

“Positive Biasness of Law”

**Sanya Ahuja
Chandigarh University*

***Himanshi Bhasin
Chandigarh University*

India is been reckoned as an anti-women nation , a country that is not safe for women but the laws of India have been amended over time to favor women and there is a heated debate over the right and wrong of the biasness towards women.

Where at the time of offence is committed against women, the dignity and integrity of women are dried out in public whereas such is very ethereally framed in law under various enactments. Predominantly, to commence from the Grundnorm of India i.e. The Constitution of India, Article 15 provides for prohibition of discrimination on basis of sex, race, caste etc. Nevertheless clause 3 of Article 15 implies to state that nothing in this section shall prevent the State for making any special provision for women and children.

The Nirbhaya Gang Rape¹ incident of 16 December, 2012 trembled the world in such a manner that it leads to strengthening the roots of humanity and triggered the amendment in form of Criminal Amendment Act 2013 which was further amended in 2018. Section 375 of The Indian Penal Code, 1860 clearly states that, a ‘man’ is said to have committed rape if he have a sexual intercourse in a manner as prescribed under this section, without the required consent of women, same is made punishable under Section 376. Further in Section 376 D provisions of Gang Rape are prescribed which were mainly provided after Nirbhaya Rape case. All these Sections highlight the protection of women against offence of rape. Further law provides favorable condition for protection of women. Firstly, under Section 164(5)A of Code of Criminal Procedure, 1973 provides for Right of Privacy while recording of the statement of rape victim, that she can record her statement in presence of Magistrate and a women constable only and evidence of her character or any previous sexual experience for proving her consent is immaterial and irrelevant as under Section 53A of The Indian Evidence Act, 1872. Secondly, Section 228A of the Indian Penal Code, 1860 provides Right of Confidentiality. It states that the identity of any rape victim must not be disclosed and if such is done, it is considered as a punishable offence. Thirdly, it provide for Right to Ultimate Registration whereby police cannot deny a female irrespective of delay or irrespective of place of filing First Information Report (Zero FIR). Lastly, it provides for Free Legal Aid under Legal Service Authority Act, 1987.

¹ State of Delhi NCR v. Ram Singh & Ors., 2012

Landmark case of **Laxmi v. Union of India**² in which a Public Interest Litigation (PIL) was filed seeking measures to regulate the sale of acid in the country. The court took the cognizance of pending cases related to acid attack and thereafter in 2013, The Supreme Court of India imposed certain stringent regulations on sale of acid which banned the counter sale of acid and the dealers could now only sale acid if the buyer provides his valid ID proof that too dealer has to submit details of sale within three days to police. Thus, Criminal Amendment Act 2013 came up with various insertions in the Penal Code i.e. Section 326A which specifically describes about the heinous offence of Acid Attack – its severity and punishment. The same amendment also inserted Section 354A, 354B, 354C, and 354D that protects the women from any other kind of assault which outrage the modesty of a women. Section 354A lays down the provision against the sexual harassment and punishment for the same. And to enhance it, a separate enactment i.e. The Sexual Harassment of Women at Workplace (Protection, Prohibition and Redressal) Act, 2013 came into existence. In case of **Vishaka & Ors. v. State of Rajasthan & Ors**³, The Apex court on 13 August,1997 Commissioned Vishaka guidelines that put the onus on the employers to provide safe working environment. Section 354B provides for assault of disrobing and further Section 354C protects her from Voyeurism. Similarly, Section 354D safeguard her from stalking. Under this amendment Act of 2013, punishment for uttering any word, making gestures with the intend to insult the modesty of a women as prescribed under Section 509 of Indian Penal Code, 1860, was increased from one year to three years. Thus the Penal laws after 2013 amendment Act were made more stringent in order to trump the condition of women in the society. Specific laws were made for women to safeguard her from exploitation as under Section 366. It makes abducting of a women and compelling her to marry, a heinous crime and tries to prohibit procurement of minor girl child under Section 366A.

In a country like India, where daughters are protected but daughter-in-laws are abused, such crime against married women have been surging incessantly and it is ironical that most women are unaware of their legal rights. The Hindu Adoption and Maintenance Act, 1956 entitles wife with basic rights that she can reside in her matrimonial or marital house i.e. house that is owned by her husband or her in-laws. *A man believing himself to be at dominant position exercise his power by using his physical force but law aims to prohibit such* and categorize his act as Domestic Violence under purview of Section 498A of the Penal Code. This section allows a women to file a charge sheet against her husband and his family and there is no span as to when crime can be reported. For the purpose of pursuing such suit, free legal aid is provided to women under Legal Service Authority Act, 1987. Article 39A of The Constitution and also under Protection of Women from Domestic Violence Act, 2005. Protection of Women from Domestic Violence Act, 2005 covers both abuse and victimization of women in a marital or live-in-relationship. Sometimes women are tortured for demand of dowry and failure to fulfil such demand leads to dowry death which is considered as a heinous offence and is punishable under

² 2014 4 SCC 427

³ AIR 1997 SC 3011

Section 304B of Indian Penal Code, 1860. Most recent initiative have been taken by National Legal Service Authority as to open online legal assistance service where a panel of female lawyers in every district could provide their services to aid victims of domestic violence which had a major spike during lockdown because of pandemic COVID-19 outbreak. Domestic violence been a form of cruelty has been one of the major grounds for divorce under Section 13(1) (ia) of Hindu Marriage Act, 1955. *A report states that every 9 minute a case of cruelty is committed by husband or relatives of husband.*⁴ Rights of women also exist even after dissolution of marriage as primarily a mother is favored to gain custody of child and a divorced women is entitled for maintenance by husband or her in laws as under Section 18 of The Hindu Adoption and Maintenance Act, 1956. Beside Hindus there are women of another religion as well who need to claim maintenance, therefore a uniform law exists for every women as they can claim it under Section 125 of The Code of Criminal Procedure, 1973. Judgement under **Mohd. Ahmed Khan v. Shah Bano Begum & Ors.**⁵ act as a major precedent manifesting that even Muslim women can claim maintenance under Section 125 of The Code of Criminal Procedure, 1973.

After the Amendment of 2005 in Hindu Succession Act, it gives daughter an equal share in paternal property. In case if father dies without a will there arises a case of intestate succession where a daughter now has the same right as the son in both ancestral and self-acquired property. Now the marital status of daughter is immaterial and she possesses the same rights as of an unmarried one.

The recent Magnum opus in women-centric law is Maternity Benefit (Amendment) Act, 2016. It protects the employment of women during her maternity period and also entitles her to other maternity benefits such as paid-leave. This amendment has increased duration period for paid maternity leave from 12 weeks to 26 weeks. The Act is not only applicable to biological mothers but also to adoptive mothers and commissioning mother and for the maternity leave of 12 weeks is available. This Act also enable provisions related to work from home and it also provides crèche facility under Section 111A. The Act makes it mandatory for the employers to educate women about maternity benefit available to them at the time of their appointment.

CONCLUSION:

In this patriarchal society, men being the head is adjudged to have all the eloquence. This cliché ends up in formation of male dominating society and thus law comes into play. Law have certain provisions and enactments for the women that are slightly biased towards women but such biasness does not create any inequality rather these are helpful in uplifting and empowering of women so that there must be equality between both the genders. Thus, the aim of positive

⁴ India tackles domestic violence. BBC News. 2006-10-27. Retrieved 3 March 2014.

⁵ 1985 (1) SCALE 767 = 1985 (3) SCR 844 = 1985 = (2) SCC 556 =AIR 1985 SC 945

biasness of law is to break the stereotype of male dominating society and the thinking of men being a breadwinner will steadily, yet surely, will crumble.