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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

WOMEN AND LAW

AUTHORED BY - TAYYABA* & DR. RAJ KUMAR**

Abstract

There has been a mixed trend in the incidence of dowry deaths during the period 2002-04. The total number of cases registered has decreased from 6822 in 2002 to 6208 in 2003(-9%) and to 7026 in 2004(+13.2%). Cases of dowry death have been the highest in Uttar Pradesh in 2004 followed by Bihar and Madhya Pradesh. The conviction rate of 57 this crime was 32.1 in 2004, which was slightly higher than the average conviction rate of IPC crimes against women (29.3). The total number of cases registered under the Dowry Prohibition Act has decreased from 2816 in 2002 to 2684 in 2003(-4.7%) and increased to 3592 in 2004(+33.8%). Cases booked under this Act have been the highest in Bihar in 2004 followed by Orissa and Uttar Pradesh. The conviction rate of this crime was 25 in 2004, which was much lower than the average conviction rate of SLL crimes against women (70.66). Though legislations are already in place by way of an Act on Dowry Prohibition and provisions on harassment faced for dowry, Section (498A) and dowry deaths (Section 304B) in IPC, their implementation has been weak and very few cases have been filed so far. In many parts of the country, Dowry Prohibition Officers have not been appointed. The police and other law enforcement bodies have shown apathy in recording and investigating into complaints relating to dowry related harassment and dowry deaths. Harassment relating to dowry has now also been covered under the Protection of Women from Domestic Violence Act 2005. There is a need to amend the Dowry Prohibition Act to provide clarify the existing provisions and ensure its implementation in consonance with the PWDVA.

Key words: Equality, Rights, Women, Discrimination.

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INTRODUCTION

The Constitution of India recognizes equality rights of women in Articles 14, 15 and 16. Article 15 (3) allows the state to take special measures for women and children to realize the guarantee of equality. Despite different gender specific laws in place, women's status in society continues to be devalued. Gender based violence and discrimination faced by women are manifestations of the devalued status of women. In order to find an enduring solution to gender-based violence, laws impacting on a woman's equality rights have to be assessed and strictly implemented. Laws prohibiting gender discrimination based in the home and in the public sphere have to be evolved and implemented. As this process will take place in the years to come, the aspect of gender-based violence requires immediate attention. Hence the focus of the action in the 11th 5 year plan is on issues of gender based violence. Simultaneous efforts to improve women's status through the use of laws will also be undertaken.

PREVALENCE OF GENDER BASED VIOLENCE

Violence against women (VAW) includes 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 arbitrary deprivation of liberty, whether occurring in public or private life. Violence against women manifests itself in many ways and is one of the most pervasive forms of human rights abuse in the world today. While all women may experience violence, it intersects with other social and identity-based constructs like caste, religion, ethnicity, disability.

CONSTITUTIONAL PHILOSOPHY AND PROTECTION OF WOMEN

Sexual orientation to make specific groups vulnerable to different and particular forms of violence. Thus, the nature of the violence and how it manifests itself may differ because of social location. To effectively deal with the problem of violence against women efforts are being made to strengthen the existing legislation through review and amendments and develop institutional mechanisms. The Support Services, in place, to victims of violence are Short Stay Homes, Swadhar, Help lines for women in distress, Legal Literacy and Legal Awareness Camps, earmarking of one Fast Track Court in a district, (where there are two) to deal exclusively with cases of violence against women, constitution of the National Commission for Women (NCW) and State Commissions, increased recruitment of women police officers, establishment of women police cells in police stations and exclusive women police stations and

establishment of Rape Crisis Intervention Centers in police districts in some big cities. In addition to these, efforts are being made to sensitize judiciary, police and civil administration. National Database on Sexual Offenders (NDSO) The government on September 20, 2018 launched the National Database on Sexual Offenders (NDSO). The database contains entries of offenders convicted under charges of rape, gang rape, POCSO and eve teasing. The portal as of now contains 440,000 entries of cases that have been reported since 2008. It's managed by the National Crime Records Bureau. The database is accessible only to the law enforcement agencies for investigation and monitoring purpose. Fast track courts As a result of the 2012 Delhi gang rape case, the Indian government implemented a fast-track court system to rapidly prosecute rape cases. The fast-track court system has been welcomed by some, but their fairness questioned by legal experts and scholars. The legal scholars state that the fast-track courts may not be fair in an impoverished country where millions of cases are backlogged.

Average of just 14 judges per million people—among the lowest in a United Nations study of 65 nations. National Database on Sexual Offenders (NDSO) Fast track courts divert limited judicial resources and add delays to prosecution of other crimes. They noted that Delhi state had instituted five fast-track courts in 2013 to handle rape cases, but there are no fast-track courts for murder. Mrinal Satish, of New Delhi's National Law University said, 'there is a risk that in this emotional response and clamor for immediate justice, we could end up putting innocent people imprison'. Marital rape Marital rape is not a criminal offence within Indian legal framework, except during the period of judicial separation of the partners. The marital rape exception, that is exception 2 of section 375 of the Indian Penal Code states that sexual intercourse by a man with his own wife, the wife not being under 18 years of age, is not rape. In the 1980s, women's rights groups lobbied for marital rape to be declared unlawful. Government officials argued that the contract of marriage presupposes consent to sex and that criminalizing marital rape in turn would degrade family values in India. Forced sex by husbands upon wives does have legal consequences in Indian matrimonial law, in that it can be treated as a matrimonial fault, resulting in dissolution of the marriage. All religious personal laws and the secular law governing marriage and divorce in India deem 'cruelty' by one spouse to the other to be a ground for divorce. The originally enacted Hindu marriage Act provided that in order to constitute a cause for divorce, an act of cruelty should be such that it 'produces a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party.' Marital rape also amounts to 'sexual abuse' under the law regarding domestic violence enacted in 2005, under which aggrieved wives or female

live - in partners can claim civil remedies, like injunction against violence, dispossession from home or direction to the husband/partner to pay maintenance. The law kicks in to regulate sexual violence in marriage only in cases.

When it is accompanied by extreme physical violence or when the health and safety of the wife is endangered, as in the case of minor wives. This exception has restricted application when the wife has been living separately from the husband, with or without a decree of judicial separation. In such cases, the husband can be prosecuted for rape. If convicted, the minimum punishment is imprisonment for two years and imposition of a fine (Section 376B, IPC). This clause was ratified in the year 1983, a period of great upheaval in the history of rape law reform in India, when major changes were made for the first time since enactment of rape laws by the colonial state in 1860. The parliamentary committee that gave final shape to the 1983 amendments was disinclined to treating non-consensual sex between a separated couple as amounting to rape, on the grounds that a rape

Charge would heighten the possibilities of divorce by making reconciliation that much harder for the couple. Hence, the minimum sentence stipulated for this category of rape was set much lower than usual. Until 2017, there was a discrepancy between two sub clauses of Section 375. Exception 2 stated that “sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.” However, the same provision stated that a man is said to commit rape if he has sexual relations with a woman with or without her consent, when she is under 18 years of age. Independent Thought, a non-governmental organization, in a petition in 2013, had challenged Exception 2. In a landmark ruling on 11 October 2017, the Supreme Court upheld the age of consent as 18 years. The court held that the distinction made between a married girl child and an unmarried girl child was illogical and ran against the provisions of the Protection of Children from Sexual Offences Act, 2012. Such a distinction also violated child’s right to liberty and dignity under Article 21 of the Constitution. Two other significant statutes undermined by the original IPC section were the Prohibition of Child Marriage Act, 2006 and the Juvenile Justice Act, both of which define a child as someone below the age of 18.

EDUCATION PROGRAMMES

In February 2017, the Ministry of Health and Family Welfare unveiled resource material relating to health issues to be used as a part of a nationwide adolescent peer education plan

called Saathiya. Among other subjects, the material discusses relationships and consent. The material states, "Yes, adolescents frequently fall in love. They can feel attraction for a friend or any individual of the same or opposite sex. It is normal to have special feelings for someone. It is important for adolescents to understand that such relationships are based on mutual consent, trust, transparency and respect. It is alright to talk about such feelings to the person for whom you have them but always in a respectful manner.... Boys should understand that when a girl says 'no' it means no. The Tenth Five Year Plan addressed the problems of violence against women on top priority basis through a well-planned programme of action, with both short- and long-term measures, both at the national and state levels. Amendments were recommended in the Indian Penal Code and other related legislations to make punishment more stringent. Collaborative interventions in the Tenth Plan with the NGOs helped to bring about societal orientation, an important area to deal with the problem of different forms of violence against women in society. The Mid Term Appraisal to the Tenth Plan also identified violence against women as one of the burning issues affecting women. The problem of VAW has to be dealt with holistically. Draft Approach Paper for the 11th Five Year Plan has included Violence against Women as one of the three aspects relating to the problems of women in the country, the other two being Economic Empowerment of Women and Women's Health. Thus, a major challenge before the XI Plan is to enable the creation of an environment for women that is safe and free from violence. Only then it would be possible for women to be true partners in India's democracy at the social, economic and political level. Forms of violence that take place at the community include which hunting, sati, child marriage, and incidents of public stripping. These unfortunately are increasing in prevalence. In recent years there have been disturbing reports of cases of sati and its subsequent glorification. There has been an alarming rise in reported cases of honor crimes committed in the name of protecting family or community honor. Equally worrying is the growing numbers of anti-women strictures being pronounced by community.

The brunt of these so-called judgments, which in some cases have resulted in brutal punishments, such as dismemberment and mutilation, are usually borne by women or the women's family. Many such actions follow when women try and change age old, narrow and regressive social norms, like marrying outside one's caste or religion. Many of these so-called judgments are not only anti-women but go against the Constitution. Experiences from the ground and various reports are now showing that women are specifically targeted in situations of communal and sectarian violence as they embody the so-called honor of the community. If a particular community or group is to be attacked and humiliated, women are targeted. In such

situations women are victims of various forms of sexual violence including rape, molestation, mutilation, stripping etc. In areas experiencing tension and conflict like the North- East and Kashmir women are particularly vulnerable and are caught in the crossfire. There have been reports of sexual violence perpetrated by security forces as well. Many women in such situations experience trauma.

RAPE AND SEXUAL ABUSE

The increased incidence of rape cases in recent times may be because more cases are being reported now. The proportion of rape cases in the country during the last five years is 12 percent of total crimes against women. During 2004 reporting of rape increased by 13.6 percent. Out of rape cases reported in 2004 about 69.1% were investigated, 94.2% of cases were charge sheeted but convictions made were only 25.2%. The conviction rate of rape cases is very low. The alarming fact is that crimes against women have been continuously increasing from 7.2% in 2000 to 7.8% in 2004. Rape cases account for more than 10% of total crimes against women, the percentage varying from 11.2 to 11.8 during 2000-2004. Incest rape, which was a taboo subject in the past, is being reported and in 2003-04 399 cases were reported – an increase of 26.5 percent. The data on age group of the victims shows that it is between 18-30 years. In 84-88.8% cases of rape committed in the years 2000-2004, the victim knew the offenders. In 9 percent of cases the father or other members of the family or close relatives were themselves the offenders. Neighbors and other persons known to the victims constitute the offenders in more than three-fourth of the cases. Only one seventh of the offences were result of offence by strangers. Currently, the crime of rape is dealt with in Sections 375-377 of the Indian Penal Code. A Bill on “Sexual Assault” has been drafted in lines of the recommendations made in the 172nd Law Commission report. This Bill seeks to expand the definition of rape to cover aspects of all forms of sexual violence faced by women and children. In addition, another Bill “Offences against Children Bill” has been drafted to specifically address all forms of violence faced children. “Sexual abuse” as a civil offence, has also been recognized in the PWDVA. According to the order of the Supreme Court, a scheme for Relief and Rehabilitation of Rape Victims is being drafted for inclusion in the XIth Plan.

COMMUNITY SPECIFIC VIOLENCE AGAINST WOMEN

Experiences from the ground and various reports are now showing that women are specifically targeted in situations of communal and sectarian violence as they embody the so-called honor

of the community. If a particular community or group is to be attacked and humiliated, women are specifically targeted. In such situations women are victims of various forms of sexual violence including rape, molestation, mutilation, stripping etc. In areas experiencing tension and conflict like the North- East and Kashmir women are particularly vulnerable and are caught in the crossfire. There have been reports of sexual violence perpetrated by security forces as well. Sexual violence perpetrated against women in situations of conflict have been recognized as a crime against humanity by the International Criminal Tribunal (Rwanda). The statute of the International Criminal Court includes sexual offences in its definition of “crimes against humanity”. Other sexual offences, within the context of conflict, that have been recognized as a crime against humanity are -“Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.” A Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 has been drafted with a view to prevent violence against minorities and deal with the outbreaks of communal violence. The Communal Violence Bill, though addressing the existence of sexual violence during such times, has defined it in extremely narrow terms of rape and outraging the modesty of a woman. The draft of this bill must be brought in lines with prevailing international norms. Aspects of relief and rehabilitation of victims of sexual violence, the presence of sensitized officers to investigate into instances of sexual violence perpetrated on women in times of conflict must be separately provided for. Provisions relating to confidentiality of the victim and the manner in which the trial should be conducted should also be included.

ORGANIZED CRIME: TRAFFICKING IN WOMEN

Human Trafficking both forced and under false premises is widespread, but no accurate data is available. Trafficking however, is usually and wrongly, conflated with prostitution. However, according to ILO, IOM, UNIFEM etc. purposes of trafficking include, (besides prostitution), entertainment, industry, forced labor, domestic work, camel jockeys, illegal adoption of children, bonded labor, forced marriage, drug trafficking, begging etc. Poverty, breakdown in livelihood options, food insecurity, unemployment, debts, occurrence of disasters, and conflicts leave the victims, particularly women, of such situations with practically no choices for survival. Girls are also trafficked in the name of marriage. Victims often find themselves unwillingly trapped in a life of abuse that is physical as well as sexual. The situation of women who have been trafficked into sex work is particularly vulnerable. They have little control over their earnings and face the risk of pregnancies, abortions, maternal mortality, sexually

transmitted diseases such as HIV and AIDS. The Immoral Trafficking (Prevention) Act, 1956 penalizes all persons.

Involved in trafficking women for sex work and living off their income. Unfortunately, the law has been implemented in a highly moralistic manner resulting in the further victimization of trafficked women. The objective of the Act, i.e. the punishment of those involved in trafficking has not been met. The Act is being amended to provide more stringent punishment for traffickers and brothel keepers and to prevent victims of trafficking from being further harassed. Government of India in 2000 signed the UN convention against Transnational Organized Crime (UNTOC), which includes the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children. MWCD drew up a Plan of Action and constituted a Central Advisory Committee to combat trafficking and commercial sexual exploitation of children and activate legal and law enforcement systems. The Central Advisory Committee constituted on combating child prostitution meets regularly and has come up with a protocol for pre-rescue, rescue and post rescue operations. A manual for sensitizing the police force in matters relating to trafficking of women and children and one for medical officers dealing with medico legal cases of victims of trafficking have been finalized. A manual for district and taluka level judiciary is also under preparation which would act as a judicial handbook on combating trafficking of women and children for commercial sexual exploitation and would assist the judges in effective implementation of ITPA. Awareness generation on the issue is being taken up on a large scale. A detailed media campaign has been formulated using TV, radio and print. Swadhar and Short Stay Homes have been set up across the country for rehabilitation of women in difficult circumstances including women rescued from trafficking. It is proposed to set up one home in each district. Costs of shelter, food, clothing, health and legal expenses are borne by the Government. A comprehensive scheme for prevention of trafficking is being drafted.

CONCLUSION

In addition to the above, other gender specific crimes that have been recognized under the IPC and special laws are Sati, Bigamy, Molestation, Obscenity, Indecent Representation of Women, Kidnapping, Abduction and Importation of Girls. Aspects of investigation, arrest and prosecution of these crimes are the responsibility of state governments. The criminal justice system has to pay particular attention to the needs of women who are subjected to these specific

forms of violence. There are also different forms of violence being perpetrated on women that need to be addressed by the law. One example is that of increased rates of “acid attacks” on women. This is a heinous form of violence against women and has lasting impact on their autonomy and freedom of movement. Data on such emerging forms of violence should be collated and measures should be adopted to address the same.

RECOMMENDATIONS

1. Measures to be taken to prevent victimization of victims of traffickers.
2. Focus on entry point where traffickers begin the sale and purchase of humans for effective prevention of trafficking by generating livelihood options for women.
3. Inter-regional networks should be set up to check forced migration and trafficking.
4. There is a great need for awareness at all levels of the society, community and government to reduce the vulnerability of women and children to by generating livelihood options.
5. Special Police officers and Community Vigilance are needed to reduce trafficking.
6. Training modules must be developed for conducting ongoing training programs for Police, Judiciary and other government personnel involved in the prevention of trafficking.
7. A policy of relief / rehabilitation should be formulated with wide spread consultations with stakeholders.
8. More rehabilitation homes to be set up with longer periods of rehabilitation.
9. Special homes to be set up for rehabilitation of trafficked women along with halfway homes.
10. Protocols to deal with post rescue rehabilitation and relief should be developed.
11. Special courts must be set up in every state with Special Judges to try trafficking cases and proceedings in such courts are to be time bound.
12. Staff in protective homes must be specially trained and sensitized. Victims should not be forced to return home. In case they do return, adequate follow up should be done to ensure their security. Continuity of care should be available to the victim for at least 3 years after rescue for effective psycho socio reintegration and rehabilitation.
13. Witness prosecution programmes to be developed.

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