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An Analysis of the Perpetuation of Violence against Women and special provisions for Women in India

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ABSTRACT

India is a country of paradoxes. One of the largest democratic countries in the world and a huge population running in crores, the Indian society, patriarchal in composition, well defines the duties of women as daughter, wife, and mother but the same is coupled with very few rights enjoyed by them. With the passage of time, even in the modern era, women in India unfortunately continue to face uncountable issues at home and in the society since their youth.

The feminist strive for equal rights has been paved through legislation and provisions, be it the Suffragette movement and the right to vote, to employment rights, protection rights, property rights, or rights concerning divorce and marriage to child-care. However, although these rights exist on paper, the depth of the issue runs deeply into the patriarchal mindset of the many in the country. Innumerable kinds of wrongs are perpetuated against women, from their very birth. Various factors ranging from sociodemographic, cultural, lack of sufficient awareness regarding their rights, media, etc. play a role in this continued saga of women being treated as inferior, lacking the safety or basic rights they deserve, and being pulled down rather than being uplifted.

These days, it is not uncommon to have questions like; has our legal system sustained with social change? Do rights guarantee justice? Are citizenship rights gendered? In this light, the first half of this paper aims to study the kinds of violence committed against women, the factors behind the same and various prevention mechanisms that can be adopted in this regard. The second half deals with the various legal provisions and laws for women that we have in place and the loopholes in the legal system of India, followed by suggestions by the author and lastly, the conclusion.

Keywords: Law, Violence, Women, Provisions, India.

I. INTRODUCTION

It can be said that in the Vedic era, anything nurturing human life was worshipped as a female character, i.e., the nature was known as Prakriti Devi, the earth as Prithvi Devi, the forests as

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Van Devi and more. However, post this, the status of Indian women has continuously worsened and they are deemed as a subordinate to their counterparts in all walks of life. The struggle for women's equality in India can be stated back to the 20th century, during the fight for Independence. In the struggle against the British, educated leaders like B. R. Ambedkar, Mahatma Gandhi, Raja Ram Mohan Roy and Savitribai Phule encouraged women to step out from the closed walls of their homes and enter the public sphere and participate in the fight for Independence. Further, Indian values, nationalism and cultural heritage were glorified and elevated through the symbolism of 'Mother India'. Perhaps for the very first time in India, the notion that a woman can be and is part of the larger Indian view as a legal citizen, took foundation and root. The inclusion of the female citizen into the public sphere called for citizenship rights and changes in the law that brought about provisions such as right to education, inheritance rights, maintenance rights, abolition of sati and polygamy along with allowance for widow-remarriage.

Violence against women in India refers to any instance of brutality or cruelty committed against Indian women. The main requisite for an act to be considered violence against women is that the act must be committed solely because the victim is female. It may be physical or sexual violence and typically committed by a man.

Violence against women in India is actually more present than it appears to be if you take only a brief look, as many instances of violence are not considered crimes, or otherwise go unreported or undocumented due to fear, certain Indian cultural beliefs and mentality of the people.

This issue is not of any particular region or group; it is an unfortunate universal, moving across the frontiers of ideology, social class and ethnic identity. Most importantly, at the individual level, this violence obstructs, causes turmoil and unsettles the lives of countless women, limits their options and opportunities, undermines their confidence, productivity and self-esteem, and damages or hinders their well-being and health psychologically, mentally as well as psychically. It goes against their human rights and disables their full participation in society. Violence against women deprives society of the advantages of full participation of women in all prospects of development, not just in terms of period of labour missed due to violence, but also in terms of the cost of helpful facilities to the victims. Instances of violence against women happen throughout their lifespan, ranging from pre-birth, infancy, childhood, to adolescence, adulthood and old age. Violence is imposed on children, adults with disabilities and mental illness, etc. and occurs in all kinds of different settings such as at home, workplace, hospitals, jails, education centres, governmental and nongovernmental homes for the under privileged, in

the community and so on. It takes place in all socioeconomic and cultural company.

Some common forms of violence against women in India include instances such as **domestic abuse**, sexual assault, and murder (dowry death, female foeticide and female infanticide, etc), harassment, etc.. Most often, these acts are committed by men as a result of their mentality of being superior in a sense and the long-standing gender inequalities present in the country.

According to a report by National Crime Record Bureau regarding crimes against women (IPL and SLL) between 2014-2016, it was shown that in 2014, 18807 crimes were there, in 2015 there were 18495 crimes, and maintaining the increasing trend, 18565 crimes were there in 2016.² Since then, as per the latest report of 2022, 4,45,256 cases were registered, which was a 4% increase from 2021, with the most cases in UP.³ In 2018, domestic violence topped the list of crimes against women in India.⁴ During the COVID-19 pandemic, the situations worsened for women as there was an increasing risk of domestic violence during that time in India.⁵

A **dowry death** could be either murder or suicide of a married woman caused by an altercation or disputation over her dowry. When a dowry death is committed by setting the woman on fire, it is known as bride burning. Bride burning murder is often made to appear as a suicide or accident. Although dowry is illegal in India as per Dowry death (Section 302, 304B IPC) and Dowry Prohibition Act, 1961, it is still a usual practice.

The National Crime Record Bureau statistics displayed that approximately 91,202 dowry deaths were reported in India from January 1, 2001 to December 31, 2012. While 6,851 dowry deaths were reported in the country in 2001, the number reached 7,618 in 2006 and touched a high of 8,233 in 2012.⁶ State wise, the figure was highest in UP, which is a trend still continuing as recently as 2022.⁷

In spite of all the strict laws and campaigns against dowry, data on dowry-related deaths in the

² National Crimes Records Bureau, *Crime in India 2016*, MINISTRY OF HOME AFFAIRS (2016), https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%203B.1_0.pdf.

³ National Crimes Records Bureau, *Crime in India 2022*, MINISTRY OF HOME AFFAIRS (2022), <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf>.

⁴ Outlook, *Domestic Violence tops crime against women in 2018: NCRB*, OUTLOOK (2020), <https://www.outlookindia.com/newscroll/domestic-violence-tops-crime-against-women-in-2018-ncrb/1704114>.

⁵ Dinabandhu Mondal, Pintu Paul, Suranjana Karmakar, *Increasing risks of domestic violence in India during COVID-19 pandemic*, 135 J PSYCHIATR RES., 94 (2021) 95, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9749426/>.

⁶ National Crimes Records Bureau, *Crime in India 2001-2012*, MINISTRY OF HOME AFFAIRS (2012), https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Cases%20registered%20and%20their%20disposal%20under%20Dowry%20Deaths%20during%202001-2012.xls.

⁷ National Crimes Records Bureau, *Crime in India 2022: Table A2*, MINISTRY OF HOME AFFAIRS (2022), <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701935180TABLE3A2.pdf>.

country in the past 12 years from 2001 to 2012 released by the National Crime Records Bureau (NCRB) showed that such deaths have only increased over the years.

Sexual harassment of women is growing in India. As the Indian culture instils a tolerant attitude in women towards injustice and inequality, many a times they choose not to open their mouth.

Female infanticide and foeticide take place through sex-selective abortion. In India, daughters are often considered to be a social and economic burden on the family.

Modern prenatal diagnostic techniques can suggest the sex of the foetus, which in turn has made families capable of deciding whether they would like to abort based on sex.

The Preconception and Prenatal Diagnostic Techniques Act of 1994 (PCPNDT Act 1994) was revised in 2003 with the purpose of targeting medical professionals.

Surat reported the highest figure of foeticides across all states in our country, according to statistics from the National Crime Records Bureau (NCRB) for 2022. Total of 1,239 foeticides/infanticides/abandonment were reported throughout the country.⁸ Although the NCRB data do not specify the sex of the foeti, it is quite possible that many of them were female. It can be said that the PCPNDT Act has proven ineffective due to the lack of implementation.

India is considered to be one of the world's most dangerous countries in terms of sexual violence against women, with **rape** being one of the most common crimes in India.

Reporting of their rapes by rape victims is increasing and they are confronting the perpetrators. Women are getting more independent, confident and educated, which in turn is increasing their likelihood to report their rape. But at the same time, it can be argued that lack of and without comparison to non-existent data of women who were victims of crimes but did not report them to the police, such inferences can only be speculative. The number of rape cases reported in 2018 was at a peak total of 33356, according to a report by the NCRB, and in 2022 it was 31,982, along with 250 murder with rape cases registered.⁹

In 2012, former CPM minister, a regional policy maker, Anisur Rahman, asked a female minister what "her fee" would be for getting raped.¹⁰

A total of 58,24,946 cognizable crimes, including 35,61,379 Indian Penal Code and 22,63,567

⁸ National Crimes Records Bureau, *Crime in India 2022: Table B2*, MINISTRY OF HOME AFFAIRS (2022), <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701943661TABLE4B2.pdf>.

⁹ NCRB, *supra* note 6.

¹⁰ TOI, *Ex-Minister's Filthy Jibe at CM raises storm*, TIMES OF INDIA (Dec. 28, 2012), <https://timesofindia.indiatimes.com/city/kolkata/Ex-ministers-filthy-jibe-at-CM-raises-storm/articleshow/17789392.cms?>.

Special and Local Laws (SLL) crimes, were registered in the year of 2022.¹¹ Out of all the crimes registered under the IPC against women, the majority of the cases were registered under the "cruelty by husband or his relatives" at 31.4 per cent, meaning **domestic violence** was the most prominent forms of violence against women that took place. Following this, the second most prominent category of crime was "Kidnapping and Abduction of Women" followed by "assault on women with intent to outrage her modesty" at 19.2 and 18.7 per cent, respectively.¹² In Global Report Card on Adolescents, 2012, a report by UNICEF, it was found that 57 percent of Indian boys and 53 percent of girls between the ages of 15 and 19 think wife-beating is justified.¹³ This number is still at 35 percent, as of 2021.¹⁴

Another violence is in the form of cyber-crimes against women. They get harassed, shocked but don't know how to protest, whom to approach and what are the laws of the country in their favour. Such offences are increasing day by day.

II. CAUSES OF THE EXISTENCE AND PERPETUATION OF VIOLENCE AGAINST WOMEN

There are various factors which hinder the growth and the prospects of empowerment of women in India.

Various **sociodemographic factors** such as young age, illiterate or low level of literacy, poverty, living in urban area, and women who do not earn any income, unmarried, separated or divorced or being in a live-in relationship can be cited as risky. India positioned at 127 out of 146 countries in the disparity index by WEF.¹⁵

It can also be observed that women living in rural areas and engaged in farming were more likely to be abused than women who held an equal occupational status to that of their husbands. In regard to legal frameworks that are in place for employment and economic benefits of women, India was positioned at only 40 per cent in 2022, as per UNICEF. Moreover, as of 2016, only 40 per cent of women complete upper secondary education in India.¹⁶ Where women have a higher economic status than their husbands and seem to have sufficient power and confidence to change traditional gender roles, men sometimes tend to feel threatened and this

¹¹ National Crimes Records Bureau, *Crime in India 2022: Tables*, MINISTRY OF HOME AFFAIRS (2022), <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701859869TABLE11.pdf>.

¹² *Id.*

¹³ UNICEF, *Progress for Children: A Report Card on Adolescents*, UNICEF (April, 2012), https://www.unicef.org/media/86401/file/Progress_for_Children_-_No._10_EN_04272012.pdf.

¹⁴ Adolescent Data Portal, UNICEF, <https://data.unicef.org/adp/adolescent-girl-country-profile/ind/>.

¹⁵ Global Gender Gap Report 2023, WORLD ECONOMIC FORUM (June, 2023), https://www3.weforum.org/docs/WEF_GGGR_2023.pdf.

¹⁶ UNICEF, *supra* note 13.

may lead to a higher chance of violence taking place. In some cases, women suffering from any mental illness may be subjected to different forms of violence in a marital system without the appropriate, necessary steps being taken for the treatment and diagnosis of their mental illness, further adding to marital disharmony and restricted functioning of the family.

Family factors such as boys being subjected to harsh physical discipline during childhood and witnessing any kind of harassment or abuse by the father on the mother during childhood can be assumed to be a kind of predicting factor of victimising and perpetration of violence against his wife in adulthood. Girls who witnessed such instances at a young age may be prone to developing a self-victimised mentality wherein she may feel that the abuse is a normal aspect of marital life because she saw the same in her childhood. 82 per cent of female adolescents were living in poverty in India as per UNICEF 2015 data.¹⁷ In villages, rape victims are quite often encouraged by elders and clan councils to "reason, compromise and come to a sort of agreement" with the family of accused and drop charges, or in extreme cases even to marry the attacker. What's more, a girl's eventual prospects of marriage are thought to be more important than securing a rape victim justice by presenting a rapist to the judicial system.

Psychiatric morbidity in terms of aggression being more prevalent among psychiatric patients suffering from mental illnesses such especially like schizophrenia. Similarly, women suffering from depression, mental retardation, etc. would be at a higher risk for various forms of abuse most prominently mental and psychological abuse as they make up a highly vulnerable unit at risk for violence.

Sociocultural traditions¹⁸ are extremely deep rooted and prevalent in our country. Perpetuation of violence against women in India seems to continue as a result of many structures and practices of sexism and patriarchy in place within Indian culture. Beginning since childhood and even at the primary school level, young girls are given lesser access to education than their male counterparts. It is deliberated that in comparison to boys, female children are often fed less and are given less nutritious diets. Girls are often seen to be subjected to and taught about the inequity they will face in life, whereas boys are left uneducated on this and are therefore unprepared and oblivious to treat women and girls as equals. The talents of the Indian women are unutilised and buried under the pressure of becoming a house wife. Patriarchy, traditions like dowry, family honour, experiencing family violence etc., have carried on through the ages

¹⁷ *Id.*

¹⁸ Agumasie Semahegn, Bezatu Mengistie, *Domestic violence against women and associated factors in Ethiopia; systematic review*, 12 REPROD HEALTH. 78 (2015), <https://reproductive-health-journal.biomedcentral.com/articles/10.1186/s12978-015-0072-1#citeas>.

and have brought down women to disadvantaged positions. Women are very heavily pressured into stay quiet and not speak up due to strong social and cultural beliefs, such as family honour. In Indian society, women who drink, smoke, stay out late, have male friends or go to pubs are widely seen as ‘morally loose’.

At times, when verbal harassment or groping occurs in public areas, bystanders frequently tend to look the other way rather than intervene and help, both to maybe avoid a conflict and because they -- on some level -- blame the victim, observers say. Continuing even later in life, the social atmosphere continues to reinforce inequality, and subsequently, violence against women. Many a times, married women in India tend to see violence as a routine and normal part of being married. Women who are subjected to gender-based violence are often victim shamed, and are told that their safety is in their own hands and their own responsibility and that whatever may have happened to them, it is their own fault in one way or another.

It can be said that **India's court system** is rather sluggish and painfully slow, in part because of a shortage of judges.

Media plays a vital role in many spheres. Consistent exposure to violence in the media has been associated with increased chances of aggression, particularly in children. Television and cinemas at times portray sexual content for making fast money. Pornographic material is quite readily available to many on the internet and using other ways too. In some movies or songs, women are portrayed as objects and various forms of unacceptable behaviour such as eve teasing, stalking, etc. is shown playfully as being appreciative and wanted.

Easy availability of **addicting substances** (especially alcohol, bhang, and ganja) can also be said to be responsible. Alcohol seems to have been one of the major factors responsible for the infliction of several forms of violence against women.

In some cases, **psychosocial stress** and tension about poverty, career, unemployment, work, marriage, and corruption, etc., may contribute to violence by consequently resulting in dysfunctional coping responses and/or triggering mental illness in vulnerable persons.

An insensitive, inefficient, ineffective, incapable and corrupt **law enforcement machinery** (including administrators, police, and judiciary) fails to keep and overlook its role as a mechanism for redressal of complaints and disincentive for commission of crimes. It has accurately been said that “justice delayed is justice denied.” In a 1996 survey conducted on 109 judges by a Delhi-based NGO Sakshi it was revealed that a whopping 68% felt provocative

clothes are an invitation to sexual assault.¹⁹

Deterioration of religious and ethical values is also a major aspect.

Even in instances when a woman who is a victim of gender-based violence or crime does decide to report the incident, it is not very likely that she will have the availability of the support, assistance and encouragement she would need to handle the situation efficiently. At times law enforcement officers and doctors choose not to report a case, due to involvement of a strongly backed party in the case and their fear of them. In the instance that she gets help from a doctor, the procedure for determining whether a woman is a victim of sexual assault is not specified and followed accurately. Doctors at times resort to highly invasive and primal methods such as the infamous “two-finger test” which can worsen the problem and lead to uncertain circumstances and can also be psychologically and mentally damaging for the victim.

In several places, there are only **a few number of women police officers**. According to an article,²⁰ in New Delhi just 7% of police officers are females, and further they are frequently given inconsequential posts that don't include patrol duty. In all these years, India's police force has gone up to 11.75 per cent in 2022 but is still falling short of the Union Home Ministry's target of 33 per cent.²¹

Many women in our country **do not have even a basic knowledge regarding the rights** and protections granted to them by the different laws in our country. This lack of knowledge keeps them silent and prone to tolerating violence without raising their voice.

III. PREVENTION OF VIOLENCE AGAINST WOMEN

The focus of **gender sensitization** should be on sensitivities and limits of man-woman relationships, manner and standard of conduct with respect and dignity towards the opposite gender, and strategies to curb violence at unusual places and times. Awareness and education can be ensured by all intimate social beings such as parents at home, teachers in school and colleges, employers and colleagues at work place and last but not the least, non-governmental organizations (NGOs) in the community and society. This can be done in the form of workshops, lectures and street plays, videos organized in schools, colleges, and public gatherings for awareness and educating everyone. How to handle relationships, prevention of

¹⁹ Shabana Ansari, *Indian Judges are Chauvinistic, Finds 14-Year Study*, DNA INDIA (Oct. 24, 2010), <https://www.dnaindia.com/india/report-indian-judges-are-chauvinistic-finds-14-year-study-1457180>.

²⁰ Indrani Basu, *Women Officers Rare in Delhi Police*, TIMES OF INDIA (Dec. 20, 2012), <https://timesofindia.indiatimes.com/city/delhi/women-officers-rare-in-delhi-police/articleshow/17684836.cms>.

²¹ Bharti Jain, *Women's Representation in Indian Police Falls Short of 33% Target: Home Ministry Report*, TIMES OF INDIA (Dec. 6, 2023), <https://timesofindia.indiatimes.com/india/womens-representation-in-indian-police-falls-short-of-33-target-home-ministry-report/articleshow/105762632.cms>.

violence and efficient communication skills should be instilled in the youth only, through training workshops on all levels ranging from school to community. To cite an example, a national level workshop was organized by an NGO Maitri on April 5, 2012 in Delhi on violence against women. Also, medical practitioners and medical students should be sensitized regarding how to tackle gender sensitive violence and issues. There is an immense need for sex education to be taught beginning from the level of school only.

Some persons with chronic illness such as mental retardation and compulsory medical treatment of persons with alcohol dependence should be carried out to prevent any violence raging out of such illness or dependency.

Collaborative efforts must be made to control and **restrict the consumption of alcohol, bhang, ganja, and other such substances** especially in young people. Alcohol consumption in mass gatherings, in institutions, and in public places like trains and buses should not be allowed. The age for purchasing alcohol may be raised or otherwise special effort must be put to ensure under aged people are not able to buy alcohol. Special checks on festive occasions can be carried out with the help of breath analysers.

Media campaigns can play a huge role and help to reverse and modify social attitudes and beliefs that tolerate violence against women. In a joint effort with the media, the focus should be to create new messages and responses to prevent violence.

The portrayal of women in various art forms such as movies or songs must be regulated and conform with the principles of respect and dignity of women.

Pornographic sites should be blocked as some suggest promote objectification of women. CD-ROMS/websites containing such pornographic content should also be stringently prohibited.

Law enforcement machinery like 24 × 7 helplines for women like Maitri are required. Victims of violence should have access to directly go to the hospitals, seek referrals from the community centers, and use 24 × 7 helpline numbers. These should facilitate legal solutions to those who are in need of it. Fast track courts are strongly recommended.

Cells in police stations with the help of women police officers can be equipped with latest gadgets like CCTV footage and phone help lines, etc.

The **patriarchal mindset of the judiciary has to change** towards being gender neutral. Sexism within the system has to be eradicated before it does more damage in the country.

In hospitals there is a code of conduct which does not allow examination of a female without a female attendant. All institutions in which such guidelines may be required, should have some

such code of conduct. Adherence to the same might prevent sexual misconduct. Also, if it is violated, it can be readily easily detected and appropriate measures can be taken.

Improving the socioeconomic status of women and empowerment of women through boosting their education, job opportunities, awareness about their rights and legal provisions would be a step in the right direction.

Religious leaders and scholars should **re-examine interpretations of religious texts** and doctrines from the perspective of supporting equality and dignity for women.

NGOs/social activists/communities/resident welfare organizations (urban)/village panchayats need to be actively involved and provided with assistance, donations and opportunity to work with the government in regard to violence against women. Their services can be put to work in minimizing violence by putting social pressures on the perpetrators of crime. They can also provide leadership in the local community to oppose violence against women. Some organizations have come into existence to help end the perpetuation of violence against women in India, such as Dilaasa, a hospital based crisis centre for women run in collaboration with CEHAT which aims to provide proper care for survivors of violence against women and undertake efforts for ending gender inequality.

IV. SPECIAL PROVISIONS FOR WOMEN

Constitutional provisions provide legal backing to ensure justice for crimes. The feminist strive for equal rights has been paved through legislation and provisions, be it the Suffragette movement and the right to vote, to employment rights, or rights concerning divorce and marriage.

In India, although the constitution guarantees equality for all women, it is often contradictory to the harsh societal reality of the country and its cultural norms and thinking process.

While a struggle for independence modified the legal scenario of women's rights through the colonial era, the post-colonial era in India has been distinct by major changes such as globalization, new policies and the leaps and bounds in technological development. This has enhanced women's involvement in the public sphere. More Indian women have begun to be engaged in business enterprises, international platforms, multi-national careers like advertising, design and fashion, and have a wider scope of opportunities owing to the free movement of goods, capital and ideas. Ideas that question the very nature and essence of laws. However, the social realities of life may have changed with globalizations, but the age-old traditional concepts about the submissive and dependent role of women have not changed. Society and men seem

not ready yet to accept the advanced status of women.

There are various constitutional provisions, legislations, special laws, committees and associations directed towards ensuring neutrality between men and women, protection of women from various crimes, and ensuring equality.

(A) Constitutional Privileges

- **Article 14** ensures equality, both before law and equal protection in law.
- According to **Article 15 (i)**, discrimination on any citizen on the basis of sex cannot be done by the State.
- **Article 15 (3)** can be considered very important as it grants the power to the State for making special provisions for women. This is known as positive discrimination.
- **Article 21** guarantees Protection of life and personal liberty. In the case of *State of Maharashtra v. Madhukar Narayan Mardikar*²², the Supreme Court held that even a woman of easy virtue is entitled to privacy and the same cannot be invaded by any man. This article has also been applied in regard to upliftment and dignified life of prostitutes.
- **Article 23** bans trafficking in human beings and forced labour, which has been prevalent in India for a long period of time in the form of prostitution and selling and purchasing of human beings.
- **Article 32** provides the right to Constitutional remedies which help ensure protection of fundamental rights.

(B) Directive Principles of State Policy

- There are various DPSPs dedicated to ensuring equality and empowerment of women, such as under **Article 39 (a)**, it is given that to secure equal right for both men and women to an adequate and sufficient means of livelihood, the state is to direct its policy towards the same.
- To advance justice based on equal opportunity and to offer free legal aid by suitable legislation or in any other way to make sure that opportunities for ensuring justice are not denied to any citizen due to economic or other disabilities.
- The state is recommended to make sure that the health and strength of women workers are not abused and that they are not forced by economic necessity to pursue any

²² AIR 1991 SC 207, 211.

recreational activity that is unsuited to their strength, as per **Article 39(e)**.

- Just and humane working conditions and for maternity relief are to be ensured by the State by view of **Article 42**.
- According to **Article 46**, the State is also required to promote and undertake particular measures to guard the educational and economic interests of the weaker sections and to protect them from social injustice and any and all kinds of exploitation.
- **Article 51 (A) (e)** the State is also to assist to repudiate practices derogatory to the dignity of women.

The State has passed various legal provisions and legislative measures to ensure equal rights, fight forms of violence and atrocities and to offer support services especially to women who are working.

Crime against Women (crimes specific to and aimed directly towards females) are broadly classified under two categories -

- (1) The Crimes recognized Under the **Indian Penal Code (IPC)**
- (2) The Crimes recognized under the **Special Laws (SLL)**. While some of these have special provisions to empower and protect women and their interests, there are some which may not be specific to the female gender but these provisions of law affirmatively affect women significantly.

- **Protection of Women from Domestic Violence Act (2005)** is a legislation to protect women in India from all forms of domestic violence. It covers violence of any kind—physical, sexual, mental, verbal or emotional.
- **Immoral Traffic (Prevention) Act (1956)** prevents trafficking in females for the purpose of exploitation of a sexual manner such as prostitution as a means of living.
- **Indecent Representation of Women (Prohibition) Act (1986)** is pretty much self-explanatory. Through any kind of advertisement or in publications, or in any other manner, it is prohibited.
- **Commission of Sati (Prevention) Act (1987)** is enacted for more effective prevention of the commission of sati and its glorification on women.
- **Dowry Prohibition Act (1961)** prohibits both giving and taking of dowry from women at, before, or any time after the marriage.
- **Maternity Benefit Act (1961)** monitors the employment of women in certain

organisations for certain period before and after child-birth and offers maternity benefit.

- **Medical Termination of Pregnancy Act (1971)** provides that on humanitarian and medical grounds by registered medical practitioners, particular pregnancies may be terminated.
- **Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (1994)** bans sex selection any time before or after conception and puts a stop to the misuse of these techniques for sex determination as it can lead to female foeticide and/or infanticide.
- **Indian Penal Code (1860)** includes provisions to protect and safeguard Indian women from Rape (Sec. 376 IPC), Homicide for Dowry Deaths or their attempts, Molestation (Sec. 354 IPC), Sexual Harassment (Sec. 509 IPC), Kidnapping & Abduction for different purposes (Sec. 363-373), Importation of girls (up to 21 years of age), Torture, both mental and physical (Sec. 498-A IPC) and other offences.
- **Code of Criminal Procedure (1973)** has certain protective measures for women like obligation of a person to maintain his wife, arrest of woman by female police, etc.
- **Legal Services Authorities Act (1987)** offers cost free legal services to Indian women.
- **Mines Act (1952) and Factories Act (1948)** prohibits the employment of women between 7 P.M. to 6 A.M. in mines and factories and provides for their safety and welfare.
- **National Commission for Women Act (1990)** paved the way for the establishment of a National Commission for Women which came into existence in 1992 to study and monitor all matters relating to the constitutional plus legal rights and safeguards of women, reviewing existing legislations, suggesting any necessary amendments, etc.
- **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal). Act (2013)** provides protection to women from sexual harassment at all workplaces.
- A woman who has been sexually assaulted is given the option of recording her statement alone before the district magistrate when the case is under trial, or in the attendance of a female police officer to ensure that her privacy is protected.
- Under the Legal Services Authorities Act, female rape victims have the **right to cost free legal aid**, assistance or help from the Legal Services Authority. This authority will

arrange a lawyer for the victim.

- Under the Code of Criminal Procedure, 1073, except in exceptional case on the orders of a first-class magistrate, it is **not allowed to arrest a woman at night**, that is, after sunset and before sunrise.
- According to the guidelines issued by the Delhi Police, **women are granted the right to file virtual complaints**. Further, the SHO forwards a police constable to her place to record her complaint. It is to be noted that this is in case a woman is not in a position to physically appear at a police station to file.
- **Women have a right against being stalked, granted in Section 354D** of the IPC. It is considered a legal offense.
- **Women have the right to file a Zero FIR**, which can later be moved to the Police Station in whose jurisdiction the case falls under.
- In addition to these, in recent years India has ratified several international conventions and human rights instruments devoted to ensure equal rights of women. A major one among them is the **Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993**.

V. LOOPHOLES IN LEGAL SYSTEM

- Several **prevalent crimes** are not recognized as a crime, for example, wife beating is still not a specific crime and falls under the general law on assault. Similarly, considering a woman a ‘witch’ and punishing her in furtherance of that belief by way of social boycott and/or mass-beating, as well as throwing of acids still do not occupy a separate space in the Indian Penal Code. Honour-killing is still not defined as a separate crime. It should be viewed as murder with a specific intention of satisfying the false ego of a particular caste.
- The essential elements of rape in its definition under Section 375 of the Indian Penal Code are firstly, ‘sexual intercourse with a woman’ and secondly, the absence of consent. **This definition does not incorporate acts of forced oral sex, or anal sex, or penetration by foreign objects**, instead these acts have been criminalized under Section 354 of the 1PC, which deals with ‘criminal assault on a woman with intent to outrage her modesty’. Penetration with any other object, as life-threatening as it may be (a knife, an iron rod, etc), and though more physically harmful, is not rape. This can be said to be one of the obstacles in the law of rape in our country.

- **Under IPC, ‘Rape’ does not include marital rape**, etc. and causes grave injustice to many victims. As per the law of the land, sexual intercourse by a man with his own wife who is not under the age of 15 years, is not rape (Exception 2 to Section 375 of the Indian Penal Code). Thus, although sex with a minor wife amounts to rape, but **beyond 18 years of age, there is no such legal protection provided to the wife** except in cases of judicial separation. Also, in context of wife between the ages of 16 and 18 years, as such no legislation is given for this, which is highly unreasonable. When the minimum age of marriage for girls is declared as 18 years under law, then continuing this section without any amendment seems to be quite confusing and contradictory. It is overlooked by the present laws.
- In cases of **child rape**, at times penetration through fingers or by objects takes places or they are forced to perform oral or anal sex, but as saddening as it is, this is not considered rape by the Courts.
- Another problem is that **unless the woman undergoes a medical examination within 24 hours** of the act, forensically it becomes difficult to prove that rape has occurred. Due to being unable to prove penetration, judges are caught trying “rape” cases under less strict sections such as ‘outraging the modesty of a woman’, carrying lighter punishment, unfortunately denying the victim proper justice.
- The way the law has been interpreted or the evidence has been assessed by some courts has often proved to be an obstacle. In spite of Supreme Court judgments to the contrary, lower court judges at times ask and assert on evidence of physical resistance or marks of injuries as evidential assurance that a woman has not consented. **A woman’s evidence without corroboration is at times not considered sufficient.**

Due to all these reasons, it can be said that for rape laws to be of great deterrence, they must have a cooperative victim, professional investigation, meticulous prosecution; and a proper trial.

- The **offence of ‘outraging the modesty of women’ is very vague** to express the scope of the applicability of the Section. Separate specific offences do not currently exist leaving some confusion in the minds of the judges while declaring punishments in such cases.
- Rape on minor girls is the murder of their innocence and childhood. However, instead of Courts giving the rapists appropriate punishment as mentioned in law, **sometimes either they are let off** on the grounds of ‘benefit of doubt’ **or sub minimum**

punishments are given on various other grounds.²³

- The Immoral Traffic (Prevention) Act, 1956 **does not define ‘trafficking’**, and in addition to this, the act seems to be unsatisfactory to cover the trafficking of children to hotels, guest houses, etc. and their subsequent sexual abuse.
- The **lengthy judicial procedure** may give rise to apathy towards legal remedy. The judicial system runs slow and the lengthy and time-consuming judicial process gives ample time to wipe out or tamper evidence of the crime. Due to the slow running of courts, protests by the woman loses its importance. Further, the law-enforcement machineries are not maintaining their required role.
- Apart from that, at times the **role of media** is not sensitive, accurate or satisfactory. The media is a widely influential entity but if that is not efficiently utilised, the purpose seems to fail.

VI. SUGGESTIONS

In a vast and complex country like India, the dimensions and issues of violence against women do not yield and cannot be solved with easy solutions. There has to be effective implementation of standards and laws at the national, regional and international levels. The rule of law and recourse to legal remedies for violation of rights and entitlements must be fully utilised.

Despite constitutional protection and several legal legislations, gender discrimination and injustices continue to take place. As per the NCRB data, we continue to see an increase in crimes against women, which rose by a drastic 15.3 per cent in 2021.²⁴ A big reason for this can be because those who enforce and/or interpret the laws do not always entirely share and follow the philosophy of gender justice concept.

Indian women are, on a large scale, disabled and impaired in respect to all the necessary and essential conditions for access to justice, such as widespread illiteracy, the cultural and societal barriers and subordination they go through and endure. The sourly unpleasant process of law have restricted most women, who have issues, from approaching the law and courts. Victimized women have various hostile experiences with the nation’s systems of criminal justice. In terms of tackling violence against women, there often exist gaps and ambiguities in the laws concerned with criminalizing violence. Laws tend to focus on specific forms of violence rather

²³ SHOBHA SAXENA, CRIMES AGAINST WOMEN AND PROTECTIVE LAWS 99 (Deep & Deep Publications, New Delhi, 2001).

²⁴ Outlook, *Crimes Against Women Rose by 15% in 2021, Experts Say Laws Need to be Implemented Strongly on Ground*, OUTLOOK (Aug. 30, 2022), <https://www.outlookindia.com/national/crimes-against-women-rose-by-15-per-cent-in-2021-experts-say-laws-need-to-be-implemented-strongly-on-ground-news-219995>.

than dealing extensively with all forms of violence against women, thereby presumed to be piecemeal. And when the law is appropriately in place, there is often weak and shaky law enforcement, which becomes the reason behind the victim's apathy and distrust and avoidance of the system. In certain instances such as cruelty and dowry deaths, corruption among police and other enforcement officials operates as a major hurdle.

- To form and implement an adequate response to the problem of violence against women, foremost it is necessary to understand it and gather information about the prevalence, the basis, the nature and the consequences of it, for which we need reliable and consistent data. Secondly, all national and global information and data on violence against women must be converted into effective and unified action. Third, responses to violence against women should be broadened so as to involve the cumulative participation of multiple sectors and social groups: the police, judicial officials, the health sector, community groups, NGOs and above all women themselves. Finally, to bring down a definitive change in mentality, consciousness and behaviour, responses and opposition to violence against women must be implemented at the community, municipal, national and international levels, so that a “community-based response” involves all communities and has a lasting deep-rooted effect.
- Changing people's attitude and mentality towards women in the right direction will take a long time. Nevertheless, raising awareness on the issue of violence against women, and particularly emphasising on educating boys and men to view women as valuable beings and partners in life, in the development of a society and in the achievement of peace are equally, if not more important than taking legal steps to protect women's human rights. It is also important to prevent violence that non-violent means are promoted to resolve conflict amongst all members of society. Breaking the cycle of abuse will require strict efforts and concerted collaboration and action between governmental and non-governmental agencies, including all educators, health-care authorities, legislators, the judiciary and the mass media. Education of both men and women is important as it will lead to change in attitudes and perceptions. It is not an easy task to eradicate deep rooted cultural values or alter traditions that perpetuate discrimination, but it is not impossible also.
- Bringing about changes and modifications in the policies, procedures and practices of the entire socio-legal system will also strengthen locally active social support system and other such networks.

- Legal representation should be provided to victims of sexual assaults. The victim's advocate should not only assist her in filing the complaint but also guide her and legal assistance should be provided at the police station as well keeping in mind the distressed state of mind of the victim.
- It should be ensured that police should be under a duty to inform the victim of the right to get representation before asking her questions and the police report should state that she was so informed.
- Also, a list of advocates should be prepared who were willing to act in these cases and such advocates favourably should be appointed by the Court, but with a view to avoid delay advocates can be authorized to act in police station before court permission has been taken.
- To dismiss gender bias attitudes against rape victims, there should be training programmes for members of Judiciary and the Bar to build awareness regarding the women's plight in such cases. It will assist in the formation of attitudes conducive and positive for the effective interpretation and implementation of law.
- Setting up of special courts for hearing cases of crimes against women is strongly recommended. In these special courts, women judges should be appointed so that the victim feels comfortable in narrating the details of the sexual assault perpetrated on her;
- Specialised investigation units comprising majorly of women police officers can be created. Investigating officers need to be trained and informed about the needs and sensibilities of victims. Police officers and doctors need to be trained in interview and forensic techniques which should be conducted as far as possible in the victim's home. Doctors simply go by the rule book and this narrow legalistic interpretation has to be substituted by a new humane perspective.
- The police officers must be given particular training to deal with the victims of sexual abuse, through steps like gender sensitization programmes. Preferably, it should always be made sure that there are women officers in every police station to attend to such females.
- The court dealing with rape cases should be understanding, sensitive and thoughtful towards the conditions of rape victims and award punishments to rapists with great seriousness and consideration towards women conditions in the Indian society.
- In countries like Australia, United Kingdom, Canada, America, etc. Rape Crisis Centres

are set up. These centres aim to provide their assistance through their telephonic help lines. These centres arrange medical help, counselling and financial help by way of providing job opportunities etc. to the rape victims. Such centres should be set up in India to dispense medical aid and counselling to the rape victims.

In the times of distress and emotional trauma, the best support and care can be provided by the family members, meaning that another very important aspect is to provide counselling for the family members of the victim.

- It can be said that the need of the hour is the creation of a state sponsored victim compensatory fund particularly for heinous offences such as rape. This body should have a need-based procedure according to the victim's needs and should come into action the moment FIR is registered or cognizance is taken of a complaint.
- Another extremely important and influential aspect is media, which must be sensitive and empathetic to the plight of the rape victim and must not highlight the name or any such inferences leading to the identification of the victim, as that will be counterproductive. The media must invariably highlight those cases where the offender has been convicted, instead of the case where the offender has been acquitted and by doing so it might help infuse the feeling of deterrence among the people.
- State government should encourage and aid at least one women group in each district for taking up various programmes and initiatives for the care and protection of victims of violence. The government should periodically evaluate the performance of these organizations but should not interfere in the autonomy and functioning of the NGOs in lieu of their patronage, support and cooperation. The evaluation can be done by non-official experts who may be appointed by the competent authority.
- "When a rule of international law, created by custom or treaty is not incorporated in to Indian Law by legislation, the municipal court may apply it though the mechanism of interpretation. The courts in India have played an important role in incorporating and enforcing human rights available at international level in to Indian law through judicial construction."²⁵

All the suggested reformatory measures will not prove fruitful until and unless political institutions become sensitive to the plight of female victims of violence.

It is a perspective that gender violence is violative of human rights which needs to be combated

²⁵ K.C.Joshi, *The Judicial Process; Recent Trends*, 34 J ILI, 71, 84-86 (1992).

by both males and females who share the view of justice for all citizens irrespective of their class, caste, racial, religious and ethnic backgrounds.

VII. CONCLUSION

Since independence, the Constitution has shown beyond doubt that it is the guardian of gender equality. It can be called the document that is the foundation and which provides a strong framework for women empowerment. Constitution of India clearly expresses its concern about women's rights and by and large, Supreme Court of India has from time to time, contributed to this ideology and even laid down the law when it was felt necessary. But the journey, neither was nor is, easy. Women are said to be equal to men and consequently to be judged on the same standards. At the same time, they are also said to be different from men, and hence deserving of differential treatment. In the Indian scenario, the issues become more complex.

The consequences of being a victim of any such crime are extremely unfortunate and major. The victims suffers from psychological and mental trauma, fear, anxiety, their status and image possibly being compromised in the eyes of the society, social unacceptability, and many more.

Equal access to education for girl is an essential means of social empowerment and has to be ensured at the level of policy-making, as well as the curtailment of gender gap in secondary and higher education. Efforts should be initiated in the direction of ensuring maximum presence of girls in school especially in rural areas. Reduction of female infant mortality and maternal mortality rate is an important goal in every part of the country. Practical measures should be endorsed to take into account the reproductive rights of women to enable and empower them to make informed choices regarding their sexual and health related problems and common diseases affecting females. As a fight against the malnutrition which a women faces in all stages of her life from childhood to pregnancy, the expansion of government programmes seems be the ultimate hope.

The women's protests and movement for empowerment and equality in the society along with a nationwide connectivity of non-Government associations which have strong base presence and deep insight into women's issues have contributed in carrying out initiatives for the benefit of women.

However, a broad gap between the goals and objectives mentioned in the Constitution, legislation, policies, plans, programmes, etc. still remains on one hand and the striking situational reality of the status of women in India, on the other.

The existing provisions for women in our Constitution can only be called sufficient if there is

proper implementation of the same, and the effectiveness of it also depends upon the awareness of these rights among all. A strong need is felt for constitutional amendments which will facilitate and encourage the growth and empowerment of women in all areas of education, sports, industry, science, technology, etc. This will boost up the Indian economy.

Ultimately, the researcher dreams of an average Indian family in which a girl finds the rights of equal treatment, education and nutrition, as a wife acquires respect and the right of dignity in marriage, freedom from all forms of domestic violence and holds proprietary rights, as a mother is treated with equality in matters of upbringing and care taking of children and on a humane level as a female she has freedom from sexual harassment, assault, obtains economic independence, equal treatment at work in society and is seen with respected eyes.
