

Women Laws: Shield or Sword

Ms. Sheersha Saxena

Assistant Professor

Ishan Institute of Law, Gautam Buddha Nagar,

Greater Noida, U.P

Abstract

The condition of women deteriorated in the Indian society over the years subjecting them to a patriarchal mindset, cruelty and other forms of inhumane and unjust treatment. Taking this into mind the Legislature and the Judiciary took positive steps towards curbing this social evil by enacting various effective laws and laying down guidelines, observations and recommendations respectively. Various Women Centric Laws were enacted for the protection of women from various evils prevailing in the society. These evils included that of dowry, cruelty, domestic violence, sexual harassment, rape, outraging the modesty of women, etc. These laws were set up as a shield to protect their respect and dignity against crime that is committed against them.

However, in the recent years, the data shows that several cases that are filed by women against men pertaining to crime against women are false and are filed in a fit of anger, over trivial fights or in order to blackmail the men to gain some unfair advantage.

This article discusses about various women laws along with the data showing the need of such laws. This article further discusses about misuse of such laws where the women are using laws for their benefit and there are multiple guidelines issued by our higher courts on this.

Key Words: Women, Crimes against women, Misuse of laws, Need of Women Laws

Introduction

Crime against women has been on the rise for many years. They are harassed at home by their family members, at public places by random strangers who try to molest them, pass indecent comments or sexual remarks or stalk them and even at their workplaces where the seniors sometimes try to take advantage of their seniority to harass them. Women in India are subjected to physical and mental harassments through various offences which include rape, sexual harassment, voyeurism, acid-attack, dowry, domestic violence and the list goes on. They have to suffer all this owing to the only reason that they are born as a female.

Women occupied a high place of respect in ancient India which is evident from our sacred Hindu book Rigveda and other Indian scriptures. But slowly, with economic, social and political changes happening all around the world, they subsequently lost their status and were relegated, disregarded, harassed and made subject to the patriarchal system where they were even condemned from raising their voice. Therefore, there arose a need for women-centric laws to protect the economic, social and educational status of women.

The Need for Women Laws

Crime against women occurs at every minute in India. As per NCRB annual crime report, the total number of crimes against women in India in 2022 were 4,45,256 with almost 51 FIRs every hour, up from 4,28,278 in 2021 and 3,71,503 in 2020. The rate of crimes against women per lakh population stood at 66.4 while the charge sheeting in such cases was logged at 75.8. Out of these crimes against women, 31.4% pertained to cruelty by husband or his relatives, 19.2% were of kidnapping and abduction of women, 18.7% were of assault on women with intent to outrage her modesty and 7.1% were rape cases. Delhi registered highest crimes against women with 14,247 cases in 2022 as compared to 14,277 cases in 2021 and 10,093 cases in 2020. It was followed by 65,743 registered FIRs in Uttar Pradesh, 45,331 in Maharashtra, 45,058 in Rajasthan, 34,738 in West Bengal and 32,765 in Madhya

Pradesh. These 5 states together contributed to 2,23,635 cases which amounts to 50.2% of total cases lodged in India in 2022 as per NCRB data. ¹

These figures are shocking and horrifying as to the situation of women in our country and the horrible experiences that they are facing without any mistake on their part. They are a matter of grave concern and implementation of strict laws is necessary so that women in India can live with peace, liberty, honour, dignity, freedom, respect and equality in an atmosphere which is free from all kind of denigration, atrocities and heinous crimes. Principle of gender equality was embedded by the constitution-makers in the preamble, fundamental rights and directive principles of state policy under article 14, 15, 16, 39(a)(d) and 42 to protect the interests of women but still, they had been subjected to cruelty. Therefore, women laws were made and implemented to cure this pitiful situation of women and to restore their status in the society. They were given by the legislature to the women as a shield to protect themselves from all the social evils prevailing against society.

Women Laws

The legislature of India has enacted various laws to protect women from such social evils and heinous crimes that are committed against them. They can be classified as a crime against women in special and local laws. Some of the laws enacted by parliament to protect women are related to wrong representation, dowry control, sati prevention, combatting child marriage, safeguarding women from domestic violence, maternity related laws, workplace protection etc.

Apart from these Acts, certain provisions in IPC, now replaced by Bhartiya Nyay Second Sanhita 2023 which are specifically for women can be enumerated as under-

- Dowry death (304B) (Section 80 BNS 2)
- Acid Attack (Sections 326A and 326B IPC) (Section 124 BNS 2)
- Outraging the modesty of women (Section 354 IPC) (Section 74 BNS 2)
- Sexual harassment (Section 354A IPC) (Section 75 BNS 2)

¹ Crime in India 2022 (Jan 25, 2024, 10:44 am), <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf>

- Assault on women with intent to disrobe a woman (Section 354B IPC) (Section 76 BNS 2)
- Voyeurism (Section 354C IPC) (Section 77 BNS 2)
- Stalking (Section 354D IPC) (Section 78 BNS 2)
- Selling or Buying Child for the purposes of Prostitution, etc. (Section 98-99 BNS 2)
- Kidnapping and abduction
- Rape
- Cruelty

The Bhartiya Nyaya Sanhita 2 (BNS2) retains these provisions. The threshold age for gang rape cases has been increased from 16 to 18 years. Sexual Intercourse with woman by making false promises or by using deceitful means is also criminalized in this new act.²

Some of the heinous offences which are committed against women are discussed as follows-

Rape- According to section 375 IPC & Section 63 of BNS 2, a man is said to commit rape if a man penetrates even the slightest degree of his male reproductive organ into a woman without her consent or the ravishment of a woman without her consent, against her will, by force, fear or fraud. Any person committing the offence of rape will face imprisonment of not less than seven years up to life and fine.

Under section 114-A of Evidence Act and Section 120 of BSA 2023, if sexual intercourse is proved and the woman alleged to have been raped then the court shall presume that she did not consent and the onus of proof will lie on the accused to prove that she consented it.

Outraging the modesty of woman- Section 354 IPC & Section 74 of BNS 2 states that whoever assaults or uses criminal force against a woman with the intent to outrage her modesty shall be punished for a term which shall not be less than 1 year but which shall extend to 5 years and also with fine. A man who make physical contact, physical

² The Bhartiya Nyaya (Second) Sanhita, 2023 (January 25, 2:20 pm), <https://prsindia.org/billtrack/the-bharatiya-nyaya-second-sanhita-2023>

advances, asks sexual favours, shows pornography against the will of woman, makes sexually coloured remarks or assaults, uses criminal force with the intent to disrobe her or watches, takes pictures of her while she is doing a private act and have an expectation of not being watched or follows, monitors a woman shall be punishable under these sections respectively.

Acid Attack- According to section 326-A and 326-B of IPC, Section 124 of BNS 2, whoever administers acid on a person or throw or attempt to throw or attempt to administer acid on a person shall be punishable with imprisonment and fine which is reasonable to meet medical expenses of the treatment of the victim.

Dowry-Death- Section 304-B of IPC and Section 80 BNS 2 states that if a woman dies within 7 years after marrying by burns or bodily injury and soon before her death, there was element of physical or mental cruelty in connection with demand for dowry, then these types of death will be counted under dowry-death.

According to Section 113-B of the Indian Evidence Act and Section 118 of Bhartiya Sakshya Adhinyam 2023, the court shall presume that the death of the woman was a case of dowry-death if the circumstances mentioned above are proved.

Misuse of Women Laws

There are numerous incidents and cases which depict that the laws which were given to women as a shield to protect themselves from social evils were being used by them as a sword to assert their supremacy over men. There are several cases where women register false complaints like that of rape, domestic violence, sexual assault, molestation or case of dowry demand over trivial fights without even realizing the consequences and implications of registering such complaints.

As per NCRB 2022 Report³, 239 Dowry Death cases, 7076 cases of cruelty against women by husband or his relatives, 760 cases on attempt to commit rape, 6,821 cases of outraging the modesty of women and 4340 rape case were ended as final report was found to be false.

³ Crime in India 2022 (Jan 25, 2024, 10:44 am), <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf>

Landmark Cases

In **State of Haryana v. Bhajan Lal**⁴ (1992), the Supreme Court laid down the guidelines to prevent misuse of the provisions of Section 498-A IPC pertaining to cruelty by husband or his relatives. The Court further emphasized the need to distinguish genuine cases from false or exaggerated ones.

In another significant case of **Arnesh Kumar v State of Bihar**⁵ (2014), the honorable Supreme Court discussed about the misuse of Section 498-A IPC where the arrest is prescribed on mere allegation without any decent proof. The Apex Court observed that no such arrest should be made in a routine manner and that the arrest should only be made after due investigation. The Supreme Court further provided some mandatory instructions to be followed by police to avoid unnecessary arrest in such cases.

In **Independent Thought v Union of India**⁶ (2017), the Supreme Court dealt with the misuse of POSCO provisions and held that the consensual sexual relationship between minor where both were close in age will not be considered as an offence.

In **Rajesh Sharma and others v State of Bihar**⁷, the Supreme Court issued guidelines to restrain the abuse of Section 498-A IPC and instructed District Legal Services Authority to establish Family Welfare Committee in each district and conduct investigation into all domestic report incidents before making any arrest.

In a recent case of **Swapan Kumar Das v State of West Bengal** (2023), the Calcutta High Court observed that there is element of legal terrorism when section 498-A is misused.

In another recent case of **Manoj Kumar Arya v State of Uttarakhand**⁸ (2023), the Uttarakhand High Court observed that the law punishing rape under section 376 I.P.C. is being misused by women when differences arise between the partners

⁴ 1992 AIR 604, 1990 SCR Supl. (3) 259

⁵ (2014) 8 SCC 273

⁶ AIR 2017 SC 4904

⁷ 2017 SCC 821

⁸ Criminal Misc. Application No. 79 of 2021

Conclusion

These are just a few examples, apart from these, there are several other cases also where women use the laws made for their protection as a sword to make victim sound like the culprit. But then there are some cases too when their voices are made to shut by society or their family members. As a result of which, they are not able to raise voice against the injustice that they are suffering. There are many cases of incest rape too where their family members commit such a sinful act. Most of the families discourage their daughters to file a case of molestation to save their family's reputation. Because of such practices in society, a strict need of women laws arises which are legislated and executed in such a way that even the most underprivileged or restricted girls can avail it and seek justice through it.

Hence such laws are very crucial to restore the status of women, maintain their sanctity, uplift their position, relieve them from patriarchal mindset, society and prevent the commission of such crimes. However, it should be the duty of such women to use them only when the need arises and in the right manner otherwise, the laws made for their protection will soon be snatched away from them or will be amended with such restrictions that it will become difficult for real victims to avail justice.

Bibliography

Bill, Act and Statutes

- Indian Penal Code, 1860
- Bhartiya Nyaya Sanhita, 2023

Internet Sources

- <https://ncrb.gov.in>
- <https://www.scconline.com/>
- <https://www.thehindu.com/>
- <https://www.hindustantimes.com/>

Case Laws

- State of Haryana v. Bhajan Lal 1992 AIR 604, 1990 SCR Supl. (3) 259
- Arnesh Kumar v State of Bihar (2014) 8 SCC 273
- Independent Thought v Union of India AIR 2017 SC 4904
- Rajesh Sharma and others v State of Bihar 2017 SCC 821
- Swapan Kumar Das v State of West Bengal 2023 SCC Online Cal 2427
- Manoj Kumar Arya v State of Uttarakhand Criminal Misc. Application No. 79 of 2021