



Provisions related to women in constitution & criminal laws: A critique study

Vishnu Pati Tripathi

Research Scholar, Department of Post Graduate Studies and Research in Law, Rani Durgavati Vishwavidyalaya,
Jabalpur, Madhya Pradesh, India

Abstract

Women, a girl, a wife, a mother, a grandmother, overall woman is a key of a family. World can never be complete without a woman. Law is the set of rules enforced to govern the behavior of people. From the beginning of this world women are treated as a weaker section of the society and they are the victims of the crimes like rape, eve teasing, female infanticide, dowry, domestic violence, child marriage and acid throwing. They were only allowed to live beneath the shoes of their husbands and fathers. Laws are being made to secure the lives of the women from the violence of their families and societies, and to provide them with their rights of which they are the owners. This paper covers the aspect of women from past history to the present world. It shows how the law of our country has contributed its best to change the lives of women, to make them live with dignity and respect not as a slave.

Keywords: legal status, women rights, domestic violence, child marriage, dowry, eve teasing

Introduction

Legally a female is known as a woman after she has passed through her childhood and adolescence, i.e. basically after crossing the teenage a girl is a woman. Government of India has made several laws to provide equal status to women in our country and secure their lives from various violence and crimes. Constitution of India provides fundamental rights and fundamental duties to the citizens of India; each and every citizen of this country is equally entitled of these rights and duties. The Constitution of India guarantees to all Indian women equality (Article 14), no discrimination by the State (Article 15(1)), equality of opportunity (Article 16), and equal pay for equal work (Article 39(d)). In addition, it allows special provisions to be made by the State in favour of women and children (Article 15(3)), renounces practices derogatory to the dignity of women (Article 51(A) (e)), and also allows for provisions to be made by the State for securing just and humane conditions of work and for maternity relief. (Article 42).

Rolling back to the history of our country we can find the pathetic condition of the women from the very first era. According to studies, women enjoyed equal status and rights during the ancient and the early Vedic period. However, in approximately 500 B.C., the status of women began to decline, and with the Islamic invasion of Babur and the Mughal Empire and Christianity later worsened women's freedom and rights. Indian women's position in society further deteriorated during the medieval period, when child marriages and a ban on remarriage by widows became part of social life in some communities in India. The Muslim conquest in the Indian subcontinent brought purdah to Indian society. Among the Rajput's of Rajasthan, the Jauhar was practiced. In some parts of India, some of Devadasis were sexually exploited. Polygamy was practiced among Hindu Kshatriya rulers for some political reasons. In many Muslim families, women were restricted to Zenana areas of the house. During the British rule many reformers fought for the betterment of the women. Women also contributed in

the struggle of the independence of India. Condition of women started improving from the British Rule Women in India now participate fully in areas such as education, sports, politics, media, art and culture, service sectors, science and technology, etc. Indira Gandhi, who served as Prime Minister of India for an aggregate period of fifteen years, is the world's longest serving woman Prime Minister. There are many acts and provisions made by the Government of India for the benefits of women.

Legal Status of a Woman in India

Women in India are being provided with the legal security to secure their economic, social and cultural lives. These are few acts which show the efforts made by Indian Government in interest of women's life safeguard. Dowry Prohibition Act 1961, Maternity Benefit Act 1861, Births, Deaths & Marriages Registration Act 1886, Medical Termination of Pregnancy Act 1971, National Commission for Women Act 1990, Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1999, Protection of Women from Domestic Violence Act 2005, Sexual Harassment of Women at Work Place (Prevention, Prohibition & Redressal) Act 2013, Hindu Widows Remarriage Act 1856, Muslim women (protection of rights on divorce) Act 1986, Guardians and Wards Act 1890, Indian Penal Code 1860, Christian Marriages Act 1872, etc.

Women in Family

Family is a cooperative unit based on the common interest and mutual support. A woman is the key role of a family. The support of husband, children and in-laws is must to make a happy family. Earlier woman was just treated as a house keeper. She needs to serve her children, in-laws and her husband. But the scenario has changed now, woman enjoys the equal status in the family and contributes more than her husband as she earns for the family and performs all their responsibilities of the household. Women have now stepped out of the house to live their lives in their own

manner. Contribution of woman is more than a man in the present era. The acts for the working women and housewives are, Guardians and Wards Act 1890, Married Woman's Property Act 1872, Indian Succession Act, 1925, Dowry Prohibition Act 1961, Hindu Marriage Act 1955, Muslim Women (protection of rights of divorce) Act 1986.

Women and Education

The education of women in India plays a significant role in improving living standards in the country. A higher women literacy rate improves the quality of life both at home and outside the home, by encouraging and promoting education of children, especially female children, and in reducing the infant mortality rate. Several studies have shown that a lower level of women literacy rates results in higher levels of fertility and infant mortality, poorer nutrition, lower earning potential and the lack of an ability to make decisions within a household. Women's lower educational level is also shown to adversely affect the health and living conditions of children. A survey that was conducted in India showed results which support the fact that infant mortality rate was inversely related to female literacy rate and educational level. The survey also suggests a correlation between education and economic growth. In India, it was found that there is a large disparity between female literacy rates in different states. For example, while Kerala actually has a female literacy rate of about 86 percent, Bihar and Uttar Pradesh have female literacy rates around 55- 60 percent. These values are further correlated with health levels of the Indians, where it was found that Kerala was the state with the lowest infant mortality rate while Bihar and Uttar Pradesh are the states with the lowest life expectancies in India. Furthermore, the disparity of female literacy rates across rural and urban areas is also significant in India. Out of the 24 states in India, 6 of them have female literacy rates of below 60 percent. The rural state Rajasthan has a female literacy rate of less than 12 percent.

In India, higher education is defined as the education of an age group between 18 and 24, and is largely funded by the government. Despite women making up 24-50% of higher education enrollment, there is still a gender imbalance within higher education. Only one third of science students and 7% of engineering students are women. In comparison however, over half the students studying education are women. The number of literate women among the female population of India was between 2-6% from the British Raj onwards to the formation of the Republic of India in 1947. Concerted efforts led to improvement from 15.3% in 1961 to 28.5% in 1981. By 2001 literacy for women had exceeded 50% of the overall female population, though these statistics were still very low compared to world standards and even male literacy within India. Recently the Indian government has launched Saakshar Bharat Mission for Female Literacy. This mission aims to bring down female illiteracy by half of its present level.

Women's Economic, Social and Cultural rights

The movement to assure women's economic, social and cultural rights (ESCR) as a basic human's right is just emerging in India. The movement aims to locate women's right within the larger human rights framework, and by doing so moves away from women's issue only within the framework of violence and reproductive rights. ESCR attempts to look at the broader issues facing women namely

poverty, housing, unemployment, education, water, food security, trade, etc. While the human rights movement at ESCR is largely contained at the international policy level, there are emerging social movements around the world. In the Indian context, projects like the, Programme on Women's Economic, Social and Cultural Rights (PWESCR) aims to build the women rights movement in India to create equality in all the sphere of women's lives. Women's economic opportunity in India is a rapidly changing landscape as women are not less than any man in every sector whether it may be organized or unorganized. The exposure is needed for the women in unorganized sector.

Important Constitutional and Legal Provisions For Women in India

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. Within the framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at women's advancement in different spheres. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993.

1. Constitutional Provisions

The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.

Constitutional Rights ^[1].

1. Equality before law for women (Article 14)
2. The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Article 15 (i))
3. The State to make any special provision in favour of women and children (Article 15 (3))
4. Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (Article 16)
5. The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a)); and equal pay for equal work for both men and women (Article 39(d))
6. To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (Article 39 A)
7. The State to make provision for securing just and humane conditions of work and for maternity relief

(Article 42)

8. The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (Article 46)
9. The State to raise the level of nutrition and the standard of living of its people (Article 47)
10. To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (Article 51(A) (e))
11. Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (Article 243 D (3))
12. Not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women (Article 243 D (4))
13. Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality (Article 243 T (3))
14. Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide (Article 243 T (4))

2. Legal Provisions

To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women. Although women may be victims of any of the crimes such as 'Murder', 'Robbery', 'Cheating' etc, the crimes, which are directed specifically against women, are characterized as 'Crime against Women'. These are broadly classified under two categories.

1. The Crimes Identified Under the Indian Penal Code (IPC)^[2]

1. Rape (Sec. 376 IPC)
2. Kidnapping & Abduction for different purposes (Sec. 363-373)
3. Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
4. Torture, both mental and physical (Sec. 498-A IPC)
5. Molestation (Sec. 354 IPC)
6. Sexual Harassment (Sec. 509 IPC)
7. Importation of girls (up to 21 years of age)

2. The Crimes identified under the Special Laws (SLL)^[3]

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some acts which have special provisions to safeguard women and their interests are:

1. The Employees State Insurance Act, 1948
2. The Plantation Labour Act, 1951

3. The Family Courts Act, 1954
4. The Special Marriage Act, 1954
5. The Hindu Marriage Act, 1955
6. The Hindu Succession Act, 1956 with amendment in 2005
7. Immoral Traffic (Prevention) Act, 1956
8. The Maternity Benefit Act, 1961 (Amended in 1995)
9. Dowry Prohibition Act, 1961
10. The Medical Termination of Pregnancy Act, 1971
11. The Contract Labour (Regulation and Abolition) Act, 1976
12. The Equal Remuneration Act, 1976
13. The Prohibition of Child Marriage Act, 2006
14. The Criminal Law (Amendment) Act, 1983
15. The Factories (Amendment) Act, 1986
16. Indecent Representation of Women (Prohibition) Act, 1986
17. Commission of Sati (Prevention) Act, 1987
18. The Protection of Women from Domestic Violence Act, 2005

State Initiatives for Women

1. National Commission for Women^[4]

In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc.

2. Reservation for Women in Local Self Government

The 73rd Constitutional Amendment Acts passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.

3. The National Plan of Action for The Girl Child (1991-2000)

The plan of Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child.

4. National Policy for The Empowerment of Women, 2001

The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a "National Policy for the Empowerment of Women" in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women.

Women's Security: Indian Scenario

Policies relating to women's rights have had a positive trajectory in the past few decades with the central government articulating many progressive measures to advance gender equality in social, economic, and political arenas. Inequality between men and women runs across the board, including in education, economic opportunities, representation in governance, and other state and private institutions. The multiple forms of violence experienced in the household, at the community level, and in some instances by the state, threaten women's security in India.

Criminal Law (Amendment) Act, 2013^[5]

The Cabinet Ministers on 1 February 2013 approved for bringing an ordinance, for giving effect to the changes in

law as suggested by the Verma Committee Report. According to former Minister of Law and Justice, Ashwani Kumar, 90 percent of the suggestions given by the Verma Committee Report have been incorporated into the Ordinance. The ordinance was subsequently replaced by a Bill with numerous changes, which was passed by the Lok Sabha on 19 March 2013.

New offences

The gang rape of a 23-year-old student in Delhi on 16th December 2012, led to a country wide agitation by women's groups and feminists all over the country. Following the protests, a committee under the leadership of retired Justice Verma was constituted to come up with recommendations for the amendment to law relating to sexual offences. The committee submitted its report on 23rd January 2013. The committee in its report emphasized on the duty of the State to ensure gender justice. The Criminal Law Amendment Act of 2013 that came into force did not accept all the recommendations of the Justice Verma Committee. However, major changes in substantive and procedural law were made with respect to rape cases.

The amendments made in the Indian Penal Code 1860, Code of Criminal Procedure 1973 and Indian Evidence Act, 1872 relating to rape cases were as follows:

Indian Penal Code, 1860 (IPC)

This new Act has expressly recognised certain acts as offences which were dealt under related laws. These new offences like, acid attack, sexual harassment, voyeurism, stalking have been incorporated into the Indian Penal Code.

1. The amendment inserted a new provision under section 166 A for punishing public servants who refuse to record a FIR in cases of specified crimes against women including rape.
2. The amendment also inserted a new proviso under section 166 B punishing those in charge of a public or private hospital for refusal to provide free medical treatment for victims of rape.
3. The definition of rape in section 375 was widened to include acts other than forcible peno-vaginal penetration or sexual intercourse. The amended section 375 includes forcible penetration by the man of his penis, any part of his body or any object into the vagina, mouth, urethra or anus of a woman or making her do so with him or any other person; manipulation of any part of the body of a woman so as to cause penetration into the vagina, urethra or anus of a woman or making her do so with him or any other person; and applying his mouth to the vagina, anus or urethra of a woman or making her to do so with him or any other person.
4. Consent was defined by adding an explanation to section 375 as "unequivocal voluntary agreement" signifying willingness by the woman by "words, gestures or any form of verbal or non-verbal communications" to participate in the sexual act. This definition clarifies that women's silence or absence of 'no' cannot be construed as a "yes".
5. The age of consent was raised from 16 to 18 years.
6. Section 376 (2) was expanded to include rape committed by a member of the armed forces deployed in an area by the Central or a State Government in such area.

7. Section 376 (2) was also expanded to consider rape of a woman below the age of 16 years as aggravated and hence enhanced punishment for it.
8. The judicial discretion available to impose a reduced sentence (lesser than the required minimum) was deleted by the Amendment.
9. A separate section 376 D was made for the offence of gang rape with a higher punishment. The section states that, where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine.
10. The amendment made separate section for rape that caused death or persistent vegetative state of the victim under section 376 A. With this section, the amendment introduced death penalty as a punishment for rape that caused vegetative state or death.
11. Section 376 C was expanded to include the abusing of a position of authority or fiduciary relationship by certain persons to induce or seduce any woman in his custody or charge to have sexual intercourse with him.
12. The amendment also included a section 376E for repeated offenders and laid down stricter punishment for persons convicted under this section. Death penalty was also introduced in this section as the punishment along with life imprisonment without parole.
13. Earlier, section 376A (intercourse by a man with his wife) provided for a punishment of imprisonment for a term, which may extend to two years. After the 2013 amendment, punishment for sexual intercourse by a husband upon his wife during separation without her consent (section 376B, substituting section 376A) was increased to seven years, with a minimum punishment of two years.

Code of Criminal Procedure, 1973 (CrPC)

1. Section 154 (1) that deals with the recording of FIR was amended to include that in certain offences against women (including rape), the FIR has to be recorded by a woman police officer or any woman officer. It also added that in case of a woman who is temporarily or permanently mentally or physically disabled and alleges commission or attempt of an offence under section 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E or section 509 of the Indian Penal Code, 1860, such information shall be recorded by a police officer, at her residence or at a place of her choice, in the presence of an interpreter or a special educator. Along with this, such information shall be video-graphed and her statement before the Magistrate under section 164 CrPC shall be recorded as soon as possible by the police officer.
2. Section 164(5A) was inserted by the Criminal Law Amendment Act 2013, which makes it mandatory for recording of statement of the victim/survivor by the Judicial Magistrate, as soon as the commission of the offence is brought to the notice of the police.
3. An explanation was added to section 197(1), CrPC to the effect that it would not be necessary to seek prior

sanction from the Appropriate Government for prosecution of a public servant for any of the offences of sexual abuse. This is for the obvious reason that the section 197 is intended to protect public servants from malicious prosecution for acts done in the discharge of duties. It cannot be argued by any stretch of imagination that sexual abuse happened as a part of public duties, hence the said amendment was made to enable expeditious prosecution of public servants for rape and other forms of sexual abuse.

4. Section 375C, inserted by the Criminal (Amendment) Act 2013, makes it mandatory for all public and private hospitals to immediately provide free first aid or medical treatment to victims of acid attack and rape, and to immediately inform the police of such incident.

Indian Evidence Act, 1872 (IEA)

1. A new section 53 A was inserted by the Criminal Law Amendment Act 2013 which deals with 'evidence of character or previous sexual experience'. As per this section, in a prosecution for an offence of rape, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the question of such consent or quality of consent.
2. The existing section 114A was substituted by a new one stating that in a prosecution for rape under clauses (a) to (n) of section 376(2) IPC, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.
3. The proviso to section 146 was substituted with the existing one to state that, in a prosecution for rape, it shall not be permissible to adduce evidence or to put questions in the cross examination of the victim as to the general immoral character or previous sexual experience of such person with any person for proving such consent or quality of consent.

Criminal Law Amendment Act, 2018 ^[6]

The Ministry of law and justice introduced the criminal law amendment bill 2018 in Lok Sabha on July 23, 2018, and the same was passed on 30 July and 6 August by Lok Sabha and Rajya Sabha respectively. This bill aims to provide grievances to the victim, who has been sexually assaulted and ensure the death penalty for those who, convicted for raping a girl below 16 or 12 years. It replaced the ordinance promulgated by the President of India in April and also did relevant amendments in:

Brief facts of Kathua rape case and Unnao rape case

An 8-year-old girl was raped in Kathua, a district of Jammu and Kashmir. It has been alleged that she was kept in a Shrine for several days and raped continuously and later murdered.

The Unnao rape case was another shock to the nation where a teenage girl accused an MLA of raping her in the year 2017. She tried to set herself on fire in front of the MLA's residence in Unnao, northern Uttar Pradesh.

Timeline of events which led to the amendment

Several state assemblies such as Madhya Pradesh, Haryana,

Rajasthan, and Arunachal Pradesh passed stringent anti-rape laws for committing rape of minor girls after the Kathua rape and the Unnao rape incidents.

- Following this, the President had promulgated the Criminal Law Amendment Ordinance on 21 April 2018.
- The Criminal Law (Amendment) Bill was then tabled in the Parliament which replaced the Ordinance.
- The Bill was passed by the Parliament on 6th August 2018.
- The President gave assent to the Bill and thus, the Criminal Law (Amendment) Act, 2018 came into force.

What lead to enactment of Criminal Law Amendment Act, 2018

This followed the Criminal Law (Amendment) Ordinance, 2018 and brought amendments in four major Acts.

- The Indian Penal Code, 1860
- The Code of Criminal Procedure, 1973
- The Evidence Act, 1872
- The Protection of Children from Sexual Offences Act, 2012

Amendments in Indian Penal Code

Criminal amendment act 2018 inserts three new sections in IPC-

376AB
376DA
376DB

And amend three sections of IPC-

166A
228A
376

Inserted Sections

376AB ^[7]

This section was inserted just after Section 376A and provides that whoever commits rape with a woman, who is under 12 years of age shall be punished with rigorous imprisonment for a term which shall not be less than 20 years, and it may extend to life imprisonment which impliedly intends to introspect what he had been done is thoroughly illegal and off-base, or in legal sense, reminder for that person natural life, and with fine or death penalty. And also liable to pay compensation and such compensation shall be reasonable and just, to meet the medical expenses and for victim rehabilitation. Additionally, commands that any payment by the denounced under this section will be paid to the person in question (victim).

376DA ^[8]

After Section 376D, 376DA section inserted and states that when a woman under the age of sixteen years raped by one or more person constituting a group or done some action for the pursuance of common intention, each of that person deemed to commit the offence of rape and shall be punished with imprisonment for life which shall impliedly intends to introspect what he had been done is thoroughly illegal and off-base, or in legal sense, reminder for that person natural life, and with fine or death penalty. And also liable to pay compensation and such compensation shall be reasonable and just, to meet the medical expenses and for victim rehabilitation.

Additionally, commands that any payment by the denounced under this section will be paid to the person in question (victim).

376DB ^[9]

This section states that where a woman who, is below the age of 12 years is raped by one or more person constituting a group or action for the pursuance of common intention, each person shall be deemed to commit the offence of rape, and punished with life imprisonment which impliedly intends to introspect what he had been done is thoroughly illegal and off-base, or in legal sense, reminder for that person natural life, and with fine or death penalty. And also liable to pay compensation and such compensation shall be reasonable and just, to meet the medical expenses and for victim rehabilitation.

Additionally, commands that any payment by the denounced under this section will be paid to the person in question (victim).

Amended Sections

166A ^[10]

This section deals with public servant disobeying directions under the law, and has three clauses. And clause (c), is substituted with section 376AB, 376B, 376C, 376D, 376DA and 376DB.

228A ^[11]

This section deals with disclosure of the identity of the victim of certain offences, and sub section 1 of this section was substituted with Section 376AB, 376B, 376C, 376D, 376DA, and 376DB.

376 ^[12]

This section deals with the punishment for rape and under this section, the sub-section 1 was substituted as “whosoever commits an offence of rape shall be punished for the term not less than 10 years or which may extend to life imprisonment and with fine”.

And by this amendment in section 376, sub-section 2 clause (a) sub-section 1 has been repealed.

After sub-section 2 of section 376, new sub-section inserted namely “3” which provides that whoever commits the offence of rape with a woman, who is under the age of sixteen years shall be punished with rigorous imprisonment for a term not less than 20 years, and shall extend to imprisonment for life which impliedly intends to introspect what he had been done is thoroughly illegal and off-base, or in legal sense, reminder for that person natural life, and with fine or death penalty.

And also liable to pay compensation and such compensation shall be reasonable and just, to meet the medical expenses and for victim rehabilitation.

Additionally, commands that any payment by the denounced under this section will be paid to the person in question (victim).

The Criminal Amendment Act, 2018 amends two sections of the Indian Evidence Act, 1872

53A

Provision of Section 146

53A ^[13]

This section deals with the evidence of character or previous sexual experience not relevant in certain cases substituted

with Sections 376AB, 376B, 376C, 376D, 376DA, and 376DB.

146 ^[14]

This section deals with questions lawful in cross-examination (what are the questions must be asked by the Police Officer) when a witness is cross-examined, he may in addition to the question hereinbefore referred to, be asked any question which tends-

- Tend to test the veracity.
- To discover who he is and what is his position in life.
- To sake his credit, by injuring his character, although the answer might tend directly or indirectly to criminate him, might expose him to a penalty or forfeiture.

Provision 3 or this section were substituted with section, 376AB, 376B, 376C, 376D, 376DA and 376DB.

Amendment in Code of Criminal Procedure

By the Criminal Amendment Act, 2018 following sections of Cr.PC has been amended these are:

Section 173

Section 374

Section 377

Section 438

Section 439

Section 173 ^[15]

In this section there is an amendment in sub-section (1A) which provides that rape of a child may be completed within 3 months, this sub-section was substituted with “an offence under section 376AB, 376B, 376C, 376D, 376DA, and 376DB or section 376E of the Indian penal code shall be completed within 2 months”.

Section 374 ^[16]

In section 374 of Cr.PC, after sub-section (3), the following sub-section inserted i.e, sub-section (4) and read as when an appeal has been filed against a sentence passed under Section 376, 376A, 376AB, 376B, 376C, 376D, 376DA, and 376DB or Section 376E of the Indian penal code the appeal shall be disposed within period of 6 months from the date of filing of such appeal.

Section 377 ^[17]

In Section 377 of the code of criminal procedure, after sub-section (2), new sub-section was inserted i.e. sub-section (3) and read as when an appeal has been filed against a sentence passed under section 376, 376A, 376AB, 376B, 376C, 376D, 376DA, and 376DB or section 376E of the Indian penal code the appeal shall be disposed off within a period of 6 months from the date of filing the appeal.

Section 438 ^[18]

In Section 438 of the Code of Criminal Procedure, after sub-section (3), new sub-section inserted i.e. sub-section (4) and provides that nothing in this section shall apply to any case involving the arrest of a person on accusation of having committed an offence under sub-section (3) of Section 376, 376AB, 376DA, 376DB of the Indian penal code.

Section 439 ^[19]

In Section 439 of CrPC, after sub-section (a), (1) provision, another provision was added and says that “the high court

and the session court shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of Sections 376, 376AB, 376DA, 376DB, give notice of the applicant for the bail to the public prosecutor within a period of 15 days from the date of receipt of such notice.

And after sub-section (1) of Cr.PC following sub-section was inserted i.e. (1A) which provides that the presence of the informant or any person authorized by him, shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of sections 376, 376A, 376DA, 376DB.

Protection of children from sexual offences (POCSO) Act, 2012 ^[20]

By the Criminal Amendment Act, 2018 there is a change in Section 42 of POCSO Act, 2012. This section deals with Alternative Punishment and Sections 376A, 376C, 376D were substituted with 376A, 376AB, 376B, 376C, 376D, 376DA and 376DB of Indian penal code.

Conclusion

It is an unfortunate reality the females are considered as weaker section of society not only from the point of view of physical abilities but also from the sociological aspects as well. In India females have been considered as a burden on males since ancient times. They are dependents of father, husband, or son as the case may be. The position of women was degraded gradually with the development of male dominating society and became worst in the present society. Now the crimes against women and exploitation of women in India is on rise in India despite the fact that many efforts have been made by legislature and the judiciary to stop or prevent the same. The Constitution of India itself provides protection against arbitrary treatment of women and there are number of protective laws enacted by the legislature but, still the crimes against women have continued their upward trend and victimizing more and more women in the crimes of matrimonial cruelties, trafficking, rape, stalking, voyeurism, pornography, prostitution and eve teasing etc. Women have also been subjected to socio-economic crimes and cultural deprivations. Although justice is the part of basic structure in India but, in practice the gender justice cannot be seen practically on ground. Gender justice basically means that there shall be no discrimination on the basis of gender, but, as a matter of fact the women are the major sufferer of injustice in Indian society.

The main causes behind the poor condition of women are lack of education, lack of knowledge, powerless, poor health, malnourished, unskilled, overburdened etc. There are certainly some social causes behind the same such as inferior status of women, orthodox thoughts of society, broken homes, cruelty, permissive atmosphere etc. Unemployment and poverty play a major role in crimes against women. The under reporting of crime is another major problem in India. The Indian society feels it more shameful for women to lodge a complaint of violence committed against her. It is believed if the matter remains within the four walls then it will be better. This blinkered view pervades the entire Indian system.

Although the judiciary is doing its level best but the number of cases are increasing day by day. It clarifies the position of the executives. The implementation of law seems to be lacking everywhere. So many laws made for protection of women including constitutional provisions are of no use

until implemented at ground level. Hence it is true that making law in not sufficient. It must be adhered and applied rigorously.

References

1. Constitution of India.
2. The Crimes Identified Under the Indian Penal Code (IPC)
3. The Crimes identified under the Special Laws (SLL)
4. National Commission for Women
5. Criminal law amendment act 2013
6. Criminal law amendment act 2018
7. Sec. 376 AB IPC
8. Sec. 376 DA IPC
9. Sec. 376 DB IPC
10. Sec. 166 IPC
11. Sec. 228-A IPC
12. Sec. 376 IPC
13. Sec. 53 a the Code of criminal procedure.
14. Sec. 146 the Code of criminal procedure.
15. Sec. 173 the Code of criminal procedure.
16. Sec. 374 the Code of criminal procedure.
17. Sec. 377 the Code of criminal procedure.
18. Sec. 438 the Code of criminal procedure.
19. Sec. 439 the Code of criminal procedure.
20. Protection of children from sexual offences (POCSO) Act, 2012.