
CRIMES AGAINST WOMEN: THE DIABOLIC CHAPTER OF INDIA

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ABSTRACT

Although the women's status in India has improved slightly but not eradicated completely. Crimes against women can take any form of abuse whether it is physical abuse, financial abuse, emotional abuse, sexual abuse, spiritual abuse, technological abuse or any other such form of abuses which takes place due to the male dominating society in India. Such violence and abuses are often carried out either by the women's family members or by strangers wherein they use their controlling behaviors to torture and indulge fear in their minds which results in victims suffering in silence and getting little or no public awareness of their plight. In spite of having various legislative and judicial initiatives, crimes against women have been considered as a legitimate human rights violation. There are various NGOs and women groups who are working and fighting for the rights of the women but this will remain deficient until the reforms are being brought in the thought-process of the people living in this society.

Keywords: Crime against Women, Sexual Crimes, Harassment

"Violence against Women is the most pervasive and unaddressed human rights violation on Earth. As long as it continues, we cannot claim to be making real progress towards equality, development and peace."

- Kofi Annan

INTRODUCTION

Crimes against women have been carried out in the society since its inception. Women, since time immemorial have been subjected to violence, cruelty and disgrace suggesting that they are and meant to be submissive to men, as second class citizens. Women have always held a certain paradoxical position in our developing country. The society, due to a patriarchal outlook has always considered that women are meant to adhere to what their father, husband, brother and teacher command them to do. Offenders consider women as their property thereby showcasing dominance and superiority over them. Moreover violence against women is often not considered as violence because of general acceptance of man's superiority in the society. As according to the Declaration on the Elimination of Violence against Women, Violence against women is "a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women".¹

It has been observed by the United Nations that :

"Violence against women is a violation of human rights, rooted in historically unequal power relations between men and women and the systemic discrimination against women that pervades both the public and private spheres".²

The alarming situation today is that, despite the nationwide outrage, these crimes have only been increasing immensely which suggests that there is something seriously wrong with our society because the foundation of a strong legal system has already been laid by the various stringent acts. It is estimated that a crime against women takes place every 2 minutes in India.

CRIMES AND VIOLENCE AGAINST WOMEN: DIFFERENT CRIMES AT DIFFERENT STAGES OF WOMEN'S DEVELOPMENT AND GROWTH

1. Declaration on the Elimination of Violence against Women, UNGA Res 48/104 (20 December 1993) UN Doc A/RES/48/104.

2. Report of the Secretary –General, Ending Violence Against Women: From words to action, 102 (2006).

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".³ Rape, Marital Rape, Domestic Violence, Harassment, Eve teasing are essentially some of the most prominent, disturbing and grave crimes against women. They have to bear the burns of domestic, public, physical as well as emotional and mental violence against them, which affects her status in the society at the larger extent.⁴ They are vulnerable to hostility since even before their birth and until they continue to live, which has been depicted by the United Nations Entity for Gender Equality and the Empowerment of Women and the World Health Organization⁵ :-

India has reported 1,64,765 Crimes against Women in 2006⁶ which include Rape, Sexual Harassment, Dowry Deaths, Molestation, Cruelty by Husband and Relatives, Kidnapping, Abduction and Immoral Trafficking and as many as 3,38,954 crimes in 2016⁷, an 106 percent rise in the number. Moreover, in 2016 the conviction rate of the crime is merely 19 percent and whereas the pendency percentage stands at 90⁸ percent which is pitiful and disgraceful. It is therefore deduced that a crime against women is reported every 1.5 minute in India.

Additionally, crimes against women during different stages of her life can be classified as follows, including discussion on some of them :

Stage 1: Pre- Birth and During the Birth

Stage 2: School Going Age

Stage 3: Adolescence

Stage 4: Marriage

Stage 5: Motherhood

Stage 6: Workplace

4. UNGA Res 48/104, Declaration on the Elimination of Violence against Women, (1993).

5. Aadesh K. Devgan ,Crime against women and child(1st ed. Cyber Tech Publications, 2008).

6. Mary Ellsberg and Lori Heise, Researching Violence Against Women A Practical Guide for Researchers and Activists (WHO and PATH, 2005) ; Watts and Zimmerman, Violence Against Women: Global Scope and Magnitude (Lancet, 2002).

7. National Crime Records Bureau, Figures at a Glance 1(2007).

8. National Crime Records Bureau, Crime in India Statistics 4 (2016).

9. National Crime Records Bureau, Crime in India Statistics 146-147 (2016).

STAGE 1: PRE BIRTH AND CHILDHOOD

FEMALE FOETICIDE AND INFANTICIDE

Foeticide is an act that causes the death of an embryo.⁹ In a legitimate setting, it alludes to the conscious or coincidental slaughtering of an embryo because of a criminal human act, for example, a hit to the midsection of a pregnant lady.¹⁰ As a clinical term, foeticide is killing of the female embryo, for instance as the primary period of a legitimate or legal abortion at early stages of Pregnancy.¹¹ The last in some particular circumstances is inescapable and legitimate particularly in the beginning period of pregnancy; it is for some time discussed and debated. In any case, the sex specific fetus removal isn't at all legitimate.¹² Individuals in Punjab, Haryana and other Western states can manage the cost of illicit test to decide the sex of the child and dispose of it.¹³

In India female Foeticide is occurring for different variables viz. monetary, socio-custom, and technological.¹⁴ There is a huge gap in the gender based wage level. For a similar work females are paid less compensation.¹⁵

UNICEF appraises that the turnover of foeticide industry has now arrived at 244 million dollar from 77 million dollar in 2006.¹⁶

Females are made or considered powerless against brutalities of the male in the types of physical, mental and rapes and injuries in the patriarchal construction of India.¹⁷ The presence of low-cost innovations like ultrasound, have prompted sex-based early termination of female embryos.

10. Central Bureau of Health Intelligence, Health Information of DGHS, Government of India, New Delhi: 2003.

11. Female foeticide in India, 2007. Available from http://www.unicef.org/india/media_3285.htm.

12. Census Figures of 2001. Office of the Registrar General and Census Commissioner, New Delhi, India

13. Khanna R, Kumar A, Vaghela JF, Sreenivas V, Puliyeel JM. Community based retrospective study of sex in infant mortality in India. *BMJ* 2003;327:126-30.

14. (From The Tribune, Chandigarh 2003/09/12).

15. Bardia A, Paul E, Kapoor SK, Anand K. Declining sex ratio: Role of society, technology and government regulation in Faridabad district, Haryana. *Natl Med J India*. 2004;17:207-11.

16. Jha P, Kumar R, Vasa P, Dhingra N, Thiruchelvam D, Moineddin R. Low female[corrected]-to-male [corrected] sex ratio of children born in India: national survey of 1.1 million households. *Lancet* 2006;367:211-8.

17. Pakrasi KB, Haldar A. Sex ratios and sex sequences of births in India. *J Biosoc Sci* 1971;3:327-37.

18. Sahni M, Verma N, Narula D, Varghese RM, Sreenivas V, Puliyeel JM. Missing girls in India: infanticide, foeticide and made-to-order pregnancies? Insights from hospital-based sex-ratio-at-birth over the last century. *PLOS ONE* 2008;3:e2224.c2008.

Female Infanticide can be characterized as the tenacious end of the existence of a newborn girl child solely because of her gender.¹⁸ Female Infanticide and foeticide, both are not just practiced in India, they are polished all around the world.¹⁹ The significance of mother love in religion, bounty of female figures with rich adornments, the similarly less significance given to guys would show that the general public in old Indus valley was more positive for ladies than to men.²⁰

The definition of a girl child according to the Madras Declaration on the Rights of the girl child 1990 is, "The female below the age of 18 years, unless by the law applicable to the child is called Girl Child."²¹

Literacy stays an essential issue for dominant part of the female populace in many nations. 213 of the world uneducated populace is female. Female schooling turns into a casualty if there are monetary requirements in the family.

In the present era, there have been instances and prevalence of a number of Institutional and Legal Measures that have been taken to combat the practice of Female Feticide in India.²² Some of them form the subject matter of this paper.

1) PNDT (Regulation and Prevention of Misuse) Act, 1994 : Maharashtra is the primary state in nation to boycott pre-natal sex assurance through the establishment of Maharashtra guideline of pre-birth diagnostics strategies act.²³ There is a focal administrative board, suitable specialists and warning councils. Infringement of the PNDT Act conveys a long term prison term and a fine of around Rs. 20,000.

2) Apart from this Special Statute, Section 312 of IPC discusses about causing Miscarriage Voluntarily which connects itself with the causing of Foeticide. The Section States that "*Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with*

19. Indian Council for Child welfare, 'Female Infanticide in Usilampatti' -News Letter, April 1995.

20. M. Jeeva, Gandimathi and Pavalam, 'Female Infanticide Philosophy, Perspectives and Concern of Society for Integrated Rural Development (SIRD)', SEARCH, Volume No.3, July, September 1998, Bangalore, p.9.

21. Sunanda K.S., 'A few steps backward. Is Culture the Culprit?', Special Issue on Girl Child, September 1995, Alternative for India Development, Chennai.

22. The Madam Declaration on the Rights of the Girl Child 1990, 'Anatomy of the Girl Child' edited by James Arphj Williams, Asian Youth Centre, Chennai.

23. Genocide of India's Daughters. Mail Online, 2006. Available from: <http://www.dailymail.co.uk/news/article-393896/Genocide-Indiasdaughters.html>.

24. George S.M. Sex selection/determination in India: Contemporary developments. Reproductive Health Matters 2002;10:184-97.

imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine".²⁴

3) The Supreme Court of India has given notification to the Indian government and the states and association domains on an appeal looking for stricter execution of laws that boycott pre-natal sex-determination tests and sex-particular early terminations in India.²⁵ The Supreme Court saw that the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT) that is intended to forestall female foeticide in India, has fizzled.²⁶

The national policy on child was adopted in the year 1974 by the Government of India and according to that, the Children of India are declared, "supremely important assets and the policy emphasized the provision of almost all facilities before and after birth of children and even after during their growth for their development".²⁷ Since 1901, as per the report of UNICEF, 40 - 50 million female children have disappeared in India. In light of that the Government passed the Prenatal Diagnostic Techniques Act, 1994, which makes Pre Birth sex determination tests illicit. However, its execution has not been exceptionally agreeable.²⁸ There are incalculable Acts like Female Infanticide Act (1870), Prohibition on Child Marriage Act (1929), The Employment of Child Act (1938), Prohibition Act of Child Labor (1986), The Juvenile Justice Act of 1986, and Acts against Rape, Sati, Dowry, etc. Be that as it may, the enactments have been profoundly incapable especially in the unorganized sector.²⁹

A petition was filed in the Apex Court, which sought directions from it, in order to implement the Pre Natal Diagnostic Techniques Act.³⁰ The role of the Supreme Court has been instrumental in this regard. The Court took upon the role of monitoring the implementation of

25. Indian Penal Code 1860, § 312, No. 45, Acts of Parliament, 1860.

26. Sachdeva DD. Social Welfare Administration in India, Allahabad ; Kitab Mahal ; 1998.

27. Bose S, Trent K. Socio-demographic determinants of abortion in India: A north-South comparison. J Biosoc Sci 2006;38:261-82.

28. Editorial, *Towards Eradication of Female Infanticide : Achievements, failures and challenges* Search Publications, July-Sep.1998.

29. Bhuvaneshwari. M., *The Unborn Girl Child - A Study on Sex Ratio at Birth as an indicator of Female Foeticide* M.S.S.R.F. Publications, Chennai, 2000.

30. Geetha Ramaseshan, *"Legal Aspects on Girl Child" Paper presented in the Campaign for the Rights of the Girl Child*, Asian Youth Centre, Chennai. Elizabeth Francina Negi, 'Death by Social Causes' M.S. Swaminathan Research Foundation, Chennai, 1997.

31. *Centre for Inquiry into Health and Allied Themes v. Union of India*, 2003 (10) SCALE 11 ; (2003) 8 SCC 412.

law, in the strictest possible manner and issuing a slew of directives during the proceedings of the case. It had also directed the centre and the states to ensure the proper implementation of the act and raise public awareness about the act through all measures. The Court went on to acknowledge that, *"It is unfortunate that for one reason or the other, the practice of female infanticide still prevails despite the fact that gentle touch of a daughter and her voice has soothing effect on the parents"*.³¹

The 2003 Landmark ruling of CEHAT (Centre for Enquiry into Health and Allied Themes) focuses essentially on the menace of female infanticide and female foeticide and raises serious questions over it. Moreover, in the landmark ruling, wherein privacy rights were recognized to an extent, the court held that a person has complete rights and control over his body.³²

STAGE 2: SCHOOL GOING AGE

DISCRIMINATION IN EDUCATION

*"Societal blocks to female education must be understood as part of a much larger social fabric, which has spawned numerous institutions of gender inequality."*³³

Discrimination in the education of girl child has been a long drawn issue, which is pertinent in India. Many factors have contributed to it, the most likely of all being the fact that Indian parents believe it is of no worth to educate a girl child, since she would get married in the coming years and thus it would be nothing but waste of money. The UNICEF has as well reiterated that the primary reason for gender inequality is poverty and practices followed by the local culture. Between the years 2006 to 2010, merely 26 percent were able to complete their secondary education, in comparison to 50 percent boys. The literacy rate as well depicts a similar picture.³⁴ Nonetheless, as a matter of fact, the literacy rate has been rising amongst girls, which truly appears to be a positive sign and over 10 percent higher girls are enrolled in schools as compared to 2011 than in 2019.

32. *Sabu Mathew George v. Union of India*, WRIT PETITION (CIVIL) NO. 341 OF 2008.

33. *Kharak Singh v. State of U.P.*, 1963 AIR 1295 ; 1964 SCR (1) 332.

34. Nations, U., 2021. Gender Disparity in Primary Education: The Experience in India | United Nations. [online] United Nations. Available at: <https://www.un.org/en/chronicle/article/gender-disparity-primary-education-experience-india> [last visited Feb. 5, 2021, 6:36 PM].

35. Gvi.co.uk. 2021. Keeping girls in school: Contributing to gender equality in India through education | GVI UK. [online] Available at: <https://www.gvi.co.uk/blog/keeping-girls-in-school-contributing-to-gender-equality-in-india-through-education/#:~:text=a%20positive%20contribution,->, [last visited Feb. 7, 2021, 7:29 PM].

According to a Report published by Lancet Global Health, it has been reported that at least 2,40,000 girls below the age of 5, die every year, because of gender discrimination.³⁵ This discrimination tends to be 'invisible, routine and continuous'. The issues include lack of education, lack of medical attention and poor nutrition. The mortality rate remains to be above 18 in over 25 states. The Discrimination which a girl faces in the early years of her life, is reflected in the later years. It is estimated that merely 25 percent of India's workforce consists of women.³⁶

STAGE 3: ADOLESCENCE

ACID ATTACK

*"Brutality against ladies is an indication of truly inconsistent force relations among people, which have prompted mastery over and victimization ladies by men and to the anticipation of the full headway of women."*³⁷

The Indian Penal Code, 1860 by prudence of Criminal Law (Amendment) Act, 2013 under the Explanation 1 of Section 326B has characterized acid to incorporate, *"any substance which has acidic or destructive character of consuming nature, fit for causing substantial injury prompting scars or deformation or impermanent or perpetual disability"*.³⁸ Acid attack can be seen as utilizing acid in any structure on the casualty with the aim of or with information that such individual is probably going to cause to the next individual lasting or fractional harm or distortion or disfiguration to any piece of the assemblage of such individual.³⁹

Sadly in India, there were no different Acts especially for dealing with the act of acid attack before the passing of The Criminal Law (Amendment) Act. 2013. The offense was enlisted under Sections 320, 322, 325, 326 and 307 of the Indian Penal Code (I.P.C). Section 320 of IPC discusses "Grievous Hurt", Section 322 discusses about "Voluntarily causing Grievous Hurt", Section 325 states "Punishment for Voluntarily causing Grievous Hurt" being 7 years. Section 326 discusses about "Voluntarily causing grievous hurt by dangerous weapons or

36. The Guardian. 2017. Discrimination kills 230,000 girls under five in India each year, study shows. [online] Available at: <https://www.theguardian.com/global-development/2018/may/15/discrimination-deaths-girls-under-five-india-lancet-study> [last visited Feb. 8, 2021, 2:12 PM].

37. Time. 2019. Why Are So Many Girls in India Not Getting an Education?. [online] Available at: <https://time.com/5614642/india-girls-education/> [last visited Feb. 9, 2021, 11:11 AM].

38. "A/RES/48/104 - Declaration on the Elimination of Violence against Women". United Nations General Assembly.

39. The Indian Penal Code, 1860, § 326B - Explanation 1, No. 45, Acts of Parliament, 1860.

40. (National Commission of India, July 2009).

means" which included Acid Attack too. Of late Section 326A and 326B were embedded by ethicalness of Amendment Act 2013, which talk exclusively about Acid Attack. Section 326A provides for the punishment with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine. The fine must be reasonable enough to meet the medical expenses of the victim.⁴⁰

Section 326B provides for the punishment with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

With the advancement of science and technology, attempts are always made to decipher new *modus operandi*. Acid attacks has been one of them. India witnesses numerous acid attack instances, a number of which have also reached to the courts, which have expressed sheer grief over the crime.⁴¹ In *State of Karnataka by Jalahalli Police Station v. Joseph Rodrigues*⁴², the accused threw acid on a girl, for the mere fact that she had refused his job offer. The Court convicted him under Section 307 of IPC (since the present provisions concerning acid attacks were not a part of the law previously) and a compensation of 2 lakhs with 3 lakhs fine.

The most discussed landmark ruling for acid attack crimes is *Laxmi v. Union of India*⁴³, in which the petition was filed by the acid attack survivor Laxmi. The Supreme Court had issued a slew of directions to the centre and the state, on the use of acids and for its regulation. The Court as well looked through the concept of compensation and held that under Section 357A of Criminal Procedure Code, 1973, the victims or their dependants shall be duly entitled to at least 3 lakhs as rehabilitation and aftercare cost.

Despite the ruling, widespread changes were not witnessed and acid was readily available and compensation was not being paid. Thereafter, a PIL was moved in the Supreme Court⁴⁴, seeking adequate compensation, rehabilitation and free medical care. The Court issued strict measures and directives in the instant ruling as well. Moreover, it is pertinent to note that the Preeti Rathi

41. Indian Penal Code 1860, § 326A, No. 45, Acts of Parliament, 1860.

42. *Marepally Venkata Sree Nagesh v. State of A.P.*, 2002 Cri LJ 3625 ; *Devanand v. The State* 1987 (1) Crimes 314.

43. *State of Karnataka by Jalahalli Police Station v. Joseph Rodrigues*, Decided in the Hon'ble High Court of Kerala on 22/8/2006.

44. *Laxmi v. Union of India*, 2014 4 SCC 427.

45. *Parivartan Kendra v. Union of India*, 2015 (13) SCALE 325.

case has been the first such instance wherein acid attack perpetrator has been awarded death sentence.⁴⁵

RAPE

*"It not only destroys the physical frame of the body of the victim but also degrades helpless females in the society and public at large. Rape destroys entire psychology of a victim and pushes her into deep emotional crisis."*⁴⁶

Rape is regarded as worse than actual death because the miseries are not only physical and all engrossing but also continuous and permanent.⁴⁷ It is a destruction of her pride, security, purity, esteem, dreams which leaves a blot on her whole life. She is raped at home (literally and figuratively) and in public, followed by demeaning medical examination, examination and cross-examination by the police and in court, in salacious media reports, and in the insensitive response of society, including family and acquaintances.

Section 375 of the Indian Penal Code defines rape and Section 376 makes it a punishable offence which shall not be less than seven years but which may be for life or for a term which may extend to imprisonment for life, as it stands amended by the 2013 Criminal Amendment Act. The punishment has been further extended by the Amendment Act and it prescribes extensive punishment for rape offenders like police officials, public servants, armed forces personnel, relatives, teachers, jail staff and in communal violence, pregnancy of victim, minor girl, incapability of woman to give consent, mental or physical disability dominating position or while rape causes grievous bodily harm which is for a minimum of 10 years and extends to life imprisonment which means imprisonment for the convict's remaining natural life.

In the case of *Mukesh & Ors. v. State For NCT Of Delhi (Nirbhaya Rape Case)*⁴⁸ a woman of 23 years old was returning with a friend from a movie theatre wherein she was gang raped by the passengers in the bus including the driver and her friend was also beaten up and assaulted by the convicts when he tried to save her. She was brutally gang raped including a 16 year old boy who was a minor wherein they mercilessly mutilated her private parts which resulted in

46. *State of Maharashtra v. Ankur Pawar*, CRIMINAL APPEAL NO. 139 OF 2017.

47. *Dharambir v. State of Haryana*, 2005 (3) RCR 426 (Cri).

48. M.W. Roosa and P.J. Angelini, The Relation of Child Sexual Abuse and depression in Young Women: Comparisons across Four Ethnic Groups *Journal of Abnormal Child Psychology*, 27[1999].

⁴⁸. *Mukesh & Ors. v. State (NCT Of Delhi) (Nirbhaya Rape Case)*, (2017) 6 SCC 1.

her death. The Supreme Court awarded death sentence to all the accused taking into consideration their inhuman act, mutilating woman's body and also ruining her dignity.⁴⁹ Section 376A of IPC⁵⁰ further extends the punishment in circumstances where death is caused if victim is left in a persistent vegetative state for a minimum of 20 years up to death. Section 376D punishes Gang Rape with a minimum of 20 years up to life imprisonment. Further, for the protection of minors the Parliament came up with the Protection of Children From Sexual Offences Act in 2012 which functions in consonance with Section 375 and Section 376 of IPC. Moreover, it is significant to note that the Supreme Court in *Independent Thought v. Union of India*⁵¹ has read down Exception 2 of Section 375, IPC and henceforth sexual intercourse by a man with his wife below the age of 18 years would be considered as Rape. The court observed, "We are left with absolutely no option but to harmonize the system of laws relating to children" as the exception was found to be in violation of POCSO (Prevention of Children from Sexual Offences) Act, 2012 and also not in consonance with Articles 14,15 and 21 of the Indian Constitution.

The statutory laws for the protection and prevention of rape in India do give an insight of a stringent legal system and merciless punishment to the offenders. Despite such stringent provisions India witnesses 106 rapes every day which is sheer humiliation of our Constitutional and Moral values, it becomes inescapable to recognize the rationale for the same.

CHILD MARRIAGE OR FORCED MARRIAGE

Child marriage at its very heart is a progression of common freedoms infringement in continuum. The training kills numerous little youngsters every year.

UNICEF as of late announced that worldwide there are in excess of 720 million ladies alive today who were married before they turned 18 years old.⁵² They additionally announced that around 15 million young ladies are married each year prior to their eighteenth birthday celebration. Among the ladies aged 15 to 24 years, around 48 percent of them were married

⁴⁹. Yash Sharma, *Landmark judgments on offences against women under the Indian Penal Code, 1860*, i PLEADERS (Aug. 20, 2020, 1:26 PM), <https://blog.iplayers.in/landmark-judgments-on-offences-against-women-under-indian-penal-code-1860/>.

⁵¹. Indian Penal Code, § 376A, No. 45 of 1860, Acts of Parliament, 1860.

⁵². *Independent Thought v. Union of India*, (2017) 10 SCC 800.

⁵³. UNICEF, 'Ending Child Marriage: Progress and Prospects' (2014).

before the age of 18 years.⁵³ regarding outright numbers, due to the size of its populace, India has the most child marriages."⁵⁴ A new report by Action Aid⁵⁵ uncovers some alarming figures which are important. In view of their investigation of the Census 2011 information, the numbers of child marriages that are occurring are:

Child marriage generally is a gross basic liberties infringement. It has solid roots in male controlled society and sex imbalance. These relationships unfavorably sway the improvement of young ladies who at a youthful age are tossed into taking care of a total family and early pregnancy while truly, they ought to be in schools and getting instruction like all other children.⁵⁶

The law in India around child marriage created in the twentieth century when unexpectedly the Child Marriage Restraint Act, 1929 was ordered after much push from reformers⁵⁷ of the time who had looked for the institution of a particular enactment on child marriage.

The new and current enactment of the Prohibition of Child Marriage Act, 2006 acquired a moan of alleviation. Changes that were looked for under the CMRA were acquired with this order. According to the CMRA, child relationships were neither void nor voidable. In the PCMA, they have been made voidable⁵⁸ at the alternative of the gathering who was a kid at the hour of the marriage. ⁵⁹ This implies that now young ladies or young men who were hitched as kids could move toward the court to have their marriage annulled⁶⁰. The Act too expanded the discipline to thorough detainment which may reach out to two a long time or fine which may stretch out to one lakh rupees or both. Regardless of the presence of a more grounded law on child marriage, the training has proceeded at a disturbing rate. This is additionally in light of the fact that there are still escape clauses inside the law.

54. *Id.*

55. UNICEF, 'Joint Press Release- Child Marriages: 39000 Every Day' (7 March 2013).

56. Child Rights Focus, Beti Zindabad and Action Aid, '*Eliminating Child Marriage in India Progress and Prospects*' (December, 2016), <https://9dd22cecb57cc7c49673951a-f40fpqic7vvq2ruqx.netdna-ssl.com/wp-content/uploads/2017/07/Eliminating-Child-Marriage-in-India.pdf>.

58. UNICEF, 'Child Marriage' <https://www.unicef.org/protection/harmful-practices> [last visited Feb. 13, 2021, 8:48 PM].

59. These include Behramji Malabari, Rukhmabai, Pandita Ramabai and Anandi Gopal Joshi.

60. Voidable Marriage: Contract with legal force and effects when made that can later be annulled by court by a recession process.

61. The Prohibition of Child Marriage Act, 2006, § 3, No. 6, Acts of Parliament, 2006.

62. Annulment: When a marriage is terminated and treated legally as though it never occurred.

If a girl is marriage, while she is below the age of 18 years, it would attract the penal provisions of the Prohibition of Child Marriage Act 2006. In the landmark ruling *Lajja v. State*⁶¹, it was held by the Delhi High Court that the Prohibition of Child Marriage Act prevails over other personal laws.

The Apex Court in 2020 pronounced a landmark verdict, holding that the act in no way intends to punish a male aged 18-21 years, for marrying a female adult. It held that Section 9 does not lead to the punishment of a child for marrying a woman or for the punishment of woman. The most primary and fundamental objective of the act is to punish a man for marrying a minor girl.⁶²

STAGE 4 : MARRIAGE

DOMESTIC VIOLENCE AND DOWRY DEATH

Domestic violence can be defined as a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner by abuse which may be physical, sexual, emotional, economic or psychological and includes, harassment, maltreatment, brutality or cruelty and even the threat of assault-intimidation. United Nations defines Domestic Violence as, "domestic and family violence against women is defined as any action Model framework for legislation on violence against women or omission based on gender that causes the woman's death, injury, physical, sexual or psychological suffering and moral or patrimonial damage".⁶³ Women have been so degraded and deemed so dependent that they are not in a position of complaining to anyone against their husband and family members due to honor and self-esteem of themselves and their family.

India ranks 20th amongst 94 countries in which women face the most domestic violence.⁶⁴ The National Violence Against Women Survey indicates that 1 in every 4 women will experience

63. *Lajja v. State*, 2013 Cri LJ 3458.

64. THE HINDU, <https://www.thehindu.com/news/national/dont-punish-a-child-for-marrying-a-female-adult-says-supreme-court/article30473214.ece#:~:text=The%20anti%2Dchild%20marriage%20law,held%20in%20a%20recent%20judgment.&text=%E2%80%9CThe%20intention%20behind%20punishing%20only,girls%2C%E2%80%9D%20the%20court%20reasoned.> [last visited Feb. 14, 2021, 5:54 PM].

65. UN Department of Economic and Social Affairs, Handbook for Legislation on Violence Against Women, 329 (2010).

66. UN Report on The World's Women, Violence Against Women 129 (2008).

domestic violence in her lifetime.⁶⁵ WHO has estimated that that up to 70 per cent of women have experienced physical and/or sexual violence from an intimate partner in their lifetime.⁶⁶ India has perceived 1,10,378⁶⁷ domestic violence cases in 2016 which is a 200 percent of the 56,121⁶⁸ reported Domestic violence cases in 2004, 300 cases per day, witnessing as many as 13 cases every hour.

In some parts of the world, disputes related to dowry are the major reasons that result in acts of violence against women, including killings and acid attacks.⁶⁹ One of the most brutal face of Dowry is the rapid occurrence of Dowry Deaths of women in the family. Dowry deaths are deaths of women who are murdered or driven to suicide by continuous harassment and torture by husbands and in-laws in an effort to extort an increased dowry.

Dowry deaths are found in almost all of the rural India⁷⁰. India reports the highest total number of dowry deaths with 8,391 such deaths reported in 2010, 1.4 deaths per 100,000 women. The groom's family is considered to be the sole perpetrator of murder or suicide.⁷¹

India has by far the highest number of dowry related deaths in the world according to Indian National Crime Record Bureau. In 2012, 18,233 dowry death cases were reported across India.⁷² This means a bride was burned every 90 minutes, or dowry issues cause 1.4 deaths per year per 100,000 women in India. The Indian National Crime Records Bureau (NCRB) also reports that there were about 8331⁷³ Dowry Death cases Reported in India in 2011.

To provide for more effective Protection of the rights to women guaranteed under the Constitution, an Act termed as "Protection Of Women From Domestic Violence Act, 2005" was enacted in the Nation in the year 2005. With the enactment of this act, a broad and full fledged legal definition of 'Domestic Violence' was codified in India. The definition, being a

67. U.S. Department of Justice Full Report of the Prevalence, Incidence and Consequences of Violence Against Women, 183 (2000).

68. WHO, Department of Reproductive Health and Research, *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence*(2013).

69. National Crime Records Bureau, Crime in India Statistics 153(2016).

70. National Crime Records Bureau, Crime in India Statistics 84 (2006).

71. Cornell University, Combating Acid Violence in India, Bangladesh and Cambodia (New York City Bar Assn 2011).

72. National Crime Records Bureau, Crime in India Statistics, 392 (2012).

73. Oldenburg, V. T. Dowry murder: The imperial origins of a cultural crime, (3rd ed. Oxford University Press 2002).

74. Government of India, Census of India, Census Info (Nov. 12, 2017, 11:50 PM),<http://censusindia.gov.in/2011census/censusinfodashboard/index.html>.

75. National Crime Records Bureau, Crime in India Statistics, 281 (2013).

broader one includes not only physical violence, but also other forms of violence such as emotional/verbal, sexual, and economic abuse. However, it is a civil law meant primarily for protection orders and not meant to penalize criminally.⁷⁴

Primarily meant to provide protection to the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women living in a household such as sisters, widows or mothers.

Apart from the Civil Statutory Act as discussed above, the Indian Penal Code also provides for the Criminal aspect of Domestic Violence and stringent measures against the same. Section 498A of the IPC, regards Matrimonial Cruelty as a Cognizable, non-bailable and non-compoundable offence and imparts a punishment of imprisonment up to three years, and/or a fine. Matrimonial Cruelty or Domestic Violence under this section defines and includes: any willful conduct from the husband, and/or his family which has the potential to drive the woman to commit suicide or any bodily injury ; harassing the woman, in order to coerce her to meet the demands of the accused or his family.⁷⁵

There has also been another Statutory Act, termed as The Dowry Prohibition Act, 1961 which works with the objective to prohibit giving and taking of Dowry, and provides for penalties in cases of giving, taking, demanding and advertising of Dowry. Under the Act, if a person receives or gives any Dowry, his act would entitle him to be liable for a minimum of 5 years imprisonment, or a minimum fine of Rs 15,000 or that amount which he gives/takes as dowry, whichever being higher. Further if a person whether directly or indirectly demands any dowry, he would be punished for a term of 6 months to 2 years and/or with a fine which may extend to Rs 10,000. Also if a person, whether directly or indirectly, in any form promotes or advertises the exchange of Dowry, he would be liable for a term of 6 months to 5 years and/or with a fine extending up to Rs 15,000.

Further Section 304B of the IPC defines and prescribes punishment for dowry death of a woman i.e. imprisonment of the accused and/or his family for a term which is not less than seven years and which may extend to life imprisonment.

76. Center for World Solidarity, Overview of the Protection of Women from Domestic Violence Act, 2005, 220 (2010).

77. Indian Penal Code, No. 45, Acts of Parliament, 1860.

In *D. Veluswamy v. D. Patchaiammal*⁷⁶ the Court held that not all live in relationships may fall within the ambit of the Domestic Violence Act, however those fulfilling certain conditions can very well fall within it, which include, behaving as husband and wife in the society, should not be married otherwise, voluntarily lived together in the same household and are of legal age of marriage.

Moreover, the Apex Court has gone to the extent of ruling that maintenance can be claimed under the act, even if the victim is not a legally wedded wife and is either an estranged wife or in live in relationship.⁷⁷

In *Sandhya Wankhede v. Manoj Bhimrao Wankhede*⁷⁸, the Apex Court has reversed the earlier positions and ruled that complaints are also maintainable against the female relatives of the husband and are not only limited to adult males.

STAGE 5: MOTHERHOOD

FORCED ABORTION AND PREGNANCY

Women have been compelled to abide by forceful decisions during their motherhood, this is due to the belief by many men, that they rule over their wives or daughter in law's. Such instances include forced pregnancies and forced abortions. Men tend to control the rights of a women over her body and choice, and impose their decisions on them, which in turn leads to offences like forced pregnancy of women, despite no choice by her or forced abortion, in spite of the choice of the women to have a child.

Moreover, forced pregnancy may even fall under the purview of international law, if it is committed with the intent of affecting the ethnic composition of any community.⁷⁹ The most primary reason for forced abortions is linked to the crime of female foeticide and preference to the male child. It is still prevalent in the rural parts of the nation, and even urban, to say the least. The Medical Termination of Pregnancy Act 1971 was a remarkable move to recognize the women's rights and choices over her body.⁸⁰ It gave complete rights to choose to a women,

78. *D. Veluswamy v. D. Patchaiammal*, (2010) 10 SCC 469.

79. *Lalita Toppo v. State of Jharkhand*, CRIMINAL APPEAL NO (S). 1656/2015.

80. *Sandhya Wankhede v. Manoj Bhimrao Wankhede*, (2011) 3SCC 650.

81. Womenwelfare.org. 2016. Forced Abortion Forced Pregnancy, India Women Welfare Foundation - IWWF | Empowering Women for better tomorrow | Indian NGO for Women | Help Women in India | NGO India. [online] Available at: <https://www.womenwelfare.org/Forced%20Abortion%20%20Forced%20Pregnancy.html> [last visited Feb. 13, 2021, 10:39AM].

82. Ibid.

without requiring to have consent of anyone else. A woman has the option to say 'yes or no' to a pregnancy. However, the interpretation and awareness of the act has remained poor and meager, thus not leading to yielding of the sought after benefits. It has been of no assistance even in cases of rape where pregnancy takes place, without any choice of the woman.⁸¹ At times it involves hefty paperwork, and by the time it is completed, it turns out to be too late to abort a child, hence leading to no choice for the woman.

The Apex Court has remained strict when it comes to forced abortion. This has been witnessed in numerous cases, wherein the perpetrator pleads that he has been forgiven by the victim, but despite this fact, the punishment is upheld by the court. One such incident where the 4 month pregnant girlfriend was forced to abort by her boyfriend, had been convicted by the court, despite the fact that he was married to her later upon realization.⁸²

STAGE 6: WORKPLACE

SEXUAL EXPLOITATION OF WOMEN AT WORKPLACE

The United Nations Convention on the Elimination of all types of Discrimination against Women (CEDAW), which was embraced by the UN General get together in 1979 and which is approved by India regularly depicted as a global bill of common liberties for ladies, it advocates for the correspondence of ladies and men regarding basic freedoms and principal opportunities in the political, prudent, social, social and common circles. It underlines that separation and assault on ladies' respect disregard the standard of balance of rights.⁸³ Be that as it may, it has prompted numerous insidious practices, for example, physical and mental provocation, sex segregation and all the more explicitly inappropriate behavior at work place.⁸⁴ Sexual badgering is unnecessary disturbance of sexual prerequisites with regards to relationship of inconsistent force⁸⁵ which incorporates actual contact, interest for sexual

83. Nushaiba Iqbal, H., 2018. The abortion law in India is failing the women who need it the most. [online] Scroll.in. Available at: <https://scroll.in/article/941210/the-abortion-law-in-india-is-failing-the-women-who-need-it-the-most> [last visited Feb. 14, 2021, 3:46 PM].

84. Hindustan Times. 2017. Conviction for forced abortion upheld. [online] Available at: <https://www.hindustantimes.com/india/conviction-for-forced-abortion-upheld/story-WKlk52n7bAKu36pwy6CxdI.html> [last visited Feb. 14, 2021, 8:36 PM].

85. H. O. Agarwal, "International Law and Human Rights" 15th (ed.), Central Law Publication, Allahabad, 211002, pp.494-496, 2008.

86. S. C. Srivastava, "*Sexual Harassment of Women at Work Place: Law and Policy*", Indian Journal of Industrial Relations, Vol. 39, No. 3, pp. 364-390, 2004.

87. C. MacKinnon, "*Sexual Harassment of Working Women: A Case of Sex Discrimination*", New Haven, Yale University Press, 1979.

kindnesses, demonstrating hued comments and erotic entertainment even verbal and non verbal direct of sexual nature.⁸⁶

The primary causes of sexual harassment at workplace include Male Domination, Aggressive Masculine Traits, Misperception about the friendly nature of women and higher academic profile with lesser job opportunity.

After the landmark case of *Vishaka v. State of Rajasthan*⁸⁷, the Supreme Court laid down comprehensive guidelines to cut down the practice of sexual harassment of women at workplace. The decision was reiterated in many other leading cases. Post the formulation of the guidelines, The Prevention of Sexual Harassment of Women at workplace Act was enacted in the year 2013, and provides for a minimum imprisonment of 3 years extending up to 10 years. The Act also lays down comprehensive resolution procedure in the offices and prescribes for a mandatory establishment of Internal Complaints Committee at every workplace dealing with the satisfactory resolution of such cases within 30 days of complaint.⁸⁸ Apart from that 354 of IPC provides for Punishment for outraging the modesty of women. The below mentioned table depicts various legislative attempts to avoid crimes :-

INDIAN PERSPECTIVE

The nation has reported a 10 year record high cases in domestic violence during 2020. Moreover, as per The Hindu's Article dated 24th June, 2020, it is believed that about 86 percent women who went through violence never called for any help, and over 77 percent did not wish to inform it to anyone.⁸⁹ As many as 9 states tend to report a higher number of sexual violence cases, however, as a respite 8 states reported a decline as compared to the past year. The National Commission of Women has received a whopping 13,410 complaints of crimes against women during the lockdown, of which the highest were reported by Uttar Pradesh and Delhi, accounting for over 53 percent of the cases.⁹⁰ These figures tend to be the highest for NCW,

88. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 2(n), No. 14, Acts of Parliament, 2013.

89. *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

90. Prevention of Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act, 2013, § 4, No. 14, Acts of Parliament, 2013.

98. THE HINDU, <https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece>. [last visited Feb. 17, 2021, 3:30 PM].

99. THE FEDERAL, <https://thefederal.com/news/new-reports-over-13000-cases-of-crimes-against-women-during-lockdown/> [last visited Feb. 18, 2021, 9:02 PM].

since it does not receive much complaints as women find it easier to report the crimes directly to police.

The pandemic has left an indelible mark on the physical, psychological and social aspects of women. The time has been hard for all, however such instances of violence tend to make it harder for them. The harshest affect has been in women suffering from domestic violence. This tends to be a nightmare for the suffering women, because due to the pandemic and the imposed lockdown, they have no option to leave their home and would have to undergo the suffering. However, the legislature upon examining the issue had taken up prompt measures to come up with women helpline numbers in the later part of the lockdown period, however apparently, they have not been of much respite to women.

CONCLUSION

Being a patriarchal society India faces a huge biasness against women and consider them to be an object of interest, which results in drastic and horrifying crimes against them. Despite of the various laws present to tackle the issue, a prejudiced mindset and poor implementation turn out to be obstacles in receiving Justice. This mentality needs to be changed, either by will or by conscience. It needs to be understood that like men, women are also a living entity and are entitled to equal rights and opportunities akin to men. There lies various measures to achieve the end but that can only be done by united efforts of Society, Bureaucrats, Judiciary and most of all the Mindset of all of them taken together. It must be ensured that we live in a country where a woman can walk without fear at roads, where she can live in harmony with her family and where her tears are not subdued.

Faithful implementation of the laws is of the essence under the rule of law for Good Governance. After all we are one of the Largest democracies which work with the objective of 'OF THE PEOPLE, FOR THE PEOPLE, BY THE PEOPLE', and women too are a subset of People!

Thus, concluding with the quote of Maya Angelou, the famous American poet -

"Each time a woman stands for herself, she stands for all women."