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# An Analysis of the Offences Committed against Women under Special Penal Statutes

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**ABSTRACT**

*Indian Penal Code is the main Criminal Law Code of the land. Yet, there was requirement of special criminal law(s), because Indian Penal Code could not effectively deal with the changing nature of different Crime being committed in India. However, Indian Penal Code , now going to be Naya Sanhita 2023, is not totally irrelevant. The defences available to the accused under the Indian Penal Code will be applicable in the special Criminal law/ Statutes also. Sometimes same offence is covered under the Indian Penal Code and other special Criminal law statute, because Indian Penal Code is not able to provide enough deterrence. This paper will discuss some special penal statutes of India in the present context.*

## I. INTRODUCTION

It is well established that laws in any civilised society is equally applicable to all its citizens irrespective of their class and gender. Still, considering their deprived position, some special provisions have been incorporated. And to remain relevant, those provisions have also been revised from time to time according to the need of the society. Here we mention a few of such Acts: -

1. The Dowry (Prohibition) Act, 1961;

2. The Immoral Traffic in person Prevention Act, 1986;

3. The Medical Termination of Pregnancy Act, 1971;

4. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013;

5. Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

6. The Commission of Sati (Prevention) Act, 1987

## II. DOWRY AND DOWRY RELATED OFFENCES

Dowry has been part of Hindu social life, seeping from there to other communities. Today

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dowry prevails in India, practically in all communities. Probably, earlier it had not attained such menacing proportions. In "dowry" difficulties arise because of our failure to distinguish between what is normal and what is not. All over the world parents of bride and bridegroom make presents to the couple. Their relatives and friends also do so. The question of presents depends upon the status of the parents, relatives and friends. There is nothing like a simple marriage.[3]Parents, friends and relatives do make presents and they cannot think otherwise. Take for instance, friends and relatives do give something to the couple or to the parents of the bride or bridegroom by say of "sagun" which is a "must". Even when a relative or a friend is not able to attend to marriage, he sends "sagun" through someone, if one is attending a wedding or a wedding reception, he or she will certainly give "sagun". Similarly, parents on both sides and near relatives are bound to make presents. Wedding dresses for the bride and bridegroom are a must. Giving of some household utensils, some dresses, bedding, and furniture is almost mandatory. This is done willingly. A barat has to accompany the bridegroom; it may consist of five persons or five hundred. A reception for the barat has to be arranged. They have to be fed. These are inevitable part of any marriage in India. These are normal expenditure. Its quantum differs in accordance with the status of parties.

Yet, there is another aspect. In some cases, an attempt is made, and in most cases successfully, to dictate to the bride's father or guardian (it could also be the other way round, but it is usually not so) the quantum of each item of dahez, and most often than not, demands are made for cash, or for articles small or big, such as television, car scooter and like. The Bride's father is persuaded, coerced or compelled to give cash as well as articles if he has to marry his daughter with a "suitable" bridegroom. These demands verge on extortions. And these demands may not cease on the completion of marriage. Post-marriage demands are also made. And it is this aspect of the matter which has become a menace, a social evil, a social degradation. It is this menace for which efforts are being made to control and, if possible, eradicate it. Unfortunately, in the minds of legislators as well as in the minds of many persons, there is confusion between those presents which are made voluntarily and which are extorted. In fact, both are to be termed as dowry. Probably as long as property and ever-increasing consumerism continues to exist, we would not succeed in eradicating the menace of dowry. Dowry has seeped into our minds and is spreading like a cancer. Every effort is being made to control it by legislation. But still it continues and efforts are still being made to make stringent provisions in the dowry prohibition

[3] Simple marriage is rather an aberration. This happens when a couple gets married in a temple or at a friend's house against the wishes of the parents. There may be a faddist who insists on a marriage without any presents, from anyone, much less from the parents. But such faddists are few.

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laws.

Before independence, the effort in this direction of controlling dowry evil was made in the then province of Sindh by enacting the Sindh DetiLeti Act, 1935. This was a statute enacted with a view to prohibiting "payments made or agreed to be made as part of the contract of betrothal or marriage and to restrict DetiLeti in the province of "Sindh". The expression "payment" was defined to mean a payment by or to a person betrothed or, married or by or to a parent or any other relation or guardian of such person made or agreed to be made in connection with, or in consequence of, the betrothal or marriage and includes the giving of a gift or present in kind on any festival or auspicious day or on account of the birth of a child or any ceremony in the families of the parents or relations of bride or bridegroom". Section 8 provided for punishment in violation of the provisions of the Act. Simple imprisonment extending to one month or a fine extending to Rs. 1000 was provided.

No other province of pre-independent India enacted a dowry prohibition statute. However, before the Dowry Prohibition Act, 1956 some states enacted their own dowry prohibition laws. Among these States are Bihar, and Andhra Pradesh.

Free India enacted its first statutes in 1961, the Dowry Prohibition Act, 1961.

### (A) Origin of Dowry

There prevails a widespread confusion and misconception that the present dowry system has its origin to the two Hindu marriage rites, namely, kanyadan and varadakshina. Even the parliamentary Joint Committee has fallen in to this trap and perpetuated this myth. It opined, "The ancient marriage rites in the Vedic period are associated with Kanyadan or ceremony of giving away the bride. According to the Hindu Shastras the meritorious act of dan or ritual gift is incomplete till the receiver is given dakshina. So, when bride is given over to the bridegroom, he has to be given something, in cash or kind which constitutes varadakshina. Thus, kanyadan became associated with varadakshina, i.e., the cash or gift in kind by the parents or guardian of the bride to the bridegroom. It is submitted that varadakshina has not been prevalent among all Hindus. It has prevailed only among certain castes of Brahmins. Aprat from the Brahmins, no other class of Hindus have the rite of varadakshina. Even among the Brahmins its non-performance does not affect the validity of marriage. If saptapadi and vivaha homa are performed marriage was valid among all classes of Hindus. The Committee abruptly equates varadakshina with dowry. It says, the varadakshina or dowry in those days included ornaments and clothes, which the parents of the bride could afford and were given away as the property of the bride. In the same breath, it adds, "This varadakshina was offered out of affection and did

not constitute any kind of compulsion or consideration for the marriage. It was a voluntary practice without any coercive overtones. "The Committee has made to the bridegroom and it was to be retained by him. To call that varadakshina and presents made to the bride at or about marriage as dowry is to misunderstand the very concept of stridhan. In fact, major portion of stridhan is received by her at or about or subsequently to marriage. The stridhan given to her at the time of marriage cannot and should not be called dowry. The distinction between stridhan and dowry is that, dowry is essentially a property which is extorted or extracted from the bride or her parents, while presents are those properties which are voluntarily and willingly given. It is only the Dowry Prohibition Act which makes it stridhan in the sense that it lays down that dowry must be handed over or transferred to the wife.[4] The Supreme Court has further elucidated the term stridhan in Rashmi Kumar v. Mahesh Kumar Bhada[5] to include properties gifted to a girl before marriage, at the time of marriage, or at the time of bidai or thereafter and that it shall be her absolute property with all rights to dispose of at her own will and pleasure. It does not become joint property with her husband and he may use it during time of distress and he has moral obligation to restore it. Further distinction between stridhan and dowry, stridhan means and includes dowry as well as presents given to the bride by her in-laws. Section 6 covers only dowry and not the other part of stridhan given to bride by her in-laws.[6] The Dowry the social evil of dowry- cannot be thus traced to kanyadhan or varadakshina. It may be again emphasized that dowry is essentially that property which is extorted, extracted or even snatched from the parents or guardians of the girl by the bridegroom or his parents or other near relatives, since under Hindu law it is customary for a parent or rather the parent is duty bound (it is his dharma) to give his daughter in marriage. In discharge of his duty he seeks a groom for his daughter in marriage and among most Hindus it has become customary on the part of groom and groomwallas to extract and extort dowry on the specious plea that they would not accept the hand of the girl in marriage unless their demands were met. Conceptually looked at, dowry is essentially a property given by girl's parents or guardian to the groom and groomwallas, and it has to be distinguished from stridhan, which is her absolute property. The nearest to dowry that the Hindu sages have talked about and which has been condemned by them, though tolerated, is sulka. The sulka is the money or property given by a groom to the bride's father or guardian in consideration of the latter agreeing to give the hand of his daughter to him in marriage. This was in the asura form of marriage an unapproved form of marriage, which was condemned by all sages. Manu defines it thus, 'when the bridegroom receives the maiden after

[4]Section 6 of the Dowry Prohibition Act, 1961.
[5]1999 (2) RCR (Cr) 43 (SC).
[6]Pritam Singh v. State of Delhi, 2000 (4) RCR (Cr) 566 (Del).

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giving as much wealth as he can afford to the kinsmen and to the bride herself, according to his won will, that is called the asurs rite'. It was considered to be almost a sale of bride and was condemned though tolerated.

The extracted or extorted sum of money or other property obtained by a groom and his parents from the hapless, helpless and at times mutely driven and drawn parents of the girl is in fact what dowry is. This dowry has never been considered, nor was it meant to be, the property of the bride but now the Dowry Prohibition Act has made it so.[7]It may also be emphasized that there should be no confusion between the gifts made to the bride at the time of marriage which are given to brides all over the world, practically in all societies by relations, friends and even acquaintances, and which cannot be presented so long as we recognize the concept of private property. There is a prevailing confusion between stridhan and dowry which are two distinct concepts. It is the latter which has to be condemned and prevented and prohibited. It is true that border line between the two is thin, but that does not mean that we should make the confusion worst confounded. That presents made to brides and bridegrooms are recognizes even by the amended Dowry Prohibition Act with some safeguards, though time will show how effective these safeguards would be. But in our submission, it may be emphasized over and over again that stridhan should not be con fused with dowry.

### (B) Definition of Dowry

The worst thing has been the failure to define dowry. And there is no likelihood to succeed on account of the failure to see what is normal expenditure in marriages and what is abnormal, the extorted amount of expenditure which bride's father is made to spent. Undoubtedly, a most difficult task. But an exercise has to be made to find a solution to this tangle.

According to Tomlins Law Dictionary: That which the wife gives to the husband on account of the marriage, and is a sort of donation made with a view to their future maintenance and support.

According to Cambridge Dictionary: Dowry is property which a woman brings to her husband at marriage.

According to Webster Dictionary: It means "Money, good or estate that a woman brings to her husband at marriage."

Under the Dowry Prohibition Act 1961, the definition is very wide. Originally, under the Act it was defined as "any property or valuable security given or agreed to be given either directly or indirectly, - (a) by one party to the marriage to the other party to the marriage, or (b) by the

[7]Section 6 of the Dowry Prohibition Act, 1961.

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parents of either party to a marriage or by any other person, to the marriage as consideration for the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies." The Dowry Prohibition (Amendment) Act 1984, has substituted the words "as consideration for the marriage" with words "in connection with the marriage." These words widen the meaning of dowry but retain the essential character of dowry, that it is not merely what the bridegroom and the groomwallas to the bride and the bridewallas. This aspect of the definition is often overlooked. The reason seems to be that among the Hindus by and large dowry is demanded from or given by the bride's side to the bridegroom or his parents. But this does not mean that what the bride or bridewallas demand or take or agree to take some money or property from the groom or his parents in connection with the marriage they will not be guilty of the Dowry Prohibition Act. They will as much be guilty of dowry offences as the other way round. Thus, sulka in asura marriage will be dowry. This is the reason why mahr has been excluded from the definition of dowry. Before the case of Mohd. Ahmed Khan v. Shah Bano Begum[8] it was commonly accepted view that mahr is given in consideration of marriage.[9]

Dowry Prohibition Act, 1961 applies to persons of all communities residing in India: Since dowry is considered to be widespread social evil among Hindus, there is a misconception among some that it applies only to Hindus and does not apply to non- Hindus. The fact of the matter is that it equally applies to Muslims, Paris, Christians, Jews and to any and every person who performs his marriage in India, and is found guilty of any dowry offence.

In my submission veracity of this statement of the Committee need not be doubted, though the report indicates that there seems to be a prevailing confusion in the mind of the members of the Committee between what is dowry and what are presents.

## III. IMMORAL TRAFFIC IN PERSONS PREVENTION ACT, 1986

As far as our Constitution is concerned, it deals directly with the problem of prostitution when it prohibits trafficking in human being under Article 23. Further Articles 14, 15(3), 19(1)(g), 21, 39(1) and 51(a) can be directly and indirectly found to be dealing in respect of women, prostitution or matters concerning them. Judiciary also has taken a keen interest to curb the overall situation and suggest measures to improve the lot of the women involved in prostitution. Landmark cases such as Vishal Jeet v. Union of India[10]and Gaurav Jain v. Union

[8] AIR 1985 SC 945
[9]Paras Diwan, Muslim Law in Modern India, (1995) chapter v.
[10] AIR 1990 SC 1412.

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of India,[11]have set a benchmark for the steps taken by the judiciary to ameliorate the condition of prostitutes. Judiciary has taken several important decisions in various cases wherein it defined terms such as 'prostitute', 'brothel', 'trap witness', etc. These terms were defined in various cases such as Emperor v. LalyaBapu Jadhav,[12]Moti Jan v. Municipal Committee, Delhi,[13]State of Bihar v. Jagrup Singh,[14]etc.

Though there is another category of cases in which Court has given decisions wherein call girls or clandestine prostitutes were involved cases such as Ne John and others,[15]KamalabaiKethemal v. State of Maharashtra,[16]State v. Gaya,[17]are the cases wherein Courts have given decisions which concerned call girls or clandestine prostitutes.

Prostitution has been in existence throughout the world from time immemorial. It has been regarded as a means of satisfaction of carnal desire of men and also as a means of livelihood for women. There are provisions in the Indian Penal Code to control this vice under Ss. 366-A and 366-B. Besides separate legislation like Suppression of Immoral Traffic of Women and Girls Act, 1956 was enacted. This was subsequently amended and renamed as Immoral Traffic Prevention Act, 1956. The law does not abolish prostitution but only tries to arrest and control its spread.

To deal with the problem of prostitution there has developed two different trends of thought in the second half of the twentieth century in the western countries. The first trend has been towards regulation and restrictions, which involves Government control of Prostitution through procedures such as licensing, mandatory medical examination for prostitutes and restriction of prostitution to confined territorial limits. The second trend is towards decriminalisation, which consists of the removal of criminal penalties for prostitution. The argument in favour of decriminalisation includes: -

(1) Decriminalisation would end meaningless and degrading system, under which prostitutes are repeatedly arrested, fined and released to go back to work.

(2) There would be considerable reduction in police corruption, because prostitution often involves pay off to law enforcement personnel.

Now if prostitution is legalised, then these sections have also to be removed from Indian Penal

[11] AIR 1997 SC 3021.
[12]AIR 1929 Bom 266.
[13]AIR 1926 LAH 460.
[14]AIR 1963 Pat 361.
[15]AIR 1966 Mad 167.
[16]AIR 1960 Bom 289.
[17]AIR 1962 SC 1189.

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Code. Because if prostitution is no longer an offence, then any provisions which is designed to restrain or arrest and control prostitution becomes meaningless. The umbrella of legal protection over minor shall become weaker by such step. Although the Sections 372 and 373 are meant to punish the persons, who are inducing and compelling a minor to indulge in prostitution either during minority or at any age, but their purpose is to curb the introduction of minors into this nefarious trade. Here it will not be out of place to mention that a minor does not have a valid consent for indulging in sexual intercourse for consideration of prostitution does not carry any meaning for minors. We have large number of minors indulging in prostitution either voluntarily for consideration or by force and coercion.

Although we find, that there are several countries where prostitution is legal. In Singapore sex for money is open and common place. In Denmark, women can be legal prostitutes so long as it is not their sole means of income. Canada, France, Israel Mexico and Germany also allow it. The United States of America has made prostitution illegal in all States except certain counties of Nevada.

But we cannot compare with these countries where prostitution is legal, because our socio-cultural fabric is woven out of values, where woman is given an exalted status of respect and dignity in the society. Besides generally no woman permits access to her person by a stranger, unless she is pressurized by circumstances. In fact, prostitution is the greatest insult of womanhood.

Further increased punishments would give a stronger weapon in the hands of the police to extract and earn more money from the poor prostitutes and their clients. This would lead to greater exploitation of the already exploited people. The indulgence of high officials, politicians and police in the racket of prostitutions is very evident from the various reports received from time to time. The latest examples being the Moga sex scandal, Jammu and Kashmir sex scandal etc., where large number of politicians and high officials are found involved in these cases. The ultimate solution is not in enhancing punishments or the legalisation of prostitution, but though removal of poverty, unemployment and destitution. The suppression of Immoral Traffic in women and girls had also undergone amendment to make it more effective, but it has failed to produce desired results.

Trafficking is also illicit and clandestine movements of persons across national boundaries largely from developing countries. The goal is to force women and children in to sexually or economically exploitative situation for profit of recruiters, traffickers, crime syndicates and persons making false adoption.

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**(A) Reason**

(a) Economic migration leading to breakdown of traditional livelihood options.

(b) Low status of girl and women in society.

(c) Inadequate employment and educational opportunity.

Under Immoral traffic in persons Prevention Act, 1986, section 13(1) of the Act provides for special police officer for controlling and curbing exploitation. In the few states where such officers have been employed, found to be ineffective. Sometimes these officers collude with traffickers. This legislation provides punishment for keeping a brothel, allowing premises to be used as a brothel. Punishment for living on carving of prostitutes, detaining a person where prostitution is carried on.

However, most arrests made under this Act are under Section 8, seducing for purpose of prostitution. The legislation penalise only the victim, but not against official who fail to take action, no punishment for the clients. Law remained a dead letter, because mafia and political leaders are colluding with each other.

## IV. Women facing Sexual Harassment at Workplace an overview and its related Act

Women constitute half the population of the society, and it is presumed that best creation on earth is the woman. But it is a harsh reality that women have been ill-treated in every society for ages, and India is no exception. We have been gifted with a history of discrimination, subjugation and suppression. In India, it is believed that the women enjoyed an equal status as men in the Vedic Period. The Upanishad and the Vedas have cited women sages and seers. They were given equal legal rights and enjoyed equality of status unsurpassed ever since. A man was considered to be incomplete without his spouse and she was known as his 'Ardhangini' (the better half), but the condition deteriorated considerably afterwards. From the cradle to grave, females are under the clutches of numerous evils such as discriminations, oppressions and violence within the family, at work places and in the society.

The term 'Sexual harassment' means "a type of employment discrimination consisting in verbal or physical abuse of a sexual nature." In Vishaka v. State of Rajasthan,[18] sexual harassment was defined as any unwelcome sexual determined behavior (whether directly or by implication) as physical contact and advances, a demand or request for sexual favors, sexually-coloured remarks, showing pornography or any other unwelcome physical, verbal or non-verbal conduct

[18]AIR 1997 SC 3011.

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of sexual nature.

Men use their dominant positions at work to extract sex from women, and this extraction of sex from women ensures their dominance this sexual desire- dominance paradigm governs our understanding of harassment. In Apparel Export Council v. A.K. Chopra.[19]The Supreme court in this case has declared that sexual harassment is gender discrimination against women and also said that any act or attempt of molestation by a superior will constitute 'sexual harassment'.

Sexual harassment of women at workplace is also violation of the right to life and personal liberty as mentioned in Article 21 that no person shall be deprived of his life of personal liberty. 'Right to livelihood' is an integral facet of the 'right to life'. Sexual harassment is the violation of the 'right to livelihood'. For the meaningful enjoyment of 'life' under Article 21 of the Constitution of India, 1950, every woman is entitled to the elimination of obstacles and of discrimination based on gender. Since the 'Right to work' depends on the availability of a safe working environment and the right to life with dignity, the hazards posed by sexual harassment need to be removed for these rights to have a meaning.

The concept of gender equality embodied in our Constitution would be an ineffective exercise, if a women's right to privacy is not regarded as her right to protection of life and liberty guaranteed by Article 21 of Constitution of India. The sexual harassment of women at the workplace not only violates their sense of dignity, but also their right to earn a living with dignity. In Mrs. RupanDeol Bajaj v. Kanwar Pal Singh Gill,[20] in this case the meaning of 'modesty' and 'privacy' has changed in such a way that, any kind of harassment or inconvenience done to a women's private or public life will be considered as an offence.

### (A) The Sexual Harassment Of Women at Workplace(Prevention, Prohibition and Redressal) Act, 2013

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a legislative Act in India that seeks to protect the women from sexual harassment at their place of work. It was passed by Lok Sabha on February 26, 2013, the bill got assent of the President on 23rd April 2013.

#### a. Major Features: -

The Act defines sexual harassment at the workplace and creates a mechanism for redressal of complaint. It also provides safeguards against false or malicious charges.

[19]AIR 1999 SC 625.
[20]AIR 1995 (6) SC 1476.

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The definition of 'aggrieved women', who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organized or unorganized sector, public or private and covers clients, customers and domestic workers as well.

While the 'workplace' in the Vishaka guidelines is confined to the traditional office set-up where there is a clear employers-employee relationship, the Act goes much further to include organisations, department, office, branch, unit etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation.

The committee is required to complete the enquiry within a time period of 90 days. On completion of the enquiry, the report is required to be sent to the employer or the District Officer, as the case may be, further they are mandated to take action on the report within 60 days.

Every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The district Officer is required to constitute a Local Complaints Committee in each District, and if required at the block level.

The Complaints Committee has the power of civil Court in gathering evidence.

The Complaints Committee is required to provide for conciliation before initiating an enquiry, if requested by the complainant.

Penalties have been prescribed for employers for non-compliance of the provisions of the Act. It is punishable with a fine of up to Rs. 50,000. Repeated violation may lead to higher penalties and even cancellation of license or registration to conduct business.

Sexual harassment of women is violation of the women's right. Practically we see rise of very few complainants, most of them remains silent due to the fear of society. In such case not only the society violates but by remaining silent, the victim herself violates her right. The States should ensure that national legislation once adopted, does not remain unenforced. In order to protect the women from such crime, it is very important to educate our people about right and to introduce various programs at the employment places, schools, colleges etc.

## V. Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

The determination of the sex of the foetus leading to female foeticide is a blatant violation of

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human rights and insult to the dignity and status of the woman. Taking note of the gravity of the problem, the Parliament passed the Pre-Natal Diagnostic Techniques (Regulation and Prevention, of Misuse) Act 57 of 1994 on the recommendations of the Joint Committee of the House to prohibit Pre-Natal diagnostic techniques to deal with new emerging types of crimes of female foeticide.

Act has provided stringent penalties against those indulging in nefarious trade of Pre-Natal diagnostic techniques of determining sex of the child for the purpose of encouraging feticide but still the practice is rampant unabated. It has reached to even distant remote areas and effected like epidemic. Perhaps it needs social awareness and elimination of feeling of insecurity and bias towards female child and stringent enforcement of law etc.

Pre-Natal diagnostic Centre and "Mobile Killer Clinics"- In spite of claiming ourselves to be an ancient civilised and cultural society, it is found that even in may well educated and wealthy families female child is not welcomed with open arms. Unfortunately, the new technology is being used to perpetuate gender bias. For example, in recent past Pre-Natal Diagnostic Centres have mushroomed throughout the country. Which help in determining the sex of the foetus that enable people choose to abort female foetus. Indian parents still believe that having a daughter is like watering someone else's field. The evil of abortive female foetus presents a grim reality.

Reproductive and sexual issues frequently present the context for trampling of woman's right by or with the deliberate acquiescence of the State. However, regulations limiting woman's right may be justified only by a compelling State interest, and that legislative enactment must be narrowly drawn to express only the legitimate state interest at Stake.

**(A) Medical Termination Of Pregnancy Act 1971**

To soften the rigours of the law of abortion contained in the Indian Penal Code, the Medical Termination of Pregnancy Act, 1971 was passed. It is a small Act consisting of only eight sections.

The object of the Act, besides being the elimination of the high incidence of illegal abortions, is perhaps to confer to the corner of the woman the right to privacy, which includes to right to space and to limit pregnancies (that is, whether or not bear children), the right to decide about her own body. Another important feature of Act is to encourage a reduction in the rate of population growth by permitting termination of an unwanted pregnancy on the ground that a contraceptive device failed.

**(B) Human right of the unborn vis- a-vis Woman's right to privacy:**

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The validity of abortion laws has been assailed on the ground of Constitutionality of right life of an unborn vis-a-vis right of the mother to bear or not to bear a child. According to Hindu Law, an 'unborn child' is a person for all purposes and entitled to inherit the property of father. The issue of abortion therefore has become a subject of public debate as well Courts' intervention. On 7th December2013, Delhi High Court allowed the plea the of HIV positive teenager who was rescued from a brothel, for termination of her pregnancy[21]. Justice Sunita Gupta permitted the 19-year-old girl to terminate her pregnancy after accepting her submissions that she was from a poor stratum of the society and it was a forced pregnancy amounting to rape as she was in the brothel.

### (C) The Process of Abortion Legislation in India

In August 1971, Parliament passed The Medical Termination of Pregnancy Act, which significantly liberalised the abortion laws in India. Prior to the enactment of the legislation, the Indian Penal Code (Act No. 45 of 1860) permitted abortion only when it was justified for the bona fide purpose for saving the life of the woman. Section 312 of the Penal Code provided that any person performing an illegal abortion was subject to imprisonment for up to 3 years and/or payment of fine. If the woman was "quick with child",[22]the punishment was imprisonment for up to 7 years and payment of a fine. The same penalty applied to a woman who induced her own miscarriage. The Medical Termination of Pregnancy Act legalised termination of pregnancy on various socio-legal grounds. The Act aimed at eliminating abortion by untrained persons and in unhygienic conditions, thus reducing maternal morbidity and mortality.[23]

### (D) Medical Termination of Pregnancy Act - Grey Areas and Critique:

In India, legalising abortion has not yielded the expected outcome. Despite the existence of liberal policies, for the past 35 years, the majority of women still resort to unsafe and illegal abortion, contributing substantially to the burden of maternal mortality and morbidity. This is partly due to the lack of awareness of the legality of abortion amongst women and misconception about the law amongst providers.

Raising the statutory limit for therapeutic abortion up to viability on eugenic grounds has often been a well-accepted edge in those countries with liberal abortion policies. However, certain questions are still being mooted like, as to 'when does the life begin?' Does fetus acquire a right

[21]Health. India. Com. Dec. 7, 2013. Accessed on 24th April, 2014.
[22] Quickening is the perception by the mother that the movement of the fetus has taken place. It indicates that the embryo has taken the fetal form. Asit K. Bose, 1974. Abortion in India: A Legal Study, Journal of the Indian Law Institute. (vol. 16: 4) at p 536.
[23]Government of India (GDI), 1971. The Medical Termination of Pregnancy Act (Act. No. 34 of 1971), Statement of objects and reasons.

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equivalent to a human being? When, if at all, does its right supersede that of the mother?

At the end, it is said that, yugdharam should change with changing swadharm, what was not acceptable to the society and individual 35 years ago, is now advocated on humanitarian grounds encompassing the health of mother as well as the health of the potential life. Therefore, the provisions of The Medical Termination of Pregnancy Act should be amended to keep up with changing morality and medical progress.

## (E)Suggestions

**a.** Legislative reform: -

1. The "over medicalisation" and "physician only" policy should be done away with. Pregnant women's choice should be complemented with medical practitioner's opinion and not vice-versa. The women should also decide the matter of "grave injury" and "physical and mental health." Further, women should have a greater say as to what is regarded as "seriously handicapped." Such questions are subjective and is totally dependent on medical practitioners' perspective and understanding of situation. Hence, it should not be provider dependent and the woman and her family should articulate for legally terminating the pregnancy.

2. Words like "grave injury," "substantial risk" and "seriously handicapped" should be objectively defined. Little room should be left for personal discretion and choice. Interpreting these provisions based on certain guidelines will also curb the high incidence of sex selective abortion.

3. Failure of contraception as a ground for terminating the pregnancy must be recognized for all women irrespective of marital status. This provision should be available to all "pregnant women."

4. Keeping in mind the medical progress and changing morality and also for the healthy future of the unborn, abortion should be legally allowed till 24 weeks gestation.

5. Beyond 24 weeks gestation abortion should be allowed in those circumstances where continuing with the pregnancy would endanger the life of the pregnant women or if the child were born would suffer from such abnormality that is considered incurable.

It is high time to initiate discussion on the need of modifying the existing Abortion Act and redraft its clauses from women's perspective. Any such move is expected to receive big resistance from medical lobby. Hence, one of the challenges for the Ministry of Health and Family Welfare is to induce such changes in The Medical Termination of Pregnancy Act

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without making abortion a controversial issue.

## VI. THE INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986

The Act prohibits depiction in any manner the figure of woman, body or any part thereof, in such a way that has the effect of being indecent or derogatory to or denigrating women. In intends to prevent women being depicted as sex objects in the media for commercial gain or prevent the co-modification of women. This Act indents to prohibit indecent representation of women in writing, paintings and figures or in any manner that is likely to corrupt or injure the public morality or morals. It penalizes person who publishes or arranges or takes part in the publication or exhibition of any advertisement which contain indecent representation of women in any form.

It penalizes persons who sell, hire, distribute, circulate or send by posts any books, pamphlets paper, slide, firm, writings, drawings, paintings, photograph figures or representation which contains indecent representation of women in any form. The punishment is imprisonment for a term which may extend to two years with fine up to Rs. 2000/-. However certain exceptions are made in favour of religion, art learning and ancient monuments.

The Act empowers Gazetted Officers authorized by the State Government to enter and search premises, seize articles and examine records or materials which he has reasons to believe to be in the nature of contraventions of the Act.

## VII. WIDOW BURNING IN INDIA

Sati (Su-thi or Suttee) is the traditional Indian (Hindu) practice of a widow immolating herself on her husband's funeral pyre. The sati tradition was prevalent among certain sects of the society in ancient India. Who either took the vow or deemed it a great honour to die on the funeral pyres of their husbands. The ritual of sati was banned by the British Government in 1829 by Lord Bentinck, the Governor-General of India (1828 to 1835) and later the Sati (Prevention) Act 1987.

The enactment of law is a good step taken by the Government but mere enactment of the law is not enough. The acquittal of all accused involved in Roop Kunwar Sati case by a trial court of Rajasthan in spite of clear evidences has made a question mark on the success of the Commission of Sati (Prevention) Act, 1987. Not only this; the trial court took a very long period of 9 years approximate in spite of clear provisions for early proceedings under Section 12 (3) of the Act.

The Act unfortunately does not take into consideration two important factors.

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The first is that the widow is a victim of her social environment and pressures, treating her instead as a criminal.

The second is that funds for the glorification of sati are often donated not by individuals but by her corporate entities for publicity purposes or tax evasions.

Indian Constitution has heavily drawn from the Universal Declaration of Human Rights. Wherein Article 6 provides, "Everyone has the right to recognition everywhere as a person before law". In this chapter, a number of significant gynocentric laws of India along with certain exemplary incidences have been discussed. Considerations of the laws above reveal that in spite of the existence of the above provisions, women in India are often not treated as persons before law, which results in violation of Article 14, 15 and 21 of the Indian Constitution.

## VIII. Conclusion

Though Indian Penal Code is the major penal law of the land, the other penal statutes are required for punishing special crimes like dowry, harassment of women at work place, etc. The various defences available against a criminal prosecution in the Indian Penal Code (Now, going to be a Naya Sanhita 2023) will be applicable for special Criminal Statutes also.

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