

Crimes against women in India: A critical study

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Abstract

Crimes against women are on the rise in India. Women are victims of matrimonial cruelties, trafficking, rape, stalking, voyeurism, pornography and eve teasing etc. Various pull and push factors are contributory towards increasing offences against women. Police, law makers, judiciary and various national human rights institutions has shouldered the responsibility to protect women against crimes but despite of it the situation does not seem improving. In order to combat increasing crimes against them, we need to anticipate and attack the root causes of crimes against women. Eradication of poverty and unemployment and raising status of women in Indian society are some of the measures which are required to be taken to improve the graph of crimes against women in India. The present paper aims to discuss some common causes of crimes against women. The study further aims to throw light on major shortcomings in some of the existing women related laws. The last part of the paper contains suggestions to counter increasing offences against women in India.

Keywords: crime, women, laws, causes, modern crime

Introduction

Preludes

The Indian Society provides paramount place to each and every women. In ancient India women were treated as an important instrument of society. Moreover in Manu Smriti it has specifically been mentioned that God make their abode in the household in which women are treated with respect and where the women are disrespected, all other actions, no matter how noble they are, shall remain unrewarded ^[1]. Swami Vivekananda also said that "That country and that nation which do not respect women have never become great, nor will ever be in future." ^[2] Even practically the Indian history has witnessed that the women in India were considered as divine force. Unfortunately, in the present world the crimes against women have increased rapidly and India is not at all exception to it. In many parts of our country the women are considered as a burden on male members of family. Before marriage they are burden on father, after marriage on husband and during old age on son. The Indian society in many places celebrates the birth of son and become silent on the birth of girl. Therefore the women have become a weaker section of society not only from physical point of view, but, from sociological aspect as well. The discrimination that begins even before birth of a girl continues till her death. She is being tortured for not bringing enough dowry, she is being raped or harassed at workplace etc. The increase in crime against women in India gave an alarming signal to our Parliament and resultantly the Parliament enacted plenty of exclusive laws to prevent crime against women. Despite these efforts of the Parliament, the discrimination and violence against women continues unabated. When women try to empower themselves economically, they face the problem of sexual harassment at work place and domestic violence as well. Judiciary is the only ray of hope with them. In this study a sincere attempt has been made by the researcher to highlight the problems faced by women, the causes, the various enactments for safeguard of women and the judgment of the

various courts of India.

Objective

In this paper the researcher aims to analyze/study the position of Indian women, the causes of discrimination, harassment, gender oppression, inequality, unempowerment and violence etc. against women. The researcher also aims to study various provisions of Constitutional Law and other special laws enacted for the protection of women. The paper shall also scrutinize the approach or the role of judiciary in such matters.

Methodology

The research work in this paper is doctrinal in nature. It involves collection of material from various sources such as Statutes, books, Articles, judgments of High Courts and Supreme Court and on line material. The analytical, descriptive and evaluative methods have been adopted to scrutinize various provisions of law and the judgments passed by various courts.

Causes of Crimes against Women:

The crime against women is not a new problem. Women have probably been suffering since time immemorial or we can also say that this problem is as old as civilization. Women have been raped, beaten, harassed, abducted, treated unequally or humiliated from the very beginning of civilization. Even in Ramayana we study that Ravan abducted Maa Sita and in Mahabharat we study that Draupiti was insulted, harassed and treated like an object in gambling. The position of women at present has not changed a lot despite the fact that the society has been prepared to acknowledge the extent of the problem and has developed a legal and practical framework to deal with this problem. There exist plenty of social, biological, cultural, economic or legal factors that account for the rise in number of crime against women. The causes of crime against women can be discussed under the following heads:

Social Causes

- Man dominating society.
- Orthodox thoughts.
- Overall environment of family e.g. Domestic Violence, immorality, cruelty etc.
- Broken families.
- Excessive interference of family in the lives of women.
- Excessive punishments.
- Unnecessary expectations from women in society e.g. bringing dowry, remaining silent, only one who is bound to take care of others etc.
- Rigid Tradition or Culture

Personal or Psychological Causes

- Lack of Education
- Unemployment
- Poverty.
- Religion.
- Alcoholism /drunkenness.
- Physical weakness.

Legal Causes

- Insufficient Laws
- Ineffective enforcement machinery.
- Costly Legal Assistance.
- Less number of Court and enforcement staff.

Women in India: Historical Perspective

Historically the Indian women were recognized as a divine force, but, the status of Indian women never remained uniform because of multicultural Indian society that placed women at different places. However it is true that there had been a continuous upliftment of women's position in Indian society. As per Romila Thaper, "Within the Indian sub-continent there have been infinite variations on the status of women diverging according to cultural malice, family structure, class, caste property rights and morals"^[3] While defining the position of women in India it has also been said that "The Indian philosophy poses the women with dual character. On the one hand, she is considered fertile, patient and benevolent but on the other hand, she is considered aggressor and represents 'shakti'."^[4]

The position of Indian women be divided/discussed under the following heads

The Vedic Period

The Vedic period can be termed as a golden period for women as their position during this period was glorious because they enjoyed ample equality and considerable freedom and high status in society. They enjoyed freedom like men and studied in Gurukul which enriched their position in society. While explaining the position of women in Vedic period Mamta Rao said that "The Vedic period is characterized by the absence of the purdah system, equal rights in selecting life partners, polygamy being rare, mainly confined to ruling class. The dowry system was prevalent only in rich and royal families and only in the form of movable gifts. A widow could marry again or could undertake recourse to leveratge (niyogya). There was no discrimination between a boy or a girl. Girls were allowed to undergo Upanayana or thread ceremony."^[5]

The Post Vedic Period

The Post Vedic Period is comparatively worse so far as

position of women is concerned. The position of women deteriorated significantly in all spectrums. During this period various restrictions were imposed on freedom of women. The era of male dominating society started during this period. The birth of a girl child was considered as a disaster for the family. Girls were not allowed to undergo *Upanayana* or thread ceremony. Girls were denied the right to education. However, the females of ruling class were exception to it. During this period the women were put under the surveillance of father, husband or son according to her age. But, it has also specifically been said that she should be loved, respected and protected and shall never be dishonoured.^[6]

The Medieval Period

This period witnessed the further degradation of position of women in Indian Society. The major reason for the same was the invasion of India by Alexander and the Huns. The Indian society was bound to place the women behind the veil to protect them from the invading soldiers. The participation of women in matters of community and their education came to a sudden halt. It started a continuous decline of social, economical, political and cultural life of women. The social evils like child marriage, sati-partha, Devdassi, dowry, female infanticide etc. developed during this period. Women basically were treated as object and there existed high number of crime against women.

The British Period

The Britishers who entered as traders ruled India initially under the East India Company and later through the direct control of the crown. During early period the British Government did not pay any attention to the degrading position of Indian women. But later this period witnessed various social reforms as well. As per V. K. Dewan, "The attitude, behavior and living pattern of Hindu Society changed drastically during the British Regime due to education and western impact on the socio-cultural life of India^[7]. The Britishers enacted several laws to eradicate disparity, social evils, discrimination, and dissimilarities in Indian society. During this period several social evils/practices like child marriage^[8], prohibition on widow's remarriage^[9] Sati-Pratha,^[10] female infanticide,^[11] Purdah Pratha etc. was eliminated/banned. Efforts were also made to educate women. Despite many efforts of British Government, there were no major improvements in the position of women in India. Rather the Indian society remained male dominating society only despite the fact that on papers they were equal.

The Post-Independence Period

After independence a democratic government was established in India and its Constitution guaranteed equal status of women. Women can freely participate in each and every activity such as social, political, cultural, educational, science and technology etc. The Constitution itself provided equality,^[12] no discrimination by the State,^[13] special provisions for women,^[14] equality of opportunity,^[15] equal pay for equal work,^[16] maternity relief,^[17] duty of every citizen to renounce practices derogatory to the dignity of women.^[18] Besides Constitutional provisions plenty of special legislations were also enacted form time to time. The special enactments providing relief to women are Special Marriage Act, 1954,^[19] Hindu Marriage Act, 1955,^[20]

Hindu Adoption and Maintenance Act, 1956,^[21] Immoral Traffic in Women And Girls Act, 1956,^[22] The Dowry Prohibition Act, 1961,^[23] Medical Termination of Pregnancy Act, 1971,^[24] Muslim Women (Protection on Divorce) Act, 1986,^[25] Indecent Representation of Women (Prohibition) Act, 1986,^[26] Commission of Sati (Prevention) Act, 1987,^[27] Protection of Human Rights Act, 1993,^[28] Pre-natal Diagnostic Techniques Act, 1994,^[29] Information Technology Act, 2000,^[30] Indian Divorce Act, 1869 (As amended by Amendment Act, 2001),^[31] Protection of Women from Domestic Violence Act, 2005,^[32] Sexual Harassment of Women At Workplace (Prevention, Prohibition and Redressal) Act, 2013.^[33] Besides these legislations the Parliament also established women Commission to help, assist and provide justice to each and every woman.^[34]

Although plenty of laws have been framed for the protection and upliftment of women in India, but, the position of women has not improved as desired by these laws. The major reason behind the same is the lack of proper and conscientious enforcement of these laws. For example the women are still expected to bring dowry or face atrocities or even death despite the Dowry Prohibition Act^[35] and the Indian Penal Code^[36]. Similarly the position of widows is not satisfactory despite the existence of Remarriage Act^[37]. The Indian society is still a male dominating society. The woman is still facing violence, harassment, exploitation, discrimination etc. The position of women in rural areas is worst. The most alarming problem is that the crime against women is increasing continuously day by day. As per the National Crime Records Bureau the total number of crimes reported against women under the Indian Penal Code and other special enactments in India in the year 2016 was 338954 and in the year 2017 it was 359849 and it reached 378277 in the year 2018^[38].

Crimes against Women in India and Protection Therefrom

As mentioned above that the position of women in India is degrading day by day, but, still they have a ray of hope from the judiciary that came forward at several times for their protection against crimes. This problem is not a new one but exists since the time immemorial. Women have been subjected to various crimes and she has also been protected under various laws. The crimes against women and their protection can be discussed under the following heads:

Traditional Crimes against Women

Woman in India is being subjected to various traditional crime that basically pertains to physical or sexual assault particularly by men. The traditional crimes against women and the protection of women against those acts are as under:

Sati Pratha

The Sati Pratha system was one of custom or practice among Hindus in India. As per this practice the widow was to sacrifice her life by sitting on funeral pyre of her deceased husband. This term "Sati" originated from the name of Goddess "Sati" who married "Shiva" against the wishes of her father "Daksha" and thereafter when "Daksha" humiliated her husband then she self-immolated herself. Basically this term "Sati" means a "chaste Woman" who would burn herself alive at the funeral of her deceased husband. The Commission of Sati (Prevention) Act defines

this term Sati as burning or burying alive any widow or women alongwith the body of husband or any relative or any article, object irrespective of consent on part of that widow or women^[39].

The practice of "Sati" is one of the oldest customs of India. It basically started in Brahmanical India a few centuries before Christ^[40]. But it is also true that none of the Dharamshastras contain any reference of this practice of "Sati". The Jauhar is another similar famous practice followed by Rajput ladies of Chittor. The practice of Sati was more prevalent in Bengal during British period. It scandalized the Britishers who initially adopted a policy of non-interference in religious matters. But later they realized their mistake and took some actions. But infact it was the efforts of Raja Ram Mohan Rai that forced William Bentinck, Governor General of British India, to enact the Bangal Sati Regulation^[41]. This horrible custom continued even after independence that led to enactment of the Commission of Sati (Prevention) Act, 1987^[42]. The main objective of this Act was to provide for the much more effective prevention of the commission of "Sati" and its glorification. This Act provided for the establishment of Special Courts to try matters under this Act and provided punishment for attempt to commit suicide, abetment of Sati and for glorification of Sati. Thus, at present, this practice of "Sati" stands completely banned in India.

Female Infanticide

Female infanticide is the intentional killing of new born female child. As per Wikipedia, "Female infanticide is a major cause of concern in several nations such as China, India and Pakistan"^[43]. In India the position of women started deteriorating Smriti age and an unfavorable atmosphere developed during this period and the same was degraded during Mughal period. According to Prabhat Chander Tripathi, "during the Mughal period, the female child in the Rajput families was considered a curse and the brothers of these girls used to become their first enemy. Considering the position of the brother-in-law low, they used to instigate the killings of the new born female child of the family. Though this crude system was neither supported by the Vedas or Puranas, nor by the Koran or the Bible, it prevailed in society and became widespread. For these barbaric child killings, pills of tobacco, poison or 'bhang' etc. were used. In some cases, mothers' breasts were smeared with opium or juice of the poisonous 'dhatura' to kill the new-born child^[44]."

The another factor or cause of female infanticide i.e. the custom of dowry created a big problem for the parents and it changed the mind of people a lot. Therefore, "in order to escape from future foreseeable problems, people started the practice of killing the female child immediately after her death^[45]."

During British period an officer Mr. Noor was appointed by the then Government to make special investigation pertaining to female infanticide^[46]. during this investigation he came to know that the crime of female infanticide was in existence. As per his report in 62 villages there was not even a single girl child under the age of 6 years and in the other 10 villages there were no girl child^[47]. The British Government finally enacted an Act^[48] to prevent the killings of female child. Beside this the Indian Penal Code also contain a provision for punishment of person who commits the offence of infanticide of a child^[49]. Although

there are specific law that provides punishment for such heinous crime but it is a reality that till date India is facing this major problem of female infanticide. As per the National Crime Records Bureau there were 56 reported cases of female infanticide and as many as 83 cases were pending investigation in India in the year 2018^[50]. Thus it can be said that although India pretends to be modern but still it's ideology of equality of sexes is only on papers.

Dowry

Dowry is one of the biggest social evil that exists since time immemorial. Dowry basically is a demand of property or money associated with marriage. According to Webster's New Dictionary the dowry means and includes:

1. "The money, goods, or estate, which a women brings to her husband in marriage; the portion given with the wife;
2. A natural talent, gift or endowment: as poetry was her dowry;
3. A gift given to or for a wife^[51]."

As per the Dowry prohibition Act the term dowry means "any property or valuable security given or agreed to be given either directly or indirectly", but it does not includes dower or mehr^[52]. Thus, the term dowry means the property brought by the female as gift to the husband or his family. This system of dowry started as customary presents given with love and affection at the time of marriage but slowly it rooted very deeply as a social evil in the entire community at large. With the passage of time it took the ugliest form and now it is a biggest menace of the society. It has also become a status symbol of the present society.

Keeping in view the effects of this social evil the Government of India enacted the Dowry Prohibition Act, 1961. The Apex Court while dealing with a matter of dowry under this Act held that "The Act is a piece of social legislation which aims to check the growing menace of the social evil of dowry and it makes punishable not only the actual receiving of dowry but also the very demand of dowry made before or at the time or after the marriage where such demand is preferable to the consideration of marriage^[53]." In another case, the Apex Court clarified the extent of dowry and held that, "the addition of the words 'any time' before the expression" after the marriage" would clearly show that even if the demand is made long after the marriage the same could constitute dowry, if other requirements of the section are satisfied"^[54]

The Punjab and Haryana High Court Full Bench while dealing with the question of traditional gifts and presents given in marriages held that the traditional gifts or presents given voluntarily because of love and affection does not fall within the category of dowry^[55]. Similarly in Pratibha Rani v. Suraj Kumar^[56], the Apex Court held that all gifts including jewellery, clothes, furniture and utensils etc. are included within the meaning of Stridhan. All of these gifts etc. can never be said to be given to the husband. In Vinod Kumar v. State^[57], the position of Stridhan was further strengthened and Court held that if the husband and in laws refuse to return Stridhan despite demand it will amount to criminal breach of trust.

The Dowry Prohibition Act prohibits or has imposed a ban on advertisements for dowry^[58]. It also prohibits any agreement relating to dowry. In Ramekbal Singh v. Harihar Singh^[59], it was held that "the amount paid at the tilak

under a contract contravenes the provisions of the Dowry Prohibition Act and the contract being an agreement prohibited by law cannot be enforced". If a person demands dowry he may be behind bars. In Inder Raj Malik v. Sunita Malik^[60], it was by the Apex Court that the demand of dowry has been made a criminal offence punishable under the Indian Penal Code^[61], which was inserted by the Amendment Act, 1983.

Thus it is clear that Dowry stands completely banned in India, but, still it is in practice. The laws made for prevention of the same are not in a position to stop this social evil. The Apex Court in Soni Devraj Bhai Baber Bhai v. State of Gujarat^[62] had the same observation. In the instant case the Court cited the following observation of the First Prime Minister Pt. Jawahar Lal Nehra: "legislation cannot by itself normally solve this deep rooted social problem. One has to approach in the other ways too, but legislation is necessary and essential, so that it may give push and have that educative factor as well as the legal sanctions behind it, which helps public opinion to be given shape." In this case, even the Apex Court was of the opinion that this social evil of dowry is a bane of Indian society and the same can be eradicated only when the society itself comes forward.

Domestic Violence

It has rightly been said by Sidney Brandon that "Statistically it is safer to be on streets after dark is over with a stranger than at home in the bosom of one's family, for it is there that accident murder and violence are likely to occur. Accidents in home are commonest cause of injury; murder....."^[62] although women constitute almost half of the global population, but, still they are facing various disadvantages. The dominance of male is the major cause behind this universal problem of domestic violence. It exists in every society irrespective of caste, class, colour, creed, religion or nationality. India is not an exception to it. The position of India is worst and "the family violence against women is on the rise in this country"^[63]. Indian society is basically a tradition bound society. In India "women have been socially, economically, physically, psychologically and sexually exploited from time immemorial, sometimes in the name of religion, sometimes on the pretext of writing in the scriptures and sometimes by the social sanction^[64].

In India women are facing much more problems of violence at home than outside. According to Revathi "The four walls of her home have become a grave threat to the safety of women, but for culprits it is the safest place to commit offence^[65]. The violence against women inside the house is not committed by strangers but the family members i.e. the near and dears or loved one's of these women, themselves are involved in these heinous crimes against women. This domestic violence includes verbal, physical, economical, sexual, emotional or psychological abuse of women. The domestic violence against women in India includes dowry death, cruelty, wrongful restraint, wrongful confinement, abetment to commit suicide, cruelty, sexual intercourse during judicial separation, bigamy, hurt, grievous hurt and adultery etc. Besides these there are plenty of other acts that are although domestic violence but are not judicially recognize such as using abusive language, taunting, curtailing the basic needs of food, clothes, medicines etc. Keeping in view the deteriorating conditions of women the Indian Parliament passed the Protection of Women from

Domestic Violence Act ^[66] in the year 2005 and the same came into force on 26 October, 2006. The main object of the Act was to provide more effective protection to women as guaranteed under the Constitution of India. This Act is the first enactment that recognized the domestic abuse as an offence and the prime beneficiaries of the Act are women and children who are tortured physically, mentally or in any other way. It covers all acts, conducts, omissions or commissions that harms or injures or may harm or injure. Such acts etc may be physical, verbal, psychological, economical or emotional or they may constitute a threat of the same. This Act provides for setting up of Protection Officer. The Protection Officer remains under the jurisdiction and the control of the court and have a duty to monitor the cases of domestic violence. He submits the Domestic Incident Report before the court or an application of aggrieved for protection. He will have to ensure legal aid, safe shelter, medical aid or other necessities of the aggrieved persons. If the Protection Officer fails to do his duty he may be penalized for the same.

This Act also provides for the woman's right to reside in shared household. But the definition of the term shared household given in Section 2 (S) appears to be defective as it doesn't clarify the meaning of shared household. The Apex Court also pointed out this defect in R. Batra v. Tarun Batra ^[67] case. The court observed that the Section 2 (s) doesn't give clear cut meaning to the term shared household. The court was of the opinion that it appears that this term includes each and every household where she stayed with her husband. It may be a house owned by her parents, grandparents, uncle, aunt, brother, sister, nephew etc. The Court loudly held that there is a need to clarify this term. The Court further said that it shall generally include the house of her husband, mother-in-law and father-in-law.

This Act also provides for immediate and emergency relief against domestic violence. First of all the Protection Officer shall make a safety plan for the victim. The Act also provides for appointment of a counselor for such cases. He will assist the victim during counseling process. The Act further provides that later the opposite party can be made accountable by the orders of the Court for all expenses incurred and losses suffered by aggrieved person which may include loss of earnings, medical expenses, maintenance, compensation etc. The court may also provide for the custody of child to the aggrieved person.

Triple Talaq

Tripple Talak is a form of divorce under the Muslim law. It permits a muslim man to divorce his wife by uttering the word Talak three times. The man can give divorce orally or in writing as well. In recent times even the electronic media can also be used for triple talak. Tripple Talak is also known as talak-e-biddat and talak-e-mughallazah. It is the instant divorce and irrevocable divorce. Tripple Talak remained a subject of controversy and has been debated several times on the ground of equality, gender justice, human rights, justice etc. On 22 August, 2017 the Apex Court of India settled the law pertaining to Tripple Talak in India and declared it to be unconstitutional ^[68]. The Constitutional bench of the Apex Court declared it to be unconstitutional with a majority of 3:2, as it violates the fundamental rights of muslim women and it takes the option of the attempt for reconciliation or revocation because it becomes irrevocable when it is pronounced.

To protect the rights of married muslim women and to prohibit divorce by triple talak the Parliament of India on 26 July, 2019 passed an Act ^[69]. This Act made the act of Tripple Talak a cognizable, non-bailable and compoundable offence. This offence is punishable with imprisonment of maximum 3 years and fine as well. It also provides for subsistence allowance to be paid by the husband to the wife, after taking into consideration the dependants if any. The custody of child, if any, remains with mother. The Act also provides that the bail application of accused shall not be entertained without giving an opportunity of being heard to the wife i.e. the victim.

Honour Killing

Honour killing is one of the ancient system or approach or practice seen throughout the world. As per this practice the family member is killed by the family itself because the family believes that the victim brought dishonor or shame upon the family or violated the principles of the community. The major reasons behind this crime are marriage against the will or culture or religion or caste of the family, relationship of married women with some other man, separation from spouse, non-acceptance of arranged marriage, having relationship outside religion or caste, Gotra etc. Although the victims in such cases are both i.e. men and women but the rules for men and women are different. Women are biggest sufferers of honour killing at large.

In India, the cases of honour killing are increasing despite the modernization of Indian society. The cases of honour killing are reported mainly in the northern region of India namely Punjab, Haryana, Rajasthan and Utter Pradesh. Tamilnadu is the only southern state where this evil of honour killing exists. As per the date of National Crime Records Bureau the number of Honour killing cases in India in the year 2018 was 30 ^[70]. The Khap Panchayats in India are well known for their orders of honour killing or to inflict any other atrocity on women. There is no specific law to deal with this crime but if any offence is committed against any person then he can be penalized under the Indian Penal Code as per the offence committed. In absence of specific law for honour killing this crime cannot be dealt with properly.

Rape

Rape is one of the most common crime against women India ^[71]. Rape is sexual intercourse with a women committed without consent. As per the Oxford Dictionary rape means "to force sb to have sex with you when they do not want to by threatening them or using violence" ^[72] The Indian Penal Code also defines this term. According to it a man commits the offence of rape when it is committed without consent or will or with consent but consent is obtained by threat or fear or the women thinks that the man is her husband or the unsound mind women gave consent or the women was under intoxication or the girl was of 16 years or under sixteen years of age ^[73].

In India rape is considered as killing a woman several time as it attaches a stigma for the rest of her life. This offence is committed not only against her body but also against her soul as well. It becomes very difficult for her to face the society after commission of this crime against her despite the fact that she committed no wrong. In India the number of cases of rape is increasing intensively. Here a women is

raped in every 20 minutes ^[73]. As per National Crime Records Bureau, in the years there were as many as 38947 cases of rape and 5729 cases of attempt to rape and 2187 cases of unnatural offences against women. In the year this number was 32559 rape cases, 4154 attempt to rape and 1271 unnatural offences, whereas it was 33356, 4097, 1378 in the year 2018 ^[74].

In India, rape is considered as a deathless shame hence shall be dealt with as a gravest offence against human dignity. The Apex Court while dealing with the rape case held that "Rape is a crime not only against the person of woman, it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. Rape is therefore the most hated crime against basic human rights and is violative of the victim's most cherished right, namely, right to life which includes right to live with dignity contained in Article 21 ^[75]. Keeping in view the large number of rape cases in India and the gravity of the offence of rape, it can be said that the implementation of rape laws is lacking somewhere. Police reforms are required to stop the crimes against women. Besides this the society requires to be acquainted with moral values to respect women.

Women Trafficking and Prostitution

The trafficking of women for the purpose of sexual exploitation is a universal problem and India is also facing the same. It basically is an organized crime that completely destroys the life of the victim. Keeping in view the seriousness of this problem the Constitutional Fathers inserted a specific provision in the Constitution which completely prohibits the traffic in human beings ^[76]. By virtue of the power conferred on Parliament under Article 35 to implement the fundamental rights the Indian Parliament enacted the Immoral Traffic Prevention Act to prevent trafficking in human beings ^[77]. The Indian Penal Code also provides for punishment for this offence ^[78].

Human trafficking is a modern-day form of slavery that involves the illegal trade of human beings for the purpose of some form of forced exploitation ^[79]. The basic purpose of human traffic is either sexual exploitation or forced labour. This sexual exploitation includes putting a woman in the business of prostitution as well. It is a well organized crime. The victims cannot escape from it as the criminal organization control the whole chain from recruitment, transportation and the sexual exploitation. Therefore it is necessary to find out such females and to rehabilitate them in the main stream of society. In a landmark judgment ^[80] the petitioner sought appropriate directions to be issued to the government for the improvement of the plight of the prostitutes, fallen women and their children. The Apex Court issued a number of directions. The Court held that it is the duty of the Government and the Non-Governmental Organizations to take necessary steps for protection rehabilitation of such women so that they can live life with dignity. The Court further directed that they should be provided opportunity for education, financial support developed marketing facilities for goods produced by them. The Court also directed that the rescue and rehabilitation of the child prostitutes and children should be kept under nodal department, namely, Department of Women and Child Development.

Modern Crimes against Women

The unfavorable atmosphere that developed against women from time immemorial was further polluted by modernization of society and technological development. This development of society brought more severe techniques or strategies or opportunities to exploit women. The modern crimes against women are as under:

Female Foeticide

The horrible custom of female infanticide which is still in existence has now been replaced at large by the new scientific or medical technique of female foeticide. Female foeticide is an abortion whereby a female fetus is illegally terminated solely based on the reason that the fetus is a female. The basic reason behind the same is the century old belief that the son is the real "old age security" of parents whereas the female child is the "paraya dhan" (asset of others). This belief resulted in rampant misuse of modern technology and failure of medical ethic. Keeping in view the increasing numbers of cases of female foeticide the Parliament enacted an Act ^[81] in the year 1994. This Act prohibits the sex selection whether before or after conception and provides for regulation of pre-natal diagnostic techniques for the purpose of detecting genetic abnormalities or metabolic disorders etc. and their misuse for sex determination leading to female foeticide. It also prohibits sale of "any ultrasound machine or any other equipment capable of detecting sex of foetus" to persons, laboratories and clinics not registered under the Act. Besides this there is the Indian Penal Code as well that provides for punishment for abortion of child. Although there are plenty of laws dealing with this problem but still the female foeticide incidents are occurring regularly. As per the data of National Crime Records Bureau the foeticide cases that were already pending in India in the year 2018 were 51 and new cases recorded were 128.

Sexual Harassment at Workplace

The sexual harassment of women a biggest problem of world has unfortunately out of control in India. As per the National Crime Records Bureau the sexual harassment cases in India in the year 2016 were 27344, in the year 2017 the number was 20948 and in the year 2018 it was 20962. Beside this the Indian society is facing another problem of sexual harassment at workplace. The sexual harassment of women at workplace started with the employment of females. This employment is at workplace where employer and employee relationship exist or it may be a place where raising objections or refusing may have negative consequences. It may be organized or unorganized sector. Employment may be permanent or non-permanent. Sexual harassment is a harassment which is sexual in nature. The sexual harassment basically includes physical contact, demand or request for sexual favours, showing pornography and sexually coloured remarks even nonverbal like staring to make other person uncomfortable kissing sound, making offensive gestures etc ^[82]. The Apex Court while defining the term sexual harassment observed that "Sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly

when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her.”^[83]

In India, it is unfortunately true that years after established tradition of Indian working women their harassment at workplace is very common. There are millions of women who enter all fields from daily wage to top posts even that in politics, yet nearly all of them face harassment. In India we have provision for the protection of women in the Constitution itself such as Article 14, 15, 19, 21, 42, 51-A, 226.32 etc. Despite this fact the position of women at work place is not safe hence the Apex Court was to give guidelines for the safety of women in the landmark judgment in *Vishakha v. State of Rajasthan* case wherein the court observed that “Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. The international conventions and norms are, therefore, of great significance in the formulation of guidelines to achieve this purpose.”^[84]

Besides these guidelines issued by the Apex Court the Parliament enacted a specific law to protect women from sexual harassment^[85]. This Act defines the term sexual harassment at workplace and provides for establishment of internal complaints committee of the institute to be headed by some female working on higher post in the concerned institute. The Institution may be private or public sector institute. This committee of the institute shall be a quasi-judicial authority and has powers of civil court of summoning any person and examining evidence etc. If a woman is not willing to file complaint before the internal complaints committee, she is free to lodge FIR in police station. As per the National Crime Records Bureau the cases of sexual harassment at work place in India in the year 2017 were 479 and in the year 2018 the cases were 401.

Indecent Representation of Women

Women who possess the most respectable place in society are also have been victims of indecent, vulgar and obscene depictions. The advancement of technology and the development of electronic media and above all the introduction of internet provided platform for indecent representation of women. The indecent representation of women is on peak in commercial society wherein advertisement is the most powerful and influential method and women play a major role in advertisements. Women are used to promote the product or a concept as a weapon of persuasion. The reason of preferring or targeting women to promote a product is that in many societies’ women make majority of consumption decisions. Although it is good from the point of view of employment or empowerment of women but, unfortunately, it is true that in most of the advertisements women are made victim of cheap advertising techniques as it represent women in indecent ways.

Indian Parliament has already enacted Indecent Representation of Women Act in the year 1986 “to prohibit the indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and for matters connected therewith or incidental thereto.” Indecent Representation of

women means “the depiction in any manner of the figure of a woman; her form or body or any part thereof in such way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals.”^[86] This representation of women may be through newspaper, magazines, hoardings, hanging, painting, posters or through electronic media. This Act prohibits the “production, sale, hire, distribution, circulation, sending by post any book, pamphlet, slide, film, writing, drawing, painting etc. which contains indecent representation of women in any form.”^[87] Any person who commits offence under this Act is punished with imprisonment of 2 years and fine.

In a landmark judgment on this Act the Division Bench of the Supreme Court held that nakedness does not always arouse the baser instinct^[88]. This case pertains to the publication of an article with a picture of a world renowned tennis player Boris Becker, posing nude with his dark skinned fiancée, a film actress, which was photographed by none other than her father itself. It was contended to defend this act that the article intends eradicate evil of racism and apartheid in society and to promote love and marriage between white skinned man and black skinned women. The court held that the proceedings under Section 292 of Indian Penal Code, 1860 or under Section 4 of the Act cannot be initiated in such circumstance because this article and the picture are not objectionable at all.

Acid Attack

A cruel form of violent assault against women originated in the modern world is the acid throwing or acid attack or acid violence. This is a premeditated crime wherein acid is thrown on the face of the victim. This crime not only inflicts physical injuries but destroys the entire life of the victim by leaving permanent scars on affected area of body or disfigurement of face. In India this atrocious crime is also in existence. Although this crime can be committed on any ground such as sex, caste, religion or age etc. but in India it is seen that the crime is committed mostly against women^[89]. Therefore this heinous crime is also called as gender terrorism. The victims in such attack are mostly the young girls and the reason behind majority of cases is the rejection of love or marriage proposal, dowry, divorce, property issues etc. This crime is increasing day by day and the average age of victim is 11-30 years^[90]. In India, acid attack is penalized under the Indian Penal Code with minimum 5 years imprisonment which may extend upto life imprisonment with fine^[91]. Although many steps have been taken to prevent acid attack but acid attack cases are growing continuously in Indian society. As per the date of National Crime Records Bureau the acid attack cases in the year 2016 were 223 and in the year 2017 it were 244 and in the years 2018 it were 228 and in addition to it the attempt acid attack cases in the years 2016 were 60 and the in the years 2017 and 2018 were 65 and 59. This data clearly shows that the situation is becoming more dangerous in India.

Cyber Crimes

Internet is one of the most important inventions of the modern world that permits people around the globe to interact or communicate with each other any time irrespective of physical distance between them. It in fact is a blessing. It should be used for the purpose for which it came

into existence, but if it is misused then it can commit blunders. It can be used as a weapon to commit crimes including crimes against women. As a matter of fact internet has been used to target women in this modern world wherein the crime against women was already increasing. In comparison to other crimes the cyber-crime against women is more traumatic in nature.

Cyber-crime can be committed with the help of a device such as computer mobile phone etc. and it is a wrong "which is committed against a single individual or a group of them with a criminal mind to intentionally cause harm to the dignity of the sufferer or to cause physical or mental trauma to the victim in any manner, direct or indirect, by way of modern telecommunication networks like the internet [92]. There are plenty of cyber-crimes committed against women such as cyber stalking, cyber harassment, cyber pornography, trolling, email spoofing, phishing, cyber defamation or morphing etc. The primary law that deals with such crimes in India is the Information Technology Act [93]. Although there is a specific law to deal with cyber-crimes in India but the number of cases is increasing day by day and thereby affecting women drastically. The under reporting of such matter is one of the major reason that is encouraging the criminals. The victims do not know their rights and the remedies available to them. They are unaware of the procedure to file a complaint. As per the National Crime Records Bureau, in India the total number of cyber-crimes pertaining to women in the year 2018 was 1872 [94].

Judicial Response

Judiciary is known as protector of the Constitution of India. It is main pillar of Indian democratic set up. It played great role for the protection of women from harassment of any kind. There are plenty of judgments of Apex Court and High Courts dealing with the rights of women. Here the researcher has picked up a few important judgments to show the approach of the judiciary in the matters concerning women.

In *Yosuf Abdul Aziz v. State of Bombay* [95] the Section 495 of the Indian Penal Code, 1860 was challenged on the ground that this violates Article 14 and 15 of the Constitution of India as it provides punishment for males only in case of offence of adultery even if both parties agree. The Apex Court upheld the validity of the provision on the ground that sex is not the only ground of classification. The Court in fact tried to implement the Article 15 (3) in this case. Similarly in *Government of A.P. v. P. B. Vijayakumar* [96] the Apex Court held that the reservation of 30% in favour of women in government services is constitutional as it implements Article 15 (3) of the Constitution.

In *Air India v. Nargesh Mirza* [97] the question before the Apex Court was whether the bar against the marriage of airhostess or becoming pregnant is constitutionally valid? As per the Air India Regulations any airhostess cannot get married within four years of joining of services. If she gets married then she will have to resign and if she get married after four then she will have to resign on becoming pregnant. If such a woman follows both of the regulations then she can work till 35 years of her age. These provisions were challenged on the ground that they violate Article 14, 15 and 21 of the Constitution of India. The Apex Court after taking into consideration the entire record of the case held that the bar of 4 years of marriage is constitutional whereas

the condition of pregnancy and compulsory retirement at the age of 35 years are unconstitutional.

In another case [98] the Apex Court while confirming the right to live with dignity and the right to privacy of women declared that the termination orders of the petitioner are unconstitutional because she was terminated on arbitrary ground that she did not furnish correct information about her menstrual period and past pregnancy. The Court held it to be invasion of privacy guaranteed under Article 21 of the Constitution.

In a landmark judgment [99] the Apex Court laid down principles pertaining to blood test to find out paternity of a child born during marriage. The Court held that the Courts cannot order blood test as a matter of course. There shall be prima facie case for suspecting fatherhood and the same shall be carefully examined by the court. The Apex Court rejected the application of the father in this case by applying the above principle. In a historic judgment in *Githa Hariharan v. Reserve Bank of India* [100] while establishing gender equality the Supreme Court held that the mother can act as natural guardian even if the father is alive as gender equality is one of the basic principle of the Constitution.

The Supreme Court while dealing with rape cases delivered a dynamic judgment and held that "Unchastity to a woman does not make her open to any and every person to violate her person as and when he wishes. Even a prostitute has a right to privacy under Article 21 and no person can rape her just because she is a woman of easy virtue [101]. In another matter, the accused person entered into a false marriage and the women became pregnant. The accused persuaded her to abort the child and thereafter once again she became pregnant. When the accused refused to own and maintain her she finally lodged FIR and he was prosecuted under Sections 314, 420, 493, 496 and 498 A of the Indian Penal Code, 1860. The Apex Court refused to quash the prosecution of the accused and held that the offence of rape is not simply an offence under the Indian Penal Code but it also violate her right to live with dignity. It is a crime against entire society, which destroys the entire psychology of a woman [102].

In a significant judgment in *Sarla Mudgal v. Union of India* [103], the Apex Court held that a marriage celebrated under one personal law cannot be dissolved under any other personal law to which the other spouse refused to convert. Thus the rights created by marriage under Hindu law shall not come to an end if one spouse converts himself into Islam. He cannot remarry without getting a valid divorce under Hindu Law.

In a landmark judgment in *Noor Saba Khatun v. Mohd. Quasim* [104] the Apex Court held that a muslim women is entitled to claim maintenance on divorce from husband for her children till they become major. She can claim it under the Section 125 of the Criminal Procedure Code [105].

On the basis of the above mentioned judgments it is clear that the Apex Court played a significant role in protecting women against harassment of any kind. It interpreted the Constitution and the other Statutes in appropriate manner and gave maximum benefit to the deserving weaker section of Indian society.

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 is not sufficient. It must be adhered and applied rigorously.

Suggestions

On the basis of this study the researcher is of the view that the following suggestions shall play a great role to deal with the problem of crimes against women:

1. Education of women is the basic necessity of the present society. The rural area in India contains more number of uneducated women therefore the drive to educated women shall be more aggressive in such areas.
2. Women shall also be educated about their rights and duties. It has been seen that plenty of educated women don't like to lodge complaint against crimes against them despite being educated as they are unaware about their rights. They don't have knowledge about the agencies that can be approached in crisis.
3. Empowerment of women is necessary so that the reporting of cases shall increase. They shall be educated, protected and encouraged to fight against injustice.
4. The laws shall be implemented strictly and there shall

also be effective monitoring of the same. The enforcement of law in such cases shall be in the hands of trained personals who shall act swiftly and sensitively towards women.

5. The laws dealing with crime punishment shall be amended and they all shall provide exemplary punishment to the criminals.
6. The police system requires reforms. It should equipped with more powers and training to investigate the matter scientifically as well. And at the same time if there is any delay or irregularity in such matters then he shall be penalized rigorously. The matters of crimes shall be investigated by specialized female police officers.
7. The Human Rights Commission shall take such matters on priority basis.
8. The women Commission of India shall be stuffed more adequately for the education, complaints and ministering of the policy for women.
9. There shall be separate courts for dealing matters of crimes against women to provide speedy justice to women.

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