

**CRIME AGAINST WOMEN: PERSPECTIVES IN THE  
CONTEMPORARY WORLD WITH SPECIAL REFERENCE TO  
INDIA**

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**Introduction**

All human beings are born free and equal in dignity and rights<sup>2</sup>, yet, women dominated by cultural beliefs, the increase use of communal, caste and ethnic identities even in pursuit of political gains aid in spreading of violence,<sup>3</sup> steeping to low manifestations of crime. Studies portrays that the increase in participation of women in work and politics is making them more vulnerable to the offences and crime committed against them. Attempts to control and intimidate women associated with decision making process leads to violence. The case of *Bhanwari Devi*<sup>4</sup>, the ‘saathin’ from Rajasthan is an exemplary case of women who was tried to be subjugated by gang raping her mercilessly by upper caste men in the village for trying to stop the practice of child marriage. Crime against women has roots in the patriarchal structure of the societies, socio-economic, legal and political order.<sup>5</sup>

Crime or violence against women is also known as gender-based violence<sup>6</sup> and sexual and other forms of gender-based violence;<sup>7</sup> violent acts committed primarily or exclusively against women or girls. The UN Declaration on Elimination of Violence against Women expressed that violence against women is a manifestation of historically unequal power relations between men and women<sup>8</sup> and violence against

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<sup>2</sup> UN General Assembly, Universal Declaration of Human Right, GA Res 217A (III), GAOR, UN Doc. A/810 (December 10, 1948)

<sup>3</sup>Chandan Mukherjee, Preet Rustagi, et.al, “Crimes against Women in India: Analysis of Official Statistics,” 36(43) Econ. Political Wkly4070 (2001)

<sup>4</sup>Visakha and ors. v. State of Rajasthan, (1997) 6 SCC 241

<sup>5</sup>Gopal Subramanian, J. S. Verma, et. al, Report Of The Committee On Amendments To Criminal Law (Akalank Publications, 2013)

<sup>6</sup> Nancy Felipe Russo and Angela Pirlott, “Gender Based Violence: Concepts, Methods And Findings,” 1087 Ann. N. Y. Acad. Sci 187 (2006)

<sup>7</sup> World Health Organisation, Sexual and Other Forms of Gender Based Violence, available at: <https://www.who.int/hac/techguidance/pht/SGBV/en/> (last visited on May 6, 2020)

<sup>8</sup> UN General Assembly, Declaration on Elimination of Violence against Women, GA Res 48/104, GAOR, U.N. Doc. A/RES/48/104 (December 20, 1993)

women is one crucial mechanism by which women are forced into a subordinate position compared with men.<sup>9</sup>

Though there have been many definitions on crime or violence against women, the most widely accepted definition is the one given by the United Nations. It set out as "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.<sup>10</sup>

It further states that "Violence against women shall be understood to encompass, but not to be limited to, the following physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; and perpetrated or condoned by the State, wherever it occurs."<sup>11</sup>

Through this paper, we try to analyze crime against women, its forms and manifestations, discuss the legal remedies available against the crimes committed and suggest some possible strategies at conceptual level to tackle it.

### **Crime against Women in India**

Crime against women is systematic and occurs in the public and private spheres. Women are discriminated not only on the basis of sex, but also on the grounds of caste, class, ability, sexual orientation, tradition and other realities, exposing many to continuous violence throughout their life, commonly referred to as existing 'from the womb to the tomb'.<sup>12</sup> Having born as a female child itself is considered as a curse and

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<sup>9</sup> Nancy Felipe Russo and Angela Pirlott, "Gender Based Violence: Concepts, Methods And Findings," 1087 Ann. N. Y. Acad. Sci 178, (2006)

<sup>10</sup> UN General Assembly, Declaration on Elimination of Violence against Women, GA Res 48/104, GAOR, U.N. Doc. A/RES/48/104 (December 20, 1993)

<sup>11</sup> UN General Assembly, Declaration on Elimination of Violence against Women, GA Res 48/104, GAOR, U.N. Doc. A/RES/48/104 (December 20, 1993)

<sup>12</sup> UN General Assembly, Special Rapporteur on violence against women, its Causes and Consequences, Rashid Manjoo, UN GAOR, UN Doc A/HRC/26/38/Add.1 (April 1, 2014).

shame by some sections of the society. Given the traditional preference to male child, Vijay Kumar<sup>13</sup> says that it is not surprising that right from the first census of 1871, India has consistently shown an abnormal sex ratio of 940 women per 1000 men. The figure in 2011 constitutes the ratio of 933 females per 1000 males.<sup>14</sup> Violence against women in India is actually more common and at first glance many expressions of violence are not considered crimes, or go unreported for understandable reasons such as attached stigma, or distrust in legal mechanisms, fear of retaliation, and many other factors.<sup>15</sup>

As a matter of fact, women face violence at the hands of their protector. These factors contribute to India's Gender Inequality rating of 0.524 in 2017, putting it in the bottom 20 percent of the ranked countries of that year.<sup>16</sup> During 2012, crime against women increased to the rate of 6.4 percent<sup>17</sup> and was reported to have been committed in every three minutes.<sup>18</sup> Crime against women in 2018 gave a rise to 58.8 percent from that of the previous year 2017.<sup>19</sup> As a matter of fact, on one hand 65 percent of Indian men believe that women should tolerate violence to counter balance with keeping the family together, while on other hand, it is also believed that women deserve to be beaten in Asia.<sup>20</sup> The same report claims that 24 percent of Indian men had committed sexual violence at some point of their lives, showing a toxic masculinity in the society.

Through these data, it can be understood that high rate of crime and violence exist against women at different levels in different forms at various parts of India. These

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<sup>13</sup>S. Vijay Kumar, "Female Sex Ratio- Ratio in India-A Review", 8 (1) Indian J. Dev. Res. Soc. Actions 30 (2012)

<sup>14</sup> Census 2011, Sex Ration in India, available at: <https://www.census2011.co.in/sexratio.php> (last visited on May 6, 2020).

<sup>15</sup> Chandan Mukherjee, Preet Rustagi, et.al, "Crimes against Women in India: Analysis of Official Statistics," 36(43) Econ. Political Wkly4070 (2001)

<sup>16</sup> United Nations Development Programme, Human Development Reports, Table 5: Gender Inequality Index (GII), available at: <http://hdr.undp.org/en/content/table-5-gender-inequality-index-gii> (last visited on May 6, 2020).

<sup>17</sup> Government of India, "National Crime Records Bureau, Crime in India Statistics 2012, Crime against Women" (Ministry of Home Affairs, 2012)

<sup>18</sup> Renuka Chowdhury, "India tackles domestic violence", October 26, 2006, BBC News, available at: [http://news.bbc.co.uk/2/hi/south\\_asia/6086334.stm](http://news.bbc.co.uk/2/hi/south_asia/6086334.stm) (last visited on May 7, 2020).

<sup>19</sup> Government of India, "National Crime Records Bureau, Crime in India Statistics 2018, 1" (Ministry of Home Affairs, 2018)

<sup>20</sup> HamsaRajan, "When Wife-Beating Is Not Necessarily Abuse: A Feminist and Cross-Cultural Analysis of the Concept of Abuse as Expressed by Tibetan Survivors of Domestic Violence," 24(1) Violence Against Women 11 (2018).

forms of crime manifestations include rape, molestation, assault, dowry, kidnapping, trafficking, mental and physical torture and sexual harassment. However, it is also important to note that the official statistics expose only a fraction of the actual magnitude of crime against women, less than one-third of the women approach counseling unit only after facing violence for a year.<sup>21</sup> A finding from another study<sup>22</sup> says that women generally seek help from police and service organizations as a last resort.

The significant rise of crime against women in India has reason being women empowered as men may react to it as a challenge posed to them. With the growth of the society, there has been growth of these crimes as well.

### **Crime against Women: Categorization**

Although women may be victims of various crimes such as robbery, theft, cheating, etc., there are certain crimes which are specifically committed against women and are particularly known as 'crime against women'. Types of violence against women continue throughout their life. The paper attempts to provide an overview of the most pervasive forms of violence or crimes against women in India on the basis of their nature and which are divided broadly into: Pre-birth Elimination of Females and female infanticide, Domestic Violence and Sexual Violence<sup>23</sup> and Other Unclassified Crimes and study the legal measures provided for each of them.

#### **A. Pre-Birth Elimination of Female and Female Infanticide**

The preference of male child over female child in a family has given rise to the heinous forms of crime such female feticide and female infanticide. Prenatal sex detection has been misused and medical practitioners promote it in return of hefty amount and there have never been enough strict laws to curb it. 'Son preference' in a family is just not due to customary beliefs or social norms. A female child is comparatively more expensive than a male child considering due to dowry to be given at the time of marriage, lack of financial return, educational and health expenses. While sons offer security to their families in old age and can perform the rites for the

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<sup>21</sup> Commissioned by National Commission for Women, "Evaluation Research Study of the Counseling Units at Special Police Units for Women and Children (Special Cells), New Delhi," 7 (2016).

<sup>22</sup> International Center for Research on Women, "Domestic Violence in Women, A Summary Report of Four Records Studies," 4 (2000)

<sup>23</sup> International Center for Research on Women, "Violence against Women In India: A Review Of Trends, Patterns And Responses," (2004).

souls of the deceased parents, daughters are perceived as social and economic burden<sup>24</sup>.

Another form of eliminating girl child has been the practice of female infanticide. The Indian Penal Code, 1860<sup>25</sup> under Section 315 defines infanticide as the killing of an infant 0-1 year age group. Female infanticide is intentional or deliberate unlawful killing of a female child due to low value associated with the birth of girls given the preference to male child.<sup>26</sup> The National Family Health Survey suggested that over 100,000 female fetus are being aborted annually in India.<sup>27</sup> In 2000, foeticide cases increased by 49.2 percent and infanticide cases increased by 19.2 percent over previous year.<sup>28</sup>

### **Legislative Approaches and Provisions Laid Down By Law**

In order to liberalize abortion laws in order to control population or to save the life of the mother and to give a choice whether to give birth or not, the Medical Termination of Pregnancy act was passed in 1971. However, this Act was misemployed to abort female child. In order to do away with the lacunae, the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994<sup>29</sup> was passed in the year 1994 which was amended in 2003 to the Pre Conception and Pre Natal Diagnostics Techniques (Prohibition of Sex Selection) Act, 2003.<sup>30</sup> The Act prohibited determination of sex of fetus and stated punishment for violation. The Act declared that all ultrasound machines are to be registered and that resorting to illegal sex determination is prosecuted. In a recent judgment to the case of *Vijay Sharma v. Union of India*,<sup>31</sup> the Bombay High Court pronounced that pre-natal sex determination would be as good as female foeticide and pre-conception sex determination violated a

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<sup>24</sup>Nehaluddin Ahmad, "Female Feticide in India", 26(1) Issues Law Med. 13 (2010).

<sup>25</sup> Indian Penal Code, 1860 (Act 45 of 1860)

<sup>26</sup> Pawan Mittal, Vijay Pal Khanagwal, et al., "Case Report Female Infanticide: The Innocence Murdered again" 35(2) J. Indian Acad. Forensic Med. 181 (2013)

<sup>27</sup> Yvonne MacPherson, "Images and Icons: Harnessing the Power of the Media to Reduce Sex-Selective Abortion in India", 15(3) Gender & Development 413 (2007)

<sup>28</sup> Sneha Lata Tendon and Renu Sharma, "Female Foeticide In India: An Analysis Of Crimes Against Girl Children", 1(1) Int. J. Crim Justice Sci 4 (2006)

<sup>29</sup> (Act 54 of 1994)

<sup>30</sup> (Act 14 of 2003)

<sup>31</sup> AIR 2008 Bom 29

woman's right to life and was against the Constitution of India.<sup>32</sup> However, even this well intentioned legal tool suffers from poor enforcement.

### **B. Domestic Violence**

Domestic violence refers to violent acts committed by a family or a member of the family against another person within a domestic setup. It can refer to any kind of abuse – including physical, emotional, sexual or financial- either in between intimate partners or by others living in the same family. It is any form of maltreatment, abuse, threat of abuse that takes place in a heterosexual or homosexual relationship between any age group. Though a male may also be a victim of domestic violence, in most cases in India, it is typically suffered by women in the hands of male members of her family or relatives. It includes harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of a person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or to coerce a woman or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned above; or Otherwise injures or causes harm, whether physical or mental, to the aggrieved person.<sup>33</sup>

Domestic violence usually involves repetitive physical and psychological intimidating behavior or abuse and a “cycle of violence.” In the case of *BartimenBipinbhaiTamboli*,<sup>34</sup> the High Court of Gujarat remarked that the domestic violence of this country is rampant and several women encounter violence in some form or other or almost everyday. However, it is the least reported for number of cruel behavior. A woman resigns her fate to the never ending cycle of enduring violence and discrimination as a daughter, a sister, a wife, a mother, a partner, a single woman in her lifetime. The non- retaliation by women alongwith either absence of laws or ignorance of the existing laws addressing women's issues and societal attitude makes the women vulnerable.

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<sup>32</sup> The Constitution of India, 1950

<sup>33</sup> Protection of Women from Domestic Violence, 2005 (Act 43 of 2006), s. 3.

<sup>34</sup> *BhartibenBipinbhaiTamboli v. State of Gujarat*, 2018 (1) RCR (Criminal) 831

Domestic violence in India is defined under Section 3 by the Protection of Women from Domestic Violence Act<sup>35</sup>. In view of the prevalence of domestic violence in India, many researchers attempted to access the causes of such violence in the society towards women. According to Murthy, the number of family members, type of marriage, husband's education and menstrual problems has significant influence in domestic violence<sup>36</sup>. While others such as Leonard<sup>37</sup>; McKenry<sup>38</sup>, Bhatt<sup>39</sup> opined that lifestyle of men such as smoking, drinking and drugs promote them to commit domestic violence. Hamberg<sup>40</sup> and Nayak<sup>41</sup> is of the view that masculinity and domestic violence are closely related. Nevertheless of any of the causes, prevalence of domestic violence did not cease to exist in India.

In India, 70 percent women are victims of domestic violence.<sup>42</sup> Domestic violence as a criminal offence in India was recognized in 1983 by the introduction of Section 498A of the Indian Penal Code.<sup>43</sup> Indian law defines various forms of domestic violence which are:

**i. Cruelty:** Cruelty has been defined as inflicting physical or mental harm to the body or health of women and indulging in acts of harassment with a view to coerce her or her relations to meet any unlawful demand for any property or valuable security.<sup>44</sup> Cruelty can either be physical or mental. What is surprising is that six out of ten men admitted to have perpetrated violence against their partners.<sup>45</sup> Every 9 minutes a case

<sup>35</sup> Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2006).

<sup>36</sup> M.S.R. Murthy, P. Ganesh, et al., "Proximate Determinants of Domestic Violence: An Exploratory Study on Role of Menstrual Problems and Life Style of Men," 33(1) Demography India 105 (2004).

<sup>37</sup> Kenneth E. Leonard and Howard T. Blane, "Alcohol And Marital Aggression In A National Sample Of Young Men," 7(1) J. Interpers Violence 27 (1992).

<sup>38</sup> Patrick C. McKenry, Teresa W. Julian et al., "Toward a Bio-psychosocial Model of Domestic Violence," 57 J. Marriage Fam. 316 (1995)

<sup>39</sup> R. V. Bhatt, "Domestic Violence and Substance Abuse," 63(Suppl.1) Int. J. Gynecol. Obstet. 30 (1998)

<sup>40</sup> Barnett and Hamberger, "The Assessment of Martialy Violent Men on the California Psychological Inventory," Violence And Victim (1992).

<sup>41</sup> Nata Duvvury and Madhabika B. Nayak, "The Role of Men in Addressing Domestic Violence: Insights from India," 46(2) Development 48 (2003).

<sup>42</sup> Renuka Chowdhury, "India tackles domestic violence", October 26, 2006, BBC News, available at: [http://news.bbc.co.uk/2/hi/south\\_asia/6086334.stm](http://news.bbc.co.uk/2/hi/south_asia/6086334.stm) (last visited on May 7, 2020).

<sup>43</sup> Indian Penal Code, 1860 (Act 45 of 1860)

<sup>44</sup> Indian Penal Code, 1860 (Act 45 of 1860), s. 498A.

<sup>45</sup> Nita Bhalla, "Six out Of 10 Indian Men Admit Violence against Women-U.N Stud.," November 10, 2014, Reuters available at: <https://in.reuters.com/article/india-women-idINKCN0IU0WR20141110> (last visited on May 7, 2020).

of cruelty is committed against women either by husband or his relatives.<sup>46</sup> Majority of the crime against women were registered under ‘Cruelty by husband or his relatives constituting 31.9 percent as stated in the 2018 Statistics.<sup>47</sup>

**ii. Dowry death:** Dowry in the sense of expression contemplated by Dowry Prohibition Act, 1961 can be meant as demand for property of valuable security having inextricable nexus with marriage, i.e., it is a consideration from the side of the bride’s parents or relatives to the groom or his parents and/or guardian for agreement to wed the bride-to-be. Property demanded after marriage will also be considered as dowry.<sup>48</sup> Dowry system in India has put many families into financial constraint and the women to emotional abuse including injuries to death.<sup>49</sup> Dowry death relates to bride’s killing or suicide. The year 2010 has seen the highest number of dowry deaths with 8391 such death deaths reported in India,<sup>50</sup> where the recent data by NCRB shows 7634 women killed in 2015 due to dowry harassment.<sup>51</sup> The National Crime Records Bureau indicated that female dowry deaths account to 40 to 50 percent of all female homicides recorded annually in India.<sup>52</sup>

### **Legislative Approaches and Provisions Laid Down By Law**

The Indian government has implemented legislation such as the Protection of Women from Domestic Violence Act, 2005 that provides protection to women not only from their husbands but also from other family members including mothers, grandmothers, etc. it also goes on to provide protection to women who are in live-in relationships and their respective relatives. This civil law promises protection from any kind of domestic violence, financial compensation to women,<sup>53</sup> the right to live in their shared

<sup>46</sup> Renuka Chowdhury, “India tackles domestic violence”, October 26, 2006, BBC News, available at: [http://news.bbc.co.uk/2/hi/south\\_asia/6086334.stm](http://news.bbc.co.uk/2/hi/south_asia/6086334.stm) (last visited on May 7, 2020).

<sup>47</sup> Government of India, “National Crime Records Bureau, Crime in India Statistics 2018, 1” (Ministry of Home Affairs, 2018)

<sup>48</sup> Y.K Bansal v. Anju, All LJ 914

<sup>49</sup> Anita Rao, Svetlana Sandra Correya, “Leading Cases On Dowry,” Human Rights Law Network (2011)

<sup>50</sup> Government of India, “National Crime Records Bureau, Crime in India Statistics 2013, Crime against Women” (Ministry of Home Affairs, 2013)

<sup>51</sup> Deepika Bhardwaj, “India Top Court Charges Anti-Dowry Law To Stop Misuse,” July 28, 2017, BBC News, available at: <https://www.bbc.com/news/world-asia-india-40749636> (last visited on May 7, 2020).

<sup>52</sup> Government of India, “National Crime Records Bureau, Crime in India Statistics 2016” (Ministry of Home Affairs, 2016)

<sup>53</sup> Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2006), s. 22.



household,<sup>54</sup> and in such cases, they are allowed to get access for maintenance from their offenders<sup>55</sup>.

Section 498A of Indian Penal Code, 1860 provides protection to women from cruelty, from dowry related harassment and dowry deaths. It is a criminal law which is defines as “whoever being the husband or the relative of the husband of a woman, subjects such woman cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The offence is cognizable, non-compoundable and non-billable.” Section 498A can only be invoked by wife or daughter in law.

Dowry has been made punishable with the enactment of the Dowry Prohibition Act, 1961. The legal framework prohibited demanding, giving and taking of dowry<sup>56</sup>. The punishment to such offences may be imprisonment of five years and a fine of more than Rupees 15000 or the value of the dowry received, whichever is higher.<sup>57</sup> The Act also provides penalty for directly or indirectly demanding dowry and such penalty involves imprisonment of six months which can be extended up to two years along with a fine of Rupees 10000. Although, through this Act, dowry has been made illegal, its prevalence has not decreased. To further strengthen the anti-dowry Act, Section 498A was added to the Indian Penal Code, 1860 and Section 198A to the Criminal Procedure Code, 1983. Section 304B was added to the Indian Penal Code, 1860 which made dowry death a specific punishable offence with imprisonment for seven years which can extend to life imprisonment. Section 304B (1)<sup>58</sup> provided that “Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.” Further, Section 113B in the Indian Evidence

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<sup>54</sup> Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2006), s. 17.

<sup>55</sup> Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2006), s. 20.

<sup>56</sup> Dowry Prohibition Act, 1961 (Act. 28 of 1961), s. 3.

<sup>57</sup> Dowry Prohibition Act, 1961 (Act. 28 of 1961), s. 3(1).

<sup>58</sup> Indian Penal Code, 1860 (Act 45 of 1860)

Act, 1872<sup>59</sup> provides for presumption as to dowry death. It states that “When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.” Section 304B<sup>60</sup> along with Section 113B<sup>61</sup> has enabled the authorities to convict offenders who were unable to be convicted by the Dowry Prohibition Act, 1961.<sup>62</sup>

### C. Sexual Offences

India, considered to be the world’s most dangerous country for sexual violence for women, is ranked dangerous on three of the topic questions- the risk of sexual violence and harassment against women, the danger women face from cultural, tribal and traditional practices, and the country where women are most in danger of human trafficking including forced labour, sex slavery and domestic servitude.<sup>63</sup> Sexual violence can be meant as a sexual activity or act or attempt to obtain sexual act by violence or coercion. It is forcing or manipulating someone into unwanted sexual activity without their consent. It can be an act of physical or psychological in nature. It includes sexual assault, sexual harassment, stalking, indecent exposure, sexual exploitation and so on. The sexual violence committed against women can often occur either in a domestic setting or outside or both.

**i. Sexual Assault:** Sexual assault is a criminal act intentionally committed or attempt to commit by use of force or coercion to outrage a woman’s modesty. It is pertinent to note that the essence of women modesty lies in her sex.<sup>64</sup> According to National Center for Victims of Crime, sexual assault can take any form including attacks such as rape or attempted rape, as well as any unwanted sexual contacted or threats.<sup>65</sup> The essence of sexual assault is touching another person’s body in a sexual way and without the person’s consent, it does not matter even if it is not through the clothes.

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<sup>59</sup> (Act 1 of 1872)

<sup>60</sup> Indian Penal Code, 1860 (Act 45 of 1860)

<sup>61</sup> Indian Penal Code, 1860 (Act 45 of 1860)

<sup>62</sup> AnshuNangia, “The Tragedy of Bride Burning in India,” 22(3) Brooklyn J. Int’l 654 (1997).

<sup>63</sup> Thompson Reuters Foundation, The world's most dangerous countries for women 2018, available at: <https://poll2018.trust.org/> (last visited on May 6, 2020)

<sup>64</sup> Ramkripal v. State of M.P, AIR 2007 (crl.) SC 370

<sup>65</sup> National Sexual Violence Resource Center, About Sexual Assault, available at: <https://www.nsvrc.org/about-sexual-assault> (last visited on May 7, 2020)

Through the Criminal Law (Amendment) Act, 2013<sup>66</sup> now included provision in the Code, 1860 to protect women against anyone who ‘assaults or uses any criminal force to any woman or abets such act with intention of disrobing or compelling her to be naked.’<sup>67</sup> The crime also includes sodomy, child molestation, incest and fondling.

**Rape**, the fourth most common crime against women in India<sup>68</sup> is defined under Section 375 of the Indian Penal Code, 1860. The Unnao and Kathuarape case draw attention to the fact that India remains largely unsafe for women.<sup>69</sup> According to the report submitted by National Crime Records Bureau<sup>70</sup> total number of cases reported for assault on women with intent to outrage her modesty constitutes 84,746 and rape constitutes 38,947 in the year 2016, constituting the rate of 10.3 percent as estimated in the year 2018.<sup>71</sup> approximately 32,500 cases of rape were registered with the police in the year 2017, in about 90 a days’ period, whereas, Indian courts disposed of only about 18,300 cases related to rape that year, leaving more than 127,800 cases pending at the end of 2017.<sup>72</sup>

In India, **marital rape** has not been recognized as a criminal offence.<sup>73</sup> Exception 2 of Section 375 of the Indian Penal Code 1860 states that sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape. India is one of the fifty countries that have not outlawed marital rape.<sup>74</sup> 664 cases of women were reported domestic violence in 2015 at the NGO Sneha’s crisis

<sup>66</sup> Criminal Law (Amendment), 2013 (Act 13 of 2013)

<sup>67</sup> Indian Penal Code, 1860 (Act 45 of 1860), s. 354B

<sup>68</sup> Government of India, “National Crime Records Bureau, Crime in India Statistics 2012, Crime against Women” (Ministry of Home Affairs, 2012)

<sup>69</sup> Priya Kapoor, “Over 30,000 rape cases, only 1 in 4 convicted” June 11, 2019 Times Of India, available at:

<https://timesofindia.indiatimes.com/india/over-30000-rape-cases-only-1-in-4-convicted/articleshow/63748925.cms> (last visited on May 7, 2020).

<sup>70</sup> Government of India, “National Crime Records Bureau, Crime in India Statistics 2018, 1” (Ministry of Home Affairs, 2018)

<sup>71</sup> Government of India, “National Crime Records Bureau, Crime in India Statistics 2018, 1” (Ministry of Home Affairs, 2018)

<sup>72</sup> “Statistics on Rape in India and Some Well-Known Cases,” December 6, 2019, Reuters, available at: <https://www.reuters.com/article/us-india-rape-factbox/statistics-on-rape-in-india-and-some-well-known-cases-idUSKBN1YA0UV> (last visited on May 7, 2020)

<sup>73</sup> Kinneer L. Karen, Women In Developing Countries: A Reference Handbook 208 (ABC-CLIO 2011).

<sup>74</sup> Sharmila Lodhia, “From 'Living Corpse' To India's Daughter: Exploring The Social, Political And Legal Landscape Of The 2012 Delhi Gang Rape,” 50 Women’s Stud. Int. Forum 101 (2015).

counseling centre at Dharavi, Mumbai, and 159 women reported marital rape.<sup>75</sup> 60 percent married women report sexual violence of which forced sex being the most common.<sup>76</sup>

**ii. Sexual Harassment:** The Sexual Harassment of Women at Workplace (prevention, Protection, Prohibition and Redressal) Act, 2013<sup>77</sup> uses the definition of sexual harassment given by the Supreme Court in *Vishaka v. State of Rajasthan*<sup>78</sup>. It lay down as “‘Sexual Harassment’ includes such unwelcome sexually determined behavior (whether directly or by implication) as:

- a. Physical contact and advances
- b. A demand or request for sexual favours;
- c. Sexually coloured remarks;
- d. Showing pornography;
- e. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts are committed in circumstances under which the victim of such conduct has a reasonable apprehension that in relation to the victim’s employment or work (whether she is drawing salary or honorarium or voluntary service, whether in government, public or private enterprise), such conduct can be humiliating and may constitute a health and safety problem, it amounts to sexual harassment in the workplace. It is discriminatory, for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work (including recruiting and promotion), or when it creates a hostile working environment. Adverse consequences might result if the victim does not consent to the conduct in question or raises any objection thereto.”

Data from BSE 100 companies showed that there has been 14 percent increase of reports on sexual harassment in the FY19.<sup>79</sup> According to the report published by the

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<sup>75</sup>Roli Srivastava, “Marital Rape: The Statistics Show How Real It Is,” June 30, 2016, The Hindu, available at: <https://www.thehindu.com/news/cities/mumbai/Marital-rape-the-statistics-show-how-real-it-is/article14410173.ece> (last visited on May 6, 2020)

<sup>76</sup>Roli Srivastava, “Marital Rape: The Statistics Show How Real It Is,” June 30, 2016, The Hindu, available at: <https://www.thehindu.com/news/cities/mumbai/Marital-rape-the-statistics-show-how-real-it-is/article14410173.ece> (last visited on May 6, 2020).

<sup>77</sup> Sexual Harassment of Women at Workplace (Prevention, Protection, Prohibition and Redressal), 2013 (Act 14 of 2013).

<sup>78</sup> (1997) 6 SCC 241

<sup>79</sup> Riya Bhattacharya, “India Inc Reports 14% Rise In Sexual Harassment Complaints In FY19,” September 25, 2019, Economic Times, available at:

Ministry Of Women And Child Development<sup>80</sup> the number of cases of such offences increase by 54 percent from 371 cases registered in 2014 to 540 cases in 2017.

**iii. Human Trafficking and Forced Prostitution:** Trafficking for prostitution and sexual exploitation is one of the most prevalent forms of crime worldwide. Every year, millions of people including children are commercially exploited for sex. The United Nations defines human trafficking as the recruitment, transportation, transfer, harboring, or receipt of persons by improper means (such as force, abduction, fraud, or coercion) for an improper purpose including forced labor or sexual exploitation.<sup>81</sup>The NCRB data based on statement of rescued victims showed that sexual exploitation for prostitution constituted 22 percent. More than 23,000 victims were rescued in 2016.<sup>82</sup> A total number of reported cases under the Protection of Children from Sexual Offences Act, 2012<sup>83</sup> during the year 2016 were 36,022.<sup>84</sup>A report from the Central Bureau of Investigation in 2009, estimated that there are 1.2 million children involved in prostitution.<sup>85</sup>

**iv. Child Sexual Abuse:** The guidelines adopted by the 1999 WHO Consultation on Child Abuse Prevention defines child sexual abuse as “the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being

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<https://economictimes.indiatimes.com/news/company/corporate-trends/india-inc-reports-14-rise-in-sexual-harassment-complaints-in-fy19/articleshow/71288712.cms?from=mdr> (last visited May 7, 2020)

<sup>80</sup>Lok Sabha Unstarred Question No. 1763 on July 27, 2018 available at:

<http://164.100.24.220/loksabhaquestions/annex/15/AU1763.pdf> (last visited on May 7, 2020)

<sup>81</sup> UN General Assembly, Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, United Nations Convention against Transnational Organized Crime., GA Res 55/25, GAOR, UN Doc A/55/383 (Nov. 15, 2000).

<sup>82</sup> Press Trust of India, “8132 Cases of Human Trafficking Reported In 2016, Average 63 Victims Rescued In a Day,” December 03, 2017, Hindustan Times, available at:

<https://www.hindustantimes.com/india-news/8132-cases-of-human-trafficking-reported-in-2016-average-63-victims-rescued-a-day/story-OguqzIq50jiFZrvy51hrmL.html> (last visited on May 7, 2020).

<sup>83</sup> (Act 32 of 2012).

<sup>84</sup> Sruthi Radhakrishnan, “Over 36000 Cases Registered Under POSCO Act In 2016,” June 22, 2019, The Hindu, available at: <https://www.thehindu.com/news/national/36000-pocso-cases-registered-in-2016/article28108136.ece> (last visited on May 7, 2020).

<sup>85</sup>“Official: More than 1M Child Prostitutes in India,” May 11, 2009, CNN World, available at: <http://edition.cnn.com/2009/WORLD/asiapcf/05/11/india.prostitution.children/index.html> (last visited on May 7, 2020).

intended to gratify or satisfy the needs of the other person. This may include but is not limited to:

- the inducement or coercion of a child to engage in any unlawful sexual activity;
- the exploitative use of a child in prostitution or other unlawful sexual practices;
- the exploitative use of children in pornographic performance and materials”.<sup>86</sup>

The rate of crime against children is seen to have risen in the year 2018 constituting 31.8 percent as compared to the previous year 2017 which had 28.9 percent.<sup>87</sup>

### **Legislative Approaches and Provisions Laid Down By Law**

Implementation of a new legal framework, the Criminal Law (Amendment) Act, 2013 became imperative due to nationwide outrage and increase of rape and subsequent death of women in India. The Act not only introduced new offences such as acid attack but also made changes to the provisions of the existing criminal laws such as the Indian Penal Code, 1860,<sup>88</sup> the Code of Criminal Procedure, 1973<sup>89</sup> and the Indian Evidence Act, 1872.<sup>90</sup>

Assault under Section 354B of the Indian Penal Code states that if a man assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place, he commits an offence under section 354B, which is punishable with imprisonment between three and seven years. This section is specific and supplements to the provision dealing with the offence of outraging the modesty of a woman. Section 376 of Indian Penal Code, 1860 provides for punishment of rape. It provides for rigorous imprisonment of not less than ten years which may extend up to imprisonment of life and fine and that whoever, being a police officer or a public servant or member of armed forces or a person being on the management or on the staff of a jail, remand home or other place of custody or women's or children's institution or a person on the management or on the staff of a hospital, or a person in a position of trust or authority towards the person raped or a near relative of the person raped commits the offence of rape or commits

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<sup>86</sup>Laura K. Murray, Amanda Nguyen, et. al., “Child Sexual Abuse,” 23(2) [Child Adolesc Psychiatr Clin N Am.](#) (2015)

<sup>87</sup> Government of India, “National Crime Records Bureau, Crime in India Statistics 2018, 1” (Ministry of Home Affairs, 2018)

<sup>88</sup> Indian Penal Code, 1860 (Act 45 of 1860).\

<sup>89</sup> (Act 2 of 1974)

<sup>90</sup> (Act 1 of 1872)

rape on woman knowing her to be pregnant, a woman suffering from mental or physical disability or while committing rape causes grievous bodily harms or maims or disfigures or endangers the life of the woman shall be punishable rigorous imprisonment of not less than ten years which may extend up to Imprisonment of life and fine. Also, whoever committing the offence of rape on a woman under sixteen years of age shall be punished with a term not less than twenty years which may extend to life imprisonment along with fine.

There is currently no law addressing the offence of force sex in a marriage or commonly known as marital rape. MsVrinda Grover, lawyer and women's rights activist says that there is increasing evidence in the form of documentation that there is high incidence of rape within marriage.<sup>91</sup> The article also say, senior lawyer Indira Jaising stated that "Forced sexual intercourse within marriage should be brought within the ambit of definition of rape under Section 375 Indian Penal Code 1860, by deleting Exception 2."

The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013<sup>92</sup> criminalizes sexual harassment and provides for prevention and protection of women from the offence at workplace. Section 354A of the Indian Penal Code, 1860 provides for punishment up to three years or fine or both for any person who has committed sexual harassment of the nature of unwelcome physical contact and advances or a demand or request for sexual favours or showing pornography and punishment up to one year or fine or both in case of sexual harassment of the nature of making sexually coloured remark. The Criminal Law (Amendment) Act, 2013 also states punishment for gang rape and repeat offenders<sup>93</sup> of rape or gang rape which constitutes rigorous imprisonment of between twenty years and life imprisonment.<sup>94</sup> Section 377 of Indian Penal Code, 1860 set out that any adult who commits sexual intercourse with another adult person against the will and without the consent of the other adult person shall be punishable by imprisonment of either description up to seven years and with fine. Section 509 of the

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<sup>91</sup>Roli Srivastava, "Marital Rape: The Statistics Show How Real It Is," June 30, 2016, The Hindu, available at: <https://www.thehindu.com/news/cities/mumbai/Marital-rape-the-statistics-show-how-real-it-is/article14410173.ece> (last visited on May 6, 2020).

<sup>92</sup> (Act 14 of 2013)

<sup>93</sup> Indian Penal Code, 1860 (Act 45 of 1860), s. 376E.

<sup>94</sup> Indian Penal Code, 1860 (Act 45 of 1860), s. 376D.

Code states that whoever, with a sexual purpose or with the intention to insult any woman, utters any word, makes any sound or gesture, or exhibits any object or a part of the body intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

The Immoral Traffic (Prevention) Act, 1956<sup>95</sup>, penalizes human trafficking for commercial and sexual exploitation. Article 23 of the Constitution of India protects from exploitation, prohibits trafficking of human beings and forced labour such as beggar and contravention to the provision shall be punishable. Section 366A of Indian Penal Code 1860 provides that inducing any minor girl under the age of eighteen years to go to any such place with intent to force or seduced illicit intercourse with another person shall be a punishable offence. Section 366B of the Code states that importing any girl under twenty-one years with the intent that she will be, forced or seduced to illicit intercourse with another person is a punishable offence.

With respect to offences such as sexual assault, sexual harassment and pornography, and safeguarding interest of a child, the Protection of Children from Sexual Offences (POCSO) Act, 2012 was enacted to provide a legal framework for the protection of children at every stage. For matters related to pornography, the Act criminalizes watching or collection of pornographic content involving children and provides for imprisonment of seven years as well as fine. The Act calls for stringent punishment for aggravated sexual assault on children under Sections 4, 5 and 6 and those committing penetrative sexual assaults on a child below 16 years of age would be punished with imprisonment up to twenty years, which might extend to life imprisonment as well as fine. The Act also makes abetment of child sexual abuse an offence. Under the Protection of Children from Sexual Offences (Amendment) Act, 2012, death penalty is assured to those convicted for raping girls below 16 years of age.

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<sup>95</sup> The Immoral Traffic (Prevention), 1956 (Act 104 of 1956)



**C. Unclassified Crimes:** There are various other crimes against women which occur to women of any age group and we classify them as follows:

**i. Kidnapping and Abduction:** Under the head 'crime against women' kidnapping and abduction alone constituted a total number of cases reported to be 1,05,734 in the year 2018, which rated to be 10.3 percent.<sup>96</sup> Kidnapping has been termed as unlawfully taking away or conveying or wrongfully confining a person.<sup>97</sup> It has been codified as a criminal offence under the Indian criminal law.

**ii. Voyeurism:** The Criminal Law (Amendment) Act enacted in the year 2013 not only brought changes in the existing criminal laws in India, but also added certain new provisions meeting the present day offences committed or which has previously not been added. The concept of voyeurism has referred to sexual interest in or practice of spying on people who are engaged in sexual activities or other activities that are considered private in nature.<sup>98</sup> Even after the inclusion of new provision under the Code, 1860, the reported cases of voyeurism has been continuously rising at 932 cases in 2016, 1090 cases in 2017 and 1393 cases in 2018.<sup>99</sup>

**iii. Stalking:** Stalking as a criminal offence has been added under Section 354D, Indian Penal Code 1860. It is defined as following a woman and contacting, or attempting to contact such a woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or monitoring the use by a woman of the internet, email or any other form of electronic communication. The provision is however gender neutral and only protects women from being stalked by men. Mullen defined stalking as constellation of behaviors in which one individual inflicts repeated unwanted intrusions and communications on another.<sup>100</sup> The dramatic rise of total number of reported cases of stalking at 9,438 in the year 2018 with that of 8,145 cases in 2017<sup>101</sup> has been a matter of concern.

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<sup>96</sup> Government of India, "National Crime Records Bureau, Crime in India Statistics 2018, 1" (Ministry of Home Affairs, 2018)

<sup>97</sup> Indian Penal Code, 1860 (Act 45 of 1860), s. 361.

<sup>98</sup> John O. Saviny and Bernt E. Turvey, Rape Investigation Handbook 13 (2<sup>nd</sup>edn., 2011).

<sup>99</sup> Government of India, "National Crime Records Bureau, Crime in India Statistics 2018, 1" (Ministry of Home Affairs, 2018)

<sup>100</sup> Michele Pathe and Paul E.Mullen, et al., Stalkers And Their Victims 7 (Cambridge University Press, 2000).

<sup>101</sup> Government of India, "National Crime Records Bureau, Crime in India Statistics 2018, 1" (Ministry of Home Affairs, 2018)

**iv. Acid attack:** The 226th Law Commission of India<sup>102</sup> report and also the Justice Verma Committee Report<sup>103</sup> mentions that acid attacks have a gender dimension in India. Acid attack refers to the attacking with acid on any other person with the intention of hurting the victim, cause harm, disfigurement and torture or the intention to kill someone to boost their ego. Rejection of marriage proposals, high education or jobs has been some shallow reasons which accounted for acid attacks in India, as reported so far. At other times, it could be the reason of not giving dowry, refusal to intimate relations or even personal conflicts. In the year 2016 223 cases of acid attacks were reported, while 2017 recorded 244 such cases. In 2018, acid attacks reported a marginal decline to 228 cases.<sup>104</sup>The criminal Law (Amendment) Act, 2013 added two provisions to the Indian Penal Code 1860 related to the offence; Section 326A which defines acid attack and Section 326B which states about attempt to acid attack.

#### **Legislative Approaches and Provisions Laid Down By Law**

Section 363 in The Indian Penal Code 1860 state that whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend up to seven years, and shall also be liable to quantum of monetary fine.

Section 366A of the Indian Penal Code 1860 lays down the provision for procurement of minor girl. It says “whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.”

The offence of voyeurism under Section 354C of the Code, 1860 constitute punishment on first conviction with imprisonment of either description for a term which shall not be less than one year, and may extend up to three years, and shall also

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<sup>102</sup> Law Commission Of India, 226<sup>th</sup> Report on Proposal For The Inclusion Of Acid Attacks As Specific Offences In The Indian Penal Code And A Law For Compensation For Victims Of Crime, (July, 2009).

<sup>103</sup>Gopal Subramanian, J. S. Verma, et. al, Report Of The Committee On Amendments To Criminal Law (Akalank Publications, 2013).

<sup>104</sup> Government of India, “National Crime Records Bureau, Crime in India Statistics 2018, 1” (Ministry of Home Affairs, 2018)

be liable to fine, punishment on a second or subsequent conviction shall constitute imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Stalking under Section 354D of the Indian Penal Code, 1860 shall be punishable with imprisonment not less than one year but which may extend to three years, and shall also be liable to fine. The case of *Manish Kathuria*<sup>105</sup> is the first reported case against cyber stalking in India which led to the Amendment of the Information Technology Act 2000<sup>106</sup> in the year 2008.

Section 326A of the Indian Penal Code, 1860 provides for punishment imprisonment not less than ten years but which may extend to imprisonment for life and with fine which shall be just and reasonable to meet the medical expenses which shall be paid to the victim for committing the offence of acid attack. Section 326B<sup>107</sup> lays down that for the offence of attempt to acid attack the punishment shall be imprisonment not less than five years but which may extend to seven years, and shall also be liable to fine. *Laxmi v. Union of India*,<sup>108</sup> was the first case where compensation was given to acid attack victim and led the Supreme Court of India ordered for ban on selling of acid in the shops. The Prevention of Acid Attacks and Rehabilitation of Acid Attack Victims Bill, 2017 has been introduced as a legal tool for providing for prevention of acid attacks by regulation of sale, supply and use of acid or other measures and rehabilitation of women victims of acid attacks and matter connected therewith.

### **Recommendations**

- i. Strong sensitization of the Criminal justice system within the state is absolute requirement to put limits to the crimes against women.
- ii. Strategic alliances by the State and the civil society and the other institutions are necessary to establish a crime free community where women can freely move and express themselves.
- iii. Implementation of women friendly enactments and legislations in the State to protect the rights and provide remedies to the women.

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<sup>105</sup>Manish Kathuria v. State, 2008

<sup>106</sup> (Act 21 of 2000)

<sup>107</sup> Indian Penal Code, 1860 (Act 45 of 1860)

<sup>108</sup>2014 4 SCC 427

iv. Research on women's views, opinions and perceptions are to be undertaken so that effective implementation and interpretation of laws are established at every level of the State.

v. Enough funds by the Government of the State should be provided to the authorities, institutions and organizations through which research work is carried out, compensation against violence committed, other innovative programs implemented and so on.

vi. Effective rehabilitation centers for women and the juveniles are to be established for women and children victims and maintain separate rehabilitation centers for offenders.

vii. Increase concern and awareness about the causes causing violence and the consequences of violence aftermath to promote the need of changing norms, behavior of the society and specifically the men, and advocate gender equality.

viii. Educational institutions should provide effective education on such causes and consequences of violence against women to make students aware at their early age about the same.

### **Conclusion**

Violence has become existential reality in many lives in India. The growth of society has also increased the rates of crime. To say, gender violence not only has an impact on the women but also has effect on the various social, political and economic policies and forces in the society by restricting women from contributing and thereby hindering the social, economic and political development of the society. Apart from that, it significantly raises the health problems and issues which directly concern the public health sector. The intra state violence against women again is a factor in rising international crime. Though there has been profuse amount of measures and enactments acting towards ending crime against women, with research and literature around, it seems that there is still a need to readjust the structural power imbalances to alleviate greater prerogatives men hold. The objective to prevent, reduce and eliminate crime against women is currently being approached with a focus on

achieving gender equality. However, with the rising rates in crime, it needs more research to understand exact meanings and how effectively it can be implemented.