

LEGAL AND ETHICAL ISSUES IN CRIMES AGAINST WOMEN - INDIAN SCENARIO

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The issue of crimes against women has attained the spotlight in the 21st century. The title *per se* indicates the veracity of the problem at hand. Even the international community has woken up to enact Conventions to protect women from all forms of discrimination and abuses. Nevertheless the supreme law of the land i.e., the Constitution of India also contains provisions to safeguard the womenfolk. *Albeit* there are enough and more legislations to curb violence against women, abuse is still unrestrained. The technological advancements on one hand coupled with the depraved mindset of mankind on the other, has led to a meteoric rise in the crime rates. It is indeed surprising to find the novel ways in which these crimes are being orchestrated. The society has lost the fear for law and it is evident from the alarming statistics. What is wrong with the world? Who is to be blamed for this heinous acts? Why are the perpetrators not punished according to the gravity of their offence? Are the questions that needs to be addressed immediately? A close analysis indicates the presence of a wide gap between the enacted laws and actual implementation of the same. In consideration of the facts mentioned above, *inter alia* now is the time to curb this dichotomy between the enacted legislations and enforcement agencies, thereby making our land a better place to live in for all the women folk?

Introduction:

The abuses and discriminations which the women folk encounter are not of recent origin rather they are from the ancient days. In the present century, only its magnitude has increased. The scientific and technological advancements instead of curbing the violence is aiding people to commit 'innovative' crimes. Ironically, the increase in legislations has led to increase in crime rates. Sensing the veracity of the problem the international community has convened several Conventions to curb the abuses against this vulnerable weaker section. The Indian judiciary and legislature has also done its part in enacting and amending the existing statutes as and when the need arises. As far as India is concerned, the reason for increased crime rate is definitely not the lack of legislations, rather the poor implementation by enforcement agencies and deteriorating moral values can be attributed for the same. As a panacea to these issue this paper throws light on some of the issues encountered by women with special reference to the provisions for criminal violations faced by them under several legislations, crimes at home, cybercrimes, the efficacy of

these enactments and remedies in solving this age old problem. It is high time we as citizens examine where we have gone wrong in protecting the weaker section and let us plug all the loopholes that continue to be a safe haven for the offenders with the aid of the State machinery.

Current status of women:

The role of women as a daughter, a mother, a wife and as a grandmother is beyond description. No amount of words would suffice to describe her contribution to the family, the society and the nation as a whole. In India, the ancient law given by Manu and Yajnavalkya entrusted the responsibility of protecting females upon father, husband and son at various stages of life.[1] The current status of women is the result of age old efforts that were made to safeguard their rights and privileges. Compared to the ancient days women are definitely in a good state. In the past the women folk were denied education, property and other rights. They were confined within the four walls of the home. Thanks to our legislations that has broken all the bondages of women, to live a life of freedom. The land mark enactments include The Commission of Sati (Prevention) Act, 1987, Indecent Representation of Women (Prohibition) Act, 1986, Maternity Benefit Act, 1961, The National Commission for Women Act, 1990, Pre-natal Diagnostic Techniques Act (Regulation and Prevention of Misuse) Act, 1994 etc., All the above mentioned legislations *inter alia* has increased the status of women manifold. Besides, the Constitution of India also contains provisions asserting the equality of women along with men in all spheres. In short the legislations have played a vital role in elevating the status of women.

Statistics on crimes against women:

At least 34,651 cases of rape were reported across India in 2015 according to the statistics released by the country's National Crime Records Bureau (NCRB). The released figures, showed that the victims ranged from female children younger than six years old to women over 60 years, with those aged between 18 and 30 reporting the largest number of rape attacks - totaling almost 17,000. Victims knew their alleged rapists in 33,098 of the 34,651 reported rape cases, or 95.5 percent, according to the figures, which also showed a slight decrease compared with the 36,735 rape cases reported in 2014.[2]

The dowry death statistics is also equally alarming. A total of 24,771 dowry deaths have been reported in the country in past three years with maximum of them occurring in Uttar Pradesh with 7,048 deaths. In a written reply to the Lok Sabha, Women and Child Development Minister Maneka Gandhi said that 8,233, 8,083, and

8,455 cases were registered under section 304B (Dowry Death) of the Indian Penal Code in the country in 2012, 2013 and 2014 respectively.[3]

As per the statistics available with the National Crime Records Bureau (NCRB), Data on Protection of Women from Domestic Violence Act, 2005 has been collected for the first time in 2014. A total of 426 cases were reported under this Act during 2014. Kerala (140 cases) followed by Bihar (112 cases), Uttar Pradesh (66 cases), Madhya Pradesh (53 cases) and Rajasthan (17 cases) have reported the maximum such cases during 2014, these four States together accounted for 91.1% of total such cases reported in the country during 2014. All these statistics are two, three years old and it is no wonder to find a meteoric rise of all these crimes in 2017. This data reflects the deplorable life of women and the need to take steps for reducing the crime rate against women.

Crimes under the Indian Penal Code:

With this alarming statistics at hand, it is vital to understand about our Penal Act. The major Penal Statute for our nation is the Indian Penal Code, 1860. It contains several provisions regarding the offences which can be committed against women. Six days after the infamous Nirbhaya gang rape case on 22nd December 2012, the Government of India appointed a committee under the leadership of Justice Verma, retired Supreme Court judge, to undertake radical reforms and suggest amendments in the criminal law. After the stipulated one month period the committee submitted its report and it indicated that failures on the part of Government and Police were the root cause behind crimes against women. As a result, the Criminal Law Amendment Act, 2013 was enacted to amend the Indian Penal Code, The Indian Evidence Act and the Criminal Procedure Code. Several new offences were brought to the book namely Acid attack, voyeurism, stalking etc., were included. Besides, rigorous punishments were also added to the existing and the newly added provisions. The punishment for rape has been made stringent. Section 376 A and 376 E of the Indian Penal Code prescribes rigorous imprisonment for a term not less than twenty years but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of the person's natural life or with death. In addition to this provision there are several other provisions explained in chapters XIV (Offences affecting the public health, safety, convenience, decency and morality, XVI (Offences against the human body), XVII (Offences against property), XX (Offences relating to marriage), XX- A (Offences relating to cruelty by husband or relatives of husband, inserted by the Criminal Law (Second Amendment) Act, 1983), XXII (Offences relating to criminal intimidation, insult and annoyance) and XXIII (attempts to commit offence) of the penal code.

Crimes at home:

i) Dowry Harassment:

The issue of Dowry Harassment is a vital area that needs to be addressed. In common parlance 'Dowry' refers to the goods which the bride carries to her marital home. Anyhow, Dowry is considered to be prejudicial to human rights because it is regarded as a compensation for the low value of women for getting the company of a high valued man. It is pathetic to find this evil practice has led to the loss of several innocent lives. With the increasing number of Dowry deaths this Act was further amended in the year 1986 and subsequent amendments were also made by insertion of Section 304B (Dowry death)[4] and Section 113B (Presumption as to Dowry Death)[5] in the Indian Penal Code, 1860 and Indian Evidence Act, 1872 respectively. For all these purposes the term dowry shall have the same meaning as defined in section 2 of the Dowry Prohibition Act, 1961. The Hon'ble Apex Court in *Kundula Balasubramanyam v. State of Andhra Pradesh*[6] observed as follows, "of late there has been alarming increase in cases relating to harassment, torture, abetted suicide and dowry deaths of young innocent brides. This growing cult of violence and exploitation of the young brides, though keeps on sending shock waves to the civilized society whenever it happens, continues unabated. There is a constant erosion of the basic human values of tolerance and the spirit of 'live and let live'. Lack of education and economic dependence on women have encouraged the greedy perpetrators of the crime". The continuance of this practice is indeed a shame to our 'post-modern' society.

1. ii) Domestic Violence:

Domestic violence is other crime against women, committed within the four walls of the home. The Vienna Accord of 1994, the Beijing Declaration and the Platform for Action has acknowledged that the issue of Domestic Violence is definitely a human rights issue. The problem with this violence is that it is totally invisible in the public domain. Although the violence against women by her husband and relatives can be brought under the ambit of Section 498A of the Indian penal Code dealing with Cruelty, the civil law has not addressed this issue in an exclusive manner. To combat this abuse the Domestic Violence Act, 2005 was enacted. Section 3 of the Act defines the acts that constitute the offence of domestic violence. It includes actual abuse or threat to abuse that is physical, sexual, emotional or economic. Harassment to the women and her relatives with regard to dowry will also come under its purview.

The famous proverb goes like this, "East or west, home is the best" but seems as if this doesn't apply to women.

The home which is required to be a safe haven for women has indeed turned to be a crime spot where all types of violence and abuses go on unrestrained, despite clear cut tailor-made legislations. If the primary guardians of women turn to be the perpetrators where in the world can they expect safety and security? The nemesis of the past still haunts and will haunt the women for the rest of their lives if this abuse remains unchecked.

Crimes at the work spot:

The sexual harassment against women were not taken seriously, until a landmark judgement was pronounced in *Visaka v. State of Rajasthan*[7]. But an exclusive legislation was enacted only after several years from this decision. After repeated demands, the Parliament of India finally enacted the "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013" with the object of providing a safe work place for all women. This Act is in consonance with Article 11 of the Convention on Elimination of All Forms of Discrimination (CEDAW) which requires the State parties to take adequate measures in eliminating discrimination against women in the field of employment. India is a party to this convention and it was ratified on the 25th of June, 1993 and so the provisions have a binding effect on the nation. Article 21 of the Constitution that talks about the right to life and personal liberty includes the right to work in a safe environment free from all harassments. Besides Article 19(1)(g) provides the Fundamental Right to citizens to practice any profession, or to carry on any occupation, trade or business. Even this right implies an enabling environment which is safe and secure. The *onus* is on the employer, the District Magistrate or the Deputy Collector of every District in the State to lay down statutory redressal mechanisms thereby making sure that women will be treated with due respect, dignity and decency at the workplace. This piece of legislation certainly helps them to achieve this dream.

Crimes at the Cyber space:

The term cyber or cyber space has come to signify everything related to computers, the Internet, websites, data, emails, networks, software, data storage devices (Such as hard disks, USB disks etc..) and even electronic devices like mobile phones , ATM machines and so on. Cyber law simply governs cyber space. The so-called weaker sex is more vulnerable in this cyber era. India is witnessing a steady increase in the number of cybercrimes and the worrying statistics bear witness to this fact. The question that comes to one's mind is, where all the laws have gone to provide justice for the poor victims. Be it the Swathi Murder case, DSP Vishnupriya's suicide and even to Kate Middleton, the Duchess of Cambridge, cyberspace has cost them dearly.

The major crimes in the cyber space include electronic transmission of obscene content, violation of privacy, child pornography, morphing, blackmailing, hacking of private information etc., The main legislation guarding the cyber space is the Information Technology Act, 2000 (as amended by 2008 Act). But, it is really painful to see it's poor implementation. Even though the IT act was amended to cope up with the evolving technology, conviction rates are moving in a snail's pace. Unless the enforcement authorities take stringent actions to curb the offenders, safeguarding women would be a distant dream. By the way, in this fast moving world women cannot be asked to stay away from using the evolving technologies, true independence is to see them enjoy their Cyber-Freedom without infringement. The Law in action can certainly help this marginalized group. On the other hand simply blaming the male community does not put an end to this fuss. The blame game never ceases and evil will go unrestrained. Using technical 'Jargons and argots' will certainly make the problem messier and for good or for worse it once again takes a toll on the women folk. It's the right time to stop pointing fingers at each others and work tirelessly to see all our legislations in reality.

Efficacy of the legislations:

With the plethora of legislations at hand the next obvious question is its efficiency. A clear analysis indicates that the increase in legislations has paradoxically led to the increase in crime rate!. The reason for its pathetic plight is due to many reasons. On the side of judiciary the lengthy trials devoid of stricter punishments is an undeniable fact. Take for instance the Criminal Law Amendment Act, 2013 that provides for death sentences in case of rape. How many rapists were hanged to death from its enforcement on 3rd April, 2013 to the present day? is a question that remains unanswered. Besides, to make this issue still more complex the 'Rarest of the Rare' doctrine was evolved in the *Bachan Singh vs. State of Punjab*[8] in accordance with Section 354(3) of the Criminal procedure code, 1973 that reads like this. "When the conviction for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence". By evolution of this doctrine alone, several accused criminals have escaped the noose. While one legislation approves giving death penalty the other seeks 'special reasons' so that this capital punishment can be given only in a 'rarest of the rare' case. In other words death penalty can be given only in 'exceptional' cases. On the contrary death penalty is the rule in the Middle Eastern countries till today and that is the reason for their decreased crime rates. In India even though our legislations speak about capital punishment, in reality

death penalty has become an exception rather than being the rule. While several victims are desperately in need of justice, all these provisions make their plight even worse. Unless these contradictions are addressed, reduction of crimes against women will definitely be a distant dream. On the side of executive authorities, the poor implementation of enacted laws has led to increase in crime rates. The society has lost the fear of law and it is evident from our day to day happenings. To make our legislations and executive wing effective all loopholes present in our system must be plugged in immediately.

Need for stricter punishments:

While several thousand cases are being registered every day, the conviction rates are lagging behind. It is vital to understand that the offender must always be paid back in the same coin. In other words the punishment must be in proportion to the gravity of the crime. This was also asserted by the Hon'ble Supreme Court of India in *Mahesh V. State of Madhya Pradesh* [9] that "giving lesser punishment to accused in such a brutal case will beat the citizen's faith in courts and justice, and law is liable to provide justice to society". In *Dhananjay Chatterjee Alias Dhana V. State of West Bengal*, [10] Justice A.S. Anand and N.P. Singh said "that the measure of punishment must depend on the gravity of crime, so that the victim must be provided with fair justice".

In legal parlance this is often referred as the retributive theory of punishment. This theory did not evolve out of the blue, rather it was established in the Holy Bible several thousand years before Christ. The biblical verse says "Breach for breach eye for eye, tooth for tooth: as he hath caused a blemish in a man, so shall it be done to him again". [11] The Hebrew law prescribed such severe death sentence for crimes like rape, adultery, homosexuality and other grave offences. The offender was treated without any mercy and was paid to suffer for the wrong he has caused to the victim. But when this intrinsic element is missed the object of criminal justice delivery system would turn futile. Middle Eastern countries are known for their strict public executions. That is the simple reason for the reduced crimes.

Reforms in the Judiciary:

The common man in the country is not bothered by all the legislations and legal jargons. All he expects is a crime free society with justice and liberty for all. Despite the presence of severe punishments there has been no reduction in the crime rate. 'Thanks' to our criminal justice delivery system to end this pathetic plight the Indian judiciary needs a paradigm shift from the current Adversarial system to the inquisitorial system as

followed in many European countries like France, Italy etc.,

The Adversarial system seems to favor the accused *in toto* and this is evident from its cardinal principles a) every accused is innocent until proved guilty, b) benefit of doubt is given to the accused c) the parties present their case to an 'impartial' judge. d) Charges must be proved beyond reasonable doubt. By these presumptions several accused have been left scot free. The shocking statement of Additional Sessions Judge G.P.Thareja in *Ms.Priyadharshini Mattoo case (Santhosh Kumar Singh v. State through CBI)* [12] highlights the weakness of this system. The Judge remarked "though I know he is the man who committed the crime I acquit him, giving the benefit of doubt". This statement rightly says about the adversarial system. In this system the role of Judiciary is limited to a mere passive listener who decides the case based on 'skilled' advocacy rather than finding the truth. Those with the ability to influence and manipulate will escape the sanctions, but all the helpless people suffer the brunt of law. Now is the high time we take these facts to consideration and strive towards providing to women through proper criminal justice delivery system.

Ethical and moral count:

Each and every individual's life irrespective of their gender, caste, race, status is precious. And so, no one has the right to tarnish or cause harm to the other. If any person causes harm, leaving aside our legislations, the principles of natural justice demands that the person must be punished in proportion to the harm he has caused. That is what retributive theory of punishment is all about. To make it simpler a murder must be given capital punishment without any mercy, only then justice will be fulfilled to the victim. The late Archbishop of Canterbury, William Temple in his remarkable lecture "The ethics of penal action" says as follows "It is the first moral duty of the community or the state on its behalf to reassert the broken moral duty against the offender who has broken it. It has the first point in the retributive theory of the punishment that the penalty must be visited to the guilty party." Moral and ethical laws demand proportional punishments even though our legislations hold otherwise. Several acts that are deemed legal are indeed immoral in the ethical sphere. Take for instance consensual sex, cohabitation, legally justified killings etc., what is legally right need not be morally right. In consideration of moral and ethical issues even the above mentioned acts must be criminalized for betterment of women folk in particular and the society as a whole. It is pertinent to note that morality always supersedes legality. Included in this ethical issue is the time count wherein the penal sanction must be given within the stipulated time frame. The accused persons cannot languish in jails without conviction. Remaining as under

trial prisoners for years together is morally wrong and it is indeed a human right violation. So this factor is to be considered with utmost importance.

Conclusion:

Women are expected to live a life of equality on par with men. In reality they are indeed caged birds with the legislative fences around them to guard their family life, social life, economic life and their cyber space too. This is the 'independence' we have achieved after 67 years of freeing ourselves from the British rein. All talks relating to women rights, empowerment of women lies in oblivion and they don't make any sense to the women folk who are still under the bondage of abuses, violences and widespread discrimination. Even today, more legislations and amendment of the existing ones are demanded to safeguard them better. At this juncture it is worth mentioning that no amount of enactments and stringent punishments can curb crimes unless a mental/emotional mutiny takes place within each and every individual present in the society. As the old proverb says 'unless a thief himself determines to stop his habit none can control him'. At the first place the *onus* is on individual to change their attitude towards a clean life. In other words our mindset must change and this reformation/revolution cannot be enforced on any individual rather this must begin at our homes. As rightly said, "*Charity begins at home*". Only then our legislations will prove beneficial to our society. It is better late than never. With the aid of enacted legislations and the State machinery we as citizens must break all the shackles and bondages of women enabling them to breathe an air of freedom with dignity, safety and respect. In consideration of this fact let us help this vulnerable community to cherish their long desired moral, social, ethical rights and strive to make our globe a better place to live, ultimately, bringing cheer and joy to all the womenfolk

[8] AIR 1980 SC 898

[9] (1987) 3 SCC 80

[10] (2004) 9 SCC 751

[11] The Holy Bible Leviticus 24: 20 (King James Version)

[12] (2010) 9 SCC 747

[1] Yaj. Smriti, I-85-6: "Rakshetkanyaam pitaa vinnaam patih putra sscha vaardhake I Abhaave jnaataya steshaam na swaatantryam kwachit striyaa"

[2] 2016, September 1, *India: More than 34,000 cases of rape reported in 2015*, Retrieved March 9, 2017, from <http://www.aljazeera.com/news/2016/08/india-34000-cases-rape-reported-2015-160831140518208.html>

[3] PTI, 2015, July 31, *24,771 dowry deaths reported in last 3 years: Govt*

Retrieved March 9, 2017, from <http://indianexpress.com/article/india/india-others/24771-dowry-deaths-reported-in-last-3-years-govt/s>

[4] Battacharya, T (2013), *The Indian Penal Code*, Allahabad, Central Law Agency.

[5] Krishnamachari, V (1998), *The Law of Evidence*. Hyderabad, S.Gogia & company.

[6] (1993) 2 SCC 684

[7] (1997) 7 SCC 323