
**DISCRIMINATION AGAINST WOMEN: ITS
IMPACTS ON VIOLENCE**

**A dissertation to be submitted in partial fulfillment of the
requirement for the award of degree of Master of Laws**

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By

Aishwarya Dubey
Roll- 1200997062

Under the Guidance
of

Asst. Professor Mrs. Sarita Singh



Session: 2020-2021

CERTIFICATE

This is to certify that, the dissertation titled “DISCREMENATION AGAINST WOMAN: ITS IMPACTS ON VIOLANCE” is the work done by Aishwarya Dubey, under my guidance and supervision for the partial fulfilment of the requirement for the Degree of **Master of Laws** in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

I wish her success in life.

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AISHWARYA DUBEY
UNIVERSITY ROLL No.
1200997062
LL.M. (2020-21)












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TABLE OF CONTENTS

• CHAPTER-I	1
• INTRODUCTION	1
 ABSTRACT	1
 INTRODUCTION	1
 HARSH TRUTHS IN INDIA	2
 STATEMENT OF PROBLEM	4
 OBJECTIVE	4
 RESEARCH QUESTIONS	5
 RESEARCH HYPOTHESIS	5
 RESEARCH METHODOLOGY	6
 SCOPE	6
 SOURCES	6
• CHAPTER-II	8
• NATIONAL PROVISIONS	8
 National Provisions	8

- **CHAPTER-III** 11
- **CRIME AGAINST WOMEN AND SOCIETAL ILLS** 11
 - MEANING OF CRIME AGAINST WOMEN 13
 - PROVISIONS FOR WOMEN IN INDIAN CONSTITUTION 15
 - CONSTITUTIONAL PROVISIONS FOR WOMEN ARE AS UNDER... 15
 - LEGAI PROVISIONS FOR WOMEN ARE AS UNDER 17
 - CLASSIFICATION OF CRIMES AGAINST WOMENS..... 19
- **CHAPTER-IV** 23
- **VIOLATION OF WOMEN’S RIGHTS IN INDIA** 23
 - Violation of Women’s Rights in India..... 23
 - DIAGRAMMING OF VIOLATIONS OF WOMEN’S RIGHTS 24
- **CHAPTER-V** 29
- **RATIFICATION OF CEDAW** 29
 - RATIFICATION OF CEDAW 29
 - ACTS OF VIOLENCE 31
- **CHAPTER-VI**..... 36
- **VIOLENCE AGAINST WOMEN: WHERE ARE THE SOLUTIONS?** 36
 - WOMAN’S PLACE IN SOCIETY 36

📄	VIOLENCE AGAINST WOMEN: THE EVIDENCE	37
📄	DOMESTIC VIOLENCE AND LAWS IN INDIA	38
📄	WHAT IS DOMESTIC VIOLENCE?	40
📄	SEXUAL HARASSMENT AT WORK PLACE	42
📄	DOWRY RELATED VIOLENCE.....	42
📄	CAUSES OF VIOLENCE AGAINST WOMEN: RISK FACTORS	43
📄	TRADITIONAL AND CULTURAL PRACTICES PERPETUATING VIOLENCE AGAINST WOMEN	47
•	CHAPTER-VII	51
•	LEGAL RESPONSE TO VIOLENCE	51
📄	COMMUNITIES’ RESPONSE TO VIOLENCE.....	51
📄	LEGISLATIVE RESPONSE	51
📄	DOMESTIC LEGAL REMEDIES IN INDIA	53
•	CHAPTER-VIII	58
•	WHAT SHOULD VICTIM DO?	58
📄	WHAT SHOULD VICTIMS DO WHEN THEY ARE ATTACKED?.....	58
📄	ADDRESSING DOMESTIC VIOLENCE	59
📄	ROLE OF PUBLIC HEALTH PERSONNEL	59

- **CHAPTER: IX**..... 61
- **IMPORTANCE OF JUDGMENT IN THE DEVELOPMENT OF LAW**61
 - OFFENCE AGAINST WOMEN UNDER IPC 62
 - LANDMARK JUDGMENTS 63
- **CHAPTER-X** 72
- **EMPOWERMENT OF WOMEN** 72
 - EMPOWERMENT OF WOMEN 72
 - FUNDAMENTAL RIGHTS TO UPLIFT THE STATUS OF WOMEN .. 74
 - LAWS RELATED TO DOMESTIC VIOLENCE IN INDIA 76
 - LEGAL FRAMEWORK FOR WOMEN AND WORK 79
 - HUMAN RIGHTS 82
 - HUMAN RIGHTS TREATIES 83
 - BARRIERS WITHIN THE COURSE OF EXERCISING RIGHTS..... 84
- **CHAPTER- XI**..... 87
- **CONCLUSION** 87
 - DO WE HAVE SOLUTIONS? 89
 - RECOMMENDATIONS FOR COMBATING VIOLENCE AGAINST WOMEN 89

- **BIBLIOGRAPHY** 94

LIST OF INSTRUMENTS/DOCUMENTS

A. PRIMARY SOURCES:

I. National Legislation

1. Constitution of India, 1950.
2. Code of Criminal Procedure, 1973.
3. India Penal Code, 1860.
4. CEDAW

LIST OF CASES

- **Laxmi V. Union Of India**
- **Mukesh & Anr Vs State for NCT of Delhi (Nirbhaya Rape Case)**
- **People's Union for Democratic Rights V. Police Commissioner, Delhi,
Police Headquarter and another**
- **Ritu Kohli Case**
- **Rupen Deo Bajaj V. Kanwar Pal Singh Gill**
- **State of Punjab V. Major Singh**
- **State V. Musa**
- **Tukaram V. The State of Maharashtra**
- **Vishakha And others V. State of Rajasthan and Others**

ABBREVIATIONS

- **AP:** Aggrieved Person
- **CEDAW:** Convention of the Elimination of all forms of Discrimination Against Women
- **CrPC:** Criminal Procedure Code
- **DPA:** Dowry Prohibition Act
- **DV:** Domestic Violence
- **DVA:** Domestic Violence Act
- **FGM:** Female Genital Mutilation
- **ICRW:** International Center for Research on Women
- **IPC:** Indian Penal Code
- **IPV:** Intimate Partner Violence
- **NCRB:** National Crime Records Bureau
- **NFHS:** National Family Health Survey
- **NFHS-4:** National Family Health Survey
- **PNDT:** Prenatal Diagnostic Techniques Act
- **PWDVA:** Protection of Women from Domestic Violence Act

CHAPTER-I

INTRODUCTION

ABSTRACT

Violence against women has long been a problem, in times of peace and war. This violence ranges from very mild teasing to rape and murder, and takes place at home, in the streets, at work places, jails, in short everywhere. Few crimes against women are reported, fewer still prosecuted, and a negligent number of accused are actually punished. In the absence of detailed studies on incidence, it is difficult to come up with suggestions to reduce if not abolish such violence. There is an urgent need for more studies on this violence so that the psychology of the violators is better understood. Instances of violence need to be thoroughly investigated, and ways and means devised to reduce their incidence. There is need for quick and severe punishment for the accused, which would act as a deterrent too. Any society, in which half the population is not assured of safety, needs to reconsider its claim to being civilised.

INTRODUCTION

Globally, one in three women experience either intimate partner violence or non-partner sexual violence during their lifetime. Intimate partner violence, female genital mutilation, early and forced marriage and violence as a weapon of war, sexual and gender-based violence, are a major public health concern across the world, a barrier to women's empowerment and gender equality, and a constraint on individual and societal development, with high economic costs.

Globally, seven percent of women have been sexually assaulted by someone other than a partner and as many as 38 percent of murders of women are committed by an intimate partner. In some countries, violence against women is estimated to cost countries up to 3.7 percent of their GDP – more than double what most governments spend on education (World Bank, 2018).

HARSH TRUTHS IN INDIA

The National Family Health Survey (NFHS-4) suggests that 30 percent women in India in the age group of 15-49 have experienced physical violence since the age of 15. The report further reveals that 6 percent women in the same age group have experienced sexual violence at least once in their lifetime. About 31 percent of married women have experienced physical, sexual or emotional violence by their spouses.

The widespread socio-economic dependency of women underlines this unbalanced equation with their husbands and other family members. The fear of social exclusion and banishment, and the lack of effective response to violence sees the Indian woman face continuing violence and intimidation.

Unfortunately, cases of violence against women and girls in India continue to rise. They are supported by the persistence of patriarchal gender and social norms. The indicators of violence against women are a reflection of the structural and institutional inequality that is a reality for most women in India. **India's average rate of reported rape cases is about 6.3 per 100,000 of the population. However, this differs in places like Sikkim and Delhi, which have rates of 30.3 and 22.5, respectively, while Tamil Nadu has a rate of less than one.** The interpretation of state-wise difference also depends on 'reported' cases, and could suffer from under-reporting. According to a recent report by livemint, about 99 percent cases of sexual violence go unreported. The extent of under-reporting tends to be higher on average in

states with a low female literacy. In states like Bihar, Uttar Pradesh and Jharkhand, less than 0.5 percent of incidents of violence against women were reported.

According to India Today's newspaper article dated June 2011, India is the fourth most dangerous place for women in the world. "The poll conducted among 213 gender experts who ranked countries on their overall perception of danger, as well as by six key categories of risks--health, sexual violence, nonsexual violence, harmful practices rooted in culture, tradition or religion, lack of access to economic resources and human trafficking"¹. According to the poll, "India ranked fourth primarily due to female foeticide, infanticide and human trafficking"². Although the ranking was based primarily on specific types of violence, there are other serious threats and violent crimes committed against women in India including: nutritional discrimination, rape, dowry related burnings. Dowry can refer to the money, goods, or estate that a woman brings to her husband in marriage (Dowry, n.d.,) as well as acid burnings--acid purposely thrown at a victim, usually their face, to disfigure or kill them (Acid Throwing, n.d.) that also exist in Indian society. According to Saravanan (2000), in India "much of gender violence is considered normal and enjoys social sanctions" (p. 1).

In 1994, India ratified the Convention of the Elimination of all forms of Discrimination Against Women (CEDAW) treaty. The purpose, as outlined in Article 1 of the treaty, is to focus on the forms of discrimination that women face and to help eliminate discrimination that either intends to, or has the effect of, limiting women from participating equally in public life.

Additionally, Articles 2 through 16 of the treaty suggest measures and laws that can be invoked in the fight against gender discrimination (ontario Women's Justice Network, 2009).

¹ (Chowdhury, 2011)

² (New Delhi Television, 2011)

STATEMENT OF PROBLEM

During my research, I found a significant amount of information on violence against women in India broken down into specific types of violence. While I have been able to find progress reports on how India is doing in accordance to various acts from a general perspective, I have been unable to find scholarly work that compiles the statistical history of various acts of violence to show progress of how India has been since the signing of CEDAW. In The United Nations' Progress Report (2009) and from Warner's Recognizing Rights Promoting Progress (2010), there is a clear agreement that much progress still needs to be made. However, these opinions appear to be based on an overall national perspectives, rather than compiling and analyzing independent acts. My research will compile information about the most prevalent acts of violence in India, and through statistical analysis, examine what, if any, impact these acts created for the safety of women in India.

OBJECTIVE

The objective of this research is to examines the effects India's ratification of the Convention of the Elimination of all Forms of Discrimination Against Women (CEDAW) had in reducing violent crimes committed against women. Three primary acts of violence are defined and examined: (1) bride burnings and/or dowry abuse, (2) female foeticide and/or infanticide, and (3) human trafficking and/or sex slaves. Comparisons are evaluated from a statistical perspective using data gathered before and after the ratification of CEDAW to show the change in frequency of each act. National conventions, or laws that were implemented, and enforcement measures that may have been enacted are reviewed to show local actions the state government has taken to further reduce violence against women. To show government enforcement, available information is included for reported court cases, prosecution, convictions,

and acquittals for each violent act. Compiled data reflects the effects India's Ratification of CEDAW had for the elimination of violence against women.

RESEARCH QUESTIONS

- 1) What are the most prevalent acts of violence in India?
- 2) What is the impact these acts created for the safety of women in India?
- 3) What is the cause of Discrimination against women in India?

RESEARCH HYPOTHESIS

The hypothesis of the researcher is as follows:

Violence against women in its various forms is a violation of human rights, the very nature of which deprives women of their ability to enjoy fundamental freedoms. It is a serious obstacle to equality between women and men. Violence against women remains hidden in the culture of silence. The causes and factors of violence against women include entrenched unequal power relations between men and women that foster violence and its acceptability, aggravated by cultural and social norms, economic dependency, poverty and alcohol consumption etc. In India, where the culprits are largely known to the victim, the social and economic "costs" of reporting such crimes are high. General economic dependence on their families and fear of social ostracization act as significant disincentives for a woman to report any kind of sexual violence or abuse. Therefore the actual incidence of violence against women in India is probably much higher than the data suggests and because of this most of the women's are experiencing violence and living its consequences

RESEARCH METHODOLOGY

The researcher has adopted the Doctrinal method and tried to analyse legal proposition, legal framework and case laws and decorated it in a systematic and logical manner.

SCOPE

The thesis will make an attempt to explore the various aspects surrounding. Due to the paucity of the material on the subjects the researcher will be forced to rely on the various legislations, parliamentary debates, and newspaper articles or views, govt. reports and judgments of various courts to conclude on whether or not a new law is needed or whether simple amendments in the law would suffice.

SOURCES

While writing the contents of this thesis, the researcher has referred to the primary sources such as the Constitution of India, Indian Penal Code, CEDAW, Code of Criminal Procedure, etc., case laws and real life case studies. Resulted to this, the researcher has as well based her study on reading about Discrimination against women and their impacts from the available secondary sources like Authorities Books, commentaries, statistical information is gathered from various newspaper reports and other such documents. Coupled with this, the researcher has also placed reliance upon the deep understanding of Supreme Court and High Court interpretations to various fundamental rights which have been scripted in regards to the point of concern herein.

CHAPTER-II

NATIONAL PROVISIONS

National Provisions

The Indian constitution was adopted on November 26, 1949; two years after India became a sovereign nation. Article 14 of the Indian constitution, Equality Before law, states, “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India” (Ministry of law & Justice, n.d.). Article 15 Prohibits discrimination on grounds of religion, race, caste, sex or place of birth and further states:

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to— (3) nothing in this article shall prevent the State from making any special provision for women and children (Ministry of law & Justice, n.d.). The rights of women in India are a fundamental right and were recognized in the constitution over 62 years ago but never enforced.

From a national level, in 1992, India established the National Commission for Women, which is the national mediator for women. In 1997 India established a parliamentary committee on the empowerment of women, and in January 2001, India announced its commitment to the empowerment of women through the launching of a new National Policy on Women’s Empowerment (United Nations, 2012). According to Amnesty International, however, “these policies should be more than just further rhetoric and should firmly address ongoing problems of non-implementation and/or discriminatory

implementation of safeguards and impunity for perpetrators of violence against women” (Samitit, 1999).

Violence against women is maintained in India, also, because: the reality of the situation on the ground for women and members of vulnerable groups continues to be extremely harsh despite the Constitutional, legislative and administrative framework in place in India. The failure to implement protective provisions and continuing gender, caste and class biases within society ensures that Constitutional, legal safeguards are rendered meaningless to many (Samiti, 1999).

India identified women as equals upon their sovereignty in 1946, and they have continued to recognize the problem of violence against women by creating provisions, committees for the empowerment of women, national policies, and other organizations and actions encouraging participation in international policies and treaties. However, if we look at the statistics for the increases in violence, the sex ratio statistics, and compare the conviction rates for offenders of violent crimes against women, one would have to agree that these policies seem rhetorical rather than meaningful, enforceable, legal safeguards.

Violence against women and the lack of protection for them may also be a direct result of the male preference commonly found in Indian society (Rande & Malhotra, 2006). Although not all families desire only male children, it is common within the culture to prefer male children due to several factors (Rande & Malhotra, 2006).

These factors generally include: “economic, religious, social and emotional desires, and norms that favor male children and make female children less desirable” and less important (Rande & Malhotra, 2006). In India, “parents expect sons—but not daughters— to provide financial and emotional care, especially in their old age” as sons usually remain living in the community home throughout adulthood, take over the family business, or get higher paying jobs than women (Rande & Malhotra, 2006).

Sons also become the head of the household when the father is too old to resume this role. Daughters, on the other hand, are generally considered an expensive burden because of the cost of weddings and dowries and their tendency to either not work, or receive low paying jobs (Rande & Malhotra, 2006). Sons also continue the family lineage, carrying on the household name, but daughters get married and usually move to their husband's household, removing with them the family's personal wealth (Rande & Malhotra, 2006).

“Sons perform important religious roles; and sons defend or exercise the family's power while daughters have to be defended and protected, creating a perceived burden on the household” (Rande & Malhotra, 2006).

These beliefs in regards to gender roles create a clear disparity in equality and desirability between the sexes. It is important to consider these beliefs in regards to gender preference when understanding the challenges in obtaining equality for women and the complexities in ending violence against them.

CHAPTER-III

CRIME AGAINST WOMEN AND SOCIETAL ILLS

In the ancient Indian times women held a high place of respect in the society as mentioned in *Rigveda* and other scriptures. Volumes can be written about the status of our women and their heroic deeds from the *vedic* period to the modern times. But later on, because of social, political and economic changes, women lost their status and were relegated to the background. Many evil customs and traditions stepped in which enslaved the women and tied them to the boundaries of the house⁸. Physical, sexual and psychological violence strikes women in epidemic proportions worldwide. It crosses every social and economic class, every religion, race and ethnicity. From domestic abuse to rape as a weapon of war, violence against women is a gross violation of their human rights. Not only does it threaten women's health and their social and economic well-being, violence also thwarts global efforts to reduce poverty. The official statistics showed a declining sex-ratio, health status, literacy rate, work participation rate and political participation among women. While on the other hand the spread of social evils like dowry deaths, child marriage, domestic violence, rape, sexual harassment, exploitation of women workers are rampant in different parts of India.

Humiliation, rape, kidnapping, molestation, dowry death, torture, wife-beating etc. have grown up over the years. The treatment of women's as sex object is a very common scenario in every sphere of life be it torture, rape, beating, molestation,

physical abuse or any such thing that has a direct effect on the mental and physical state of the women. The treatment of girl as a burden on the family because of the reason for the huge dowry to given at the time of her wedding, and because of this reason many of the girls are not even encouraged to take up even middle education. Gender discrimination be it education, employment, home or anywhere is prevalent enough to attribute to the feeling of gender bias because of which girls are confined to the house. Violence happens everywhere, but India is a particularly tough place to be female. over 40 percent of the child marriages in the world take place in India. Sex selective abortions occur there at staggering rates. In 2011, the gender ratio was at its most imbalanced since India's 1947 independence: among children six years old or under, there were only 914 girls per every 1,000 boys. Increases in wealth and literacy have only exacerbated the problem of female feticide. Women lag far behind men because the laws granting rights to women have been extremely slow and their implementation lacks smoothness and effectiveness. Although, women are victims of all kinds of crime, be it cheating, murder, robbery, etc., yet the crimes in which a women is specifically targeted to be harmed are characterised as "crime against women". Broadly, crimes against women are classified under two categories:

(i) Crimes under the Indian Penal Code (IPC), which include seven crimes:

1. Rape (Sec. 376 IPC)
2. Kidnapping & Abduction for different purposes (Sec. 363-373)
3. Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
4. Torture, both mental and physical (Sec. 498-A IPC)
5. Molestation (Sec. 354 IPC)
6. Sexual Harassment (Sec. 509 IPC)
7. Importation of girls (up to 21 years of age)

(ii) Crimes under Special and Local Laws (SLL), which include seventeen crimes, of which the important ones are:

- (i) immoral traffic (1956 and 1978 Act),
- (ii) dowry prohibition (1961 Act),
- (iii) committing Sati (1987 Act),
- (iv) indecent representation of women (1986 Act).
- (vi) Domestic violence act (2005 Act)

The term violence is actually applied to physically striking an individual resulting in an injury¹, striking a person with the intent of causing harm but not actually causing it², act where there is high risk of causing injury³ or an act which may not involve actual hitting but involves verbal abuse and psychological stress and suffering. The distribution pattern of crimes against women has not changed much in the last few years, but between 2001 and 2011 the overall number of incidents of crime against women rose steadily, and was 59% higher than in 2001. These figures are, at best, indicative. Rape and violence against women are among the most under-reported crimes worldwide because of the social stigma attached to the nature of the crime. The UN office on Drugs and Crimes records that in 2010 there were only 1.8 cases of rape⁶ reported per thousand people in India; in Germany it was 9.4, in Norway the figure was 19.2, in the United States it was 27.3 and in Sweden it was 63.5 per thousand. It is legitimate to question whether these figures represent the number of crimes, or how easy it is for women in these countries to report them to the police.

MEANING OF CRIME AGAINST WOMEN

The meaning of crime is defined as direct or indirect physical or mental cruelty to women. Crime which are specifically “directed against women” and in which the “women’s are victims” are termed as crime against women⁴. Crimes against women are of various types as crimes involving sex for economic gains including prostitution, keeping of brothel seduction, wrongful confinement, trafficking, dowry extortion murder, crimes relating to women's property which includes dishonest

misappropriation, criminal breach of trust, extortion, robbery and murder, crimes in relation to sex including outraging the modes of women, use of criminal force, assault, kidnapping, abduction wrongful confinement, rape, trafficking, adultery, murder, other immoral acts injurious to the society and other injurious acts against women. The United Nations defined “Violence against Women” in 1993 in Declaration on the Elimination of Violence against Women. It is defined as any act of gender biasness violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. The challenges Indian women face include an often misogynistic society outdated and sometimes repressive governance structures, an inefficient legal justice system, a weak rule of law and social and political structures that are heavily male-centric. According to the 2011 census the sex ratio between men and women indicates 940 women to a 1000 men which is a definite improvement over the 2001 census where the ratio was 933:1000. However, India still has one of the lowest sex ratios on the world with approximately 35 million women "missing". The highest number of missing women at birth is in the north-western states of Punjab, Rajasthan and Haryana, etc. Research indicates that 12% of this gap is found at birth which increased to 25% in childhood⁷. Much of the violence against Indian women is in the form of domestic violence, dowry deaths, acid attacks, honour killings, rape, abduction, and cruelty by husbands and in-laws. one of the key challenges is dowry – a practice of the bride’s family giving gifts of cash and kind to the groom and his family. In some cases the groom’s family mistreats the bride if such demands are not met. To protect women against this threat the Indian government had enacted the Dowry Prohibition Act and the Protection of Women from Domestic Violence Act and cruelty under Sec 498A of the Indian Penal Code. In 2012, according to the National Crime Records Bureau (NCRB), dowry deaths – or murders of women by the groom or in-laws because of unmet high dowry expectations – constituted 3.4% of all crimes against women. In other words,

last year in India on average 22 women were killed per day because their families could not meet dowry demands.

PROVISIONS FOR WOMEN IN INDIAN CONSTITUTION

Gender equality is enshrined in every sphere of Indian constitution, be it preamble, fundamental rights, fundamental duties and directive principles. The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993¹⁰.

CONSTITUTIONAL PROVISIONS FOR WOMEN ARE AS UNDER

- Equality before law for **women** (**Article 14**)
- The State not to discriminate against any citizen on grounds only of religion, race, caste, **sex**, place of birth or any of them (**Article 15 (i)**)
- The State to make any special provision in favour of **women** and children (**Article 15 (3)**)

- Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (**Article 16**)
- The State to direct its policy towards securing for men and **women** equally the right to an adequate means of livelihood (**Article 39(a)**); and equal pay for equal work for both men and **women** (**Article 39(d)**)
- To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (**Article 39 A**)
- The State to make provision for securing just and humane conditions of work and for maternity relief (**Article 42**)
- The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (**Article 46**)
- The State to raise the level of nutrition and the standard of living of its people (**Article 47**)
- To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of **women** (**Article 51(A) (e)**)
- Not less than one-third (including the number of seats reserved for **women** belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every **Panchayat** to be

reserved for women and such seats to be allotted by rotation to different constituencies in a **Panchayat (Article 243 D(3))**

- Not less than one- third of the total number of offices of Chairpersons in the **Panchayats** at each level to be reserved for **women (Article 243 D (4))**
- Not less than one-third (including the number of seats reserved for **women** belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every **Municipality** to be reserved for **women** and such seats to be allotted by rotation to different constituencies in a **Municipality(Article 243 T (3))**
- Reservation of offices of Chairpersons in **Municipalities** for the Scheduled Castes, the Scheduled Tribes and **women** in such manner as the legislature of a State may by law provide **(Article 243 T (4))**

LEGAL PROVISIONS FOR WOMEN ARE AS UNDER

- ***Factories Act 1948:*** Under this Act, a woman cannot be forced to work beyond 8 hours and prohibits employment of women except between 6 A.M. and 7 P.M.
- ***Maternity Benefit Act 1961:*** A Woman is entitled 12 weeks maternity leave with full wages.
- ***The Dowry Prohibition Act, 1961:*** Under the provisions of this Act demand of dowry either before marriage, during marriage and or after the marriage is an offence.

- ***The Equal Remuneration Act of 1976:*** This act provides equal wages for equal work: It provides for the payment of equal wages to both men and women workers for the same work or work of similar nature. It also prohibits discrimination against women in the matter of recruitment.
- ***The Child Marriage Restrain Act of 1976:*** This act raises the age for marriage of a girl to 18 years from 15 years and that of a boy to 21 years.
- ***Indian Penal Code:*** Section 354 and 509 safeguards the interests of women.
- ***The Medical Termination of Pregnancy Act of 1971:*** The Act safeguards women from unnecessary and compulsory abortions.
- ***Amendments to Criminal Law 1983,*** which provides for a punishment of 7 years in ordinary cases and 10 years for custodial rape cases.
- ***73rd and 74th Constitutional Amendment Act*** reserved 1/3rd seats in Panchayat and Urban local Bodies for women.
- ***The National Commission for Women Act, 1990:*** The Commission was set up in January, 1992 to review the Constitutional and legal safeguards for women.
- ***The Protection of Human Rights Act, 1993:***
- ***Protection of Women from Domestic Violence Act, 2005:*** This Act protects women from any act/conduct/omission/commission that harms, injures or potential to harm is to be considered as domestic violence. It protects the women from physical, sexual, emotional, verbal, psychological, economic abuse and also marital rape.

- ***Protection of Women against Sexual Harassment at Workplace Bill, 2010:*** on November 4, 2010, the Government introduced protection of Women against Sexual Harassment at Workplace Bill, 2010, which aims at protecting the women at workplace not only to women employee but also to female clients, customer, students, research scholars in colleges and universities and patients in hospitals. The Bill was passed in lok Sabha on 3.9.2012.
- **Section 376 A-** if a person committing the offence of sexual assault, "inflicts an injury which causes the death of the person or causes the person to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean the remainder of that person's natural life, or with death.

CLASSIFICATION OF CRIMES AGAINST WOMENS

Women have been suffering since ages and this torture against them still continues in the form of murder, robbery, cheating etc. Although Women may be victims of any of the general crimes such as „Murder“, „Robbery“, „Cheating“ etc. Crimes which are directed specifically against women are characterised as „Crimes Against Women“. Various new legislations have been brought and amendments have been made in existing laws with a view to handle these crimes effectively. These are broadly classified under two categories i.e. (A) The Crimes under the Indian Penal Code (IPC) and (B) The Crimes under the Special & local laws (SII).

1) Rape (Sec. 376 IPC) (Incidence- 24,923 Rate- 4.3):

Rape is one of the most common crimes against women in India¹⁴and by the UN's human-rights chief as a "national problem. According to 2012 statistics, New Delhi

has the highest number of rape-reports among Indian cities, while Jabalpur has the per capita incidence of reported rapes. Sources show that rape cases in India have doubled between 1990 and 2008. According to the National Crime Records Bureau, in 2012, 25,000 rape cases were reported across India. out of these, 24,470 were committed by relative or neighbour. Men accounted to commit 98 per cent of reported rapes¹⁸. The latest estimates suggest that a new case of rape is reported every 22 minutes in India.

2) Kidnapping & abduction (Sec. 363-373 IPC) (Incidence- 38,262 Rate- 6.5):

According to the 2012 census, kidnapping and abduction cases have reported to increase to 7.6% of which Uttar Pradesh alone has accounted for 22.2% cases alone at national level. The number of kidnappings and abductions of women and girls have jumped a whopping 163.8% since 2002.

3) Dowry Deaths (Sec. 302, 304B IPC) (Incidence- 8,233 Rate- 1.4):

one woman dies every hour due to dowry related reasons on an average in the country, Death by burning of Indian women have been more frequently attributed to dowry conflicts. In dowry deaths, the groom's family is perpetrator of murder or suicide. The Dowry Prohibition Act, passed in India in 1961, prohibits the request, payment or acceptance of a dowry, "as consideration for the marriage", where "dowry" is defined as a gift demanded or given as a precondition for a marriage. National Crime Records Bureau (NCRB) figures state that 8,233 dowry deaths were reported in 2012 from various states. The statistics work out to one death per hour. The number of deaths under this category of crime against women was 8,618 in 2011 but the overall conviction rate was 35.8 per cent, slightly above the 32 per cent conviction rate recorded in the latest data for 2012.

4) Torture (cruelty by husband or his relatives) (Sec. 498-A IPC) (Incidence- 1,06,527 Rate-18.2):

In 1983, domestic violence was recognised as a specific criminal offence by the introduction of section 498-A into the Indian Penal Code. This section deals with cruelty by a husband or his family towards a married woman. Four types of cruelty are dealt with by this law

- conduct that is likely to drive a woman to suicide,
- conduct which is likely to cause grave injury to the life, limb or health of the woman,
- harassment with the purpose of forcing the woman or her relatives to give some property, or
- Harassment because the woman or her relatives is unable to yield to demands for more money or does not give some property.

The NCRB statistics indicate that an Indian woman is most unsafe in her marital home with 43.6% of all crimes against women being "cruelty" inflicted by her husband and relatives. These numbers do not include incidences of marital rape, as India does not recognize marital rape as an offence. of the 24,923 rape incidences in India in 2012, 98% of the offenders were known to the victim, which is higher than the global average of approximately 90%.

5) Assault on women with intent to outrage her modesty (Sec. 354 IPC)
(Incidence-45,351 Rate- 7.7):

In section 354 it has been mentioned that whoever assaults or forces any women intended to outrage her modesty shall be punished not less than one year which may be extended to five years and is also liable to be fined. The 2012 census of national crime record bureau shows the incidence of assault on women to have increased by 5.5% over the past years. ***Madhya Pradesh had reported the***

highest incidence amounting to 14.7% of total such incidences while Kerala has reported the highest crime rate.

6) Importation of girl from foreign country (Sec. 366-B IPC) (Incidence- 59):

Importation of girls from other country or from Jammu and Kashmir under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person is punishable under the Indian Penal Code sec.366-B with imprisonment which may extend to ten years and is also liable to be fined. A decrease in the number of cases has been recently found in the census 2012 of which only 59 cases have been reported in 2012.

7) Immoral Traffic (Prevention) Act, 1956 (Incidence-2,563 Rate- 0.4):

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse, of power or of a position of vulnerability or of the giving and the receiving of payments or benefits to achieve the consent of a person having control over any other person for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs". Cases seem to have increased in the recent years by 5.2% in which the incidences in Andhra Pradesh and Tamil Nadu are comparatively high (19.5% and 18.4% resp.)

CHAPTER-IV

VIOLATION OF WOMEN'S RIGHTS IN INDIA

Violation of Women's Rights in India

Achieving equality between women and men and eliminating all forms of discrimination against women are fundamental human rights and United Nations values. Women all over the world, however, commonly experience violations of their human rights throughout their lives, and human rights of women has not always been a priority. Achieving equality between women and men requires a comprehensive understanding of the ways in which women experience discrimination and are deprived of equality so as to develop appropriate strategies and norms to eliminate such discrimination. Some groups of women experience additional forms of discrimination, based on their age, ethnicity, nationality, religion, health status, marital status, education, disability and socio-economic status. These interconnecting forms of discrimination must be taken into account when formulating measures and responses to combat discrimination against women (Women's Rights are Human Rights, 2014). Combating against discriminatory treatments is essential for the progress of women. Besides these, one should give priority to the rights of women and promote their effective implementation.

Women have an important role to play in the society. They are regarded as primary sources that raises and nurtures the family. In spite the fact that the women's contribution to the progress of the country is equal to that of their male counterpart, still they experience a number of limitations that restrict them from realizing their

potential for growth. It was against this perspective that the governments all over the world, felt the need to prioritize the needs and interests of women and recognize their contribution in various stages and overcoming impediments that would take place within the course of their empowerment. The term, women's empowerment implies the capacity of the women in taking all the important decisions on an independent basis that are related to her, throughout her life span that will lead to her success in all phases of life (Saryal, 2014).

DIAGRAMMING OF VIOLATIONS OF WOMEN'S RIGHTS

The areas that violate the rights of women in India have been stated as follows: (Saryal, 2014).

Missing of Women and Girls – In many developing countries, the idiom of “missing women” has been used, when it was found, the proportion of women as compared to men is low in population. In many states of India, women and girls go missing. one of the primary reasons that lead to their missing is trafficking. When girls are trafficked, they are severely exploited and are deprived of food and other basic necessities. The girls belonging to the poverty stricken families are sold by the brokers to men in northern India, where the problem of imbalanced gender ratio is much apparent. Besides, there have been cases of women, who go missing from their marital homes. The occurrence of violent and criminal acts against women within the house and outside, primarily lead to their absence.

Dowry Deaths – In India, there has been an increase in the dowry deaths of women in their matrimonial homes. Disputes relating to dowry have become a serious problem. The National Crime Records Bureau reported, in 2012, around 8233 newly wed women were killed for dowry. The taking and giving of dowry is observed as a crime within the country. The Dowry Prohibition Act' has not been put into operation in India in an appropriate manner. It has been discovered that

most number of states neither have a Dowry Prohibition officers nor do they made it mandatory to keep the record of things given and received.

Domestic Violence – There has been prevalence of domestic violence in India, in spite of the Protection of Women from Domestic Violence Act, 2005. Domestic violence is, when a woman experiences violent and criminal acts at the hands of their husbands, in-laws, fathers, brothers or other family members. These include, verbal abuse, physical abuse, and inflicting various forms of mistreatment. There are numerous reasons for women experiencing domestic violence within their marital homes, these are inability to carry out the household tasks in an appropriate manner, financial problems, desire for a male child, unawareness and illiteracy on the part of women, experiencing problems in meeting essential needs and requirements, health problems and feelings of antagonism and resentment.

Sati – Sati is a practice, when the widows were placed in the funeral pyres of their husbands. This practice was abolished by the social reformer Raja Ram Mohan Roy. It continues to prevail in the post-colonial India. The Sati Prevention Act was passed which declared the practice of Sati as a crime for which death penalty can also be given to the perpetrators. The act also declared that the veneration of Sati by erecting a temple and worshipping of the deceased women as a God is also prohibited. However, certain sections of individuals perceives this law as intervention in their right to practice the dictates of their religion.

Child Marriage – Child marriage is when the marriage of girls takes place, when they are below 18 years of age and when boys are below 21 years of age. Child marriage is regarded as a practice that deprives the girls of their childhood. They experience problems in the acquisition of education, getting enrolled in school, taking pleasure in other childhood activities and in enhancing their skills and abilities. It also effects the social, psychological and emotional development of the child in a negative way. When girl children experience domestic violence within their marital homes, they feel vulnerable and apprehensive. Child Marriage Act

2006, prohibits child marriage and declares 18 as the marriageable age for girls and 21 for boys.

Preference for a Male Child – The individuals, who belong to rural communities and socio-economically backward sections of the society, normally give preference to the male child. They regard males to be the assets of the family and possess the viewpoint that they will contribute in generating welfare and enhancing reputation of their families. The preference for the male child is a phenomenon, which is historically rooted in the patriarchal system of the Indian society. The strong preference for having a son, took place with the transformation of the Indian society from the primitive stage, which used to be mainly a matrilineal to feudal stage, where agriculture emerged as the primary recognized occupation of the people to be controlled by males.

Female Foeticide and Female Infanticide – Female foeticide is referred to the killing of the girl child, before she is born and female infanticide is killing of the girl child, after she is born. These practices, deny the basic right from the girl child, i.e. the right to live. There have been communities of individuals, who have a strong preference for the male children. They possessed this viewpoint that families with male children were seen with pride, when they have control over the larger part of land. They regarded females as liabilities, who would not generate any wealth for their families.

Education – Education is regarded as one of the most imperative aspects that would lead to empowerment of women. The right to education under Article 21 of the Indian Constitution have made it obligatory for the government to provide free education to all the individuals. In rural areas, the retention rate of girls in schools is lower as compared to males and there are number of reasons that lead to drop-out of girls, as they move to higher classes. In higher education, the primary reason that lead to their drop-out is, parents are unable to afford education, due to financial problems. Parents expect their girls to take care of their younger siblings, as they go to work, they train them regarding the performance of the household chores,

increasing cost of education and parents feel that girls would be married off, hence, they will not be able to utilize their learning.

Forced Evictions and Exclusions – In India, widows are evicted from their marital homes and they are meant to look after their needs and requirements on their own, after the death of their husbands. Their children too get evicted along with them. Women headed households and women in general are less secure as compared to men. When a woman loses her spouse, there are various types of detrimental consequences that they are supposed to go through. When they are evicted from homes, they are required to face all hardships and difficulties in order to provide for their sustenance. A single woman, with no land or family to take care of, often ends up in an urban slum.

Sexual Harassment at the Workplace – The occurrence of sexual harassment at the workplace is considered as the most detrimental problem that impose barriers within the course of their progression. In India, women are discriminated against in terms of pay and remuneration for their jobs. This is a fact for both urban and rural areas, they are mistreated in concerns of promotion and advancement within the employment setting. Women entrepreneurs often have to deal with more problems in obtaining finances and resources to commence any kind of business. Sexual harassment at the workplace hampers the psychological approach of a woman. She even gets compelled to leave her job, even though she is not financially strong and is in need of a job.

Rape - In India, there has been a significant increase in the numbers of rape cases in the past 10 years. Rape normally takes place out of animosity, enmity, resentment or any other reason. According to the National Crime Records Bureau, in 2012, 25000 rape cases were reported. In India, within the rural areas, particularly in Northern India, the upper caste people use mass rapes as a strategy to exercise power over the members of the lower caste groups. The vicious gang rape case in Delhi in December, 2012 had led to the passage of a stricter law i.e. The Criminal law (Amendment) Act 2013 to deal with the rape cases within the country.

Societal Violence against Women - The communities and the societies in India in most of the places are bound up with the patriarchal normative structure. In these types of societies, it becomes difficult for women to establish their position and obtain justice. The religious communities, village communities or the artificial communities like professional bodies are barely epitome of equality between men and women. Quite often the religious communities have made the life of women miserable by forcing them to adopt conservative practices that would lead to negative effects. With the prevalence of societal violence, women usually get confined within their homes and become isolated from the outside world. They are required to curb their communications with the members of the society.

CHAPTER-V

RATIFICATION OF CEDAW

RATIFICATION OF CEDAW

According to the United Nations, India ratified CEDAW in July 1993 with two declarations, which the Netherlands noted as being “incompatible with the object and purpose of the convention [on the elimination of all forms of discrimination against women]” (United Nations, 2013). The first declaration states: i) With regard to articles 5 (a) and 16 (1) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent (United Nations, 2013). The first declaration in regards to 5 (a) keeps India from enforcing equal rights between men and women by stating they will not interfere in personal affairs of a community. The second declaration states: ii) With regards to 16 (2) of the Convention on the Elimination of All Forms of Discriminations Against Women, the Government of the Republic of India declares that though in principal it fully supports the principle of compulsory registrations of marriages, it is not practical in a vast country like India with its variety of customs, religions and level of literacy³. This second declaration states they cannot adhere to setting a legal age for marriage and will not require marriages to be registered under the pretense of their customs, religions, and levels of literacy. In addition, India stated in their reservation, that with regards to

³ (United Nations, 2013)

article 29 of the Convention, the Indian government did not consider itself bound by paragraph 1 (United Nations, 2012). I understand that enforcing the articles in CEDAW may be difficult due to elements like culture, religion, and literacy, but I contend that if they believed it was important to prevent young girls from getting married they would accept the provision. Also, India has not ratified the optional Protocol to CEDAW. By ratifying the optional Protocol, a State recognizes the competence of the Committee on the Elimination of Discrimination against Women -- the body that monitors States parties' compliance with the Convention -- to receive and consider complaints from individuals or groups within its jurisdiction (National Alliance of Women, 2000). Therefore, India does not comply with regular reporting and several reports due to be submitted to the supervisory committees remain outstanding as of June 6, 2002. Finally, a reservation India makes states they will not submit to arbitration if there is a dispute of CEDAW. If the country is are not going to enforce equal rights for women, an adult age of marriage for girls, individual complaints, or submit to arbitration, then it seems to me that India ratified CEDAW a bit halfheartedly. In India, the constitution states that the State shall endeavor to foster respect for international law and treaty obligations; however, because of India's special 'dualist' regime, any provisions or international laws ratified by the central government are not directly binding unless there is an explicit measure, through enactment of a statute, to internalize these obligations. Therefore, in India, international conventions and laws are not very effective unless they have been translated into domestic laws⁴. This then may not cause the ratification of CEDAW to change any actions or inactions that are taking effect. In fact, it may simply become rhetoric and propaganda for the international community, instead of a viable action plan to protect the female population of India.

⁴ (Hameed, Hlatshwayo, Tanner, Turker & Yang, 2010)

ACTS OF VIOLENCE

The following three acts of violence against women that are most prominent in India: (1) bride burnings and/or dowry abuse; (2) female foeticide and/or infanticide; and (3) human trafficking and/or sex slaves. I will define the nature of each act of violence and then examine the statistical changes of these acts both before and after ratification of CEDAW. If CEDAW has impacted the women in India in a positive way, a statistical decrease in reported acts of violence is expected. If the ratification of CEDAW has not made a positive impact for women in India, statistical similarity or increase should be evident. It is important to keep in mind that the findings will be, for the most part, based on reported cases only, as it is difficult to estimate the number of unreported cases.

Bride Burning – Dowry Abuse Bride burning or dowry deaths are when a bride is doused with a flammable liquid, usually kerosene, and lit on fire by a husband and/or in-laws when they determine a dowry is inadequate, dowry payments fall behind, or a new demand to the bride or the bride's parents is not fulfilled. Bride burning will often result in the wife's death. This makes the husband available for remarriage (Jutla & Heimback, 2004). According to lakhani (2005): between 1947 and 1990, approximately 72,000 young brides between the ages of 15-20 years old were burned to death, an average of 1,674 murders per year. Between 1990 and 1998 alone, more than 20,000 women were killed, an average of 2,500 murders per year. In 1995, the Indian government reported that an estimated 6,500 women per year die as a result of dowryrelated deaths (p. 258). It is important to note that these figures are based on officially reported cases, and therefore do not account for population growth or demographic areas that historically do not report. I believe the increase in bride burning over the years clearly shows there has not been a decline in violence against women due to ratification of CEDAW. In fact, it clearly

shows that CEDAW has had no effect in the reduction of this violent act towards women. The law against dowry known as the Dowry Prohibition Act was enacted in 1961 (Act No. 28 of 1961) and forbids the taking or giving of dowry as well as makes it an offense that is punishable by up to six years in prison (Government of India, 1961). This law has proven to be ineffective and was taken up by the National Commission for Women in November of 2005 for the wording in the act is a bit ambiguous and allows for defendants to simply state that gifts were given out of affection, were customary for certain events, or were required to sustain a financial stringency that was necessary for urgent domestic expenses (National Commission for Women, 2005). In 1986, the Indian government added 'dowry deaths' under penal code 304-B, where a bride, within 7 years of her marriage, is killed and it is shown that soon before her death, she was subjected to cruelty or harassment by her husband, or any relative of her husband, or in connection with any demand for dowry, such death shall be called 'dowry death' and such husband or relative shall be deemed to have caused her death (lakhani, 2005, p. 9). The National Crime Records statistics show that in 1994 there were 4,935 dowry deaths and 25,946 cases of dowry harassment, while in 2005, eleven years after the signing of CEDAW, that number increased to 6,787 dowry murders and 58,319 incidents of dowry harassment (National Crime Records Bureau: Ministry of Home Affairs, 2005). As of 2008, there were 31,950 pending cases of dowry deaths, 117 cases withdrawn, 1,948 convicted, and 3,876 acquitted or discharged (National Crime Records Bureau: Ministry of Home Affairs, 2008). The trend for dowry harassment and dowry deaths are on the rise, therefore there is no evidence that the ratification of CEDAW has helped reduce this violent act against women.

Female Foeticide - Infanticide Female foeticide is where female fetuses are selectively aborted after prenatal sex determination, thus avoiding the birth of girls (Grewal & Kishore, 2004). This selected abortion has caused a reduction in the female Indian population of as many as 50 million girls and women (Grewal & Kishore, 2004). Infanticide, or infant homicide, is the intentional killing of infants,

which in India are usually girl infants due to the preference of boy children (Tandon & Sharma, 2006). This act is extremely violent and more common: in the nearly 300 poor hamlets of the Usilampatti area of Tamil Nadu [state], as many as 196 girls died under suspicious circumstances [in 1993] ... some were fed dry, unhulled rice that punctured their windpipes, or were made to swallow poisonous powdered fertilizer. others were smothered with a wet towel, strangled or allowed to starve to death (Gendercide Watch, n.d.). This gendercide has caused an imbalance in the sex ratio of the population and in some parts of India the sex ratio of girls to boys has dropped to less than 800:1,000 (Grewal & Kishore, 2004). In 1991 it is estimated that the child sex ratio (age 0-6) was 945 girls to every 1000 boys born, while in 2001 it is estimated that the sex ratio was 927:1000, and in 2011 the child sex ratio was 914:1000 (Ramaiah, Cahandrakarayya, & Murthy, 2011). From 1991 to 2001, female birth rates were reduced by 18 female babies, and by 2011, the number was reduced again by another 13 baby girls per 1000 births. To put this into perspective, the sex ratio at birth in the US and the UK is 1050 male births to every 1000 female births (Central Intelligence Agency, 2012). The reduction in female births of approximately 13 per thousand clearly shows an increase in female genocide and does not support the claim that CEDAW reduces violence against women. To control female feticide, the Government of India enacted the Prenatal Diagnostic Techniques Act (PNDT) in 1994, which restricts the determination and revelation of gender of the fetus through amniocentesis as well as specifies the code of conduct for medical practitioners. Under the PNDT Act, an individual/ institution found guilty of advertising prenatal determination of gender in any form is subject to imprisonment and/or a fine. The PNDT Act was amended in 2002 and 2003, owing to innovation in technologies for sex determination through ultra sounds that impede the implementation of the Act (law is Greek Reporter, 2010). The failure of this act is evident due to the sex ratios of females to males that have continued to decline in India, as mentioned earlier. To control infanticide, the Indian government enacted Section 318, "concealment of

birth by secret disposal of the dead body and amounts to culpable homicide” (Tandon & Sharma, 2006). In poorer families that cannot afford amniocentesis, blood tests, or ultrasounds, infanticide is a more prevalent problem than feticide. In 2000, “infanticide cases increased 19.5% over the previous year” (Tandon & Sharma, 2006). According to an article printed in the India Tribune (2011), the Report of the Union Ministry of Health and Family Welfare showed that during 2009-2010, only 139 cases were reported under the PNTD Act (Kashap, 2011). The article goes on to state that, “an earlier media report (May 2007) had found that of the total number of 416 cases filed under the Act until 2007, only 15 had resulted in conviction” (Kashap, 2011). This is a ridiculously low number when it is estimated that “as many as 50 million female foetuses might have been aborted illegally” (Kashap, 2011). These numbers not only indicate that the ratification of CEDAW did not help to prevent violence against women; it shows the government’s lack of enforcement in this particular form of violence against women.

Human Trafficking – Sex Slaves Human trafficking and/or sex slave is defined as: the procurement, recruitment, transportation, transfer, harboring or receipt of persons, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise (India Development Gateway, 2011). In India, more than 1.2 million children are caught up in human trafficking as child prostitutes (Cable News Network, 2009). Many girls are tricked into leaving their homes with the promise of a well-paid job, some are abducted, and others sold by their families or their husband (Mathews, 2006). According to Save the Children India, men who seek out prostitutes now prefer 10-12 year-old girls to reduce their risk of HIV transmission (as cited in Mathews, 2006). In addition to CEDAW, there are several legal provisions in India to prevent human trafficking. “In 1956 India passed the Immoral Trafficking Prevention Act (ITPA) which has severe penalties ranging

from seven years' to life imprisonment" (Shukla & Phookan, n.d.). The Indian constitution and the Indian Penal codes have another 20 provisions to make trafficking illegal (Hameed et al., 2010). In 2002, India ratified the South Asian Association for Regional Cooperation that aims to instigate regional cooperation on the rights of women and children in South Asia (Ministry of External Affairs, 2002). India also prohibits bonded and forced labor through the Bonded labor Abolition Act, the Child labor Act, and the Juvenile Justice Act (Hameed, et al., 2010). Even with these provisions, India's National Crime Records Bureau reported an increase in 'Procurament of Minor Girls' from 253 reported cases in 2007 to 679 reported cases in 2010 (National Crime Records Bureau, 2010). The number of reported cases for 'Selling of Girls for Prostitution' also increased, from 69 reported cases in 2007, to 130 reported cases in 2010 (National Crime Records Bureau, 2010). An increase was also reported in 'Buying of Girls for Prostitution' from 40 reported cases in 2007, to 78 reported cases in 2010 (National Crime Records Bureau, 2010). With the enormous amount of children caught up in trafficking in India, the number of reported cases for 2007 and 2010 are very high. Statistically, these numbers show that CEDAW has not reduced this violent act against women.

CHAPTER-VI

VIOLENCE AGAINST WOMEN: WHERE ARE THE SOLUTIONS?

WOMAN'S PLACE IN SOCIETY

Indian Society has always revered women. In Hinduism, man and woman represent the two halves of the divine body. There is no question of superiority or inferiority between them. Hindu history is witness to the super-women, such as Gargi, Maitreyi and Sulabha, whose faculty of reasoning was far superior to that of ordinary mortals. Many female deities Saraswati, Durga, laxmi, Kali etc., are worshipped across the country. According to the Mahabharat by cherishing the woman one virtually worships the goddess of prosperity.

on the darker side, the patriarchal system has continued since the time of Rig Veda. Customs and values were made by men to favour men. Women suffer this discrimination in silence.

Historically, the Indian woman has been made to adopt contradictory roles. The strength of a woman is evoked to ensure that women effectively play their traditional roles of nurturance as daughters, mothers, wives, and daughters-in-laws. on the

other hand, the stereotype of “a weak and helpless woman” is fostered to ensure complete dependence on the male sex.⁵

VIOLENCE AGAINST WOMEN: THE EVIDENCE

Violence against women occurs throughout the life cycle from prebirth, infancy, childhood, adolescence, adulthood to senescence.⁶ Most of the data are believed to be unreliable as many cases go unreported.

Cases of violence against women are steadily increasing in the country. According to the National Crime Record Bureau, India, there is one dowry death in the country every 78 h, one act of sexual harassment every 59 min, one rape every 34 min, one act of torture every 12 min and almost one in every three married women experienced domestic violence.⁷

Studies from India reported violence in 19–76% of women (75%⁸–76%⁹ in lower caste women; 42–48% in Uttar Pradesh and 36–38% in Tamil Nadu;¹⁰ and 19% in an urban slum community of childless women.¹¹) In Western India, 15.7% pregnancy-related deaths in the community series and 12.9% in the hospital series were

⁵ Thara R. *A Study of Disabled Women*. Chennai (India): SCARF; 1997-1998. A study of mentally ill disabled women who have been separated/divorced.

⁶ Florence: Innocenti Digest, No 6. UNICEF Innocenti Research Centre; 2000. United Nations International Children's Emergency Fund (UNICEF). *Domestic Violence Against Women and Girls. Magnitude of Problem*; pp. 4–7.

⁷ National Crime Record Bureau, *Crime in India, 1997*, Ministry of Home Affairs. 2000

⁸ Mahajan A. *Instigators of wife beating*. In: Sood S, editor. *Violence Against Women*. Jaipur (India): Arihant Publication; 1990.

⁹ Mahajan A, Madhurima O. New Delhi: Deep and Deep Publications; 1995. *Family Violence and Abuse in India*

¹⁰ Jeejebhoj JS. Wife-beating in rural India: A husband's right? evidence from survey data. *Econ Polit Wkly*. 1988;11:855–82.

¹¹ Bhattacharya S, Pratinidhi KA. A community based study of infertile women from urban slum. *Indian J Matern Child Health*. 1994;5:15–6.

associated with domestic violence.¹² In Uttar Pradesh, 30% men reported beating wives.¹³ 22% of woman of childbearing age from a potter community were physically assaulted. 34% of those physically assaulted required medical attention.¹⁴

The population-based, multicenter based collaborative project of the study of abuse in the family environment (India-survey of abuse in family environment) was established in seven sites in India.¹⁵ It looked at the association with poor mental health. A total of 9938 women participated (from rural, urban slum, urban nonslum areas). 40% reported experiencing any violence during their marriage. 56% had self-report questionnaire scores indicating poor mental health.

DOMESTIC VIOLENCE AND LAWS IN INDIA

In India, more than 30% of women have been subjected to domestic violence at some point in their lives, per the National Family Health Survey (NFHS) data. Yet, nearly 75% of those who reported being subjected to domestic violence did not seek help from anyone. For those who do, by confiding in close family members, the crime often gets brushed off as a private or family matter that doesn't require outside, legal intervention.

During the first four phases of the CoVID-19-related lockdown, Indian women filed more domestic violence complaints than recorded in a similar period in the last 10

¹² Ganatra BR, Coyaji KJ, Rao VN. Pune (India): KEM Hospital Research Centre; 1996. Community Cum Hospital Based Case-Control Study On Maternal Mortality: A Final Report.

¹³ Narayana G. New Delhi: Published by WHO; 2000. Family violence, sex and reproductive health behavior among men in Uttar Pradesh, India: Policy Project, New Delhi: The Futures Group; 1996. Quoted in Women of South East Asia: A Health Profile.

¹⁴ Rao V. Wife-beating in rural south India: A qualitative and econometric analysis. *Soc Sci Med.* 1997;44:1169–80.

¹⁵ Rao V. Wife-beating in rural south India: A qualitative and econometric analysis. *Soc Sci Med.* 1997;44:1169–80.

years. But even this unusual spurt is only the tip of the iceberg as 86% women who experience domestic violence do not seek help in India.

The phenomenon of violence against women within the family in India is complex and deeply embedded. Women are subject to violence not only from husbands but also from members of both the natal and the marital home. Girls and women in India are usually less privileged than boys in terms of their position in the family and society and in terms of access to material resources. Marriage continues to be regarded as essential for a girl; control over a woman's sexuality and its safe transfer into the hands of husbands who are assumed to "own" their wives is of primary importance. Systematic discrimination and neglect toward female children is evident in a declining sex ratio of 900 women to 1000 males (2013-2015). Nevertheless, there are regional and community variations. Women in the north have relatively less autonomy than their counterparts in the south, and experience fewer opportunities for control over economic resources. A small segment of urban upper class women enjoy some of the benefits of education, careers, and economic independence.

Despite regional differences in women's status, there is much less variation in rates of domestic violence. overall, domestic violence is prevalent in all settings, regions, and religious groups. Although there are some differences in reporting by region—women in the south report fewer beatings than their counterparts in the north—in-depth qualitative studies have found considerable under-reporting in the data.

WHAT IS DOMESTIC VIOLENCE?

Domestic violence (also called Intimate Partner Violence (IPV), domestic abuse or relationship abuse) is a pattern of behaviors used by one partner to maintain power and control over another partner in an intimate relationship.

Domestic violence does not discriminate. Anyone of any race, age, sexual orientation, religion or gender can be a victim – or perpetrator – of domestic violence. It can happen to people who are married, living together or who are dating. It affects people of all socioeconomic backgrounds and education levels.

The strict importance of the word Domestic Violence essentially implies any violent or forceful conduct of any individual inside the Home as the word here may be 'Domestic' or as such a brutal fight between a couple which may constrain a female companion to file for mental badgering fundamentally under Domestic Violence Act and different arrangements of Indian Penal Code (IPC) and Criminal Procedure Code (Cr.P.C). Essentially from ages, Domestic Violence has been Committed against ladies however in the present situation men can likewise petition for Domestic Violence which can go under the classification of Domestic Abuse, family viciousness fundamentally emerging in the connections, for example, marriage incorporating associations with relatives, family companions and so on and it can be in different structures, for example, physical animosities, sexual manhandle, psychological mistreatments and so forth.

Violence could of various types i.e. physical abuse, emotional abuse, economic abuse, psychological abuse.

The home is often equated with a sanctuary, a place where individuals seek love, safety, security and shelter. For some women, the home is a place that imperils lives and breeds some of the most drastic forms of violence perpetrated against girls and women. Violence is usually perpetrated by males who are, or who have been in positions of trust and intimacy and power e.g. husbands, fathers, fathers-in law, stepfathers, brothers, uncles, sons, or other relatives.

The Protection of Women from Domestic Violence Act (PWDVA), 2005¹⁶ defines domestic violence as any act, omission or commission or conduct of the respondent, which includes threat or actual abuse.

In the 1996 survey of 6902 men in the state of Uttar Pradesh, up to 45% of married men acknowledged physically abusing their wives.¹⁷ The National Health Survey conducted under the stewardship of the Ministry of Health and Family Welfare, reported that >1/3 of women (34%) between the ages of 15–49 years have experienced spousal physical violence.¹⁸ The adverse health consequences that women experience due to violence are wide-ranging with physical, reproductive and sexual and mental health outcomes.

In a community-based study involving 450 women in Gujarat,¹⁹ 42% experienced physical beatings and sexual abuse, and 23% experiences abusive language, belittlement and threats. It is interesting to note that 56% women belief that wife beating is justified.

¹⁶ Allahabad (India): Ekta Law Agency; 2007. *The Protection of Women from Domestic Violence Act, 2005*. Diglot Edition.

¹⁷ Florence: Innocenti Digest, No 6. UNICEF Innocenti Research Centre; 2000. *United Nations International Children's Emergency Fund (UNICEF). Domestic Violence Against Women and Girls. Magnitude of Problem*; pp. 4–7.

¹⁸ Vol. 1. Mumbai (India): International Institute for Population Statistics (IPPS) and Macro International; 2007. *National Family Health Survey (NHFS-3), 2005-2006*.

¹⁹ Nambi S. 1st ed. Chennai: Manushanthi Mental Healthcare Pvt Ltd; 2011. *Forensic Psychiatry (Psychiatry and Law) Indian Perspective. Psychosocial and Legal Aspects of Domestic Violence*.

The International Center for Research on Women (ICRW) in multiple centers in India reported that 85% of men admit they had indulged in violent behavior against their wives at least once in last 12 months. 57% of men admitted to have sexual abuse with their wives. 32% of men admitted to committing violence on their pregnant wives. The men indulged in violence to establish their power over the weaker sex. Subtle and insidious forms of violence include repeated humiliation, insults, forced isolation, limitations on social mobility, the constant threat of violence and injury, and denial of economic resources.²⁰

SEXUAL HARASSMENT AT WORK PLACE

A social worker (BD) was gang-raped by a group of the upper class, influential men, because she had tried to stop the practice of child marriage. The accused was acquitted by the trial court. This inspired several women's groups and NGOs to file a petition in the Supreme Court under the collective platform of Vishaka (Vishaka and others vs. State of Rajasthan and others).²¹ It is a landmark case as it was the basis for Supreme Court guidelines on sexual harassment at workplace.

DOWRY RELATED VIOLENCE

The age-old practice of dowry has persisted and driven many women to suicide.²² In 50 district court judgments, 1987–1989, Maharashtra, West India, there was dowry related violence. 120 cases of dowry deaths and 20 cases of intentional injury related

²⁰ Washington (USA): ICRW; 2001. The International Centre for Research on Women. Domestic Violence in India II: Exploring Strategies, Promising Dialogue. ICRW Information Bulletin; pp. 1–8.

²¹ Vishakha and Others V. State of Rajasthan and Others, AIR 1997 SC 3011 at 3012, 3013. 1997. [Last accessed on 2014 Oct 21]. <http://www.indiankanoon.org/doc/1031794/>

²² Kumari R. New Delhi (India): Radiant; 1989. Brides are not for Burning: Dowry Victims in India.

to dowry were identified. There were intentional injuries, including physical violence (59%), mental torture 28%, molestation by family members and perversity (10%), and starving 3%.²³ The causes of death in the women who died were: Burns 46% and drowning 34%. It is worth noting that the women were very young-88% below 25 years; 58% of them were childless, and 22% had only female children.²⁴ Harassment by in-laws on issues related to dowry emerged as a risk factor for poor mental health. It is characteristic of the Indian setting.²⁵ Dowry related violence is on the rise in India. More than 5000 women are killed annually by their husbands and in-laws, who burn them in “accidental” kitchen fires if their ongoing demands for dowry before and after marriage are not met. on an average five women a day are burned, and many more cases go unreported.²⁶

CAUSES OF VIOLENCE AGAINST WOMEN: RISK FACTORS

Psychiatric morbidity

Regular consumption of alcohol by the husband has been strongly associated with poor mental health of women.^{27,28} Alcohol has consistently emerged as a risk marker for

²³ Seshu MM, Bhosale V. Sangli, Maharashtra, India: Meena Seshu; 1990. Imprisoning Womanhood: A Report of Death and Desertion and of Women in Sangli district; p. 62. In: Women of South-East Asia, a Health Profile. Issue 34 of WHO regional publications: South-East Asia series. New Delhi: World Health Organization, Regional office for South-East Asia; 2000.

²⁴ Seshu MM, Bhosale V. Sangli, Maharashtra, India: Meena Seshu; 1990. Imprisoning Womanhood: A Report of Death and Desertion and of Women in Sangli district; p. 62. In: Women of South-East Asia, a Health Profile. Issue 34 of WHO regional publications: South-East Asia series. New Delhi: World Health Organization, Regional office for South-East Asia; 2000.

²⁵ Kumar S, Jeyaseelan L, Suresh S, Ahuja RC. Domestic violence and its mental health correlates in Indian women. *Br J Psychiatry*. 2005;187:62-7.

²⁶ Florence: Innocenti Digest, No 6. UNICEF Innocenti Research Centre; 2000. United Nations International Children's Emergency Fund (UNICEF). Domestic Violence Against Women and Girls. Magnitude of Problem; pp. 4-7.

²⁷ Kumar S, Jeyaseelan L, Suresh S, Ahuja RC. Domestic violence and its mental health correlates in Indian women. *Br J Psychiatry*. 2005;187:62-7.

²⁸ Jeyaseelan L, Kumar S, Neelakantan N, Peedicayil A, Pillai R, Duvvury N. Physical spousal violence against women in India: Some risk factors. *J Biosoc Sci*. 2007;39:657-70.

partner violence that is specially consistent across a range of settings²⁹ for all types of violence.³⁰ Alcohol operates as a situational factor, increasing the likelihood of violence by reducing inhibitions, clouding judgment and impairing an individual's ability to interpret cues.³¹ others morbidities such as bipolar disorder, paranoid schizophrenia, delusional and antisocial personality disorder make the man more vulnerable to commit sexual crimes. There is evidence from many forensic cases (Bobbit, Manu Sharma, Nirbhaya etc.) that alcohol was the common denominator in violence against women.

Sociodemographic factors

Patriarchy has been cited as the main cause of violence against women. Early (15–19 years;³² 10–19 years),³³ and young age (31–39 years),³⁴ illiteracy,³⁵ coupled with low level of education, poor socioeconomic status,^{36,37} women with no income of their own,³⁸ and urban domicile³⁹ have been cited as risk factors for domestic violence. Women engaged in small business and farming were more likely to be abused than

²⁹ McCauley J, Kern DE, Kolodner K, Dill L, Schroeder AF, DeChant HK, et al. The “battering syndrome”: Prevalence and clinical characteristics of domestic violence in primary care internal medicine practices. *Ann Intern Med.* 1995;123:737–46.

³⁰ Babu BV, Kar SK. Domestic violence in Eastern India: Factors associated with victimization and perpetration. *Public Health.* 2010;124:136–48.

³¹ Flanzer JP. Alcohol and other drugs are key causal agents of violence. In: Gelles RJ, Loseke DR, editors. *Current Controversies on Family Violence.* Thousand Oaks, CA: SAGE; 1993. pp. 171–81.

³² Geneva: World Health Organisation; 2005. World Health Organisation. WHO Multi-Country Study on Women's Health and Domestic Violence Against Women: Summary Report of Initial Results on Prevalence, Health Outcomes and Women's Responses.

³³ Sarkar M. A study on domestic violence against adult and adolescent females in a rural area of west bengal. *Indian J Community Med.* 2010;35:311–5.

³⁴ Sarkar M. A study on domestic violence against adult and adolescent females in a rural area of west bengal. *Indian J Community Med.* 2010;35:311–5.

³⁵ Sarkar M. A study on domestic violence against adult and adolescent females in a rural area of west bengal. *Indian J Community Med.* 2010;35:311–5.

³⁶ Nambi S. 1st ed. Chennai: Manushanthi Mental Healthcare Pvt Ltd; 2011. Forensic Psychiatry (Psychiatry and Law) Indian Perspective. Psychosocial and Legal Aspects of Domestic Violence.

³⁷ Kumar S, Jeyaseelan L, Suresh S, Ahuja RC. Domestic violence and its mental health correlates in Indian women. *Br J Psychiatry.* 2005;187:62–7.

³⁸ Nambi S. 1st ed. Chennai: Manushanthi Mental Healthcare Pvt Ltd; 2011. Forensic Psychiatry (Psychiatry and Law) Indian Perspective. Psychosocial and Legal Aspects of Domestic Violence.

³⁹ Babu BV, Kar SK. Domestic violence in Eastern India: Factors associated with victimization and perpetration. *Public Health.* 2010;124:136–48.

women who were housewives or who had occupational status equal to that of husbands.⁴⁰ Where women have a higher economic status than their husbands and are seen as having sufficient power to change traditional gender roles, risk for violence is high.^{41,42} Unmarried,⁴³ separated or divorced status or being in a live-in relationship^{44,45} have been reported to be associated with violence against women.

Family factors

Exposure to harsh physical discipline during childhood and witnessing the father beating the mother during childhood is a predictor of victimization and perpetration of violence against his wife in adulthood.^{46,47,48} Childlessness,⁴⁹ longer marital duration, having more children, extended family and large family size have been associated with victimization and perpetration of domestic violence.⁵⁰ In addition, the age-old

⁴⁰ Babu BV, Kar SK. Domestic violence in Eastern India: Factors associated with victimization and perpetration. *Public Health*. 2010;124:136–48.

⁴¹ Babu BV, Kar SK. Domestic violence in Eastern India: Factors associated with victimization and perpetration. *Public Health*. 2010;124:136–48.

⁴² Koenig MA, Ahmed S, Hossain MB, Khorshed Alam Mozumder AB. Women's status and domestic violence in rural Bangladesh: Individual- and community-level effects. *Demography*. 2003;40:269–88.

⁴³ Sarkar M. A study on domestic violence against adult and adolescent females in a rural area of west bengal. *Indian J Community Med*. 2010;35:311–5.

⁴⁴ Babu BV, Kar SK. Domestic violence in Eastern India: Factors associated with victimization and perpetration. *Public Health*. 2010;124:136–48.

⁴⁵ Geneva: World Health Organisation; 2005. World Health Organisation. WHO Multi-Country Study on Women's Health and Domestic Violence Against Women: Summary Report of Initial Results on Prevalence, Health Outcomes and Women's Responses.

⁴⁶ Kumar S, Jeyaseelan L, Suresh S, Ahuja RC. Domestic violence and its mental health correlates in Indian women. *Br J Psychiatry*. 2005;187:62–7.

⁴⁷ Nambi S. 1st ed. Chennai: Manushanthi Mental Healthcare Pvt Ltd; 2011. Forensic Psychiatry (Psychiatry and Law) Indian Perspective. Psychosocial and Legal Aspects of Domestic Violence.

⁴⁸ Jeyaseelan L, Kumar S, Neelakantan N, Peedicayil A, Pillai R, Duvvury N. Physical spousal violence against women in India: Some risk factors. *J Biosoc Sci*. 2007;39:657–70.

⁴⁹ Koenig MA, Stephenson R, Ahmed S, Jejeebhoy SJ, Campbell J. Individual and contextual determinants of domestic violence in North India. *Am J Public Health*. 2006;96:132–8.

⁵⁰ Kumar S, Jeyaseelan L, Suresh S, Ahuja RC. Domestic violence and its mental health correlates in Indian women. *Br J Psychiatry*. 2005;187:62–7.

custom of dowry and gifts for husband and in-laws has been found to be strongly related to violence against women in India.⁵¹⁵²⁵³

Married women with mental illness: The triple tragedy⁵⁴

Women with severe mental illness are ostracized on three accounts, the female status, psychosis and separated/divorced status, which together constitute the triple tragedy.⁵⁵ For many women, it is a no-win situation. They are neither wanted at parents' homes nor at their husbands' homes. These women are helpless and suffer from a multitude of stresses that are unique to Indian culture⁵⁶ such as partial desertions, forced to live with the husband she hates, not being granted permission to enter her own home, being sent back to her parents every time her symptoms increase, parents being forced to pay for her medical expenses, not allowed to take her medication etc.

The situation with respect to marriage of women with mental illness in India is intriguing. It has been aptly described as the "Indian paradox" by Sharma and Tripathi.⁵⁷ All women must marry irrespective of the presence of mental illness. It is possible to marry women with mental illness, sometimes even when there is active psycho-pathology, because most marriages are arranged, and it is often possible to lure the other party with a handsome dowry. Despite violence being meted out to these

⁵¹ Kumar S, Jeyaseelan L, Suresh S, Ahuja RC. Domestic violence and its mental health correlates in Indian women. *Br J Psychiatry*. 2005;187:62–7.

⁵² Jeyaseelan L, Kumar S, Neelakantan N, Peedicayil A, Pillai R, Duvvury N. Physical spousal violence against women in India: Some risk factors. *J Bio Soc Sci*. 2007;39:657–70.

⁵³ Babu BV, Kar SK. Domestic violence in Eastern India: Factors associated with victimization and perpetration. *Public Health*. 2010;124:136–48.

⁵⁴ Sharma I, Tripathi CB. Hindu marriage Act, psychotic illness and women: The Indian paradox. In: Sharma I, Tripathi MN, editors. Varanasi (India): Mahaveer Press; 2009. pp. 317–26.

⁵⁵ Sharma I, Tripathi CB. Hindu marriage Act, psychotic illness and women: The Indian paradox. In: Sharma I, Tripathi MN, editors. Varanasi (India): Mahaveer Press; 2009. pp. 317–26.

⁵⁶ Sharma I. Souvenir Echo le. Kovalam, Thiruvananthapuram: Indian Association of Private Psychiatry; 2011. Marriage and mental illness: Helplessness of Indian Women; pp. 54–60.

⁵⁷ Sharma I. Souvenir Echo le. Kovalam, Thiruvananthapuram: Indian Association of Private Psychiatry; 2011. Marriage and mental illness: Helplessness of Indian Women; pp. 54–60.

women, they make frantic attempts for restitution of conjugal rights rather than for separation or divorce.⁵⁸

TRADITIONAL AND CULTURAL PRACTICES PERPETUATING VIOLENCE AGAINST WOMEN

Female genital mutilation

Two million/year undergo Female Genital Mutilation (FGM) in the world. It takes place in 28 countries in Africa, in some regions of Asia and the Middle East and in certain immigrant communities in North America, Europe, and Australia. FGM can lead to death, infertility, and long-term psychological trauma combined with increased physical suffering.

Acid attacks

In Bangladesh, it estimated that there are over 200 acid attacks each year. Sulfuric acid attacks have emerged as a cheap and readily accessible weapon to disfigure and sometimes kill women and girls for reasons as varied as family feuds, inability to meet dowry demands, and rejection of marriage proposals.

Killing in the name of family honour

In several countries of the world including Bangladesh, Egypt, Jordan, Lebanon, Pakistan, Turkey, and India, women are killed to uphold the honour of the family due to varied reasons such as alleged adultery, premarital relationship (with or without sexual relations), rape, falling in love with a person the family disapproves, which

⁵⁸ Sharma I. *Souvenir Echo* le. Kovalam, Thiruvananthapuram: Indian Association of Private Psychiatry; 2011. Marriage and mental illness: Helplessness of Indian Women; pp. 54–60.

justify a male member of the family to kill the woman concerned. It is rather disturbing that in certain countries (Jordan) the penal laws governing such crimes are lenient if the person committing the crime is below the age of 18 years. In India honour killings appear to be on the rise.

Early marriages

Early marriage with or without the consent of the girl, constitutes a form of violence as it undermines the health and autonomy of millions of girls. Nearly 12% were married by age 12, 26% by age 15, and 24% married by age 18.⁵⁹ The legal minimum age for marriage is usually lower for females as compared to males. In many countries, the minimum legal age for marriage with parental consent is considerably lower, than without it. More than 50 countries allow marriage at 16 and below with parental consent.⁶⁰

Sociocultural factors disfavouring women

Stereotypes of gender roles have continued over the ages. The primary roles for women have been marriage and motherhood. Women must marry because an unmarried, separated or divorced status is a stigma. The custom of dowry is still prevalent in Indian marriages. Marriage cannot be dissolved. In the settlement of marriage, it is generally ensured that the woman is younger, nonworking, and less educated than her husband. Thus, the “brother-sister” or “father-daughter” model continues into marriage with the husband having the right to dominate and discipline his wife. After marriage the girl has to go to her husband's home, never to return to her parent's place. At her husband's place, she has to accept the prevailing norm of an inferior status of the “Bahu” (daughter-in-law), which means she should adjust and be

⁵⁹ Nambi S. 1st ed. Chennai: Manushanthi Mental Healthcare Pvt Ltd; 2011. Forensic Psychiatry (Psychiatry and Law) Indian Perspective. Psychosocial and Legal Aspects of Domestic Violence.

⁶⁰ Florence: Innocenti Digest, No 6. UNICEF Innocenti Research Centre; 2000. United Nations International Children's Emergency Fund (UNICEF). Domestic Violence Against Women and Girls. Magnitude of Problem; pp. 4–7.

tolerant and respectful toward all members of the family, including those much younger to her. She should not disclose her problems to anyone outside the home, nor take help from outside (not even parents). Husband is given a divine status. Relatives bless the husband “*Suhagvati rahō*” (may your husband live long), or “*Phalo putō*” (may you bear fruits [children]); not the wife. She should bring money and gifts from parents on various festivals. She has nothing of her own. Without husband life has no meaning for her. Although the practice of Sati has declined, enforced widowhood is still prevalent. These sociocultural factors have continued over the years and have put women at risk for various forms of abuse.

Modernisation

Modern styles of living and rapid technological advances have also been blamed. Mobiles, ipads, television, computers, internet have become the order of the day. Women are moving out of the houses more freely and there is free mixing of the two genders. “Fashion, Drink, Dine and Make Merry” or “You live only once” culture is being promoted amongst the youth. Television and cinemas are portraying sexual material for making fast money. Pornographic material is easily available to many on the internet and through other ways.

Late marriages

Marriages are being delayed for various reasons with a trend toward getting married around 30, or even later.

Life stress

Poor quality of education, high competition in education and employment, corruption and inflation are the common stresses of the youth. The high-risk individual could be a young person, who lives away from his home, anxious and depressed, frequently views pornography and resorts to alcohol for recreation and relaxation.

Judiciary and law enforcement machinery

An insensitive, inefficient, corrupt and unaccountable judicial system and law enforcement machinery fails to deter against various forms of crimes.

Decline in moral and religious values

Population explosion

Unplanned increase in population leads to many types of stresses, which indirectly contribute to the risk of violence against women.

CHAPTER-VII

LEGAL RESPONSE TO VIOLENCE

COMMUNITIES' RESPONSE TO VIOLENCE

A few women-initiated community-level responses to domestic violence are praise worthy. The Nari Adalat and Sahara Sangh initiatives have been organized by the Department of Education's Mahila Samakya Program in two districts of Uttar Pradesh and Gujarat. Salishe, a traditional method, is being utilized by the Nongovernment organisation Shramajibee Mahila Samiti in West Bengal. The ICRW conducted a television program in four channels entitled "Bol". It created awareness among women.

LEGISLATIVE RESPONSE

International: There are a number of international Instruments to curb violence against women. The United Nations General Assembly resolution endorsed the urgent need for the universal application of women's rights of equality, security, liberty integrity and dignity. Article 55 and 56 of United Nations charter cast a legal obligation on United Nations organization to promote respect for equality and human rights.

The Universal Declaration of Human Rights, article 5, states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.⁶¹ There have been three United Nations world conferences on women. one in Mexico in 1975, the second in Copenhagen in 1980, and the third one in Nairobi, wherein strategies were framed to promote gender equality and opportunities for women. These were based on three objectives: Equality, development and peace.

The Vienna Declaration, 1993⁶² calls for action to integrate the equal status human rights of women. It stresses toward elimination of violence against women in public and private life. The Beijing conference, 1995⁶³ provided a platform for concentration on some of the key issues identified as fundamental obstacles to the advancement of majority of women in the world. It focused on issues such as discrimination against women, violence against women, etc.

The Convention on Elimination of all forms of Discrimination against Women (CEDAW), 1981,⁶⁴ to which 166 countries are members, is a landmark document because it framed violence against women within the framework of human rights. It identified female as the primary risk factor for violence and broadened the definition of gender violence (to include all aspects of women's life).

⁶¹ Das PK, editor. *Universal Handbook on Protection of Women from Domestic Violence Acts and Rules*. Delhi (India): Universal Law Book Publishing Co. Pvt Ltd; 1948. Universal Declaration of Human Rights, (Relevant Provisions). Vide United Nations general assembly resolution 17A (III), dated 10th December, 1948; p. 253.

⁶² Das PK, editor. *Universal Handbook on Protection of Women from Domestic Violence Acts and Rules*. Delhi (India): Universal Law Book Publishing Co. Pvt Ltd; 1993. United Nations World Conference on Human Rights (Relevant Provisions). Vienna Declaration and plan for action. Adopted at Vienna, Austria, 25 June 1993; p. 256.

⁶³ New York: UN Department of Public Information; United Nations. The Beijing Declaration and Platform for Action; p. 75.

⁶⁴ The United Nations Committee on Convention on Elimination of all Forms of Discrimination Against Women, General Recommendation No XII. 1989

DOMESTIC LEGAL REMEDIES IN INDIA

The Constitution of India:⁶⁵ Article 14 is on equality.

Difference in treatment between men and women by the state is totally prohibited on grounds of religion race, caste, sex or place of birth. Article 21 is on right to live; right to live with human dignity.

The National Commission for Women: It was set up as a statutory body in January 1992 under the National Commission for Women Act, 1990⁶⁶ to review the constitutional and legal safeguards for women; recommend remedial legislative measures, facilitate redress of grievances and advise the Government on all policy matters affecting women.

The Supreme Court guidelines on sexual harassment at work place: For the first time, the Court drew upon an international human rights law instrument, the CEDAW to pass a set of guidelines. The Court defined sexual harassment at work place as any unwelcome gesture, behavior, words or advances that are sexual in nature. “It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of sexual harassment by taking all steps required.”

The legislation relating to violence against women comprises the Indian Penal Code (IPC),⁶⁷ civil law and special laws.

⁶⁵ Das PK, editor. Delhi (India): Universal Law Book Publishing Co. Pvt Ltd; 2007. The Constitution of India (Relevant Provisions) p. 115.

⁶⁶ National Commission for Women Act, 1990 (Act No. 20 of 1990). In: The Gazette of India: Government of India, Extra Part II, Sec. 1992 Jan 31st;3(ii)

⁶⁷ Delhi (India): Universal Law Publishing Co Pvt Ltd; 2005. Indian Penal Code (45 of 1860) as Amended by The Election Laws (Amendment) Act, 2003 (24 of 2003) with Classification of offences and State Amendments, 1980. Bare Act with Short Notes.

Dowry and dowry death: The Dowry Prohibition Act (DPA), 1961⁶⁸ applies to all people, Hindus, Muslims, Christians, Parsis and Jews. Giving, taking or abetting the giving or taking of dowry is an offence, which is punishable. Several states (Bihar, West Bengal, Orissa, Haryana, Himachal Pradesh, and Punjab) amended the DPA to give it more teeth. The law was found to fail to stall the evil.

Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, within 7 years of marriage, and if shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand of dowry, such death shall be called “dowry death” and such husband or relative shall be deemed to have caused her death (IPC 304-B).⁶⁹ 113-B Indian Evidence Act, 1872, was inserted for the presumption as to dowry death.

Abetment of suicide of child or insane person: If any person under 18 years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life or imprisonment for a term not exceeding 10 years and shall also be liable for fine (305 IPC).⁷⁰ However, the difficulty is that if it is shown the victim has major mental illness, the benefit of doubt is given to the accused and he is acquitted.

Abetment of suicide: If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term

⁶⁸ Delhi (India): Universal Law Publishing Co Pvt Limited; 2008. The Dowry Prohibition Act, 1961. (Act 28 of 1961)

⁶⁹ Delhi (India): Universal Law Publishing Co Pvt Ltd; 2005. Indian Penal Code (45 of 1860) as Amended by The Election Laws (Amendment) Act, 2003 (24 of 2003) with Classification of offences and State Amendments, 1980. Bare Act with Short Notes.

⁷⁰ Delhi (India): Universal Law Publishing Co Pvt Ltd; 2005. Indian Penal Code (45 of 1860) as Amended by The Election Laws (Amendment) Act, 2003 (24 of 2003) with Classification of offences and State Amendments, 1980. Bare Act with Short Notes.

which may extend to 10 years and shall also be liable for fine (306 IPC).⁷¹ 113-A of Indian Evidence Act, 1872, relates to the presumption as to abetment of suicide. The offences of dowry and abetment of suicide are cognizable, nonbailable and non-compoundable.

Sexual offences: A man is said to have committed rape if he has sexual intercourse with a woman against her will and consent; or with her consent when the man knows that he is not her husband or when she thinks that he is her lawful husband; or with her consent when she is of unsound mind or is intoxicated by herself or the man. However, sexual intercourse by a man with his own wife, the wife not being under 15 years, is not rape (375 IPC).⁷² The latter provision seems deficient as it does not include marital rape.

Voluntarily having carnal intercourse against the order of nature with any man, woman, or animal is an offence for which the person shall be imprisoned for life and shall also be liable for fine. This provision is hardly used (377 IPC).⁷³

of cruelty by husband and relatives of husband: The willful conduct of the husband or his relative that is likely to drive the women to commit suicide or cause physical or mental trauma to her or harassment of a woman with a view to coercing her or any of her relative to meet any unlawful demand for property would be punishable by imprisonment for 3 years and fine (498A IPC). This is the most widely used provision against domestic violence.

⁷¹ Delhi (India): Universal Law Publishing Co Pvt Ltd; 2005. Indian Penal Code (45 of 1860) as Amended by The Election Laws (Amendment) Act, 2003 (24 of 20003) with Classification of offences and State Amendments, 1980. Bare Act with Short Notes.

⁷² Delhi (India): Universal Law Publishing Co Pvt Ltd; 2005. Indian Penal Code (45 of 1860) as Amended by The Election Laws (Amendment) Act, 2003 (24 of 20003) with Classification of offences and State Amendments, 1980. Bare Act with Short Notes.

⁷³ Delhi (India): Universal Law Publishing Co Pvt Ltd; 2005. Indian Penal Code (45 of 1860) as Amended by The Election Laws (Amendment) Act, 2003 (24 of 20003) with Classification of offences and State Amendments, 1980. Bare Act with Short Notes.

- other offences in mentioned in IPC are: Causing miscarriage (312 IPC), causing miscarriage without woman's consent (313 IPC), death caused by an act done with intent to cause miscarriage; if act was done without woman's consent (314 IPC), act done with intent to prevent child being born alive or to cause it to die after birth (315 IPC) and causing death of quick unborn child by act not amounting to culpable homicide (316 IPC).
- The Family Courts Act, 1984: The Family Courts Act, 1984 (Act 66 of 1984); The Family Courts Amendment, 1991 (Act 59 of 1991) The Act was established with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs.
- The Indecent Representation of Women (Prohibition) Act, 1986.⁷⁴: This Act prohibits the indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner is prohibited.

The Commission of Sati (prevention) Act, 1987:⁷⁵ This Act is for the prevention and glorification of sati.

Protection of Women From Domestic Violence Act, 2005:⁷⁶ The Protection of Women From Domestic Violence Act (PWDVA), 2005 was enacted to provide for more effective protection of the rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family and for matters connected thereto. It recognizes 4 types of domestic violence: Physical, verbal, and emotional (including not having a child or a male child, marrying without consent), and economic (including violence related to stridhan, dowry, property) and sexual (includes sexual abuse and marital rape).

⁷⁴ 1986. Dec 23, The Indecent representation of Women (Prohibition) Act 1986. In: The Gazette of India: Government of India, Extra Part II, Sec. 1.

⁷⁵ The Commission of Sati (Prevention) Act, 1987. (Act 2 of 1988) Government of India. Vide GSR 359 (E) 1988 Mar 21;

⁷⁶ Allahabad (India): Ekta Law Agency; 2007. The Protection of Women from Domestic Violence Act, 2005. Diglot Edition.

The Aggrieved Person (AP) is a woman who has been in a domestic relationship with the respondent. The respondent is any adult male person who is, or has been in a domestic relationship with the AP and against whom the AP has sought relief. The AP or any person can complain directly (verbal), telephonically or via E-mail. There is provision for various orders (protection, residence, maintenance (monetary relief), custody orders and emergency help. There is also provision for assistance (counselor, police, and assistance for initiating criminal proceedings, shelter home, medical facilities, and legal aid).

The PWDVA is good in many ways. It is friendly to even to poor and illiterate women; it educates the woman regarding the rights and available assistance; provides many reliefs (which facilitate psychosocial rehabilitation), free legal advice and help to initiate legal proceedings against respondent; it attempts to restore the family; and last, but not the least, it empowers the woman. The main criticism against PWDVA is that mental illness in AP or respondent is ignored. Apart from this, there are mixed reactions toward few legislations, especially PWDVA, DPA and IPC 498A, because they have been frequently abused and are considered as “anti-men.”

CHAPTER-VIII

WHAT SHOULD VICTIM DO?

WHAT SHOULD VICTIMS DO WHEN THEY ARE ATTACKED?

What victims of domestic violence must remember is, to not blame themselves for what is happening to them. Violence is unacceptable and the perpetrator is 100 per cent responsible. Victims must not make excuses for the actions of the perpetrators, as there are none. Acceptance of such actions may lead to a vicious cycle of abuse.

- The option of reporting domestic abuse to the police is always available. However, if the victim does not intend on that course of action, they can create a safety plan for themselves, with a safe word to alert people they live with when faced with a threatening situation.
- It is advisable to keep a friend, family, neighbour or someone in proximity informed in case of escalating risk. It is also helpful to discuss this with trusted family member/s or friends and build perpetrator accountability. There are also a number of helplines for domestic violence and free online counselling websites that victims can use for relief.

ADDRESSING DOMESTIC VIOLENCE

An effective response to violence must be multi-sectoral; addressing the immediate practical needs of women experiencing abuse; providing long-term follow up and assistance; and focusing on changing those cultural norms, attitudes and legal provisions that promote the acceptance of and even encourage violence against women, and undermine women's enjoyment of their full human rights and freedoms.

The health sector has unique potential to deal with violence against women, particularly through reproductive health services, which most women will access at some point in their lives. However, this potential is far from being realized. Few doctors, nurses or other health personnel have the awareness and the training to identify violence as the underlying cause of women's health problems.

The health sector can play a vital role in preventing violence against women, helping to identify abuse early, providing victims with the necessary treatment and referring women to appropriate care. Health services must be places where women feel safe, are treated with respect, are not stigmatized, and where they can receive quality, informed support. A comprehensive health sector response to the problem is needed, in particular addressing the reluctance of abused women to seek help.

ROLE OF PUBLIC HEALTH PERSONNEL

Domestic violence against women has been identified as a public health priority. Public health personnel can play a vital role in addressing this issue.

Since violence against women is both a consequence and a cause of gender inequality, primary prevention programs that address gender inequality and tackle the root causes of violence are all essential. Public health workers have a responsibility to build awareness by creating and disseminating materials and innovative audio-visual messages, which project a positive image of girl child and women in the society. An integrated media campaign covering electronic, print and film media that portrays domestic violence as unacceptable is the need of the hour. The role of increasing male responsibility to end domestic violence needs to be emphasized.

Hence, the responses to the problem must be based on integrated approach. The effectiveness of measures and initiatives will depend on coherence and co-ordination associated with their design and implementation. The issue of domestic violence must be brought into open and examined as any other preventable health problem, and best remedies available be applied. As a responsible citizen we should keep our eyes open for signs of violence around us too.

CHAPTER: IX

IMPORTANCE OF JUDGMENT IN THE DEVELOPMENT OF LAW

The State is a dynamic organism and to cope with it, the Indian Constitution also experiences adaptation to such changes. In our country, there are some cases that have created a landmark and build a base for the development of laws dealing with the offences against women. Consequent to these cases, our Constitution, as well as the Indian Penal Code, has undergone various changes.

A Judgement is not only a decision, but a collective pronouncement of various factors such as laws, facts, evidence and other circumstances. Basically, a judgement is a formal dictation of an authoritative opinion or a formal decision given by a court. The Judiciary as one of the three basic organs of Indian state structure has an unsubstitutable role in the development of laws in a constitutional democracy in India. our constitution frames a mechanism where the courts are empowered to enforce constitutional rights. Historically courts have always had an important role in lawmaking. Common-law is an example as it has evolved from judicial pronouncements.

Role of the judiciary as the authority to whom all the new issues are brought of significant value. Judiciary also has the role of interpreting statutes. Ratio decidendi, given by a judge in a case, becomes a rule and acts as an essential part of that law.

OFFENCE AGAINST WOMEN UNDER IPC

The Indian Penal Code, 1860, provides with the penal provisions for acts that would constitute a criminal liability. Those provisions are stated below-

1. Causing grievous hurt intentionally by use of acid (Section 326A and Section 326B).
2. Provision for rape and other related offences (section 375, 376, 376A, 376B, 376C, 376D, and 376E).
3. Attempt to commit rape (Section 376/511).
4. Kidnapping and abduction for different purposes (Sections 363–373).
5. Dowry death (Section 304B).
6. Cruelty by husband or his relatives (Section 498A).
7. outraging the modesty of women (Section 354).
8. Sexual harassment (Section 354A).
9. Use of criminal force on women with intent to disrobe a woman (Section 354B).
10. Voyeurism (Section 354C).
11. Stalking (Section 354D)
12. Importation of girls up to 21 years of age (Section 366B)
13. Insult to the modesty of women by the means of word, gesture or action (Section 509)

This article further tries to enumerate certain landmark judgements which did not only give a better explanation to the existing provisions but also recognised the need for amendment or addition to pre-existing laws.

LANDMARK JUDGMENTS

These judgments opened up scope for changes in the pre-existing laws which either were not partially or completely sufficient to protect women from offences against their body or dignity.

TUKARAM V. THE STATE OF MAHARASHTRA

In this case, the prosecution alleged that she was raped by the accused 1 and accused 2 who fondled her private parts, in the police station. She was there because her brother filed a report against her husband and in-law family members. As per her statement, the police constable accused 1 sent her family members away and then raped her multiple times.

It was held, by the Supreme Court that Rape under section 375 of IPC could not be proven under this case. The reasoning behind it given by the court was that there was no direct evidence to prove any bodily harm or consent under threat as she was taken by the accused peacefully in front of her family. Also, she changed her statement numerous times during the trial which made her statement unreliable. Therefore, an acquittal was granted to the accused.

Following this case, the Criminal law Amendment Act, 1983 was passed. The Act amended section 114A of the Indian Evidence Act, which stated that consent won't be presumed until given clearly.

Section 376 of the IPC was also amended, and the punishment for custodial rape was extended to 7 years, also, the onus of proof was put on accused once sexual intercourse is proven.

VISHAKA & ORS. V. STATE OF RAJASTHAN

This case was filed as a batch of PII, to protect women from workplace sexual harassment. The Court recognized that under Article 14(2), 19(1)(g), and 21 of the Constitution, the fundamental rights also include the right to a safe working environment. Court also issued various important guidelines for employers to follow so that a healthy and safe working environment for women could be created. Directives were given to the state and the central government to enforce those guidelines via enactments in parliament to enforce those guidelines.

Supreme Court defined the ambit of sexual harassment and its extent. Court mentioned that physical touch or conduct, displaying of pornography, any unpleasant taunt or misbehaviour, or any sexual desire towards women or sexual favour will fall under sexual harassment. The court under the guidelines given made it clear for setting up of a redressal mechanism for any complaint of sexual harassment in the work environment.

LAXMI V. UNION OF INDIA

This case was filed because earlier, in the case of Naeem Khan v. State, 2013, the issue of acid attack under Section 307 came into limelight when Laxmi, a 16-year-old

girl, was made a victim of an inhumane acid attack by the accused. Acid attack in terms of motive and emotions is regarded as a 'crime of passion' which is fueled by revenge or jealousy. It is presumed to be done as throwing acid is an easy way of taking revenge from a woman by disfiguring her physical body for demands like sexual favours, marriage proposals and dowry demands. Perpetrators of acid attacks by disfiguring and causing extreme physical and mental suffering to victims fulfil their desires of revenge and jealousy. The accused was held guilty and compensation to the victim was provided under Section 357(1)(b) for the physical and mental agony she went through. So, the case of Laxmi was filed to reimburse victims for their damages and help them get the required medical treatment. The punishment mentioned in the IPC is not enough for the victim to get justice because the trauma and pain of the survivor are far greater.

After being a victim to an acid attack herself, the victim Laxmi filed a PIL in the Supreme Court. In response to that PIL, a number of orders and directives were passed by the legislative and the Supreme Court of India in the form of guidelines for humane provisions and redressal of such acid-attack survivors. The changes in the Indian jurisprudence ranged to various statutes and did not limit to IPC.

The guidelines of the court

The amendment was made in the Code of Criminal Procedure, 1973 through which Section 357A was inserted by the Act-5 of 2009 requiring every state government, in coordination with the central government, for the purpose of compensation to the victim or their dependents, to prepare a scheme for providing funds who have suffered loss or injury as a result of the crime. Under the directive issued by the Supreme Court regarding the minimum compensation, it was made clear that compensation of Rs. 3,00,000/- for every acid attack victim to be given by all States and Union Territories of India.

IPC experienced the addition of Section 326A which states voluntarily causing hurt by use of acid, etc and Section 326B which states, voluntarily throwing or attempting to throw acid, etc. This was made due to the increasing cases of acid attack against women in India

RITU KOHLI CASE

In 2001, the first case of Cyberbullying was reported in India. The case was reported by Ms Ritu Kohli against the illegal act of Manish Kathuria for stalking her on the internet using some social chatting website. He misused her name and often used obscene and offensive language. He invited individuals to chat with her on the phone and disturbed her at her residence. After some time, she started receiving calls from different states and foreign countries, in which, people were talking salaciously with her. She reported the case to Delhi Police after not being able to find a solution herself. Her case was filed by the Police under section 509 for Insult to the modesty of women by the means of word, gesture or action. This law brought an Amendment to the Information Technology Act under section 66E because section 509 of IPC could not deal with such cases.

MUKESH & ANR VS STATE FOR NCT OF DELHI (NIRBHAYA RAPE CASE)

In this case, a girl was gang-raped while returning from a movie theatre with a friend. She was assaulted and gang-raped by 6 men one of whom was a 17 years old

minor. Her friend, when he tried to protect her, was also assaulted and beaten up by the convicts. Nirbhaya was gang-raped and they caused damage to her body of diabolic nature. They pulled out her intestines and mutilated her private parts. After almost a month of treatment, she died due to cardiac arrest, multiple organ failure and internal bleeding on December 29th 2012.

The Supreme Court's 3 judges bench, recognised the inhuman act of the accused. The court after taking into account the nature of their activities, how they mutilated her body and destroyed her dignity, awarded the death sentence while recognising it a 'rarest of the rare' case.

Following this case, Indian Criminal law underwent a multi-dimensional change. The most critical change was the enactment of the Criminal law Amendment, 2013.

DEVELOPMENT IN OFFENCE OF RAPE POST-CRIMINAL LAW AMENDMENT 2013

The definition of rape was widened after the Nirbhaya Case and several provisions were added in addition to Rape under section 376 of IPC. Those amendments were

- The Amendment Act has inserted more actions under the ambit of what constitutes rape, including unconsented penetration of the mouth, urethra, vagina, anus with the penis or other objects by anyone and unwillingly application of mouth to vagina, urethra and anus.
- Section 376 (2)(c) which provides provision for the offence of Rape by personnel of armed forces.
- Section 376A, which provides provision for dealing with the rape resulting in death or vegetative state.
- Section 376D, which deals with the crime of gang rape was inserted.

- Repetition of offences is punishable with life imprisonment or death.
- Employment of a trafficked person can also attract penal provision as well.
- It has also been clarified that penetration means “penetration to any extent”, and lack of physical resistance or any sort of other resistances is immaterial for constituting the offence of rape.

IPC DEVELOPMENT VIA CRIMINAL LAW AMENDMENT 2013

As per the Statement of objects and Reasons of the bill presented in the Parliament of India, the Criminal law (Amendment) Bill, 2012 was introduced in the Lok Sabha on 4th December 2012 in order to provide for stringent punishment for crimes against women. It also aims to provide more victim-friendly procedures in the trials of such cases. After the horrendous incident of gang rape, which occurred on 16th December 2012 in Delhi, a Committee, headed by Justice J. S. Verma, was set up to make recommendations on the Amendment of various laws in order to provide speedy justice and to enhance the punishment for offenders in cases of sexual assault of extreme nature. The Justice Verma Committee submitted its Report on 23rd January 2013.

The amendments and additions made by the Criminal Law Amendment Act, 2013 were as follows:

- Section 166A was inserted. The section states that if any public servant disobeys any law or order or direction shall be punished with rigorous imprisonment for a term which shall be not less than 6 months.
- Section 326A and 326B which cover the issue of the acid attack were added in the IPC. Post amendment they were made an independent offence, punishable with 10 years. Imprisonment is extendable to life imprisonment or fine or both.

- Section 354A was inserted, which states what is sexual harassment and provides penal provisions for the same.
- Section 354B was inserted, which states that it is an offence if someone uses criminal force or assaults a woman with an intention to disrobe her and provides punishment for it.
- Section 354C was inserted, which includes the offence of Voyeurism, that is, watching a woman when she is engaged in some private act including sexual acts or when her private parts are exposed.
- Section 354D was added, which made the act of stalking an offence, that is, the act of following a woman or trying to establish a contact despite her disinterest, or, monitoring via any means.
- The Age of consent has been enhanced from sixteen years to eighteen years.

STATE OF PUNJAB V. MAJOR SINGH

The Supreme court in **State of Punjab v. Major Singh**, while dealing with section 354 had interpreted the term 'women' denoting female of any age. It further held that an offence which does not amount to rape may come under the sweep of section 354, IPC.

STATE V. MUSA

In this context the decision rendered in the case of State v. Musa is worth noticing. The aforesaid offence caught the eye of the nation when a senior police officer misbehaved with another senior officer belonging to the IAS cadre. The lady officer was slapped before the members of the elite society. Their lordships (Supreme Court)

observed that the observations made in the FIR were neither absurd nor inherently improbable. Finally the accused was acquitted.

RUPEN DEO BAJAJ V. KANWAR PAL SINGH GILL

In **Rupen Deo Bajaj v. Kanwar Pal Singh Gill**, the Supreme Court said that the offence under this section should not be treated lightly as it is quite a grave offence. In certain western countries privacy to person and even privacy to procreation are regarded as very sacrosanct rights and if this offence is studied in that prospect the offence would clearly show that it affects the dignity of women and, therefore, the accused of this offence, when proved, should be appropriately dealt with.

PEOPLE'S UNION FOR DEMOCRATIC RIGHTS V. POLICE COMMISSIONER, DELHI, POLICE HEADQUARTER AND ANOTHER

In **People's Union for Democratic Rights v. Police Commissioner, Delhi, Police Headquarter and another**, the supreme court after holding that the accused was guilty of offence under section 354 of IPC, awarded, to the victim, compensation which is to be recovered from the salary of the guilty officers.

It is significant that the Indian legal framework responsible for maintaining decency or morality either by a regulatory provision or punitive provisions are compatible with

changes in social needs. The IPC has foregone these changes and these changes majorly have been made possible, only by active judicial role. offences against women under IPC that are mentioned in various sections are capable of dealing with the majority of the crimes. But in the cases mentioned, it could be seen that the provisions needed changes with the changing times to incorporate new provisions crucial to deal with recent changes in society.

The landmark Judgements only make it possible for the state to take cognizance of such cases and accept the need for legislation. These judgements highlighted the role of the judiciary as an overall guard of the rights of women. All the new developments were made in the IPC and the overall legal Framework of India, post these judgements. Also, based on the principle of *ratio decidendi*, the observation of court is a rule and a part of law hence no law could be made applicable without taking into consideration important judgements.

CHAPTER-X

EMPOWERMENT OF WOMEN

EMPOWERMENT OF WOMEN

Empowerment in the present existence has become one of the most comprehensively used terms that indicates progress and development of women. Women's groups, non-governmental development organisations, activists, politicians, governments and international agencies refer to empowerment as one of their main objectives. Empowerment leads to generation of awareness and understanding amongst women regarding programs, schemes, measures, strategies, policies, and rules. It is considered as a project, which normally individuals undergo, which eventually leads to changes and transformations. Empowerment is referred to as a process to change the distribution of power, both in interpersonal relations and in institutions throughout the society. Another meaning signifies, the process of acquiring, providing, bestowing the resources and the means or enabling access to a control over such means and resources. Given the above, the term is therefore, more relevant to the marginalized groups, the poor, the illiterates, the indigenous communities, and those women, who are struggling to acquire their rights within the society (Anonuevo, 1995).

Empowerment is a complex issue, with varying interpretations in social, economic, cultural, and political frameworks. With empowerment of women, they began to acquire understanding of number of areas, these are participation in the decision making processes; domestic work should be carried out by both males and females and not just females by themselves; women should take control of the reproductive functions and decide on the size of the family; women should be allowed

to spend the income, she has earned, according to her own needs and desires; working women should value and take pleasure in the performance of their job duties; they should be self-confident and learn to speak for their rights and should possess the ability to prevent criminal and violent acts (Anonuevo, 1995).

The measures that have been formulated to promote empowerment at the community or the organizational levels are, existence of women's organizations, allocation of funds to women and women projects, increase in the number of women leaders in village, district, provincial and national levels, involvement of women in the design, strategy, development and application of technology, participation in the community programs, productive enterprises, politics and arts, involvement of women in non-traditional tasks, increase in the training programs for women and exercising the legal rights, where required. At the national level, these are, awareness of the social and political rights, incorporation of women in the general national development plan, existence of women's networks and publications, extent to which women are publically noticeable and acknowledged and the extent to which women's issues can be addressed to the media (Anonuevo, 1995).

There are many factors that facilitate empowerment of women and these are, formations of women's organizations, availability of support systems for women, availability of women specific data and other pertinent information, availability of funds, feminist leadership, networking, positive media coverage, constructive policy climate, promotion of education and skill development amongst them, helping them to stand for themselves, encouraging them towards attainment of employment opportunities and generating awareness amongst them regarding all important areas, so that they are able to live their lives in an efficient way. on the other hand, factors that constrain the empowerment of women include, work pressure, isolation of women from each other as well as from the community, low education or lack of literacy skills, traditional viewpoints that limit the participation of women in various functions and events, shortage of finances, occurrence of conflicts, disputes, wars, internal strife and militarization, unstructured policies and disagreements, policy environment that

promotes discriminatory treatment against women, negative coverage of media and inability to raise their voice against violent and criminal acts (Anonuevo, 1995).

FUNDAMENTAL RIGHTS TO UPLIFT THE STATUS OF WOMEN

The Articles under Part III of the constitution of India, relating to the Fundamental Rights which try to improve the status of women and provide equal opportunities for them are stated as follows: (Chapter III, n.d.).

According to Article 14 of the Constitution of India - All individuals, including women are equal in the eyes of the law and they are also entitled to enjoy equal protection of laws within the territorial jurisdiction of India. It signifies that all persons irrespective of gender, should be treated equally in similar circumstances. The State should not make any discrimination between one person and another, and the law should be administered equally.

Article 15 of the Constitution of India deals with prohibition against discrimination - It prohibits the state to make any types of discrimination against any citizen including women on grounds of race, caste, gender, ethnicity, religion, place of birth and socio-economic background. It states that all citizens are entitled to enjoy equal rights regarding access to shops, hotels, restaurants, banks, infrastructure, public places etc. But the state has the right to make any special provisions for women and children and also for, scheduled castes, scheduled tribes and other backward classes.

According to Article 16 of the Constitution of India - All citizens including, women will enjoy equality of opportunity in matters of public employment, irrespective of their gender, races, castes, ethnicity, religions and socio-economic backgrounds. There are certain exceptions, i.e. Parliament may prescribe by law that residence within the state is required for a particular employment. The State is empowered to reserve certain posts for backward classes and also for the scheduled castes and scheduled

tribes and appointment in connection with a religious organisation may be reserved for persons belonging to that religion.

As per Article 17 of the Constitution of India - The System of untouchability is eliminated and Untouchability (offence) Act of 1955 was enacted by the parliament. This Act was amended by Untouchability (offence) Amendment Act 1976, to make the law more stringent to remove untouchability from the society.

According to Article 19 of the Constitution of India, every citizen including women have the right to freedom of speech and expression, to assemble peacefully and without arms, to form unions or associations, to move freely throughout the country, to reside or settle down in any part of the country and to practise any profession or to carry on any lawful trade or business in accordance to one's own aspirations.

As per Article 21 of the Constitution of India - No person shall be deprived of life or personal liberty, except according to the procedure established by law. This right to life, includes right to live with dignity, right to privacy etc. Domestic violence against women is also derogatory to Article 21 of the Indian Constitution, because it weakens the self-respect and dignity of women, who are victims.

According to Article 21A of the Constitution of India - The State shall provide free and compulsory education to all children, who are between the ages of six to fourteen years in a manner, as the state may determine by law.

To provide facility to the women accused - As per Article 20 of the Constitution of India, no person including women shall be convicted of any offence except for violation of a law and any person shall not be prosecuted and punished for the same offence more than once. Any person should not be accused of any offence, he or she shall be compelled to be a witness against himself or herself.

To prevent immoral trafficking in women and girl child Article 23 of the Constitution of India - Prohibits the traffic in human beings and forced labour. In pursuance of this Article, Parliament has passed the Suppression of Immoral Trafficking in women and Girls Act, 1956, which is now renamed as the immoral Trafficking (Prevention) Act 1956, for punishing the actions, which result in trafficking in human beings.

To prohibit child labour, especially girl child as per Article 24 of the Constitution of India - Employment of children, below the age of fourteen years in factory or mine or engaged in any other hazardous employment is prohibited.

Under Article 25 of the Constitution of India - All persons including women are equally entitled to freedom of conscience and the right of freedom to profess, practice, and propagate religion.

LAWS RELATED TO DOMESTIC VIOLENCE IN INDIA

In India, law on domestic violence has mainly evolved in 3 stages:

The Indian Penal Code Amendment in 1983

A unique area, numbered 498-A, that authoritatively made Domestic Violence a Criminal offense was added to the Indian Penal Code in 1983. This Section of the law particularly covers Cruelty towards wedded ladies by their spouses or their husbands' families.

An accommodating statement in this Section enables woman's relatives to make the objection for them. This is greatly helpful in situations where the Woman is excessively anxious, making it impossible to talk up for herself, for reasons, for example, she could get captured by her significant other or basically can't leave the house. one sort of Cruelty that can be punished is conduct that causes a woman's death or genuine damage, or pushes her to confer suicide. Another kind is the sort of provocation identifying with threatening the woman or her relatives to surrender her property.

Under the law, acts of cruelty include, but are not limited to, the following:

- physical abuse;
- psychological torture by threatening her or her loved ones (such as children);
- not giving the woman food;
- locking her in or out of the house as punishment; and
- sexual abuse against the woman's will.

Convicted punishers will be charged with imprisonment up to 3 years or fine or both.

The Protection of Woman from Domestic Violence Act, 2005

Domestic violence is defined by Section 3 of the Act as “any act”, omission or commission or conduct of the respondent shall constitute domestic violence in case it:

1. harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
2. harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
3. has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (1) or clause (2); or
4. otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

The Act goes on, through the section *Explanation 1*, to define “physical abuse”, “sexual abuse”, “verbal and emotional abuse” and “economic abuse”.

Other provisions for safety of women

- There are different controls or arrangements being made for protection of women against domestic violence under the statute, for example, Sec.304B of IPC relating to endowment passing.
- Under segment 313-316 of IPC female child murder has been made culpable which implies mightily ending the pregnancy of a lady.
- Different areas of IPC managing these issues are segment 305-306 identified with abetment of suicide and 340,349 of IPC individually wrongful restriction and wrongful limitation.
- An objection can likewise be recorded under area 498A of IPC for cruelty which additionally falls under aggressive behavior at home.

THE 2013 CRIMINAL LAW AMENDMENT

As a reaction to the solicitations made by the Justice Verma Committee, a little Commission named after and headed by one of India's most respected law specialists, a long rundown of alterations to the Indian Penal Code, Code of Criminal Procedure, and the Indian Evidence Act were presented in this 2013 demonstration.

The point of the Amendment was to give harsher and swifter discipline to those hoodlums who submitted mishandle against ladies. Insights with respect to rape and assault were elucidated and included onto. For example, "assault" was given a superior and more thorough legitimate definition, to incorporate non-consensual infiltration utilizing non-sexual items, and also non-penetrative sexual acts.

Punishments for offenses, for example, assault, attack, and inappropriate behavior were expanded. Specifically, heavier sentences were announced for attackers, notwithstanding including capital punishment for especially irritating cases, for

example, group assault where the casualty was left in a vegetative state after the wrongdoing.

New offenses that are punishable by law were introduced by the amendment as well. These include, but are not limited to:

- acid attacks
- stalking
- voyeurism
- publicly and forcefully disrobing a woman

LEGAL FRAMEWORK FOR WOMEN AND WORK

Women in India represent over 32 percent of the economically active population of the second most populated country in the world. The Indian constitution guarantees equality for women before the law, and institutional support for women seems advanced, with many laws to protect the right of women at work. The labour laws in India, can be industry specific, region specific or centralized. The Acts have been stated as follows: (India: The legal Framework for Women and Work, 2012).

Equal Remuneration Act, 1976 - This law aims to prevent gender discrimination of wages, hiring, promotion, or training, and can be circumvented through wage reclassification of skilled and unskilled workers. often, regardless of the type or skill level of a job, women are placed in the unskilled, lower paid wage category, while men are placed in the skilled, higher wage category. The Act includes, equal pay to men and women workers for same or similar work performed. There should not be any discrimination in recruitment and service conditions, except where employment of women is restricted by the law, such as night hours or industry specific constraints.

National Commission for Women Act, 1990 (Act of Parliament) - Creates a National Commission for Women to review existing statutory protection of women, prepare periodic reports to the Central Government on matters relating to protections for women's rights, scrutinize grievances relating to the deprivation of these rights, and financially assist in the litigation of issues affecting women.

Constitutional (74th Amendment) Act, 1992 - Women in political power at the local level have struggled for mass literacy programs and for control over resources such as, water. Because the functioning of the office has become progressively affluent, parties only put forth a few women candidates, and these are often relatives. While these women are getting promoted, overall there are still not many women in national politics. The Amendment mandates one-third reservations or quotas for women in local governing bodies in state or public institutions.

The Protection against Sexual Harassment of Women at the Workplace Bill, 2010 - This bill, would create a definition of sexual harassment within the workplace, and make it mandatory for every organization with over 10 employees to create committees, headed by women to administer sexual harassment grievances. These committees could gather evidence and would be equivalent to Civil Courts, although problematically, members do not need to have a legal background. In addition, penalties would be created for employers that include fines.

Maternity Benefits Act, 1961 – This act permits a woman to 12 weeks of leave with full pay associated with the birth of a child and there is no adoption benefit. It is unlawful for an employer to discharge or suspend a woman during or because of maternity leave. A woman worker must be permitted to take two nursing breaks, in addition to normal breaks, until her child is 15 months old.

Factories Act, 1948 - According to the act, the employer must provide child care facilities for children, below the age of six years at the workplaces, where more than 30 women workers are employed. Prosecutions against an employer for violating the Factories Act is infrequent, and supervisors seldom examine the number of women workers employed or the mandatory creche or child care centres. In fact, on record,

there is not a single case known, where an observer or a supervisor went to a worksite to check on the number of women employees. Also, employers bypass the Factories Act by employing less than 30 women or using part time and or contract labour.

Beedi and Cigar Workers (Conditions of Employment) Act, 1966 - Provides for the well-being of the workers in beedi and cigar factories by regulating the conditions of work, including maximum hours and the safety of the working environment. In addition, child care facilities must be available for working mothers. This act requires the mandatory appointment of women to the advisory and central advisory committees.

The Plantation labour Act, 1951 - Every plantation with more than fifty women workers must provide child care, including for those women workers, employed by a contractor. The plantation must also provide child care, when women employees have in aggregate more than twenty children. Women workers get breaks in between work to feed their children.

Employee's State Insurance (General) Regulation, 1950 - Maternity benefits are made available on the date a medical certificate is issued for miscarriage, pregnancy-related, sickness, bed rest, or pre-term birth.

The Contract labour (Regulation & Abolition) Act, 1970 – Day care must be provided, where 20 or more women work on contract regularly.

Prohibition of Child Marriage Act, 2006 - The Prohibition of Child Marriage Act, 2006, which is the national law against child marriage, does not allow the question of consent in case of minors and treats child marriage as a punishable offence. However, it creates misperception by declaring some marriages invalid and some others voidable. Marriage of a minor formalized by use of force, fraud, deception, enticement, selling and buying or trafficking a void marriage, while all other child marriages are voidable at the option of the parties to the marriage and hence valid marriages, until they are invalidated by the court. If the law does not attribute consent to a child, it must render all child marriages invalid, as all child marriages then become marriages that have taken place either through some form of pressure,

intimidation or use of fraud, trafficking and such other illegal means, or by influencing the mind-set of the child (Thukral, & Ali, n.d.).

HUMAN RIGHTS

Human rights are generally understood as being those rights that are intrinsic to all human beings. The concept of human rights acknowledges that each individual is entitled to exercise his or her rights without any forms of discrimination regarding areas such as, caste, creed, race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth, background and status. Human rights are lawfully guaranteed by the national constitutions and laws, regional and international treaties and documents. They safeguard the individuals and groups against activities that impede within the course of their fundamental freedom and human dignity (Women's health and human rights, 2007).

Significance of human rights have been acknowledged with respect to the following aspects, these are initiated on respect for the self-esteem and worth of each person. They are universal and are thus applied equally without any type of discriminatory treatment against anybody on the basis of factors such as, caste, creed, race, religion, occupation and socio-economic background. Human rights are indisputable, in that they cannot be taken away, except in specific situations, for example, the right to liberty can be restricted, if a person is found guilty of a crime by the court of law. Human rights are inseparable, interrelated and interdependent, thus, it is inappropriate to respect some human rights and not others. In practice, the violation of one right often affects the dignity of several other rights. All human rights should therefore, be viewed as of equal importance and equally vital for the respect and worth of each person (Women's health and human rights, 2007). It is necessary for the progress and development of the individual, society and the entire nation that human rights should be recognized and exercised in an appropriate manner.

Human rights provide a beneficial, lawful and normative framework, vocabulary and form of direction for public health actions, while improving the accountability of governments. Human rights and public health have the common objective of encouraging and safeguarding the welfare of all individuals. Human rights must be promoted and protected to report the fundamental elements of health, including the empowerment of individuals and communities to respond to health challenges and ensuring justifiable, and operative delivery of services (Women's health and human rights, 2007).

HUMAN RIGHTS TREATIES

Approval of the Universal Declaration of Human Rights in 1948 was the first step towards liberal and advanced codification of international human rights. The principles of the Universal Declaration were translated into treaties, thus States that ratified them are legally bound by the terms and conditions of the treaties. Eight international human right treaties have been adopted up to 2007: (Women's health and human rights, 2007).

- International Convention on the Elimination of All Forms of Racial Discrimination (1965).
- International Covenant on Economic, Social and Cultural Rights (1966).
- International Covenant on Civil and Political Rights (1966).
- International Convention on the Elimination of All Forms of Discrimination against Women (1979).
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984).
- Convention on the Rights of the Child (1989).
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (2002).

- Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (2006).

Every World Health organization (WHO) Member State has sanctioned, formally consented to be legally bound by at least one human rights treaty, all of which have a direct or an indirect impact on the promotion and safeguarding of the right to health and health-related rights.

BARRIERS WITHIN THE COURSE OF EXERCISING RIGHTS

Barriers that take place within the course of exercising rights have been stated as follows:

Poverty – Poverty is a condition, when the individuals experience scarcity of resources, due to which they are unable to satisfy their needs and requirements. In 2005, it has been estimated that 76% of the population lived under the poverty line of USD two per day, and that 42% had to make ends meet with an income below USD 1.25 per day. The poverty gap remains comparatively large. In and through the nationwide liberalisation process, seven states with the lowest incomes are lagging behind. In 2006, India ranked 132nd on the human development index (HDI), six places below its GDP per capita rank (Klaveren, Tijdens, Hughie-Williams, & Martin, 2010). The conditions of poverty and backwardness are the major impediments within the course of recognition and practicing of rights.

Illiteracy – When the girls are discouraged to study and the acquisition of education is not given recognition with regards to girls and women, then it is a major barrier within the course of exercising rights. Illiteracy imposes numerous disadvantages for the individuals. Through illiteracy, one usually remains unaware regarding how to sustain their living conditions in an effective way. They are not able to generate awareness regarding important areas, they remain uninformative and experience problems in carrying out all important activities of life. Unawareness and lack of knowledge and information does not enable individuals to recognize their

rights and they remain secluded. This is particularly true with respect to rural areas. When the individuals migrate to urban areas in search for a better livelihood, then usually they are able to recognize their rights.

Unemployment – Every individual desires to obtain employment or some means to generate income. The individuals, who are poverty stricken and belong to deprived and marginalized communities, usually feel that unemployment and lack of resources are the major barriers within the course of exercising rights. On the other hand, educated and literate individuals, when they experience problems in finding employment, they become depressed and frustrated. A depressed and a frustrated person will not take pleasure in exercising his rights. When they do not have a source of income, they are not able to sustain their living conditions. Aspects such as, housing, health, diet and nutrition, education and so forth remain unfulfilled. A woman, who is well educated or is literate, when she does not have employment opportunities available, she is concerned and sometimes does not acknowledge rights.

Crime and Violence – In India, women have been subjected to various forms of violent and criminal acts within the household, workplace, educational institutions, and in other public places. These include, verbal abuse, physical abuse, rape, sexual harassment, acid attacks and other forms of mistreatments. Experiencing heinous and intimidating criminal and violent acts, hampers the psychological approach of the person. Criminal and violent acts against women can be hurting and result in serious injury. These are, permanent privation in the sight of the eye, permanent privation of the hearing of either ear, privation of any member or joint, destruction or impairing of the powers of any member or joint, permanent disfiguration of the head or face, fracture or dislocation of the bone, and any type of hurt, which endangers life or which causes the sufferer to be during the space of twenty days in a severe bodily pain or unable to carry out important life functions and activities (Chapter III, n.d.).

When a woman is severely injured and undergoes permanent health problems, as it has been stated above, then she also experiences problems in exercising rights. For instance, when a person is not ambulatory, he gives up various rights. When a

woman is coerced or pressurised by someone, or undergoes abuse and mistreatment, she is not able to recognize her rights or speak out for herself. She feels vulnerable and apprehensive to a great extent. There are organizations that enable women to address their grievances and problems and seek solutions to them. Women, who have learned to speak for themselves against inappropriate conduct, generate empowerment and exercise their rights in an effective way.

Acquisition of Education – In the present existence, there have been changes taking place within the rural and urban communities and individuals have begun to recognize the significance of education. Girls and women, normally in rural areas and particularly belonging to deprived, marginalized and socio-economically backward sections of the society do recognize the significance of education, but encounter numerous impediments within the course of its acquisition. Parents believe that girls should get trained regarding the implementation of household chores and if they get educated, they will be able to make use of their learning in marital homes and it would not be advantageous to the parents in any way. Education of boys is given more preference, in some cases, girls are meant to work and earn money to support education of their brothers.

Child marriage of the girls enable them to give up education, as they need to be aware regarding domestic responsibilities, child development and in taking care of the needs and requirements of other family members. Within the rural communities, parents give preference to the education of their sons. In households with limited income, they feel that they should spend their resources in getting their sons educated. Girls are encouraged to work and get engaged in minority jobs to support their parents and siblings. In the present existence, there have been initiation of measures and schemes that education would be available free of cost up to the eighth standard, hence, this leads to an increase in the enrolment of girls in schools.

CHAPTER- XI

CONCLUSION

In 2007, India elected their first ever female president: Pratibha Devisingh Patil. Therefore, it would appear that the rights of women are progressing and that laws would be enforced to prevent violent crimes against them. Unfortunately, that is not the case: although there are many laws and organizations in place, these practices have not reduced violent crimes due to the ratification of CEDAW. It does appear India recognizes there is a problem for the women of their country, for acts have been passed, and laws and organizations have been put into place that identify specific problems that women face. From a statistical perspective, these laws do not appear to be having a positive effect, but only show on paper that India is trying to protect women. In fact, all of the violent acts mentioned in this paper are considered crimes and are illegal in India, but it does not appear that CEDAW or any of the other laws are protecting women and reducing violence. The statistics are alarming as we see each crime presented in this paper rise statistically since the ratification of CEDAW, while criminal convictions are relatively low. Brides are being burned as their husbands and in-laws demand more dowries at a rate that has increased over the last few decades. Birth rates for women are decreasing as girl children are being aborted or murdered as infants in the form of female gendercide. Young girls by the thousands are being abducted and used as sex slaves while only a handful of these trafficked girls are being reported. In a country where boys are preferred and considered an asset for economic, social, and religious reasons, it is difficult to make changes on a national level when access to education is limited, poverty is widespread, and some individuals are unaware of the International Conventions. India's ratification of CEDAW did not

make the country change its religious and cultural beliefs about the value of the female population. In fact, the ratification of CEDAW does not appear to have changed anything. The president of India, Pratibha Devisingh Patil posts on her web site “empowerment of women is particularly important to me as I believe this leads to the empowerment of the nation” (National Informatics Centre, 2012). Yet, women as a whole are not being empowered. The statistics show the contrary. India, in order to reduce gender based violence, needs a more effective governing policy, as CEDAW has clearly done nothing to help Indian women.

The main purpose of this research paper is to acquire understanding of human rights of women. The main reason, that the rights of women have been undermined is due to the existence of the patriarchal society. In the male dominant society, preference was given to the male children, there were practices of female foeticide and female infanticide. Females were considered as liabilities, which would lead to expenditure, whereas males were regarded to be the assets, which would generate wealth for their families. The decision making and other powers and authorities were vested in the hands of males. The responsibilities of the females were limited to performing of the household chores, child development and looking after the family members.

In the present existence, with the impact of modernization and use of innovative methods, the rights of women have been acknowledged. Girls and women from all categories and backgrounds are being enrolled in educational institutions. Women are emerging professionals such as, doctors, lawyers, teachers, educationists, managers, administrators and so forth. The girls, who belong to minority communities are getting enrolled in educational institutions, so that they learn to exercise their rights for the well-being of their parents as well as the community. Education enables a person to differentiate between appropriate and inappropriate, learn to make wise decisions, work towards the welfare of the community and exercise rights in an efficient manner.

DO WE HAVE SOLUTIONS?

once rape has been committed, it confirms that all measures to stall violence have failed. Reaction in the form of declaration of enhanced punishment is largely an expression of helplessness and frustration. The emphasis should be on prevention and rehabilitation.

legislation by itself would not suffice because violence against women is a deep rooted social problem. It is worth quoting late Prime Minister, Jawaharlal Nehru, who remarked: “legislation cannot by itself normally solve deep rooted social problems. one has to approach them in other ways too, but legislation is necessary and essential and hence that it may give that push and have educative factors, as well as the legal sanctions behind it, which help public opinion to be given a certain shape.”⁷⁷

Women cannot solve the problems by themselves. Women should understand men and men should understand women. Both should work together to eradicate the menace.

RECOMMENDATIONS FOR COMBATING VIOLENCE AGAINST WOMEN

Mental illness

Psychiatric illness should be identified and treated promptly. Patients with active symptoms should be kept in a protected environment till substantial improvement takes place. Many patients may need life-long protection e.g. those suffering from mental retardation or chronic schizophrenia.

⁷⁷ Nehru JL. Speaking from the floor of parliament in the joint sitting of both houses on dowry prohibition bill, 1961 on May 6, 1961. In: Diwan P, Diwan P, editors. *Dowry*. 22nd ed. Allahabad (India): Allahabad Law Agency; 1961. pp. 78–84.

Women with severe mental illness need special attention. Public awareness needs to be created with respect to the following:

- Women need protection but those with mental illness need more care and protection.
- The real problem is not mental illness, but the negative attitude toward it.
- Many medical illnesses create more problems in marriage, than mental illnesses.
- There should no double standard? If a woman can continue the marriage after her husband develops a mental illness, so can the husband. Similarly, people should be made to understand that if it is right to marry a son or daughter with mental illness, then the reverse is also true. A daughter in-law with mental illness should also be accepted.
- Good family support greatly improves the prognosis.
- Many women with mental illness prove to be better marriage partners and daughter-in-laws than those without mental illness.
- If the husband's family accepts the woman with mental illness, the society will also follow
- Woman with mental illness should be accepted with her illness.
- Violence is not the solution. Mental illness in the victim (e.g. depression) or perpetrator (e.g. alcoholism or schizophrenia) should be promptly treated.

Restriction on use of alcohol

There should be prohibition of alcohol use in mass gatherings in institutions, public places like trains and buses. The number of alcohol outlets should be decreased. The age for purchasing alcohol may be raised to 30 years. Special checks on festive

occasions are recommended with the help of breath analyzers. Involuntary treatment of persons with alcohol dependence should be carried out.

Control on media

Sexual material should be censored. Good themes, which condemn violence and glorify rehabilitation of the victim, should be projected. Ban on pornography should be strictly implemented. The sites may be blocked.

Marriages

Marriage of boys and girls should preferably be in early 20s, as soon as feasible, so that sexual needs could be satisfied in a socially appropriate manner.

Strengthening the institution of marriage

Strong marital bond would act as a deterrent. The “Shiv-Parvati” model should be promoted for Hindus.

Law enforcement

Efficient and accountable law enforcement machinery at all levels (administration, government, police and judiciary) is needed.

Legislation

Change in mind set of the judiciary

This is the need of the day. Indira Jaising, Additional Solicitor General of India, aptly stated “It's time for India's courts to gaze inward and throw out deeply embedded patriarchal notions that stop judgments from being fair to women. Sexism within the

system has to go before it does more damage in the country.”⁷⁸ A High Court judge in orissa in his judgment once famously held “It was not possible for a man, acting alone, to rape a woman in good health.”⁷⁹

Amendments in existing legislations

The Hindu Marriage Act (1955):⁸⁰ Mental illness may be removed from conditions of Hindu marriage. Not informing about past illness of mental illness should not be a ground for nullity of marriage.

PWDVA, 2005 and DPA, 1961: Assessment for mental illness may be incorporated in the code civil procedure so that the mental illness is identified in the victim (woman) and/or perpetrator (male relative) and promptly treated. This way violence can be prevented.

New legislations

New legislation is needed to provide for granting “Interim Relief” (A big sum of money that is paid by the perpetrator) to a victim of severe sexual assault. The money may be utilized for rehabilitation of the victim. Rehabilitation of the victims of brutal sexual assaults should be the State's responsibility. The legislation should provide for enhanced punishment for violence perpetrated against women with mental illness.

Appropriate application of laws in the setting of mental illness

This is often very difficult, nevertheless very important. Judiciary handling such cases should desirably have both legal (llB) as well as medical (MD Psychiatry/DPM) qualifications.

⁷⁸ Jaising I. Blind to what, your honour. Times of India. 2013 Jan 6;

⁷⁹ Jaising I. Blind to what, your honour. Times of India. 2013 Jan 6;

⁸⁰ New Delhi (India): Professional Book Publishers; 2002. The Hindu Marriage Act, 1955.

Code of conduct

Code of conduct at work place, school and home, with respect to interaction with persons of opposite sex should be outlined and implemented.

Gender sensitization

Gender sensitization by parents and teachers is needed regarding the sensitivities and boundaries of man-woman relationships.

Education and employment

Improvement in quality of education and employment opportunities for youth.

Recreation and talent

Recreational avenues and opportunities for talent development in young people.

Moral and religious values

Parents and teachers should strive to infuse good moral and religious values in children and serve as role models.

Population control

last, but not the least, If we are sincere we will get the results. let us all say “No” to violence against women.

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