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A SOCIO-LEGAL STUDY OF UNWED MOTHERS FROM URBAN AND RURAL AREAS IN THE LIGHT OF THE CONSTITUTION OF INDIA AND HUMAN RIGHTS JURISPRUDENCE

Mr. SANJAY JAYRAM AHER

Assistant Professor in law, Bharati Vidyapeeth's
New Law College Sangli (M.S.)

"I will not recognize woman as Goddess but I do as a Human Being"

Abstract:

The institution of marriage is the result of social evolution of man. It is universal in every human society which regulates intimate relations amongst male and female and provides stability and development in personal life, family life and entire society. It also confers matrimonial rights and duties upon the spouses regarding sex, maintenance, inheritance, etc. It provides legitimacy and rights on children.

Women, in Hindu society, have always been a subordinate party to marriage who go through various sufferings and distress of marital life such as dowry, child marriage, cruelty, domestic violence etc. The lives of women, with and without marriage, are miserable and intolerable in India. Especially, women who live without marriage and are blessed with motherhood have not only been continuously subject matter of societal critique but they are also deprived of legal and human rights in this land.

The Government, being *parent patria* has made endeavors to protect and uplift such unwed mothers and their children through various schemes but gravity of this issue is

neither acknowledged nor made any special provisions for them. Researcher in this paper has taken into account social, legal challenges and reliefs for such mothers and children in the light of human rights era.

Key words: Unwed mothers, illegitimate children, human rights, parent patria, inheritance, maintenance, social conscience, social negligence, legal provisions etc.

Prologue:

Unwed mothers remain a challenge in Indian society due to a complex interplay of legal, social and Psychological complications associated with them. While unwed mothers are a fairly common occurrence in the western countries, they remain a relatively rare entity in India due to the social taboo associated with them.¹ For a married woman pregnancy is a joyful situation and she is applauded and supported by those who are close to her. But for an unmarried girl, it is an occasion of regret, dejection, worry and shame. It causes panic and anxiety in her mind especially if the putative father has abandoned her.² Due to social stigma, an unmarried woman does not even point out the man, unless she is sure that he will take her as his wife and such men are very rare who agree to the proposal of marriage. The problem of maintenance of mother and child become a

grave one and therefore mothers mostly prefer to give away illegitimate children to children homes.³ Many of these mothers are not prepared emotionally, educationally and economically to discharge effective maternal roles.⁴ The legal issue, in this arena of facts, is that neither mother nor child gets legitimate status, rights from male person or his property. The social issue in illegitimacy is that illicit births are regarded as a threat to the family as a social institute. However in recent years with growing urbanization, socio-legal transformation and changes in Knowledge, Attitude and Practice (hereinafter KAP) amidst the youth, this trend is changing. More and more unwed mothers are seen carrying their pregnancy to term instead of aborting.⁵

Unwed Mothers:

Motherhood is natural blessing to women but in society if it is after marriage, is welcomed and if without marriage, is disgraceful, wherein woman may or may not have any fault. Unwed mother is a woman who conceived and begotten child without marriage despite her willingness. They are found in urban, rural and tribal areas of the land. In urban area, due to knowledge, Attitude and Practice, it is mostly avoided; therefore, number of such mothers is found less. In tribal and rural area due to lack of KAP, number of such mothers is more, whose sufferings are unaddressed and unaccounted on the part of Institutions, society and State as *parent patria*.

Some Known Facts:

The issue of unwed mothers is disregarded and hated in such a manner that not only such victims but people working for

them are also stigmatized in our country. In historical context, Kunti's example is known to all, who was unwed mother and had to abandon her son. The same tradition of abandonment of illicit children is still continuing in our present society because it is condemned even today. In this regard, there are no differences from socio-legal perspectives between unwed mothers of 21st century and Mahabharata era.⁶

In modern context, we are acquainted with 'Indian Army Rape Cases' in Manipur which resulted in pregnancies of tribal women and more than 200 unwed mothers were reported in 2004. Sharmila Irome and her women activists had undertaken a naked march against such atrocities of army.⁷ In Yavatmal one of the Districts of Maharashtra, more than 400 such mothers were reported in 2014 by one of the leading Marathi newspapers whose cognizance was taken by National Commission for Women, New Delhi which was followed by visit by NCW member Mrs. Nirmala Samant to the victims.⁸ In books on the topic of unwed mothers authored by Dr. Sulochana Deshmukh⁹ and Amrendra Kishore etc.,¹⁰ one can go through the sufferings of such women.

In a research context, few studies are conducted by some research scholars like C.S.Praveen¹¹ from Pondicherry University and George Giji¹² from TISS in the state of Kerala in which personal, social, economical, Psychological, medical etc., facets were considered in detail. Findings of these studies are brain storming and bring a shame to every human being of ordinary prudence. Beside this no more studies, surveys etc., are undertaken by private or public institutions and government also is reluctant in this regard.

Some Issues of Concern:

Unwed mothers are suffering from various issues such as physical, psychological, social, familial, legal, economical, medical etc., nowadays but nothing is being done except discussion, proclamations and schemes. In this paper, present author has discussed issues of concern from socio-legal and human rights perspectives.

There are diverse emotional and psychological crises, domestic violence, and notional stigma on family, isolation and exclusion from mainstream societal life, bitter experiences of discrimination, removal from community engagement and participation.¹³ Studies suggest that the workplace, residence, relatives' homes and schools set the social context for sexual intimacy. The physical, social, emotional and sexual proximity building processes eventually proceed to sexual intimacy and subsequent sexual relationships and pregnancies. It is evident that attaining unwed motherhood as an identity dehumanizes and discredits individual victims.¹⁴

Studies conducted show that-

"Women faced sexual interactions with family visitors/friends 38.5% and employers 37.2% that resulted in women getting pregnant. The initial sexual contact/relationship for a majority of the women was consensual 59% but with a false promise of eventual marriage by the men concerned. The second largest group 30.8% had sex by mutual consent. Some women 7.7% reported forced and intimidated sexual exploitation, and 1.3% had consented for sexual intercourse due to parental pressure..."[emphasis added]¹⁵

The men responsible for unwed mothers denied liability and put blame on

victims. They tried to persuade them for abortion and on refusal, turn off the responsibility towards the care of children and the household. However, it was also reported that some men were forced to take financial responsibility for children and household expenses. Thus, women were often left voiceless and their complaints were largely unheard. Many mothers experienced extreme emotions of shock, disbelief on such denial. They experienced uncertainty about the future, became fearful, felt giddy, and weak. Some of them experienced anger towards self accompanied with occasional suicidal thoughts and also attempted to commit suicide. Many felt unloved and isolated. Interactions with family members and individuals in the neighborhood became difficult.^{16, 17, 18} There were occasions wherein such cases reached the police stations or a court of law. However, most of the time, such cases were settled outside the courts with nominal financial assistance and a promise to bear a share of the household and child rearing expenses in the near future. Very often, these promises were not adhered to. Even though men refused to accept responsibility for the women and their children, some of these women maintained sexual and emotional ties over years.¹⁹

Socio-legal Perspectives:

Unwed mothers, from social perspective, are still condemned and unapproved form of motherhood in all respects. Social attitude and practices are being transformed in the light of single parenting, surrogacy, taste tube baby and living in relationship. However these practices are confined to multi-cultural and high profile society of metro cities in the country. In rural

and tribal societies traditional communal approaches are predominant which do not allow either male or female to adopt any of these practices.

From legal and judicial perspective, these mothers are entitled to certain remedies in the form of criminal liability of perpetrator,²⁰ right to maintenance,²¹ legitimacy of children for limited purpose,²² presumption of marriage in case of long term relations etc.²³ unwed mothers, especially, who are victims of false promises of marriage or are in domestic relationship with culprit or spent considerable time in relationship with predator have these remedies but who are victims of force, fraud, accident or otherwise, are far away from any such remedies. The child only, even illegitimate, is entitled to his putative father regarding maintenance, property. The present issue is relating to mothers, therefore, absence of law and inability of law judiciary to create new law has resulted in distress and deprivation of human rights to them in India. These mothers are not only victims of culprits but also sufferers of insensitivity of State and entire society.

Constitutional Provisions:

The Constitution of India has guaranteed the fundamental rights to every citizen such as right to equality, right to freedoms, right to life and personal liberty, right against exploitation, right against human trafficking.²⁴ The whole base of the Indian Constitution is principles of Justice, Liberty, Equality and Fraternity.²⁵ The Constitution has also imposed the liability on the State to adopt and follow directive principles in its policies. State is under obligation to secure a social order for the promotion of welfare of the people.²⁶ The

State has to ensure that the citizens, men and women equally, have the right to an adequate means of livelihood.²⁷ State is liable to the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.²⁸ It is the State which has power to make provision for early childhood care and education to children below the age of six years.²⁹ State shall protect people belonging to weaker sections from social injustice and all forms of exploitation.³⁰ It is the duty of the State to raise the level of nutrition and the standard of living and to improve public health.³¹ It is the duty of every citizen to renounce practices derogatory to the dignity of women.³² This is the sad reality that beside the constitutional provisions and various laws relating to protection of women, they are being exploited for the years together physically, sexually, socially, economically, emotionally in all walks of life.

Human Rights Perspective:

In the context of human rights jurisprudence, every human being is entitled to all basic human rights equally irrespective of his/her sex, age, race, religion, place of birth, marital status to live with human dignity.³³ The Constitution of India has guaranteed various fundamental rights to citizens and people at large.³⁴ The commission has been established for protection of women which must address such issues at centre and state level.³⁵ The ministries of women and child development at union and state level have initiated various schemes for protection and empowerment of women such as Ujjawala, Swadhar Grah, working women hostel, Mahila Volunteers, Research

Projects, and Family counseling centers etc., in order to deal with women's issues.³⁶ There is no particular initiative undertaken for unwed mothers due to the lack of data, knowledge, etc.

In this backdrop, issues of such women must be addressed in the light of human rights. They are inseparable but neglected part of our society that must be counted by the government with separate account and sensibility. We have a separate legislation for protection of human rights which is vague and ambiguous.³⁷ Our society is governed by norms of patriarchy in which woman is declared both as accused and victim in case of the same wrong for which she is not necessarily responsible.

Conclusions and Suggestions:

1. Traditionally in Indian society, no women are conferred with independent and individual status, especially, in sexual relations.
2. There is a commodification of women for the sake of sex and children in India.
3. Traditional and patriarchal mind set towards status and rights of women is predominant in India.
4. No special law, measures, endeavors etc is even thought out at the level of society or the government for such mothers in distress
5. Neither data is available nor are issues relating to such mothers identified and addressed on socio-legal platforms.

Suggestions:

1. Comprehensive research work must be carried out so as to identify target group of unwed mothers and their issues.

2. The data must be put before legislature for appropriate statute and legal liability.
3. Special action plan for this group must be prepared on government/public organization level with participation of public at large.
4. Sensitization programs must be initiated for youth, women and general public dealing with sex education, hygiene, laws etc.
5. Male persons involved in such matters must be punished rigorously.

End Note

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²¹ Indian Evidence Act, 1872, S.114

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²³ The Preamble of the Constitution of India

²⁴ Article 38

²⁵ Article 39 (a)

²⁶ Article 39 (e)

²⁷ Article 45

²⁸ Article 46

²⁹ Article 47

³⁰ Article 51A (e)

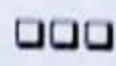
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