



## Violence against Women - A Legal Perspective

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**Abstract:** Infants man and women are two halves of humanity none of the two can reach its highest creative excellence without cooperation of the other. However, women in India continue to face atrocities such as rape, acid throwing, and dowry killings while young girls are forced into prostitution; as of late rape has seen a sharp increase following several high profile cases of young girls brutally raped in public areas. This paper deals with the crime against women is an emerging challenge and other issues are articulated comprehensively.

**Keywords:** Women's Rights, Crimes against women's, Legislations

### Introduction

Indian penal Code, 1860, intends to punish every person for every act or omission contrary to the provisions of which he shall be guilty within India and acts committed beyond India which are committed offences by the Act. Offence means a thing made punishable by this code, or under any special or local law. The punishments to which offenders are liable under the revisions of this Code are death or imprisonment for life both rigorous and simple, or forfeiture of property fine. In patriarchal society, under family system, the head of the family has to maintain the whole family. Under this circumstance, the position of women, whether she is a daughter, wife or mother in Hindu law, Muslim law, and Christian law is under the maintenance of the men. Family system is the back bone of the society. Infants man and women are two halves of humanity none of the two can reach its highest creative excellence without cooperation of the other. Through the ages, a woman is the mother of mankind but the most horrendous cruelties have influenced her life. Even in the new millennium, the status of women has not improved significantly. They have been the victims of violence and exploitation by male dominated society all over the world. Equality between man and women was almost unknown toes before the enactment of the Constitution of India.

Crime is present in various forms in India. It includes drug trafficking, gunrunning, money laundering, and extortion, murder for hire, fraud, human trafficking, poaching and prostitution. Many criminal operations engage in black marketeering, political violence, religiously motivated violence religiously, terrorism, and abduction. Other crimes are homicide, robbery, assault etc. Property crimes include burglary, theft, motor vehicle theft, and Corruption is a significant problem.

Crime against women is an emerging challenge and other issues are articulated comprehensively. Every civilized society accepting the importance of equality of sexes has, therefore, made affirmative provisions against gender discrimination. But in spite of enactment of these provisions, equality between men and women continues to be an eluded goal the reasons for such a wide gap between the ideal and practical is not only due to historical reasons but mainly because of attitude of inferiority and bondage towards women, makes her an easy particularly to physical domination.

She is often a victim of physical violence not only outside her home but also in her home. Added to that the constant neglect to the female children, which as part from having adverse effect on their health also creates mental conditions for them in which they cannot resist any physical violence or several forms

of injustices. Unfortunately, women have been discriminated in all spheres of life in all societies with varied magnitude and dimension all through the ages. Various types of crimes and atrocities are inflicted on them Rape, wife beating, eve teasing, sexual and physical harassment, economic exploitation etc., are some of worth crimes, and modern women frequently faces.

Status of women in India has been subject to many great changes over the past few millennia From equal status with men in ancient times through the low points of the medieval period, to the promotion of equal rights by many reformers, the history of women in India has been event full. In modern India, women have held high offices in India including that of the President of India, Prime Minister, Speaker of the Lok Sabah and Leader of 2011, the Speaker of the Lok Sabha and the Leader of the opposition in the Lok Sabha (Lower House of the Parliament) were women. However, women in India continue to face atrocities such as rape, acid throwing, and dowry killings while young girls are forced into prostitution; as of late rape has seen a sharp increase following several high profile cases of young girls brutally raped in public areas. According to a global poll conducted by Thomson Reuters, India is the "fourth most dangerous country" in the world for women and the worst country for women among the G20 countries.

Police records show high incidence of crimes against women in India. The National Crime Records Bureau reported in 1998 that the growth rate of crimes against women would be higher than the population growth rate by 2010. Earlier, many cases were not registered with the police due to the social stigma attached to rape and molestation cases. Official statistics show that there has been a dramatic increase in the number of reported crimes against women.

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#### Crimea Against Women –A Rising Statistic

Crime against women	1,890	1,590
Cruelty by husband	458	398
Molestation	250	308
Rape	97	65
Dowry death	53	52
Sexual harassment	40	50

#### Cruelty by Husband:

Marriage suffers from serious defects and therefore not recognized by law at all. Marriage which are avoided or invaliding law, there is another category of marriages which are also effective and liable to be declared void. But in this case the effects arenas serious and if the spouses want to continue with the marriage, there is no harm in doing so. But if either of them wants to cancel or 'annul' marriage that par can move the court for a decelerating to that effect.

#### Marrying again during lifetime of husband or wife:

According to section 494 of IPC whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Under Section 495 of the IPC, whoever commits this offence of bigamy having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### Prostitution:

The Immoral Traffic (prevention) Act 1956, which was drastically amended in 1987, deals with prostitution as a business activity. The law does not punish the prostitutes or even the customers except under certain circumstance and do not abolish prostitution. The Law tries to curb mainly traffic in young persons and prostitution as an organized means of living. The main targets of the law are pimps, agents' managers and keepers of brothels and those who promote or aid prostitution as a business. Today ~~2011~~ possible ~~2010~~ determine the sex of the unborn child. This has led to the abhorrent practice of female feticide. Eve-teasing is common, for women are considered objects of sex. Abduction and rape are everyday occurrences. Even minor girls are not spared.

Prostitution is defined as sexual exploitation or abuse of persons for commercial purposes. A prostitute may

be either a male or a female. Any person who keeps a brothels or allows the premises under him for prostitutions liable to five years in jail, and fine uptoRs.2000. Person who lives on the earnings of prostitution of others shall be punished with imprisonment up to Seven years and fine, those who procure, induce or traffic in persons for prostitution may get a jail term upto14 years. The object of the law is to rescue reform and rehabilitate the prostitutes. Therefore, instead of sending them to jail, they are sent to corrective institutions or protective homes set up by the state government.

### **Rape:**

When the Criminal law Amendment Act, 1983 came in to force the law has particularly been modified to provide the absence of true and genuine consent as the essential ingredient of the law of rape.

The law has particularly been modified to provide the absence of true and genuine consent as the essential ingredient of the law of rape. Thus, the old who very often permitted the accused to escape on the ground of apparent consent no longer holds the field. Prostitution is defined as sexual exploitation or abuse of persons for commercial purposes. A prostituted maybe either a male or a female. Any person who keeps a brothel or allows premises under him for prostitution is liable to five years in jail and fine up to Rs.2000. A person who lives on the earnings of prostitution of others shall be punished with imprisonment up to seven years and fine

Those who procure induce or traffic in persons for prostitution may get a jail term up to 14 years. Detaining a person in a brothel is also serious offence. Prostitutes themselves are punished only if they carry on their activity within 200 meters of public places like temple colleges, hospitals or solicit or loiter in public places.

The object of the law is to rescue reform and rehabilitate the prostitutes. Therefore, instead of sending them to jail, they are sent to corrective institutions or protective homes set up by the state Government. There are seven such established aggravated situations set out the new law. They refer to custodial rape by

(i) A public servant committing rape on women in his custody by taking advantage of his official position;

(ii) A police officer committing rape on women in his custody;

(iii) The manager of a jail, remand home or other place of detention, or a women's or children's institution committing rape on an inmate; and

(iv) The manager of a hospital taking advantage of his official position and committing rape on 'a woman in that hospital'

The other aggravated forms are where the victim is likely to be shocked by the rape, such as:

(v) Rape on a woman under twelve years of age; and (ii) a man committing rape on a woman knowing her to be pregnant;(iii)'gang rape 'punishment for rape: according to section 376 of IPC shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine. But, the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten year.

### **Gang rape:**

In late December, 2012 international attention was called to a case of a 23-years -old Indian women (Also called as Nirbhaya case/ amanita case) was assaulted and gang raped on a bus, resulting in her eventual death in a hospital days later.

### **Sexual Harassment:**

According to the Supreme Court definition, sexual harassment in any unwelcome sexually determined behavior they are:

- Physical contact,
- A demander request for sexual favors,
- Sexually colored remark as, showing pornography,
- Any other physical, verbal or non-verbal conduct of a sexual nature.

Sexual harassment takes place if a person: Subjects another person to an unwelcome act of physical

intimacy, like grabbing, brushing, touching, pinching etc

Types of sexual harassment at workplace are generally two types:

1. Quid pro Quo

“Quid pro quo” means seeking sexual favor or advances in exchange for work benefits and it occurs when consent to sexually explicit behavior or speech is made a condition for employment or refusal to comply with a ‘request’ is met with retaliatory action such as dismissal, demotion, difficult work conditions..

2. Harassment at the workplace

Half of the total number of crimes against women reported in 1990 related to molestation and harassment at the workplace. Eve--Teasing is a euphemism used for sexual harassment or molestation of women by men. Many activists blame the rising incidents of sexual harassment against on the influence of "Western culture". In 1987, The Indecent Representation of Women (Prohibition) Act was passed to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner.

In 1997, in a landmark judgment, the Supreme Court of India took a strong stand against sexual harassment of women in the workplace. The Court also laid down detailed guidelines for prevention and redressed of grievances. The National Commission for Women subsequently elaborated these guidelines into a Code of Conduct for employers.

**Dowry:**

Dowry means any property or valuable security given or agreed to be given either directly or indirectly a) by one party to the other party in the marriage ;or b)by the parents or of either party in a marriage or by other person to either party in the marriage or to any other person at or before or any time after the marriage, hence the Parliament has passed The Dowry Prohibition Act 1961. In 1961, the Government of India passed the Dowry Prohibition Act, making the dowry demands in wedding arrangements illegal. However, many cases of

dowry-related domestic violence, suicides and murders have been reported. In the 1980s, numerous such cases were reported. However, recent reports show that the number of these crimes has reduced drastically.

In 1985, the Dowry Prohibition (maintenance of lists of presents to the bride and bridegroom) rules were framed, According to these rules, a signed list of presents given at the time of the marriage to the bride and the bridegroom should be maintained. The list should contain a brief description of each present, its approximate value, the name of whoever has given the present and his/her relationship to the person. The necessary consequential amendments in the Code of Criminal Procedure, 1973 and The Indian Evidence Act, 1872 have been made. Even today, after enacting so many Acts, the evil practice is burning the brides. In **Ashok Kumar Vs State of Rajasthan** ( (1991) 1 SCC 166)), A 1997 report<sup>1</sup> aimed that at least 5,000 women die each year because of dowry deaths, and at least a dozen die each day in 'kitchen fires' thought to be intentional. The term for this is "bride burning" and is criticized within India itself. Amongst the urban educated, such dowry abuse has reduced dramatically. Dowry and violence: coming to pernicious results of dowry usually, for not bringing dowry, violence is resorted to by males towards their women partners this takes place after marriage. The violence may be in any form leading to the death of a woman. Dowry deaths are increasing day by day despite stringent laws, policies action and social movements. Otherwise, the symbolic relationship between the dowry and the status of Indian women continues to be mockery in the eyes of every one. Besides, the laws referring to marriage, divorce, abortion, maintenance, inheritance, matrimonial property and so forth are also to be strengthened. The spates of reforms amendments are commendable.

**Child Marriage:**

Child marriage means a marriage to which either of contracting parties is a child. Section 2(a) of the Child Marriage Prohibition Act, ‘child ‘means a person who, if a male, has not completed twenty one years of age, and if female, has not completed eighteen years of age. Today’s child is tomorrow’s citizen; woman like a man grows from childhood. Children are most privileged class. But child, from

childhood itself girls are under discrimination. As a girl, she is being looked down upon and neglected.

Parents give more tender care to boys than girls even in providing education, they are being overlooked. Parents involve them in household work and admit their sons in schools. They are being treated as domestic servants. They have to lead submissive life with less freedom. Child Marriage Restraint Act, 1929, the Government of independent India could not implement that Act in letter and spirit.

Young girls live with their parents until they reach puberty. In the past, the child widows were condemned to a life of great agony, shaving heads, living in isolation, and shunned by the society.

Although child marriage was outlawed in 1860, it is still a common practice.

According to UNICEF's "State of the World's Children-2009" report, 47% of India's women aged 20-24 were married before the legal age of 18, with 56% in rural areas. The report also showed that 40% of the world's child marriages occur in India.

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#### **Female infanticides and sex selective abortions:**

India has a highly masculine sex ratio, the chief reason being that many women die before reaching adulthood. Tribal societies in India have a less masculine sex ratio than all other caste group. Thus in spite of the fact that tribal communities have far lower levels of income, literacy and health facilities. It is therefore suggested by many experts, that the highly masculine sex ratio in India can be attributed to female infanticides and sex-selective abortions. All medical tests that can be used to determine the sex of the child have been banned in India; due to incidents of these tests being used get rid of unwanted female children before birth. Female infanticide is still prevalent in some rural areas. The abuse of the dowry tradition has been one of the main reasons for sex-selective abortions and female infanticides in India.

#### **Domestic violence:**

Incident of domestic violence's are higher among the lower Socio-Economic Classes (SECs). There are various instances of an inebriated husband beating up the wife often leading to severe injuries. Domestic violence is also seen in the form of physical abuse. The Protection of Women from Domestic Violence Act, 2005 came into force on 26 October 2006.

Constitution of India, women are always considered as a physically and emotionally weaker than the males, whereas at present women have proved themselves in almost every field of life affirming that they are no less than men due to their hard work whether at home or working places. Behind closed doors of homes all across our country, people are being tortured, beaten and killed. It is happening in rural areas, towns, cities and in metropolitans as well. It is crossing all social classes, genders, racial lines and age groups. It is becoming a legacy being passed on from one generation to another. But offences against women which reflects the pathetic reality that women are just not safe and secure anywhere. According to a latest report prepared by India's National Crime Records Bureau (NCRB), a crime has been recorded against women in every three minutes in India. Every 60 minutes, two women are raped in this country. Every six hours, a young married woman is found beaten to death, burnt or driven to suicide.

Problem of violence within our homes is 'Domestic Violence'. This violence is towards someone who we are in a relationship with, be it a wife, husband, son, daughter, mother, father, grandparent or any other family member. It can be a male's or a female's atrocities towards another male or a female. Anyone can be a victim and a victimizer. This violence has a tendency to explode in various forms such as physical, sexual or emotional. 'Domestic Violence' includes harms or injuries which endangers women's health, safety, life, limb or well being, whether mental or physical. It may also be through physical, sexual, verbal, emotional and economic abuse.

What amounts to domestic violence against women? -Domestic Violence undoubtedly a human right issue where it is very important to know what actually leads to act of domestic violence. The most common causes for women stalking and battering include:- exploitation of women for demanding more dowry, discrimination of women, alienation of women's self acquired property fraudulently, torture by husband and in-laws of the husband, arguing with the partner, refusing to have sex with the partner, neglecting children, going out of home without telling the partner, not cooking properly or on time, indulging in extra marital affairs, not looking after in-laws, cruelty by husband or in-laws mentally or physically,

abusing & insulting by using vulgar language, sexual harassment, molestation, immoral traffic, rape, sodomy and all other inhuman acts. In all above stated causes women are subjected to torture and will be considered as the aggrieved person. Usually violence takes place due to lack of understandings between the couple as well as in the family.

#### **Instances of offences against women:**

Rape and sexual assault is concerned many of the alleged perpetrators are children of senior government officials or politicians. In September 1994, Gurkirat Singh Kotli, grandson of the then CM Beant Singh, was accused of abducting and molesting a French tourist, Katia Darnand, in Chandigarh. In March 2006, Biti Mohanty, son of a senior police official in Orissa raped a German tourist in Alwar, Rajasthan. A Japanese woman was raped in Pushkar, Rajasthan on 2 April 2006

In June 2007, a South Korean was raped near Manali In September 2007; two Japanese women were gang-raped in Agra popular tourist-spot in India where the Taj Mahal is situated.

The Indian state of Rajasthan – a popular destination among foreign tourists, with one out of every three foreign travelers visiting the state – has been rattled by rape cases of foreign tourists.<sup>1</sup> On 5 December 2009, a Russian woman was raped in Goa by a local politician, John Fernandez. In February 2008, Scarlett Keeling, a British national aged 15, was raped and killed in Goa. In January 2010, a Russian girl aged 9 was raped in Goa; referring to this and earlier cases, Russia threatened to issue an advisory asking its citizens not to travel to the coastal state. The US Bureau of consular Affairs has warned women not to travel alone in India. However in contrast the British Foreign office only advise them to take normal precautions most recently in 2013 was Swiss woman who was gang raped by 6 men in front of her husband

#### **Unnatural offences:**

Carnal intercourses against the order of nature with any man, woman or animal is a crime (Section 377 of IPC). The most common unnatural offences are sodomy, and bestiality. Even if the partner has consented to the act, it will be an offence. The police

can arrest those who indulge in it without warrant, and there is no right to get bail. Physical intercourse or penetration is necessary to constitute the crime.

Most unnatural offences are not detected or reported. A girl who is a victim of unnatural offence would not like to go to the court and be cross-examined. The parents also would restrain themselves in such cases. Many unnatural things happen between husband and wife, though marriage is a license only for normal sex. A man cannot make his wife the object of his perverse sex behavior. That it is doubtful whether practices like oral sex are offences; they would grounds for divorce if done against the woman's consent. Similarly, homosexuality could be grounds for divorce. Incest, sadism and masochism are natural offences. These are punishable with life imprisonment or jail up to ten years and fine.

#### **Kidnapping and Abduction:**

Kidnapping literally means stealing a child. A boy 16 years, a girl under 18 or any person of unsound mind may be kidnapped. If they are taken away or enticed from the custody of their guardian without his or her consent. Kidnapping need not be of the girl with violence or forcible 'taking away'. Kidnapping, abduction and slavery and are dealt with in Sections 359 to 374 of the Indian Penal Code.

Kidnapping is of two types:

- Kidnapping from India and kidnapping from lawful guardianship's per Section 360 of the IPC, kidnapping from India means conveying and person beyond the limits of India without this consent or of some person legally authorized to give consent on his behalf.
- Section 362 of IPC defines "abduction" as compelling by force or inducing by any deceitful means any person to go from anyplace. Force or fraud is essential for the offence of abduction.

Punishment for kidnapping for ransomed, is imprisonment for life and liable to fine (Sec 364-A). Punishment for kidnapping, abducting or inducing woman to compel her marriages imprisonment upon ten years and shall also be liable for fine, (sec 366).

Government of India has enacted special legislations to protect the women and child some of most useful legislations are as follows:-

- 1) The factories Act 1948,
- 2) The Immoral traffic Act 1948(section 8)
- 3) Child Labor (Prohibition and Regulation) Act, 1986.
- 4) (Prevention) Act 1956.The dowry Act 1948
- 5) The Indecent Representation Of women (Prohibition) Act, 1986
- 6) The family Courts Act, 1984
- 7) The Legal Service Authorities Act, 1987:
- 8) The National Commission for women Act, 1990.
- 9) The Commission for Protection of Child Rights Act, 2005
- 10) The Prohibition of Child Marriage Act, 2006.
- 11) The Right of children to Free and Compulsory Education Act.2009.
- 12) The protection of children from Sexual Offences Act, 2012.
- 13) The pre-natal diagnostic techniques (Regulation and prevention of Misuse) Rules, 1996.

Personal Law Legislations for the protection of women and child

- The Hindu Marriage Act,1955
- The Hindu Adoption and maintenance Act, 1956
- The Hindu minority and Guardianship Act, 1956
- The Succession Act, 1956
- The Muslim Women Protection Act, 1986

### Conclusion

Unfortunately, women have been discriminated in all spheres of life in all societies with varied magnitude and dimensions all through the age. Various types of crimes and atrocities are inflicted on them. Rape, wife beating, eve teasing, sexual and physically harassment, economic exploitation etc, are some of worth crimes, and modern women frequently faces. Indian Constitution in its Preamble, Fundamental Right and Directive Principles, Article14 guarantees justice-social, economic and political-as well as equality before law and ensures non-discrimination

on the basis of sex. Article 15(3) empowers the state to make special provisions for the promotional of the welfare and developmental women. Our Constitution, the laws passed and amended, have given Indian Women a de jure status that is unique, yet social conditions, economic imbalances and religious influences have proved to be important extra legal factors that have made them second class citizens in real life Millions of our women are ignorant or just unable to enjoy the many rights and privileges that have been conferred on them creating a safe and secure environment for women and children in society. This could be done under the family counseling centers scheme of CSWB with specially trained counselors'. Women and child Development/Social Welfare of the State Government. Women want end violence against women. Violence against women should be declared a violation of women's human rights. The World Conference on Human Rights should recognize women's right to be free from all a gender-

Based violations and take action to help guarantees that right worldwide.

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