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Patriarchal Society but Women Centric Law

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ABSTRACT

India has enacted several special laws to protect women from domestic violence, dowry harassment, sexual offences and other forms of gender-based discrimination. These enactments were introduced to address the historical and social disadvantages faced by women and to secure their constitutional right to equality and dignity. While those protections remain indispensable, judicial decisions have acknowledged that in certain cases such provisions may be misused through false or malicious complaints, resulting in hardship to innocent persons. This paper examines the misuse of protective laws in matrimonial and other gender-related disputes, with particular reference to the discourse on male victimisation. It considers judicial precedent and statutory provision in order to evaluate whether the existing framework provides adequate safeguards against abuse of process while continuing to protect genuine victims, and it notes the social stigma faced by male complainants, the problem of under-reporting and the absence of specific remedies in certain situations. The paper does not question the necessity of laws enacted for the protection of women. It argues rather that the administration of justice must remain fair, impartial and evidence-based, and concludes that strengthening procedural safeguards, ensuring fair investigation and considering gender-neutral measures where appropriate would better uphold the constitutional principles of equality before the law and the equal protection of the laws under Article 14, while preserving the rights and dignity of all persons irrespective of gender.

Keywords: Patriarchy, Women-centric legislation, Misuse of law, Gender neutrality, Article 14, Equality before law

I. INTRODUCTION

Society is a community of people who live together and interact with one another according to settled rules and traditions. It is a group living in an organised way and following a shared culture, law, tradition, custom, usage and norm. Much of India has had a patriarchal social structure. A patriarchal society is a social system in which men are regarded as the head of the family and of society, and in which they ordinarily hold greater authority, rights and decision-making power than women. Where decision-making power is concentrated in the hands of men, women have limited control over matters that affect them, and they have in consequence faced

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unequal treatment in education, in the economy, in employment and in the important affairs of the family and of society.

For centuries women have faced oppression, discrimination, violence and unequal treatment under a predominantly patriarchal social system. Acknowledging these historical and structural inequalities, Parliament and the State Legislatures have, in response to the evolving needs of society, enacted a number of women-friendly laws and policies directed at the empowerment of women, the safeguarding of their rights and the securing of substantive equality. These measures seek not only to protect women from discrimination and violence but to enable their equal participation in every sphere of life, in accordance with the constitutional vision of justice, equality and dignity.

Concern has at the same time been expressed about the misuse of certain women-centric provisions in a limited number of cases. Where a law is deliberately misused by an individual to harass another or to obtain an unfair advantage, it undermines the credibility of the legal system and may cause hardship to innocent persons, including men. Such instances do not diminish the necessity or the importance of laws enacted for the protection of women.

While continuing to afford effective legal protection to women, therefore, the legal system should also secure fairness, due process and accountability. Where a court finds that a complaint has been deliberately false or malicious, or has been made with the intention of abusing the process of the court, appropriate penalties should follow in accordance with law. Measures of that kind would discourage misuse, protect innocent persons and strengthen public confidence in the administration of justice, while preserving the objective of gender justice and equality.

II. THE MEANING OF PATRIARCHY

Patriarchy refers to a social system in which men occupy dominant positions in political, economic, social and family institutions. Under patriarchal arrangements men generally exercise the greater authority, while women often experience unequal access to opportunity and to resources. The characteristics of a patriarchal society include the following.

- Male dominance in decision-making within the family.
- A preference for male children.
- An unequal division of domestic work.
- The economic dependence of women.
- Gender-based violence.
- Restricted educational and employment opportunity.

- Social stereotypes concerning gender roles.

Although significant progress has been made, traces of patriarchal thinking continue to influence many social practices.

III. THE CONSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF WOMEN

The Constitution provides a firm foundation for gender equality.

- Article 14 guarantees equality before the law and the equal protection of the laws.¹
- Article 15(1) prohibits discrimination on the ground of sex.²
- Article 15(3) permits the State to make special provision for women and children, and it is this provision that forms the constitutional basis of women-centric legislation.³
- Article 16 guarantees equality of opportunity in public employment.⁴
- Article 21 protects the right to life and personal liberty, which includes dignity and bodily autonomy.⁵
- The Directive Principles of State Policy contained in Part IV encourage equal pay, humane conditions of work, maternity relief and social justice.⁶
- The fundamental duty in Article 51A(e) requires every citizen to renounce practices derogatory to the dignity of women.⁷

IV. PRINCIPAL WOMEN-CENTRIC LEGISLATION IN INDIA

A. The Protection of Women from Domestic Violence Act, 2005

The Act provides civil remedies to a woman facing physical, emotional, verbal, sexual or economic abuse within a domestic relationship. It recognises the right of a woman to reside in the shared household and enables the court to grant protection orders, residence orders, maintenance and compensation.⁸

¹ INDIA CONST. art. 14.

² *Id.* art. 15, cl. 1.

³ *Id.* art. 15, cl. 3.

⁴ *Id.* art. 16.

⁵ *Id.* art. 21.

⁶ *Id.* pt. IV.

⁷ *Id.* art. 51A, cl. (e).

⁸ The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

B. The Dowry Prohibition Act, 1961

The Act prohibits the giving and the taking of dowry and seeks to eliminate dowry-related harassment and dowry death.⁹

C. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

The Act secures a safe working environment by requiring an employer to constitute an Internal Committee, to conduct inquiries and to implement preventive measures against harassment at the workplace.¹⁰

D. The Maternity Benefit Act, 1961

The Act provides paid maternity leave and safeguards the employment of a woman during pregnancy and childbirth. It recognises motherhood as a social function deserving the protection of law.¹¹

E. The Prohibition of Child Marriage Act, 2006

The Act seeks to prevent child marriage and to protect girls from early marriage, educational deprivation and the attendant risks to health.¹²

F. The Hindu Succession (Amendment) Act, 2005

The amending Act grants a daughter rights in coparcenary property equal to those of a son.¹³

G. The Medical Termination of Pregnancy Act, 1971

The Act, as amended in 2021, allows regulated access to the termination of pregnancy and so gives effect to a woman's reproductive choice.¹⁴

H. The Commission of Sati (Prevention) Act, 1987

The Act prohibits the commission of sati and the glorification of sati, and it is among the most significant of the enactments directed at practices derogatory to women.¹⁵

⁹ The Dowry Prohibition Act, 1961, No. 28, Acts of Parliament, 1961 (India).

¹⁰ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India).

¹¹ The Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961 (India).

¹² The Prohibition of Child Marriage Act, 2006, No. 6, Acts of Parliament, 2007 (India).

¹³ The Hindu Succession (Amendment) Act, 2005, No. 39, Acts of Parliament, 2005 (India).

¹⁴ The Medical Termination of Pregnancy Act, 1971, No. 34, Acts of Parliament, 1971 (India), as amended by The Medical Termination of Pregnancy (Amendment) Act, 2021, No. 8, Acts of Parliament, 2021 (India).

¹⁵ The Commission of Sati (Prevention) Act, 1987, No. 3, Acts of Parliament, 1988 (India).

I. The Immoral Traffic (Prevention) Act, 1956

The Act provides for the prevention of trafficking in persons for the purpose of commercial sexual exploitation.¹⁶

J. Amendment of the criminal law

Successive amendments to the criminal law, and the enactment of the new criminal statutes, have extended the protection available to women and have prescribed severe punishment for offences committed against them. The Criminal Law (Amendment) Act, 2013 enlarged the definition of sexual offences and introduced new offences following the recommendations of the Committee on Amendments to Criminal Law,¹⁷ and the Bharatiya Nyaya Sanhita, 2023 has since replaced the Indian Penal Code, 1860.¹⁸

V. LANDMARK JUDGMENTS

In *Vishaka v. State of Rajasthan* the Supreme Court laid down guidelines for the prevention of sexual harassment at the workplace, which later formed the basis of the legislation of 2013.¹⁹

In *Shayara Bano v. Union of India* the Court declared the practice of instant triple talaq unconstitutional, reinforcing the constitutional values of equality and dignity.²⁰

In *Mary Roy v. State of Kerala* the Court held that a Christian woman in the territories to which the Travancore Christian Succession Act had applied is entitled to an equal share in the property of her father, and so secured the inheritance rights of Christian women.²¹

These decisions, taken with the legislation described above, show the extent to which Parliament and the courts have worked towards the empowerment of women and the protection of their rights.

VI. THE MISUSE OF PROTECTIVE PROVISIONS

While women-centric laws have played a crucial part in protecting women from discrimination, violence and exploitation, concern has been expressed about the misuse of certain provisions in a limited number of cases. It has been alleged that some persons invoke these laws not for the purpose for which they were enacted but as a means of harassment, of personal retaliation, or of obtaining an unfair advantage in a matrimonial or family dispute. Misuse of that kind may

¹⁶ The Immoral Traffic (Prevention) Act, 1956, No. 104, Acts of Parliament, 1956 (India).

¹⁷ The Criminal Law (Amendment) Act, 2013, No. 13, Acts of Parliament, 2013 (India).

¹⁸ The Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India).

¹⁹ *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India).

²⁰ *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1 (India).

²¹ *Mary Roy v. State of Kerala*, (1986) 2 S.C.C. 209 (India).

cause mental trauma, social stigma, financial loss and damage to the reputation of innocent men and of members of their families. The Supreme Court has itself observed that the object of a provision is frustrated where it is used as a weapon rather than a shield,²² and it has laid down safeguards governing arrest in cases under Section 498A of the Indian Penal Code in order to prevent the mechanical exercise of the power of arrest.²³

The possibility that any provision may be misused undermines public confidence in the delivery of justice and points to the need for procedural safeguards. While the object of women-centric legislation must be preserved, there is a growing debate whether certain provisions should be made gender neutral, so that every victim, irrespective of gender, has access to equal protection. Stronger safeguards, impartial investigation and firm action against false or malicious complaints may in the alternative ensure that the law serves its true purpose without causing injustice to the innocent.

VII. CONCLUSION

The ultimate object of the legal system should be to achieve justice, fairness and equality by protecting genuine victims while preventing the abuse of legal provisions. A balanced framework that safeguards the rights of women and of men alike would strengthen public confidence in the administration of justice and would uphold the constitutional principle of equality before the law.

²² *Sushil Kumar Sharma v. Union of India*, (2005) 6 S.C.C. 281 (India).

²³ *Arnesh Kumar v. State of Bihar*, (2014) 8 S.C.C. 273 (India).