

GENDER AND CRIME AGAINST WOMEN: STUDY OF INDIA

Written by Suhani Suman

3rd Year BBA LLB Student, National Law University Odisha

ABSTRACT

This article tries to identify the various aspects of 'gender' in furtherance with gender roles, the social construct of gender. The author has tried to find the norms set up in the society from the ancient times till modern times. There has been a detailed research about the crimes against women, the atrocities which they are facing since ancient times on the name of traditions and culture and on the laws formulated in order to tackle these crimes.

INTRODUCTION

In the ancient Indian times, the women had a very high place of respect in the society. Numerous of books and articles could be written about the status of our women and their heroic works starting from the Vedic period to the modern times. Unfortunately this could not be continued. Later on because of social, political and economic changes, the women lost their respect and status. They were transferred to the background. Many evil traditions and customs came which lead to the degradation of the women and fixed them to the boundaries of the four walls of the house. The official statistics shows a declining sex-ratio, health status, literacy rate, participation in politics by the women. the spread of social evils across the entire nation like dowry deaths, acid attacks, child marriage, illiteracy, domestic violence, rapes, sexual harassment, female foeticide, exploitation of women workers, burning alive in fire, ban on widow remarriage are prominent and uncontrolled in different parts of India. Humiliation, rape, kidnapping, molestation, dowry death, torture, wife-beating etc. have grown up over the years.¹

The principle of gender equality is present in the Constitution of India in its Preamble, Fundamental Duties, Fundamental Rights and the Directive Principles. The Constitution of India not only provides equality to the women, but also authorizes the State to implement measures of positive discrimination in the favour of the women for neutralizing the cumulative socio, economic, education and political disadvantages faced by them. Various Acts have also been formulated for the protection of women.

Gender is the range of characteristics pertaining to, and differentiating between, male and female. The social parts of female and male in setting with each other depends on the social norms of that specific culture, which prompts the arrangement of sexual orientation frameworks.

GENDER

The word “gender” has come from the Middle English gender (also genere, gendir gendyr, gendre), a loanword from Anglo-Norman and Middle French gendre. This originated from

¹ Awadhesh Kumar Singh, & Jayanta Choudhury, Violence against Women and Children-Issues and Concerns, Serials Publications, 2012,1

Latin word genus. Both words mean "kind", "type", or "sort". Gender is the range of characteristics pertaining to, and differentiating between, male and female. Depending on the context, these characteristics may include biological sex (i.e. the state of being male, female or third gender, sex-based social structures (comprising of gender roles and other social roles), or gender identity. social science has a branch specifically for the gender studies. The social science sometimes paves gender as a social. The research in the natural science explores whether the biological differences which are present in males and females influence the evolution of gender in humans. This helps in determining how far the biological differences impact the formation of gender identity.

The grouping of females and males into social roles initiate problems. The reason being that the individuals feel that they need to be at one edge of a linear spectrum and must recognize themselves as woman or man, in spite of being permitting them to select a section in between. Worldwide the communities define the biological differences between women and men to build a set of social expectations which describe the behaviours that are "relevant" for women and men and decide women's and men's respective access to rights, resources, power, opportunities, education etc. in society and health behaviours. Though the particular nature and the degree of these differences differ from one society to the society, they still get influence to the typically favour men, which in turn creates an imbalance in the power and gender inequalities within most societies. Many cultures have dissimilar systems of rules and beliefs based on gender, but there is no such universal standard to a feminine or masculine role across all the cultures.

The social roles of women and men in context with each other are based on the cultural standards of that particular society, which leads to the formation of gender systems. The gender system is the foundation of the social patterns in the societies, which comprise the segregation of sexes, and the primacy of masculine standards. Gender refers to the socially constructed characteristics of women and men – such as norms, roles and relationships of and between groups of women and men. It varies from society to society and can be changed. ²

Gender identity is the personal experience of a person of one's own gender. All the societies have a particular set of gender groups which can serve as the foundation of the creation of a

² Available at <http://www.who.int/gender-equity-rights/understanding/gender-definition/en/>, accessed 27th April 2017

person's social identity in context to the other members of the society. Core gender identity is generally formed by the age of three. After the age of three, it is very difficult to change, and attempts to reassign it can lead to gender dysphoria. The refinement of Gender Identity continues between fourth years to sixth years of age and continues into young adulthood the assignment of gender engages into taking the account of the physiological and biological characteristics provided by the nature, pursued by the deception of the socially formed conduct. The social mark of being categorized into one or the other sex is important for the medical stamp on the birth certificates. Gender is a term which is used to represent the features that a society or culture comprises as "feminine" or "masculine". Although the sex of a person as female or male stands as a biological truth that is alike in any culture, what that particular sex means in context to a person's gender role as a man or a woman in the society differs culturally according to the things which are considered to be feminine or masculine. These roles come from different, intersecting sources like parental influences, the socialization which the child gets in her/his school, and also what the media presents to the society. It is also very important to mark that the learning gender roles starts from the birth and consists simple things such as what colour dresses a baby is being dressed in or what toys they are given to play with or the environment of the family or the talks of the family etc. The cultural features which are typically mixed to a specific sex conclude the assignment of gender.

The term "gender role" was coined by the sexologist John Mooney in the year 1955. Gender role is the set of societal standards which talks about the varieties of behaviours which are usually considered acceptable, apt, or desirable for the people based upon their real or perceived sex or sexuality. Gender roles generally focus on the concepts masculinity and femininity, though there are certain exceptions and variations. The particulars concerning to these gendered expectations may differ substantially among the cultures, while other attributes may be common throughout the range of cultures. This term was used to discuss about the manners in which the individuals express their status of being a female or male in those situations where no clear or proper biological assignment exists. The traditions, culture, and society set up the gender roles. There are various opinions regarding the roles of female and male. Some are of the opinion that their roles are the reflection of the societal norms whereas on the other hand some think that this is because of the biological factors.

In IPC, gender has been defined under section 8 – The pronoun "he" and its derivatives are used of any person, whether male or female.³ The high court of Madhya Pradesh in *Girdhar vs. State*⁴ held that the pronoun 'he' present in the section 354 of IPC can be applied both to woman or man which implies that a man as well as woman may be held guilty of the offence of assaulting or using criminal force against any woman with intention or knowledge that the woman's modesty will be outraged under section 354 of IPC.⁵

Whereas man and woman under section 10 - the word "man" denotes a male human being of any age; the word "woman" denotes a female human being of any age.⁶

CONDITION OF WOMEN

Ancient Times

In the ancient days the status of the women in the society was far better than what it is today. It is very sad that in today's date where the society is heading towards overall development of the society, the condition of the women is degrading day by day. And the worst part of it is that we all are just keeping shut and doing nothing. No actually we are doing something; we are taking the pain of blaming each other blaming the concerned authorities, police, and the government for not taking any actions. We take out the time from our busy schedule to blame each other but we don't have time to sit and ponder over this and find out the solution for this. But the point is that from where this all started. I mean if the condition of the women was so good in the ancient times that they were treated with so much respect then how did the degradation started. If males were respecting the women so much, if the society was treating equally both the female and the male then how are they deprived of their rights today?

The verses of Rig Ved tells that women were married at a mature age and they had the right to select their life partners in a practice called swayamvar or live-in relationship called Gandharva marriage unlike today.

³ Indian Penal Code, 1860, sec. 8

⁴ *Girdhar v. State* AIR 1948 MB 147 (148) (India)

⁵ K.D Gaur, Textbook on Indian Penal Code (5th edition, 12)

⁶ Indian Penal Code, 1860, sec. 10

Talking about the ancient scriptures like *Dharmasutras* and *Manusmriti*, they are very contradictory. Such Hindu texts were in the favour of patriarchy and were always biased towards men. They sometimes support women but they also favour the men by going against the women. Take the example of *Manusmriti* only, it has certain verses which support women very strongly but on the other hand it has verses which set very harsh rules and regulations for women to live in the society.

Verses which are in the favour of the women:

- Women must be honoured and adorned by their fathers, brothers, husbands, and brothers-in-law, who desire (their own) welfare. (*Manusmriti* 3.55)⁷
- Where women are honoured, there the gods are pleased; but where they are not honoured, no sacred rite yields rewards. (*Manusmriti* 3.56)⁸
- Where the female relations live in grief, the family soon wholly perishes; but that family where they are not unhappy ever prospers. (*Manusmriti* 3.57)⁹
- *Manusmriti* provides the women with right to property to six kinds of property in the verses 9.192-9.200. These contain those she got at her marriage, or as present when she eloped, or when she was taken away, or as token of love before marriage, or as gifts from her biological family, or which she receives from her husband after the marriage, and lastly she inherits from the deceased relatives.

Verses which are against the women:

- It prohibits the women to marry outside her social class but allows the men to do so. (*Manusmriti* 3.13-3.14)¹⁰
- It teaches that as a girl, she should bow to and take protection only of her father, as a young woman when she gets married she should follow her husband, and as a widow her son; and that a woman should always worship her husband as a god. (*Manusmriti* 5.144-5.155)¹¹

⁷ Available at <https://www.quora.com/Does-Manusmriti-Laws-of-Manu-put-down-women-Are-there-any-ancient-Hindu-prescriptive-texts-that-stand-up-for-women-and-their-rights>, accessed 4th April 2017

⁸ Id

⁹ Id at 6

¹⁰ Id at 6

¹¹ Id at 6

- She must worship her husband, even if he is devoid of virtues. The wife should not do anything which will displease her husband during his life time or even after his death.¹²
- She should not think of any man even after the death of the husband.
- A widow should never remarry.

These sorts of verses lead to the degradation of the condition of the women in the society. This is so inhuman to the women. This sets the mentality of the man of the society. A child whatever learns from his childhood becomes that kind of person. These are so contradictory in nature that it is very difficult to distinct that whether it supports the women or it sets inhuman conditions for the women to live in the society.

So when the degradation started...

Coming to the Treta Yug also known as Ramayana, did it started when Lord Rama sent his beloved wife Goddess Sita to exile only because a washer man questioned on her character and purity as she was prisoned in Lanka by the demon Ravana for 14 long years. Or did it started when Draupadi was put at stake by Dharmaraj Yudhishtira in the dice game; and she was dragged in the court by Dushashana by her hair or when Duryodhana said her to sit on his thigh as she is his slave and her sari was unwrapped by Duryodhana in the court in front of all the men. If this is the case then does it means that Lord Vishnu incarnation as Krishna was to improvise his mistake which he did as Lord Rama with his wife by sending her to exile. To some extent he even was successful because he saved Draupadi when her sari was being unwrapped by Kauravas by increasing the length of her sari. But the irony is Duryodhana even after committing such a disrespectful act managed to secure place in the heaven.

So we can say that the condition of the women was better in the Treta Yug but it started deteriorating with the end of Treta Yug and it continued thereafter.

Medieval Times

The position of women in the Indian society further started deteriorating during the medieval period. This started happening due to the child marriages and the prohibition on the remarriage of widows as this had become the part of the social life in some Indian communities. The conquest by the Muslim in the Indian subcontinent had brought purdah to the Indian society.

¹² Id at 6

The Rajputs of Rajasthan used to practise Jauhar. In some parts of India, some of the Devadasis were sexually exploited. The Kshatriya rulers of India had started practising Polygamy for political reasons. In many of the Muslim families, women were bounded to the Zenana areas of the house. One of the texts named the *Stri Dharma Paddhati of Tryambakayajvan* tells that women are enjoined to be of service to their husbands (opening verse).

Despite of all these conditions, females became important and played vital roles in the fields of education, politics, religion, and literature. Razia Sultan was the only female monarch to have ever ruled Delhi. The queen of Gond Rani Durgavati ruled for fifteen long years before losing her life in the battle with the Mughal emperor Akbar's general Asaf Khan in 1564. Tarabai the daughter-in-law of Chatrapati Shivaji became the regent and played a very important role in the extension of the Maratha rule.

Purdah or Pardah

The term Purdah or pardah means curtain. It is a social and religious practice by females. In Hindu culture, the variation of purdah worn is called Ghoonghat. It is of two types: physical separation of the gender and the need that the women must cover their bodies in order to cover their skin and hide their respective form.

Devadasis

Then South and some parts of the Western India were Devadasis found. A devadasi is a girl who is dedicated for the worship and service of any deity or any temple for the rest of her life. The age group of such girls required in order to get converted as jogini is 8–16 years. This takes place in a Pottukattu ceremony which is same in some ways to marriage. In the year 1934 during the British rule, an Act was also passed to stop the girls getting converted into Devadasis as they were exploited physically and sexually booth. This Act said that whoever is found guilty will be liable for one year imprisonment and fine or both.

Sati

It is custom where the wife after the death of her husband immolates herself in the pyre of her husband had started way back in the 4th century. It became popular during the 18th century during the British rule. Under the rule of British, the practice of sati at starting was tolerated. Between the years of 1815 to 1818, the count of Sati in the province of Bengal saw

and increment more than double from 378 to 839. Due to the campaign against Sati which was launched by the Christian missionaries like William Carey and the famous Brahmin Hindu reformer such as Raja Ram Mohan Roy, the provincial government prohibited Sati in the year 1829. This was succeeded by identical laws by the respective authorities of the different princely states of India, with a general prohibition for the whole of India issued by Queen Victoria in 1861.

Jauhar

It is the Hindu custom of where the queens, wife of the soldiers in mass used to self-immolate themselves by to avoid capture, enslavement and rape by the invaders. They used to do this whenever they had the fear of facing certain defeat during a war. This practice is a historic practice which was generally observed in the northwest regions of India. The most famous Jauhar were done occurring during the wars between the kingdoms of Hindu Rajput of Rajasthan and the Muslim armies. One of the most famous jauhar is the jauhar done by Rani Padmini along with other Rajput women in order to prevent them from getting seized by Alauddin Khilji in 1303 CE.

The degradation of the women started and it still continues.

Modern Times

The condition of the women is not still the same rather it has become more inhuman. But the question is that how this society did get created, what led to such creation of society where there is no respect for females. What is the basis for this condition? Is it that we have adapted ourselves to such conditions or we don't want to live in such society but are living because there is no other option? If it is so then how did this evolve? It evolved due to our thinking, due to the thoughts which prevail in our society, due to the environmental conditions of the home where a person resides. No question is being asked to son if he comes or goes outside late or if he wears western clothes or if he is on social media or if he shares his thoughts when a family discussion goes on in home. Why this happens; only because he is male. Does that give birth right to them? And being female is the fault of a daughter, a sister, a wife, a mother and this is why they can't go outside late night, they can't wear western clothes, and they can't study further, they have to marry early and that to the male which their respective family chooses, they can't be on social media, they are told to keep their mouth shut and just oblige to what the

male members decides. Due to such kind of situations a male child who sees his mother and sister not getting that amount of respect which they deserve, later on his life does the same thing. When such males enter into teenage hood and go to school and college they don't respect the females who are there in the form of students and teachers. They end up maligning the respect of females by making MMS or disturbing females by sending objectionable photographs and videos, eve teasing. Eventually in their workplace they try to do the same with the female workers. When they get married they don't respect their wives, they don't allow their wives to work, they blame their wife if she gives birth to female child, and they beat their wives etc...

When a female complains in the police station they find difficulties in registering the FIR. They also face humiliation in the police station. Sometimes in cases of dowry deaths, domestic violence, rape the accused male with the help of political and monetary power threaten the victims to take back the complaint and if they deny to do so they are being harassed. Unfortunately, the police who are there for the protection of the people also deny helping the victims sometimes due to pressure from the higher authorities or they belong to the same category of men who consider women as objects and disrespect them.

One of such case is *Ruchika Girhotra* case. It is a case of molestation of 14-year girl by the IGP in Haryana way back in the year 1990. It's so disheartening to know that the police which is there for the protection of public is sexually harassing females. And what's more shocking is that the accused was protected by the then Chief Minister Hukum Singh and Om Prakash Chautala and its government. Since the state government always had provided hand on SPS Rathore, he constantly harassed the victim and her family. The victim's brother was kidnapped and beaten up mercilessly and she was told to take back the complaint otherwise this will be the condition of her family. Ruchika along with her friend Aradhana used to go to the Haryana Tennis Court to play tennis where Ruchika was molested by Rathore who was also the head of that court. Her family used to get threatening calls regularly. Rathore had assigned policemen in plain clothes to keep an eye on her 24 hours. When she filed the complaint, investigation was done under RR Singh whose report recommended the registration of FIR against Rathore but the file was not forwarded. Instead of filing FIR government issued for filing charge sheet under departmental action but since the state was incompetent of filing charge sheet, the case file transferred from one office to another and so on. Consequently Ruchika was expelled from the school on the ground of non-payment of fees but in actual no such notice was issued to her

and even after the submission of fees she was not taken back. It was revealed later that this was done to protect Rathore's daughter from embarrassment who coincidentally was victim's classmate. Due to regular threats the victim consumed poison and died. Her family shifted to another place. The hearings were attended by Aradhana's parents. They heard about more than 400 hearings. Charge sheet was filed under section 354 of IPC but section 306 of IPC was initially not added. When the special CBI judge added 306 which is abetment of suicide he was forced to take premature retirement. Even Aradhana's father was also forced to premature retirement and when he denied he was demoted and to which he challenged the decision. After a lot of court proceedings in the year 2009 after a wait of more than a decade Rathore was pronounced jail for six months and Rs.1000 fine. But the worst part is that he got bail within minutes. In 2016 Supreme Court upheld the conviction of Rathore but decreased the jail sentence of 18 months to around 6 months already undergone by him in custody reasoning that his advanced age as 'special case'. Rathore's wife who is also an advocate defended her husband being a woman.

This type of cases forces to think about the condition of women in society.

But the question still remains the same how did this happen, what were the reasons which lead to such gender issues. One of such reason could be education. Even after so much awareness, launch of so many programmes for the education of female child there are still many families which don't allow the female child to study. Their world just starts and ends within the four walls of the house. They are totally unaware about the outside world. And if they are unaware it's obvious that it will be very difficult for them to sustain. They are habituated to be dependent on someone or the other. And when one becomes dependent then they are unable to take correct decisions about their life. It becomes extremely difficult for the females to work even if they want to. And if they can't work then how will they live their life. And this is one of the reason why wives hesitate to leave their husbands even after their husbands beat them, ill treat them; because of family such female doesn't allow their daughters to come back to their parents as they feel this will lead to disrespect in society.

They are not allowed to go anywhere. There are lot of restrictions on them. They are not exposed to the outside world. They don't know to identify the correct person. Due to which they become the prey of certain animals like males. They get raped, sexually harassed.

Incest rape also happens. It is when some of the family member rapes the female. In such cases also females hesitate a lot to tell this to their parents because they fear that they will only held wrong.

This disgusting mind set of the males of the society is the root cause for the arising gender issues. Sometimes it is also found that certain females take wrong advantage of the laws which have been formulated for the protection of the females. They wrongfully file cases in order to defame the males. Though it's very unfortunate but yes this exists. But it's also true that these types of cases are very less in number in comparison to the true cases which exists against the males.

CONSTITUTIONAL PROVISIONS FOR WOMEN

The constitution of India has also provided certain provisions such as:

- Article 14, provides that both women and men have equal rights and chances in the political, social, and economic sphere.
- Article 15, bans all sort of discrimination against any person on the grounds of caste, religion, sex, race, etc.
- Article 16, confers equal opportunities in the matters which are related to employment or appointment to any office under the state.
- Article 39(a) (d), mentions that the policy security of state equality for women and men, the right to proper means of livelihood and equal pay for equal work for both women and men.
- Article 42, orders the State to make laws for ensuring just and humane conditions of work and maternity relief.

CRIME UNDER IPC

Domestic Violence

This crime is just not only faced in India but it is a worldwide problem. Under this problem, the female suffers violence from her respective husband and or her other relatives who need

not be necessary male. Domestic violence is defined under section 3 of the Prevention of Women from Domestic Violence Act 2005. This can be of many types like:

a) Torture/ Cruelty by husband and relatives

This is the most common form of the domestic violence. It ranges from slapping, kicking, pushing, hitting through certain objects, strangling, and beating through either hands or weapons.

For the safety of the women who face cruelty in their respective matrimonial home, the honourable Supreme Court inserted section 498 in the IPC.

1, 13,403 cases have been registered in 2015 which in comparison to 2014 is less by 7.7%. Most of the cases were registered in West Bengal (20,163 cases) followed by Rajasthan (14,383 cases), Assam (11,255 cases) and Uttar Pradesh (8,660 cases). All these four States together account for 48% of total cases (54,461 out of 1, 13,403 cases). Acquittal under section 306 of the IPC will not be considered as a ground for acquittal under section 498A of IPC.

Unfortunately there are many women who misuse this section. In the latest case, *Rajesh Sharma & Ors. v. State of UP and Anr.*, the Supreme Court ordered the police not to arrest immediately or to carry out coercive actions without verifying the facts. The complaints done would be verified by the Family Welfare Committee of district level who would be assisted by a special police officer. The Family Welfare Committee would include any of the following:

- a) Paralegal volunteers
- b) Social workers
- c) Retired persons
- d) Wives of working officers
- e) Other citizens who may be found suitable and willing

The committee would consist of only three members. Grave physical injury and death are exception to this.

The Supreme Court had directed the police earlier to in *Arnesh Kumar vs. State of Bihar*¹³ to arrest according to the provisions mentioned in Section 41 of the CrPC.

¹³ *Arnesh Kumar v. State of Bihar*, AIR 2014 SC 2756

Girdhar Shankar Tawde vs. State of Maharashtra¹⁴

In this case the deceased was the second wife of the accused. After being married for six months she was being tortured continuously by her husband. The deceased brothers got to know this when deceased used to visit their homes in occasions or when she used to write letters to them. Once, even her brother had also visited to her house when he got to know that she was bleeding due to the physical torture. On 12.8.1988 the brothers were informed that the deceased had been burnt and is admitted in the hospital by some person. The brothers claimed that the accused did not inform them about the burn injuries and did not even wait for them for the funeral. It had also appeared that she had committed suicide. Therefore the accused was charged under section 306 and 498A of IPC. The trial court held him guilty. But the high court ruled out that - "To have an event sometime back cannot be termed to be a factum taken note of in the matter of a charge under Section 498-A. The legislative intent is clear enough to indicate in particular reference to explanation (b) that there shall have to be a series of acts in order to be harassment within the meaning of explanation (b)."¹⁵

This happened because there was no enough evidence other than the three letters which the deceased had written to her brothers.

Shrikant Tamrakar vs. State of Madhya Pradesh 2015

In this case the High Court held that if under section 498A of IPC, there are no proper, specific and credible allegations against the relatives of the husband with necessary particulars, they should not be made to suffer the disgrace of the criminal trial.

Harshna Paigawar was married to the accused in group marriage ceremony organised by the Chief Minister in the year 2014. When she came to her matrimonial home, she was continuously mentally harassed for dowry by her husband, father-in-law, her two sisters-in-law with their respective husbands, and Krishna Tamrakar who was not related to the accused. She had given Rs. 5, 00,000. But still she was harassed. Her husband used to bring his friends and used to consume liquor where her husband used to tell her to do everything which she used to with him. When her husband and father-in-law tried to pour kerosene on her she ran away. It was proved in the court that the mentioned relatives resided in different place. High court said

¹⁴ Giridhar Shankar Tawde v. State of Maharashtra, AIR 2002 SC 2078

¹⁵ Available at <http://www.manupatrafast.in/pers/Personalized.aspx>, accessed 6th April 2017

that the court has the power under section 482 of the CrPC to quash down the charge sheet has been made under section 498A of the IPC.

b) Sexual Assault (Marriage)

It is a form where the husband forcibly forces his wife for getting involved in sex. This in other words is known as marital rape. It will amount to offence only if the age of the wife is below 15 years. Sadly, marital rape is not a criminal offence under IPC. Just because a man is married to a woman, does not amount that he can have sexual relationship with her if she is not willing to do so. Having sexual relationship before or after marriage is not wrong but it should be done by the consent of both the partners. Sexual relationship before marriage is wrong for society and court but sexual relationship after marriage is not wrong neither for both the society and the court. A daughter who is married if complains to her parents that her husband had forcibly tried to had sex with her, will get a reply that you can't complain about this because you are married and he has right on you, he can do whatever he feels like. My question is why can he do anything on me; am I toy to play with; do I don't have any emotions, do I don't have any say? How many child marriages take place today? I am not saying that it has stopped completely but it has decreased. States like Rajasthan where this child marriage mainly prevails have a tradition called "GAUNA" which means the girl will not be sent to her husband for living until she turns elder. So why has the court set up the age bar of 15 years? In terms of law the age of an adult is 18 years. So wives below 18 will automatically turn into as child marriage case etc. Why is there no provision for the wives above 18 years? Are they not humans? If this is so then marriage is a license for every husband to enter into a sexual relationship with his wife. Laws are formulated for the protection of the members of the society irrespective of their gender, colour, religion, caste, and creed. They are made to maintain peace and harmony in the society. But having no provision for marital rape really makes us think that legal system is getting affected by the societal norms. It is really a matter of concern and its high time that we start pondering over this and come to a conclusion.

c) Dowry Deaths

This is something which is not only common but one of the oldest crimes. This happens when the bride fails to bring enough dowries from her parents' home. She

gets physically tortured, she is not given food to eat, she is even locked sometimes, and she is mentally and emotionally harassed. Though the law strictly says that the person who gives and take dowry both will be punished. There have been many laws formulated in last few years but it's ineffective. Sometimes the brides are even burnt alive. They are even poisoned which leads to their deaths.

Section 304B of IPC was inserted in the year 1986. This deals with the dowry deaths. This section is applicable if harassment cruelty or was caused by the husband or any relative of her husband in context with dowry, and that harassment or cruelty has led to the death due to any sort of bodily injury or burns (abnormal circumstances) within seven years of the marriage. In such situations, the husband or the relative will be liable to punishment.

According to the latest reports by the Nation Crime Record Bureau, 7634 cases have been registered in the year 2015 in comparison to 8455 cases registered in 2014. Uttar Pradesh and Bihar were reported to be the states which have registered the highest number of cases in this context. It's a good sign that there has been a decrease. But it will be good only if in reality dowry deaths have decrease; because it happens that many victims due to some reasons don't register the cases. So it's important to understand the truth behind this decrease.

One can be held liable under this section only if the death of the wife has taken place within seven years of the marriage and under normal circumstances; second just before her death she should have been the victim of cruelty or any sort of harassment which could connect with the death.

Shamnsaheb M.Multtani vs. State of Karnataka¹⁶

Tanima was married to the accused and within six months of her marriage when she paid visit to her mother and brother she informed them that her in-laws are demanding for money amounting Rs. 20,000. Her brother gave R. 5,000 and requested her in-laws to be satisfied with. Though she was permitted to enter the house after some days she died. According to the autopsy report she was brutally beaten up, she was thrown here and there like football, her lungs had collapsed and there were mark of several serious injuries. Since the material witness turned

¹⁶ Shamnsaheb M.Multtani v. State of Karnataka, AIR 2001 SC 921

hostile the deceased husband and in laws were acquitted. The High Court condemned this incident and convicted the accused.

Lichhamadevi vs. State of Rajasthan¹⁷

The victim Pushpa was regularly tortured by her mother-in-law because she had not brought dowry to satisfy her greed. Unfortunately her husband always saw that his mother was harassing his wife but he never protested. He kept quiet always. One day when the deceased was washing utensils she was hit by her mother-in-law with pan and then burnt alive. Soon when the neighbours heard her voice of 'save save' they rushed to save her where they saw the door was locked from outside with an iron rod. She was taken to the hospital by the neighbours. The deceased husband and mother-in-law did not pay any heed. Despite of giving statements in front of doctor and the police in charge that she was burned down with kerosene which was thrown on her by her mother-in-law the sessions court acquitted the accused of the mother charges. The judgment was reversed by the high court where the accused was convicted to death. But due to the differences between the sessions and high court, the Supreme Court only ruled out for life imprisonment.

d) Causing Miscarriage without woman's consent

According to section 313 of IPC - Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.¹⁸

Moideenkutty Haji vs. Kunhikaya¹⁹

The high court of Kerala ruled out that offence committed under section 313 of IPC cannot be made in cases where it is mentioned in the complaint that the accused had taken the woman to the doctor in order to terminate the pregnancy only upon hearing that the woman is pregnant. There is no such case that it was done without her consent. The reason being that the allegations depicts that the woman had given her consent for abortion and also that she had sexual

¹⁷ Lichhamadevi v. State of Rajasthan, AIR 1988 SC 1785

¹⁸ Indian Penal Code, 1860, sec. 313

¹⁹ Moideenkutty Haji vs. Kunhikaya, AIR 1987 Ker (FB)

intercourse with the accused. It's not clear from the complaint that whether she was taken to the doctor willingly or by her husband forcefully. And also doctor was not even made accused as per the complaint.

Rape

34,651 cases have been registered in 2015 according to the NCRB in comparison to 36,735 cases in 2014. However there is a decrease in the cases but there is increase in the attempt to commit rape. 4,232 cases were only recorded in 2014 but in 2015 4,434 cases were recorded. Madhya Pradesh recorded the highest number of 4,391 cases. Among the 34,651 rape cases registered, in 33,098 cases the offenders were known to the victims which accounts for 95.5% of total rape cases.

Section 375 of the IPC defines rape. This section was substituted in the year 2013. A man will be liable for rape only under the seven clauses mentioned in section 375 of the IPC which are as follows:

- a) Against her will
- b) Without her consent
- c) Taken consent by inducing fear
- d) Consent given under misconception that the person is the husband of the woman
- e) Taken consent under the influence of drugs / intoxication
- f) Consent of girl under 18 years of age
- g) When she is incapable of giving consent

Section 376 of the IPC deals with the punishment in regard to rape. This section was also substituted in the year 2013.

Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term

of less than seven years.²⁰ If any police officer commits rape within the police station where he is appointed or not, if the woman is in the police custody or is his subordinate; if any public servant rapes by misusing his post any woman who is in his custody or is subordinate; if any staff of the remand home or jail or any place which is kept as custody or women's or children's institution misuse his post and rapes the female present in those mentioned places or his subordinate; if a woman is raped by the hospital staff in that hospital; if a man rapes a woman knowing the fact that she is pregnant or rapes a girl under twelve years, then all such persons will be held liable and will be awarded rigorous punishment which will be not less than ten years but which may be for life and fine.

There are three types of rape basically:

- *Incest Rape*: Incest rape is a rape where the rape is done by the members of the family. Like a brother, father, uncle or any other male member within the family and relatives rapes the female member of the family. There has been a decline by 17.9% in incest rape cases in the year 2015.
- *Custodial Rape*: Custodial rape is a rape where the rape done by the person who is appointed by the state in the position of a supervisor such as police officer, public servants of jail or hospital, constables. Out of 34,651 total rape cases registered, 95 cases were recorded as custodial rape in 2015. This type of rape comes under section 376C of IPC According to this section, any person who holds any post in any authority or is in a relationship of good faith or any staff of jail and hospital or resides in any woman's or children's institution if commits rape will be held liable under this section. He will be awarded rigorous imprisonment of not less than five years which can get extended to ten years and can also be fined.
- *Gang Rape*: It is a rape where group of people at least three, rapes a single victim. Gang rape falls under section 376D of the IPC. If a woman is raped by more than one or more persons who have a common intention, then each of those will be held liable and will be punished with rigorous punishment of not less than twenty years which can get extended to the remainder of that person's natural life.

²⁰ Indian Penal Code, 1860, sec. 376(1)

State vs. Ram Singh and Others

his case is better and commonly known as 2012 Delhi gang rape case. It is a case which shook not only India but the entire world. The victim Jyoti Singh a physiotherapy student was traveling with her friend Awindra Pratap Pandey in the bus. She was beaten and gang raped by the driver and other five males who were there in the bus. Her friend was also beaten up. This incident took place on 16 December 2012. After being gang raped she was thrown on road without clothes. Eleven days later she was shifted to Singapore where she died within two days. Her injuries were very severe. The medical reports suggested that she was penetrated through an iron rod. Her intestines, abdomen were damaged. One of the accused was a minor. The suspects were arrested within 24 hours with the help of CCTV footage. This incident had brought protests worldwide. One of the suspects Ram Singh died within the custody. The minor was convicted only 3 years of imprisonment. Though the Delhi High Court ruled out for death for the accused but the Supreme Court passed out stay orders and held 10 years of imprisonment.

Tukaram vs. State of Maharashtra²¹

It is also known as Mathura rape case. It is an example of custodial rape case. The victim was raped by two policemen in the compound of Desai Ganj Police Station of Maharashtra. The victim Mathura was a Dalit girl who was raped in the year 1972 which means she was a teenager that time. She used to work as a domestic helper with woman named Nushi. Nushi wanted her to marry her brother Ashok. To which the victim's brother denied and complained in the police station. After the general investigation Ashok and his family were allowed to go home. When the victim was leaving with her brothers she was told to wait and her brothers were told to go. And consequently she was raped. The High court sentenced the two accused of one and five years respectively. The court stated that passive submission which was induced due to fear cannot be taken as giving consent for sexual intercourse. The Supreme Court in 1979 however reversed the judgement passed by the high court. It stated that since she did not shout for help and there were no marks of injury on the body of the victim which could prove that she had struggled, it means she had given her consent. Therefore it cannot amount as rape. Thus the accused were acquitted.

²¹ Tukaram vs. State of Maharashtra, AIR 1979 SC 135

After the judgment there was a massive protest, it was criticised by many law professors, activists. The court argued that there was no locus standi for passing the judgment in the favour of the victim. Consequently the Indian Government had to amend the law. This led to the addition of sections 376A, 376B, 376C, 376D. Under section 376D custodial rapes became punishable.

Shakti Mills Gang Rape case

The victim was 22 year old and photojournalist by profession. She had gone to Shakti Mills on 22nd August 2013 for an assignment with her colleague where she was gang raped six times by five people among which one was a minor. The rapists took her photographs and threatened her that if she complains they will leak the photographs in the social media sites. Her colleague was tied up by belts. She could not shout for help because the rapists had put beer bottle near her neck. After this she was brought to the railway tracks where her colleague was tied. She informed her colleague about the rape. They without wasting time filed the complaint. After this, a call centre employee also reported that she too was raped on July 31st 2013. Among the five accused, three of them were the same who had raped the call centre employee. She had gone there with her boyfriend and likewise her boyfriend was also tied up and she was gang raped. The court awarded death to the three repeat offenders in both the cases, life imprisonment to the two, and the minor were treated by the juvenile board which sentenced the minor to three years of imprisonment. For the first time in the history of Indian law, death penalty was awarded in rape case. The defence here argued that the social and economic conditions of the accused forced them to do so. The court ruled out that this can't amount that they get the license of raping females. It further stated that the crime was done in the most gruesome manner with criminal conspiracy involved as proved judicially.

Section 376E was added in the IPC – if any person was previously convicted under sections 376 or 376D of the IPC and he is again convicted for the same offence which falls under any of those sections, and then in that case he will be awarded life imprisonment which means imprisonment for that person's remaining natural life or death.

Deelip Singh vs. State of Bihar²²

In this case the accused forcibly raped a minor girl. Later on he promised the girl that he would marry her. Only because of the promise made by the accused the girl agreed for having sexual relations with the accused. When the girl got pregnant she told everything to her parents. Even after a lot of efforts to convince the accused he denied to marry her. The trial court convicted him for 10 years of imprisonment but the high court reduced it to 7 years. However the apex court on the appeal made by the accused ruled out that- consent given by a woman believing the man's promise to marry her would fall within the expression 'without her consent' vide clause (ii) to section 375, IPC, only if it is established that from the mere inception the man never really intended to marry her and the promise was a mere hoax.²³ According to the court when the victim gives her consent consciously to indulge in the sexual act only believing on the promise of marriage made by the accused, it will not amount to clause (ii) of section 375 IPC. The accused here will be liable only for breach of promise to marry under civil law. False promise to marry will not ipso facto make a person liable for rape if the prosecutrix is above 16 years of age and impliedly consented to the act.²⁴

Kidnapping and Abduction of Women

Section 359 to section 373 of the IPC deals with the kidnapping and abduction of women. According to section 362 of IPC, abduction means - Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.²⁵

The punishment for kidnapping according to section 363 is that when any person kidnaps someone from India or the legal guardianship, he will be punished for imprisonment or description for a term which shall extend to seven years and will also be liable for fine. There has been increase in the kidnapping and abduction cases in the year 2015 in comparison to 2014 according to the statistics provided by the NCRB. 59,277 cases were registered in 2015 to that of 57,311 cases of 2014. The motive behind this kidnapping and abduction is to make them beg, forceful marriage, slavery, trafficking, selling and buying minors for prostitution. Other

²² Dileep Singh v. State of Bihar, AIR 1992 SC 1275

²³ K.D.Gaur, Textbook on Indian Penal Code, 5th edition, 699

²⁴ Id

²⁵ Indian Penal Code, 1860, sec. 362

motives can be murder, intention of secretly and wrongfully confinement, ransom. Out of 59, 277 cases 31,778 cases prove that kidnaping and abduction was done for forceful marriage. Uttar Pradesh once again ranks at first in this crime too.

Section 363A was inserted in 1960 to deal where the motive is making the minor to beg. The person found guilty will be held liable both for fine and ten years of imprisonment. Section 364 deals with murder, 367 deals with slavery; under these sections the accused will be sentenced for a year which can get extended for ten years or fine or both. Where kidnaping or abduction is done with an intention of secretly or wrongfully to confine the person, the accused is punished for seven years or fine or both under section 365. When a woman is kidnapped or abducted and fear is induced which compels her for marriage there the person found guilty shall be punished with imprisonment of wither description for a term which can get extended for ten years or fine or both. Section 364A deals where kidnaping has been done for ransom, where the accused can even be awarded death.

Section 370 deals with trafficking of a person. If any person for any purpose such as transport/recruitment/ harbour/transfer sell or purchase any person by using means like inducement or threat or force or coercion or deception will be convicted for not less than seven years which can get extended to ten years and fine. When any person of a minor or more than one person, then he is convicted for not less than ten years which can get extended to life imprisonment and fine. When trafficking takes place for more than one minor then the person is convicted for not less than fourteen years which can also get extended to life imprisonment and fine. If a person is again found guilty of committing the offence of trafficking of more than one minor then he will be awarded imprisonment of his entire remaining natural life and fine.

For both selling and buying minors for prostitution, section 372 and section 373 respectively states that the person found guilty shall be punished with imprisonment of either description for a term which can get extended for ten years and shall also be liable for fine.

Importation of Girls

Section 366B of the IPC- whoever imports into [India] from any country outside India [or from the State of Jammu and Kashmir] any girl 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, [***] shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.²⁶ To that of 13 cases registered in 2014 only 6 cases were registered in 2015.

Abetment of Suicide

Section 306 of the IPC- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.²⁷ This generally happens when victims of rape, domestic violence are continuously threatened, abused, don't get justice within reasonable time, when the accused tortures the victim to take back the complaint, the victims commit suicide. It took place in the *Ruchika Girhotra* case where the accused kidnapped her brother and beat him brutally, threatened her continuously to take back the complaint, hired his men behind her to keep an eye on her she consumed poison and died.

State of Punjab vs. Iqbal Singh²⁸

In this case the accused was married to Mohinder Kaur for seven long years. They had three kids. She was working as teacher and her husband as a clerk. She was regularly tortured by her mother-in-law, sister-in-law, and husband for dowry. For the safety of herself and her children she was given police security and soon divorce was issued but not implemented. The deceased wanted for transfer to different school but it did not happen. One day she learnt that the aforementioned people including her husband will kill her by throwing kerosene on her but she survived. Nothing such happened. As she was fed up of the tortured she killed herself and before doing so she had informed about the same to the DCP about the circumstances which forced her to do so. The trial court convicted the three under 306 of IPC but the high court acquitted them on the grounds that the evidences were insufficient to prove them guilty under section 306. But the apex court held in such situation the conduct of the person would tantamount to inciting or provoking or virtually pushing her to put an end to her miseries by committing suicide.²⁹

²⁶ Indian Penal Code, 1860, sec. 366B

²⁷ Indian Penal Code, 1860, sec. 306

²⁸ State of Punjab vs. Iqbal Singh, AIR 1991 SC 1532

²⁹ K. D. Gaur, Textbook on Indian Penal Code, 5th edition, 572-573

Acid Attack

Acid attack is a form of violent assault. The accused throw this usually on the faces of the woman. This leads to the damage of skin tissues, burns, and even in some cases to dissolve of bones. Generally sulphuric and nitric acid is used as these acids are highly flammable. The aftermath of this is permanent blindness and scars over the body. The perpetrators usually do this in a fit of rage like when any girl rejects their proposal.

Section 326A – if any person causes any partial or permanent damages or any sort of deformity or any grievous hurt in any part of the body by throwing acid on that injured person with an intention or with the knowledge that this act of him will cause such degree of hurt then he will be convicted for not less than ten years which can get extended to life imprisonment and fine. The fine will cover the medical expense of the victim.

Section 326B lays down the punishment for the attempt of acid throwing. It provides with five years of imprisonment which can get extended to seven years with fine.

Laxmi Agarwal an acid attack survivor filed PIL in the year 2006 which talked about the formulation of new laws and the required amendments in the existing laws which deals with acid attack; ban on the sale of acid; compensation. The central government told the Supreme Court that it along with the state governments will work in this context before the next hearing. When the central government failed to do so, Supreme Court intervened and rephrased the law; according to which person below 18 years of age do not have the power to purchase acid, before selling acid to anyone the shopkeeper must ask for a photo identity.

Molestation

According to the data provided by NCRB, there has been slight increase in the number of cases in context to assault on women with intent to outrage her modesty in 2015 with 82,422 to that of 82,235 of 2014.

Section 354 of IPC-

Anyone who assaults or takes the help of criminal force on any woman with an intention to outrage her modesty will be punished with imprisonment not less than one year which can get extended to five years and fine.

In *Pandurang Mahale vs. State of Maharashtra*³⁰ Supreme Court held that the essence of a woman's modesty is her sex.³¹

*Rupan Deol Bajaj vs. K.P.S. Gill*³²

In this case, the accused had slapped the victim on the posterior in the party in front of all the guests. The accused was then the DGP of Punjab police while the victim was the I.A.S officer. The Supreme Court found the act done by the accused within the purview of section 354 of IPC and he was held guilty.

*State of Punjab vs. Major Singh*³³

In this case, injuries were caused to a seven month child by fingering by the accused. The court held the accused liable under section 354 of the IPC. The court held that the essence of a woman's modesty is her sex, young or old, intelligent or imbecile, awake or sleeping, the woman possess modesty capable of being outraged.³⁴

Section 354A, 354B, 354C, 354D was added in IPC in 2013 in order to discourage the criminals from getting involved in assault to woman to disrobe her or sexual harassment or voyeurism or stalking.

VERMA COMMITTEE REPORT

Justice J.S. Verma who is also the former chief justice of India with three other members was assigned to analyze the laws present for crimes related to sexual offences. The committee submitted its report to Government in the January 2013. Committee has suggested comprehensive alterations in the criminal laws to tackle with the crimes and atrocities faced by the women. Some of them are as follows:

³⁰ *Pandurang Mahale v. State of Maharashtra*, AIR 2004 SC 1677

³¹ K.D.Gaur, Textbook on Indian Penal Code, 5th edition, 652

³² *Rupan Deol Bajaj v. K.P.S. Gill*, AIR 1954 SC 711

³³ *State of Punjab v. Major Singh*, AIR 1967 SC 63

³⁴ K.D.Gaur, Textbook on Indian Penal Code (5th edition, p 653)

- **Punishment for Rape:** It recommended that the punishment in the case of rape should be rigorous imprisonment of seven years. It also suggests that the punishment for causing "persistent vegetative state" or death should be imprisonment not less than 20 years, but can also be for the entire life. In the case of Gang-rape, it recommends that the punishment should not be less than 20 years, which can also extend to entire life. While in the cases of gang-rape where death occurs the accused should be given life imprisonment. Unfortunately there is no provision for death to the rapists.
- **Punishment for other sexual offences:** Seven years of imprisonment to the accused under Voyeurism and Acid attacks. Three years for stalking or where the accused continuously puts efforts to contact the person. For Trafficking the accused will get punishment with rigorous imprisonment for a period of seven to ten years.
- **Registering complaints and medical examination:** each and every rape complain must be registered by police "Any officer, who fails to register a case of rape reported to him, or attempts to abort its investigation, commits an offence which shall be punishable as prescribed," the report says.
- **Marriages to be registered: its mandatory regardless to the personal laws,** all marriages done in India should be registered in the presence of a magistrate. The magistrate concerned needs to establish that the marriage has been fulfilled without any dowry demand made and also that both the partners have given their consent freely.
- **Police reforms:** For seeking the confidence of the public, every police must be aware their responsibilities and fulfill it with full honesty and understand the importance of their roles in the society welfare.
- **Role of the judiciary:** The main duty of the judiciary is to enforce the fundamental rights, by means of constitutional remedies. The judiciary whenever required can take *suo-motu* cognizance of those kinds of issues which are there both in the Supreme and

High Court. The Chief Justice can consider in making apt orders in regard to missing children to stop the illegal trade such as trafficking etc.

- **Political Reforms:** The committee also observed the need for reforms to tackle with the criminalization of politics. If any candidate is indulged in criminal offence and for the same the magistrate has taken cognizance, those candidates should be disqualified from contesting elections. It also recommended that the current MPs or MLAs who have been charged under criminal offences should leave their seats voluntarily.

AUTHOR'S OPINION

Only formulation of laws and its enforcement will not stop crimes which take place against women. There is a very important need of social awareness and also change in the attitude of people. So that equal status and respect can be provided to women also. This awareness can be brought by education campaign to make them aware of the existing social evils. And how those social evils can be eradicated? Media will also be very helpful as it plays an active role in present days because it has reached to every part of the country.

The very narrow mind set of our society is the basic reason behind this problem. A large group of our society thinks that men are much more capable to earn in comparison to the women. It is generally observed that male members of family tend to control the life female members of their respective families. This in turn leads to low status of females. Due to such thinking, even if the females want to contribute to the society they cannot contribute. This also leads to female foeticide. In the workplace if any female worker receives appreciation the ego hurts of the other male worker and due to which they sometimes try to sexually harass the female worker. The perception that the female workers should be paid less should be removed and for which more females should be motivated and paths should be made for their entry into the business world. The nation where it has businesswoman like Chanda Kochar, Arunadhathi Bhattacharya etc. there are still females present who have no idea about all these. Differentiation among girls and boys should be stopped because this leads to dowry system.

The country is progressing. For the first time in the history the current central government has 7 female ministers out of which 6 are cabinet ministers. Tanushree Pareek became the first

female to become combat officer in BSF in 2017. India got its first female speaker of Lok Sabha as Meira Kumar in 2009, followed by Sumitra Mahajan in 2014. The first female president of India was Pratibha Patil in 2007. So we can see that after 2000 the situation has started recovering but it still needs a lot more to recover. The Indian Armed Forces Personnel include 5% of females as of 2016.

To improve the condition of women, the patriarchal mentality of the society should be fully eradicated because such mentality leads to gender disparity which further causes crimes.

