriage/article5801893.ece>

⁵ National Crime Records Bureau - Crime in India: 2012 at p. 79

⁶ Mishra, Sujata – Women's Health and Social Issues, 1st Ed. At p. 106

⁷ Pranati Chatterjee v. Goutam Chatterjee, AIR 2006 Cal 196

life. She had lodged false report with the police under the Dowry Prohibition Act⁸. In a case before the Delhi High Court, the wife had removed some jewellery belonging to her husband and subsequently made up her mind to desert him. She further filed a criminal complaint against her husband which she failed to prove. It was rightly held by the Court that the false complaint by her was only as retaliation as the husband had moved court for custody of his minor children⁹.

Women have often misused the legal machinery to harass innocent men. There have also been many false rape allegations during the past year, particularly in the State of Haryana. It is submitted that the cases mentioned above are only those that were rightly decided. There is, in all probability, a large number of cases which are decided in favour of women acting wrongfully because of favour to women by the judiciary who view them as a marginalized section of society. Such an approach of the legislature as well as judiciary is necessary, but care must be taken to protect the interests of men as well in the process.

6. The Road Ahead

It has been noted above that there are already various efforts being made to combat the problems enumerated above, and many other problems which are beyond the scope of this paper.

It is submitted that to combat gender-based discrimination, gender sensitization is the greatest weapon. The police response to violence against women continues to be grossly inadequate and inappropriate. Besides the reasons for the generally poor response to instances of crime such as increasing workload, lack of resources, pressure of political bosses to maintain crime figures at a low level, mal-practices in the organization, there are certain specific reasons for the lack of appropriate response to offences against women. The cult of masculinity prevalent in the society and the police is also a major cause of concern. Because of this, female victims of violent crimes are at times not even able to lodge an FIR. If such a report is lodged, the woman has to go through a lot of harassment even at later stages.

The governments are already making efforts to sensitize the police. It is submitted that sensitization of medical professionals is also necessary. Medical professionals play an important role in legal proceedings as they record medical evidence after conducting medical examination. They must, along with other public servants, be sensitized. Harassment at the hands of medical professionals, who may at times regard victims as immoral (owing to cultural stereotypes) is not uncommon. This is, among other things, a cause of grave concern when it comes to ensuring justice of women.

The media can play an important role in sensitizing the public at large against gender-based discrimination thereby breaking age-old stereotypes which are detrimental to the interests of women. The government may also give incentives to NGOs in this regard. Gender sensitization may be added to the school curriculum to ensure that the stereotypes do not find a place in the minds of future generations.

It is submitted that in cases of rape, cases, once adjudicated upon are soon forgotten. It is paramount that more focus be laid upon the rehabilitation of rape victims in future. The mental trauma in such cases can completely ruin the life of the victim, and yet it is a topic which receives the least concern. It is the duty of the state to ensure the full physical as well as psychological rehabilitation of the victim.

There is a plethora of problems, and the nation is engaged in a constant battle against them.

In future, it can be reasonably hoped, that we will be able to ensure equality for our mothers, wives, daughters and sisters. At the same time, we must ensure that our zeal to find balance does not end up tilting the scale the other way.

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⁸N.P. Bhullar v. K. Bhullar, 1990 (2) HLR 203 (HP)

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