

REALIZING GENDER JUSTICE IN MARITAL OBLIGATIONS : EVALUATION OF JUDICIAL TREND IN INDIA

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Introduction

Women's rights within a family can be construed only by conceptualizing the term 'family' and the myriad forms existent in both liberal/ Western and conservative/ Eastern societies. Since family is the central institution in maintenance of women's equality *vis a vis* men on the paradigms of reproductive autonomy, expression of sexuality, conformity to cultural roles and prevailing customary practices at domestic and International level depends solely on efficacy of State Action and categorisation of violence against women as non 'private' matter.

International Human Rights law mandates that the State parties are obliged to combat familial violence, domestic violence, Intimate Partner violence¹ whether by sexual or non-sexual partners of married or unmarried women by enacting the same as criminal offence so as to punish and prevent further acts of violence thereby guaranteeing equal protection to women under law.² Further the State obligation doesn't end with enactment of a penal statute but essentially making available the incidental civil remedies and mechanisms in the form of compensation, custody of the children, mandatory counseling in divorce proceedings to assess the mental health of the disputing parties.

In consonance with the International Human Rights mandate, India has undertaken number of women centric measures namely, establishment of women's commissions, conferring public health benefits, setting up of fast track courts *et al* in addition to various legislative provisions. The debate involving prosecution of women as adulteress under 'Section 497 of Indian Penal Code' continues to be grappled from Macaulay's time, similarly Cruelty provision entails dilemma of ascertaining the psychological factors and balancing the conflicting interests of the parties namely Husband, Wife and relatives while instituting criminal proceedings and with the end objective of doing justice.

The *res integra* given by the Supreme Court³ firstly, in declaring section 498A Bailable and Compoundable for curbing the misuse of the said section thereby ensuring gender justice was evident in series of subsequent feminist judgements; secondly, expanding the notion of 'Domestic relationship'⁴ and thirdly, the husband was acquitted on the ground that *per se* extra marital affair is not a constituent element for Cruelty, though, in the particular case the wife had committed suicide.⁵

Thus the research paper is impelled with concerned decision and the aftermath which has re-infused the mythical demand for eradication of patriarchal beliefs within the bench, gender sensitization and appointing adequate number of women judges. The case has been discussed in detail to postulate mutually exclusive relation between provisions relating to cruelty and abetment of suicide.

Analysis of the Case:

1. Issues Involved:

The appellant (Mr. K.V. Prakash Babu) and the deceased (Ms. Anjanamma) were married in 1997, soon after that the appellant started having an extra marital affair with Deepa daughter of Ashwathamma who frequently visited the matrimonial home. Unable to bear with the grief the wife committed suicide in 2004. Subsequently Deepa along with her mother and brother too committed suicide owing to the humiliation. The appellant Husband was charged with sections 302, 498 -A and 306 of Indian Penal Code, 1860, R/w Section 3 of the Dowry Prohibition Act, 1961 on a complaint

by the father of the deceased. Thus the issue raised was:

“ *Whether the extra-marital affair of the appellant constituted mental cruelty on the wife to an extent that she was forced to commit suicide? ”*

1. Application of Law:

Ingredients of offence of cruelty: Husband or the husband's relatives by

- a. willful conduct of such nature cause
- b. grave injury or danger to life, limb or health (mental physical)
- c. which is likely to drive the woman to commit suicide

OR

d. harassment for coercing the woman or relative to meet unlawful demand of property or valuable security.⁶ (also amounts to mental cruelty)

2. Judgement:

a) Ratio Decendi of the Trial Court :

The appellant is acquitted of culpable homicide amounting to murder owing to failure of the prosecution to prove the same beyond reasonable doubt but convicted under 498 -A of Indian Penal Code, 1860, R/w Section 3 of the Dowry Prohibition Act, 1961 and sentenced to rigorous imprisonment of one year and two months, additionally fined for Rs. 50,000/- to be paid to father of the deceased. The court ruled that extra-marital affair *fait accompli* amounted to mental cruelty which ultimately resulted in suicide.

b) Ratio Decendi of the High Court:

On appeal the prosecution failure resulted in quashing the conviction under dowry prohibition law while sentencing the appelleant to 4 years rigorous imprisonment along with fine for Rs. 95,000/- to be paid to father of the deceased by virtue of Section 498-A and 306 of Indian Penal Code, 1860.

c) Ratio Decendi of the Supreme Court:

An appeal was preferred on the ground erring in non appreciation of evidence for proving that the appellants conduct was not harassment or torture. The court basing on previous decisions⁷ ruled that mere suspicion of extra-marital affair, contemplating second marriage of the husband and complaining of the same to parents of the deceased is not cruelty for reasons stated below: marital relationship and marital obligation as a marital debt though includes exclusivity of sexual relation, intimacy, procreation, financial contribution, mutual love and affection *et al* non discharge of intimacy is not cruelty unless the conduct of the husband drove the woman to commit suicide, but the state of mind of the woman in every case is independent and based on the social standing, individualist perception, endurance, sensitivity of the woman and not on suspicion alone as was evident in the case.

Thus alleged extra marital relationship, which if proved or disproved could be illegal and immoral but not an act inducing the wife to commit suicide unless evidence is adduced for the same.⁸

Whether Sexual Rights of Spouses has been outlined in the above mentioned case?

To answer the query raised above reference has to be made to the concept of sexual rights along with mental health among married spouses and causative factors of suicide and interrelationship *inter alia*.

Definition of sexual rights:

According to WHO “Sexual Rights is the integration of the somatic, emotional, intellectual and social aspects of sexual being, in ways that are positively enriching and that enhance personality, communication and love and is the enhancement of life and personal relations, and not merely counseling and care related to reproduction and sexually transmitted diseases, includes sexual identity/ orientation and incidental reproductive concerns.”⁹

Further “Sexual rights are universal human rights based on the inherent freedom, dignity and equality of all human beings. Sexual rights include the right to choose one’s sexual partner, to control one’s own body, to experience sexual pleasure, to not be abused or violated, to freely choose contraceptive methods, have access to safe and legal abortion, have access to information about prevention of sexually transmitted infections (STIs) and comprehensive sexuality education.”¹⁰

Finally according to International Planned Parenthood Federation, “Sexual rights refer to specific norms that emerge when existing human rights are applied to sexuality. These rights include freedom, equality, privacy, autonomy, integrity and dignity of all people; principles recognized in many international instruments that are particularly relevant to sexuality. Sexual rights offer an approach that includes but goes beyond protection of particular identities. Sexual rights guarantee that everyone has access to the conditions that allow fulfillment and expression of their sexualities free from any coercion, discrimination or violence and within a context of dignity.”¹¹

Additionally Beijing Declaration and Platform for Action stipulated, “the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behavior and its consequences.”

According to World Health Organization report all types of mood disorders including depressed mood is dependent on socio-demographic factors and the same affects men and women differently. Marriage is protective for males in terms of suicide risk but not significant for females also marital separation has greater effect on males compared to women.¹²

Conclusion

Having regard to the above mentioned definitions, the researcher has inferred that the cases emphasizes on individuality within marriage to an extent of sexual liberation and non exclusivity for the spouses. The cases by denying the criminal remedy of prosecuting for non discharge of marital obligations fuels the notion of ‘open marriage’ which in itself is destruction of sanctity of ‘marriage’ as an institution. The public law domain – State Action has been sidelined *prima facie* to private domain (divorce¹³ or filing of Domestic Incident Report under Domestic Violence Act, 2005 are the available remedies) unless the nexus between extra-marital affair as a cause for committing suicide by the woman is proved beyond reasonable doubt.

The sexual liberation is not in derogation to human dignity, equality, nor is the same coercive or discriminatory, as a matter of fact the rights of the accused along with the principle of proof beyond reasonable doubt have been given primacy. Further the presumption of abetment to suicide by woman within seven years of marriage¹⁴ allows the court to presume that the suicide has been abetted by the husband or his relatives though circumstances contrary to the same may exist and the Burden of Proof

is still on the prosecution.

However it is pertinent to note that the same decision appears flawed, if judged from the perspective of Women's Right to mental health as a human right. As stipulated by World Health Organization¹⁵ and suicide research in India shows that one-fourth of the persons committing suicide are unmarried and the suicide rate is highest in the first year of marriage. Marital and family problems, which constitute around 50%, are more important than mere cruelty. The higher rate of married women committing suicide may probably be due to marital disharmony, dowry or ill-treatment by the in-laws.¹⁶

Women's attainment of full enjoyment of social, economic, and cultural rights has not reached the same level of acceptance as the civil and political rights have achieved in positivist model. The clear distinctions as to character and nature of legal rights and obligations existing in any marital union is governed both by civil and criminal law, however the legal norms are primary to social and moral norms and any obliteration of judicial decision is for ensuring justice.

(Endnotes)

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- 1 *Report of the National Centre for Injury Prevention and Control, CDC, Intimate Partner Violence Surveillance: Uniform Definitions and Recommended Data Elements*, available at <https://www.cdc.gov/violenceprevention/pdf/intimatepartnerviolence.pdf>, last seen 01/12/2016
 - 2 Article 2 & Article 26, International covenant on Civil and Political Rights, 1966.
 - 3 *Arnesh Kumar v. State of Bihar*, 2014 (8) SCC 273
 - 4 *Indra Sharma v. K. V. K. Sharma* 2014 SC 309
 - 5 *K.V. Prakash Babu v. State of Karnataka @ S.L.P. (CrI) Nos. 5928-5929 OF 2016*
 - 6 See 498A Explanation (a) and (b) to section, The Indian Penal Code, 1860
 - 7 *Gurnaib Singh v. State of Punjab*(2013) 7 SCC 108; *Pinakin Mahipatray Rawal v. State of Gujarat* (2013) 10 SCC 48
 - 8 *Ghusabhai Raisangbhai Chorasiya v. State of Gujarat*(2015) 11 SCC 753
 - 9 *Report of World Health Organization, Report of Sexual and Reproductive Rights of Women*, available at https://apps.who.int/iris/bitstream/10665/175556/1/9789241564984_eng.pdf last seen on 10/12/2016
 - 10 *Report of Swedish International Development Cooperation Agency, Sexual and Reproductive Rights*, available at https://www.sida.se/globalassets/global/.../sexual-rights-for-all_webb.pdf last seen on 10/11/2016
 - 11 *Report of International Planned Parenthood Federation, Declaration of Sexual rights*, available at www.ippf.org/sites/default/files/sexualrightsippfdeclaration_1.pdf, last seen on 04/12/2016; *See Report of World Association of Sexology, Definition of Sexual and Reproductive Rights* available at www.worldsexology.org/wp-content/.../declaration-of-sexual-rights.pdf last seen on 04/12/2016; *Report of Amnesty International, Fact sheet of Reproductive Rights in USA*, available at www.amnestyusa.org/pdfs/SexualReproductiveRightsFactSheet.pdf last seen on 02/12/2016; *Report of United Nations Population Fund*, available at https://www.unfpa.org/sites/default/files/pub-pdf/SRH_Framework.pdf last seen on 02/12/2016;
 - 12 *Report of World Health Organization, Investing in Mental Health*, available at http://www.who.int/mental_health/en/investing_in_mnh_final.pdf last seen on 02/12/2016;
 - 13 *Narendra Kumar Gupta v. Smt. Indu* AIR 2002 Raj 169 ; *Mrs. Deepalakshmi Saehia Zingade v. Sachi Ramesh Rao Zingade* AIR 210 Bom 16; *Anil Bhardwaj v. Nirmlesh Bhardwaj* AIR 1987 Delhi 111
 - 14 Section 113A , The Indian Evidence Act, 1872
 - 15 *Report of World Health Organization, Worldwide Mental Health and Suicide Rate*, available at http://www.who.int/gho/mental_health/suicide_rates/en/ last seen on 08/12/2016
 - 16 Dr. T.S. Sathyanarayana Rao, Dr. S. Nambi & Dr. Chandrashekar H., *Marriage Mental Health and Indian Legislation* 4, *Journal of Indian Psychiatry*, 5 available at <http://www.indianjpsychiatry.org/cpg/cpg2009/article2.pdf> last seen on 03/12/2016