

**REFLECTION OF JUDICIAL SENSITIVITY; ROLE OF JUDICIARY IN
PREVENTION OF CRIMES AGAINST WOMEN” AND “RECOMMENDATION ON
WOMEN’S ACCESS TO JUSTICE**

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ABSTRACT

The judicial intervention by the judiciary has been liberal and progressive throughout the years. Judicial activism, a growing trend has been very helpful in the protection and empowerment of women. Since judiciary cannot make law but only interpret and pass judgements through it, its sensitivity towards women safety can be admired. But that doesn't change the fact that crimes against women have risen notably this year in cases of rapes, kidnappings, murders and dowry deaths. The National Crime Records Bureau data shows a spike in rape by 12-15% among other crimes against women as well. If not for the pendency of cases and delay in delivery of judgement, the nation would progress faster along with women's safety. Women in India have been oppressed since a long time but since the establishment of the judiciary, things have been better but not as they should be. The punishment imposed should be more stringent in order to discourage such other vile acts of criminals. This paper will scrutinize, in detail, the role of judiciary in prevention of the crimes committed against women and cite landmark cases accordingly. It will recommend certain measures as well for faster delivery of judgements and establishment of justice in the country. All persons have a right to life under article 21 in the Indian Constitution, the crime rates we know of are only formed of the reported cases. There go many such cases of rapes and murder of women that are not reported. Enough legislation has been formed but the implementation of said laws is not proper. The need of the hour is not struggling against the distinct oppressor, rather, on the set of beliefs that is prevalent in the Society. This paper cover the various reasons for crime against women in our country and also the analysis of the various statutes that are present and its applicability for protection of women in our country. This paper comprehensively dives into the judicial attitude regarding crime against

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women and also throws light upon the recent trends of judicial sensitivity for crime against women.

Keywords- Sensitization, Social Awareness, Normative Approach of judiciary, Effective implementation of laws, Special women Court, Law commission Recommendation, Sensitization of Youth.

RESEARCH METHODOLOGY

Subject- Crimes against Women

Topic –“Reflection of Judicial Sensitivity; Role of Judiciary in Prevention of Crimes against Women” and “Recommendation on Women’s Access to Justice.”

The current paper is fundamentally based on data which is secondary in nature. Moreover, Secondary sources of data include websites, reports and journals etc. but are not restricted to the same. The approach taken up is on the lines of deriving a conclusion in the form of a statement through the inference of the data taken into consideration. Additionally it is pertinent to note that the above stated approach is a general explanation in terms of approach adopted. Majority of research work has been done via Articles, Journals and Case Laws available in online databases. Other sources like various works by learned authors have also been referred.

SCOPE AND OBJECTIVE OF THE STUDY

The objective of the study is to study the judicial sensitivity in detail in order to determine its nature towards the prevention of crimes against women in India. Meaning that, certain landmark judgements, notifications and other important aspects released by the judiciary will be mentioned and given a detailed justification as to how important the role of judiciary, i.e. the courts of law, to prevent crimes against women happening in India, that are very much prevalent in our era. Secondly, the paper will also, according to the statistics and current situation of women and the judiciary, recommend women’s access to justice, elaborating the various means and measures that women can opt for if an injustice or crime is committed against them.

HYPOTHESIS

With the liberalization and feminism reaching its epitome, women are more aware of their rights and duties that have been vested by our constitution but molestation, eve-teasing, rape, female infanticide and many other criminal acts committed against women are prevalent today. The hypothesis is whether if the crime rates are reduced due to stricter laws and better police enforcement then the country would flourish even better, giving women in India a strong opportunity to get into the tertiary sector and increase the GDP of India? But if such hard steps forward are not taken then the status of women can plunge into an abyss from where recovery might be exceedingly difficult. Without women the women dominant industries, like nursing, will cease to function. Whether the role of judiciary would be helpful for prevention of crimes against women?

PREAMBLE

Criminal acts against women are a by-product of India's development efforts as the focus of the nation is on other material things. Our society has failed to regulate the behaviour of people committing vile acts against women as due to illiteracy, lack of public behaviour knowledge, basic respectful demeanour and still enforces the patriarchal bias in men which leads to men thinking they're superior and most cases for arrests for an offence against woman is domestic violence. Since the last decade's criminal activity statistics, a stringent increase in crimes registered under "Cruelty by Spouse" (Husband) and his family members.

Rape on the other hand have been prevalent since a long time but only started gaining attention after the 2012's Delhi Gang Rape case. No other crime has been as much attention and importance as compared to rape. Although, rape too, has increased its numbers on the statistical graph, owing to cases like Scarlett Keeling case and the recent Kathua gang rape case. That being said, the hype because of the portrayal of rape by media compels us to believe that rapes are always on the rise but data says otherwise, that rapes have more or less followed a flat line.

An astonishing figure of 2.5 million (20.5 Lakh) reports of crimes against women have been registered in the last decade. They are the only ones we know of because they are reported, there might go even more unseen crimes that are still prevalent in India. The reported cases of

crimes against women increased from 83% from a time period of 2007 to 2016. At 18.9%, the conviction rate for criminal acts against women is the lowest since 2007, in 2016. It fell from 29% to 18.9% which means that the affected parties are unable to prove the allegation in court which is resulting in the acquittal of the accused person, also, another reason affecting this is the increased number of cases in India which is resulting in the pendency of cases at the courts of law, judiciary facing issues in delivering speedy disposal of cases.

SEXUAL VIOLENCE AND ITS AFFECT ON THE COUNTRY

SEXUAL VIOLENCE AND THE GDP²

The economic effect of sexual violence and other crimes against women are not acknowledged. Increasingly scared for their own safety and their children's safety, many women are leaving the workforce or taking less paying jobs which is making them face monetary issues in order to sustain their day to day lives.

The World Bank has estimated that about 20 million women (2 crore) have vanished from India's workforce. The corporate industry which is majorly responsible for the growth of the Gross Domestic Product for India is not receiving applications from women while it is looking to hire more women as Asia's third largest economy. According to the estimate, India could sky-rocket its GDP by 770 Billion by 2025 if it was to get more women to work in the tertiary sector, according to McKinsey Global Institute. Only 27 % of Indian women are in employment which makes it the lowest among the other giant nations and 6-20 countries, according to publications of IndiaSpend.

"If we are able to establish a safer environment, definitely more women will step out for jobs, adding to the workforce," said Anjali Verma, an economist at PhillipCapital in Mumbai.

"In a decade this may contribute to higher overall consumption, savings, and economic growth." Girija Borker, a Ph.D. candidate in economics at Brown University, in a study of more than 4,000 women at Delhi University found female students willing to pay almost \$300 more than men for a safer travel route because most faced some form of street harassment. *"With the rapid urbanization, India needs better policies for women's safety,"*

²*"Sexual Violence Holding Back India's Economy: More Women At Work Can Boost GDP By \$770 Bn", ArchanaChaudhary, SarithaRai and DhvaniPandya, The Economic Times, May 29, 2018*

INDIA RANKED THE MOST DANGEROUS COUNTRY DUE TO SEXUAL VIOLENCE³

According to the Thomson Reuters Foundation survey by experts, India was ranked the world's most dangerous country for women because of the high risk of sexual violence, followed by Afghanistan and Syria.

The survey asked the respondents that which five United Nations member states or nations they thought were the most dangerous for women and which country was worst in terms of healthcare, economic resources, cultural or traditional practices, sexual violence and harassment, human trafficking etc.

India was ranked the most dangerous country for women in terms of human trafficking which includes sex slavery and domestic servitude, and for customary practises such as child marriage, forced arranged marriages against the female's wish due to parental and societal pressure, and female infanticide.

It is clear that India's lack of safety for women and female tourists from around the world make it such a bad experience for women and for the country's image. The law-makers should keep their promises of having more stringent laws in the country in order to avoid such ranks and guarantee the safety of women.

ROLE OF JUDICIARY ENSURING WOMEN'S SAFETY

Although women's safety in India is not desirable but one cannot deny the efforts the judiciary has made to ensure the safety and prevention of crimes against women. The constitutional mandates and other statutes ensure protection of women against forms of discrimination, favouring them in spheres such as economic and social life. Many devices like judicial review and activism along with social litigations, courts in India have progressed to a gender jurisprudence which has been very beneficial for women.

Following are some examples of the judicial approach where the judgement has benefitted or given justice to women:

³India Most Dangerous Country For Women Due To High Risk Of Sexual Violence: Poll, *The Economic Times*, Jun 26, 2018,

EDUCATION

Education is a very necessary element of a person's life, in fact, one of the most important factors in a healthy and successful life, be it man or woman.

In the case of *P. Sagar V. State of Andhra Pradesh*⁴ the AP court held that "Article 15(3) of the Constitution is an exception engrafted to clause (1) of the said article. Thus, in view of the Article 15(3) reservation for women cannot be denied. Similarly, the reservation for sports women does not offend the provisions of Articles 15(1) and 29(2) of the Constitution."

In *Padmaraj Samarendra v. State of Bihar*⁵, allotment of some seats for girl students in Medical Colleges was challenged on the ground that it is solely based on sex. The Court while justifying the allotment of seats for girl students held as reasonable and it cannot be said to be discrimination on the ground of sex alone.

EMPLOYMENT

In the case of *Miss C.B Muthamma, I.F.S. V. Union of India*⁶, *Air India v. Nergesh Meerza and other*⁷, *In A.N. Rajamma v. State of Kerala*⁸ the court upheld the principle of equality under article 14 and put the female and male employees at par, striking down various rules which were opined as unconstitutional.

In the case of *Vijay Lakshmi V. Punjab University*⁹ the court held that appointment of a female principal in a women's college is not violative of articles 14 and 16 of the constitution because classification is reasonable and it has a nexus with the object to be achieved. Moreover it is a precautionary, preventive and protective measure based on public morals and particularly in view of the young age of the girl students to be taught. In a cluster of cases such as *Peoples Union for Democratic Rights v. Union of India*¹⁰, *Randhir Singh v. Union of India*¹¹, *Sanjit Roy v. State of Rajasthan*¹², *Uttarakhand Mahila Kalyan Parishad v. State of Uttar Pradesh*¹³ and *Mackinnon Mackenzie and Co. Ltd. v.*

⁴ AIR 1968 AP 165

⁵ AIR 1979 Pat 266

⁶ 1979 AIR 1868, 1980 SCR (1) 668

⁷ 1981 AIR 1829, 1982 SCR (1) 438

⁸ 2001 CriLJ 1572

⁹ AIR 1976 SC 1441

¹⁰ 1982 AIR 1473

¹¹ 1982 AIR 879

¹² 1983 AIR 328

¹³ AIR 1992 SC 1695

*Andrey D' Costa*¹⁴ cases the Judiciary has played an active role in enforcing and strengthening the constitutional goal of "equal pay for equal work" enshrined in Article 39(a), which implicit in Article 14 and 16 of the Constitution.

SEXUAL ABUSE AT WORK PLACES

In *Vishaka v. State of Rajasthan*¹⁵, Supreme Court had framed guidelines and norms for protection of working women at work place, and it held that it is the duty of the employer to protect women from sexual abuse, which are later parliament, recognized and enacted Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Vishaka Case was a path breaking judgment delivered with the objective of creating an enabling and safe environment at the workplace for rapidly increasing female workforce. In the Vishaka Case, apex court searched the existing law only to find that there was total absence of legislative measures to safeguard the women from the sexual harassment at work places. It was found that it was absolutely essential to find an alternative mechanism to fulfil the urgent social need to provide suitable methods for the true concept of gender equality and to prevent sexual harassment of working women in all work places. It was observed that in the absence of legislative measures, it was imperative to have such guidelines in place, issued through judicial process, to fill the vacuum in existing legislations.

The Supreme Court examined the issue of sexual harassment of working women in workplace in the light of Article-15, 19 and 21 of the constitution of India. After examining the similar constitutional provisions and various international conventions and norms having relevance in the field, the court formulated guidelines to provide for the effective enforcement of basic human right of gender equality.

The aim of the Supreme Court while evolving the Vishaka Guidelines was:-

- 1) - To ensure a fair, secure or comfortable work environment
- 2) - To eliminate situations or possibilities where the protector could abuse his trust, and turn predator.

¹⁴1987 AIR 1281

¹⁵ AIR 1997 SUPREME COURT 3011

3) - To provide an assurance to the female members of the Indian Workforce that in case of occurrence of sexual harassment at workplace, the employer will take prompt and serious actions.

JUDICIAL SENSITIVITY ON RAPE CASES

Rape can occur anywhere, even in the family, where it can take the form of marital rape or incest. It occurs in the Community, where a woman can fall prey to any abuser. In the United States, national statistics indicate that a woman is raped every six minutes. In 1995, the case of Brazilian Jogger rape and murder in New York City's Central Park had drawn international attention to the problem. The incident occurred only a few years after an earlier sensational jogger-assault case in which the victim- an American assaulted in the same general area of the park-barely survived after her assailants left her for dead. Relations between residents of the Japanese island of Okinawa and American were thrown into turmoil in 1995 after two marines and a sailor allegedly kidnapped and raped a 12 years old girl.

Recently, in the year 2004, the famous, Hanna Foster rape and strangulation by an Indian driver Maninder Pal Kohli in UK, Poetesses Madhumita murder case of Lucknow, Uttar Pradesh., and Dhanjoy's death sentence, drew media attention internationally on this issue. The United Nation's Special Rapporteur report underlines the importance of education to sensitize the public about the special horrors of rape, and sensitivity training for the police and hospital staff who work with victims.

Indian Judiciary is also aware of the demand of the time and responding accordingly in the form of some historical recent judicial decisions. Serving justice in record time, an Alwar Fast Track Court on April 12, 2006 sentenced 23 years old Management Student, Biti Hotra Mohanty, son of Orissa DGP-level IPS Officer B.B. Mohanty, to seven year's rigorous imprisonment for raping a German Scholar.

Mohanty was also slapped a fine of Rs.10000 for the offence that took place on March 20, 2006 at a Hotel in Alwar. The victim had sent SMS to her friends in India and abroad soon after, telling them of her plight. The Court admitted these messages as evidence, along with the victim's testimony. The Chief Judicial Magistrate, Ravindra Kumar Maheshwari, who

created judicial history as the entire case was disposed of in just nine working days (within 22 days of the incident), pronounced the judgment.

The attitude of the Judge Maheshwari played a major role in the case. Many of the legal experts in the country would have taken the view that since the victim went with Mohanty to the hotel and had drinks and dinner, it amounts to implied consent and therefore, was not a case of rape. The perceived immoral character of a rape victim has led to acquittal of many rapists. More than two decades ago, a public campaign over Supreme Court acquitting Constables Tukaram and Ganpat in 1979 of custodial rape charges, after disbelieving the testimony of the victim, finally led to the Criminal Law Amendment in 1983.

Section 114-A, introduced in the Indian Evidence Act by the amendment, says the court shall presume lack of consent in cases of custodial rape, where sexual intercourse by the accused is proved and the woman states that she did not consent. Rape by police officers, public servants, jail, hospital, remand home staff and gang rape are included in the section.

Similarly, breaking all the previous records, in one of the speediest trials for a rape case involving a 47 years old German Woman, the 'fast track court' in Jodhpur, decided within 16 days. Taking *suo motu* cognizance of the case, the Rajasthan High Court directed the State Government to ensure speedy investigation within a month.

The court issued a notice to the DGP to ensure that the Forensic Report be made available to the Trial Court by May 16, 2005.^{23, 24} He bettered the record of the Jodhpur Fast Track Court. Based on the philosophy of "justice delayed means justice denied" and 'Right to Speedy Trial' provided under Article 21 of the Indian Constitution. The Delhi HC acting on the same lines, pronounced judgment on January 6, 2005 in the infamous MAMC, Medical Student's 'gang rape case'. The verdict came within two years of the incident.

DOWRY RELATED VIOLENCE:-

Besides, using constitutional provisions or remedies provided under the personal laws, a victim of domestic violence may seek remedy under civil law as well as the criminal law. Also, in order to remedy matrimonial wrongs within a common structural framework, the

Family Courts Act was enacted in the year 1984¹⁶. The main object of the Act is to provide “for the establishment of Family Courts with a view to promote conciliation in and to secure speedy settlement of disputes, relating to marriage and family affairs, and matter connected therewith”.

Before the year 1983 there was no specific legal provision pertaining to violence against women at domestic front. Husbands guilty of committing violence on their wives could be convicted under general provisions relating to murder, causing hurt, abetment to suicide or wrongful confinement. These general provisions under criminal law do not take into account the specific situation of women facing violence within confines of home as against assault by an outsider or a stranger. Therefore, an amendment was made in 1983, which added Section 498-A to Chapter XVI, IPC. In its statement of the Objects and Reasons the Criminal Law Amendment Act¹⁷- “the increasing number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the working of Dowry Prohibition Act, 1961.”

One of the merits of Section 498-A IPC is that it is wide enough to include mental cruelty. Though the term ‘grave’ is not elaborated by the lawmakers, in practice, everyday violence suffered by majority of women is precluded. The law does not define ‘domestic violence’ though it explicates the term ‘cruelty’ to include

- (1) Any wilful conduct that is likely to drive the woman to commit suicide;
- (2) Wilful conduct which is likely to cause grave injury to the life, limb and health of the woman;
- (3) Harassment with the view to force the woman or her relatives to give property;
- (4) Harassment because woman or her relatives have not given any property. A single act of violence amounts to cruelty as also a series of acts would constitutes cruelty. Courts in several judgments have clarified the behaviour that may be termed as cruelty or harassment for the purpose of this law.

Present study found women litigants struggling in the Mahila Courts in the age group of 19 to 47 years. Majority (68%) of them was in the age group of 25 to 35 years. Possibly more

¹⁶The Family Court Act of 1984 received assent of the President on September 14, 1984.

¹⁷ Act 46 of 1983

young women are registering their protest against their family ties because of social transformations taking place within the larger social fabric. About one-third hailed from Delhi i.e. their natal families have been residing in the capital for more than 40 years, another 42% were first generation migrants and have been residing in the Capital for several years. Rest were either living in Delhi since the time they got married except a few (4%) who were coming from outside for the specific purpose of attending the hearings. Almost two fifth were from the lower middle class, 52% belongs to middle class while the rest came from higher income group. About one-fifth respondents were postgraduate and other 40% hold a graduate degree. Only 3 out of 50 respondents claimed that they had never been to school. Rest more than 12% had been to primary school or have studied up to secondary school level. Data thus indicates that education does not seem to protect women when it comes to violence within the confines of home. But it may be said that perhaps education helps women to seek alternatives in order to escape the clutches of violent relationship or may help them to gain autonomy - to take decisions, which, at times, are against the conventional norms.

CONCLUSION

Today countries like India which has developing economy and very ancient culture and now we are at the welfare state, always trying to build a socio-economic development of the country. But it won't be possible without the proper use of administration and judicial sensitivity towards the crime against women. As we talk about social issues which is a stigma on the Indian society and that does not aid in increasing awareness of women's rights. If we go to the remote/rural areas of India, we will find that most of the sexual violence cases are gone unreported due to the so called social reputation of the family and the society. But if we critically analyse in our 21st Century, we will see that people are coming up with the reports of the domestic violence cases and judiciary is very sensitive and strict on the implementation of the laws regarding the crimes committed against women. As we talk about the economic development, the economic factor is totally based on overall development of the country and as we know in India we are at the ratio of about 60:40 as men to women. So, we can't have such a conservative mind set towards women and their development as they can majorly contribute to the GDP of the country. As the crime rate against the women will reduce it will certainly help to increase the GDP of the country and our government and other organs of the administration are working hard to put the situation under control.

RECOMMENDATIONS

This part represents the steps the government of India can take to improve the situation of women in India and eliminate the crimes and atrocities committed against them.

1. More enhanced legal awareness- Women in India are unaware of their rights, some are knowledgeable and literate but others are not, that is one of the reasons the crimes are not reported and go unnoticed. So, the government should engage the ministry to find out ways to increase the legal awareness, advocacy and education.
2. Legal assistance or Representation- Women should have the expertise at their disposal that would bring them justice in cases where they don't have proper access or means to represent them.
3. Gender Response Capacity-building /Training of Law Enforcement Officials and Correctional Officers- The police officers, especially the female officers should be trained accordingly in order to respond to a crime committed.
4. Promotion of Women's Participation in Justice Institutions- Women should be made aware of their rights and encouraged to participate in the justice institutions formed by the government.
5. Mobile Courts and Gender Sensitive Court Administration Reforms- Such courts would help encourage women to emerge out of the shadows and report the crimes being committed against them and stand up for others. Illiterate and women from rural backgrounds are not bold enough to come up to the courts and they won't be able to afford such cases as well, so, mobile courts where the court can be set up anywhere should be promoted and gender sensitive court implying women judges and advocates and such administrative reforms which are gender friendly/sensitive.
6. Transitional Justice Services- This type includes the judicial and non-judicial mechanisms such as truth-seeking processes and reformative/correctional reforms.
7. Informal and Community based Dispute Resolution Processes- These should be focused on reducing the gender based discrimination during their operations as they should be formed by the community or the village itself as to reduce the burden on the courts. Educated heads should be appointed in order to give justice to the aggrieved women accordingly. They are to be created by the villages and not the government.

RECOMMENDATIONS ON IMPROVEMENT OF WOMEN'S ACCESS TO JUSTICE

1. Application of UDHR in Indian Criminal Law- Some aspects of the Universal Declaration of Human Rights can be incorporated into the Indian Criminal law as violation of *bodily integrity* makes more sense than *crimes against modesty*.
2. Adoption of Legislation That Provides Rehabilitation and Reparations for Victims of Sexual Violence
3. Impose Criminal Liability on Public, Elected, Police Officials Who Harass or Assault Victims and Witnesses
4. Need for Specialized Investigative Units- The prosecutors and courts respond to and investigate the acts in order to prosecute the wrong doer. The institutional capacity should be increased by adding SIU for faster disposal of cases and efficient delivery of justice. Officers trained to specifically deal with sexual violence or crimes against women would boost the confidence of women and improve their access to justice.
5. Opting for Effective Victim & Witness Protection Measures- The protection of witnesses and victims should be guaranteed by the police at all costs. It may include relocation assistance, personal security and privacy protection etc.

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