

## Situation of Women in India: A Critical Analysis

By Rekha Thakur

Assistant Professor, Himcapes School of Legal Studies, Badhera, Una, H.P.

*Human rights are essential for all-round development of the individuals in the society. It should be necessarily protected and made available to all the individuals. There are many constitutional rights guaranteed for women in India but there is a big difference in theory and practical application of these rights. Since Indian society is a male dominating, hence women are facing attack on their dignity in every sphere of life such as rape, domestic violence, sexual harassment and dowry cases. This paper will focus on the situation of women in India and analyse violence against women with the help of two different reports as United Nations: mission to India and National Crime Records Bureau respectively.*

*In order to know the position of women in India, it will be important to discuss, what are the constitutional provisions available to women such as Article 15 of Indian Constitution states that State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them.*

*It is necessary to discuss fundamental rights and analyse how can we control the hegemony of males and achieve the goal of equality and how the successful implementation of women rights can help to extirpate the crime against females help to improve the situation of women in Indian society.*

### INTRODUCTION

In the modern world, although, women are participating in every sphere of life such as adopting different professions such as becoming doctor, engineer, player and customer agent yet the issues concerning women are not given priority especially in Indian society. Indian women are granted with constitutional rights but they get violation because of their gender. Hence violence against women is one of the reason for the inequality among men and women. If we take careful consideration of our constitutional provisions such as Article 14 and Article 15 that has been discussed later, it seems that there is a big difference in reality of practice of these provisions. The women in India have always been considered subordinate to men. Although the provisions mentioned in the Indian constitution ensures equality and non-discrimination on the grounds of sex, women is always discriminated and dishonoured at home and at workplaces. Apart from this, various legal and fundamental rights have been provided to improve the status of women in India, still the violence against women in India are increasing very fast. This will be very much clear later in this article. This paper discusses the different reports as mentioned below and fundamental rights enshrined in the constitution and situation of women in India followed by the suggestions and conclusion. Before discussing reports it becomes necessary to discuss constitution provisions accessible in India.

### WOMEN RELATED CONSTITUTIONAL PROVISIONS IN INDIA

#### 1. Fundamental Rights:

The fundamental rights which are natural and human rights of a human being are mentioned in the Indian constitution for women are listed below:

#### **Article 14 : Equality before law**

Article 14 guarantees to every person the right to equality before the law or the equal protection of the laws within the territory of India. The first expression 'equality before law' which is taken from the English Common Law, is a declaration of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. The second expression, 'the equal protection of the laws' is the

essence and core of the right to equality under which the State is obliged to take necessary steps so that every individual, man and woman should be treated equally<sup>[11]</sup>.

#### **Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth**

**Article 15(1)** prohibits the state from discrimination against any citizen on the grounds of religion, race, caste, sex or place of birth. In other words, all laws are to be applied to members of both sexes equally, and there is an express prohibition of discrimination on the ground of sex. A law which deprived female properties to hold and enjoy her property on the ground of her sex was held violative of Article 15<sup>[12]</sup>.

**Article 15(2)** provides that no citizen shall, on the ground only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction with regards to (a) access to shops, public restaurants, hotels and places of public entertainment, or (b) the use of wells, tanks, bathing ghats, roads, and places of public resort, maintained wholly or partly out of State funds or decided to the use of the general public<sup>[13]</sup>.

**Article 15(3)** empowers the State to make special provisions for women and children only. The main object of Article 15 (3) is based on 'protective discrimination' keeping in view the weak physical position of women<sup>[14]</sup>. It has been held by Bombay High court in the case of **Dattatraya v. State of Bombay**<sup>[15]</sup>, that the State can establish educational institution for women only.

#### **Article 16: Equality of opportunity in matters of public employment**

**Article 16 (1) and (2)** express the general rule that the State shall provide equal opportunities for all citizens in matters relating to employment or appointment to any office under the State. There shall be no discrimination on the grounds of religion, race, sex, caste or place of birth in providing employment. These provisions are an extension of the principle of equality before law and of the goal of 'equality of status and opportunity' as mentioned in the Preamble of the Constitution<sup>[16]</sup>.

#### **Article 19 (1)(g) – Freedom of Trade and Occupation.**

Article 19(1)(g) of the Constitution guarantees that all citizens have the right to practice any profession or to carry on any occupation on trade or business<sup>[17]</sup>.

#### **Article 23(1) – Prohibition of traffic in human beings and forced labour.**

Article 23(1) of the Constitution of India prohibits traffic in human beings and beggar and other similar forms of forced labour. "Traffic in human beings" means selling and buying human beings as slaves and also includes immoral traffic in women and children for immoral or other purposes. To control the deep rooted social evil of prostitution and to give effect of this article, the Parliament has passed "The Immoral Traffic (Prevention) Act", 1956<sup>[18]</sup>.

### **2. Directive Principles of State Policy**

#### **Article 39 : Certain principles of policy to be followed by the State.**

**Article 39(a):** That the citizens, men and women equally, have the right to an adequate means of livelihood<sup>[19]</sup>.

**Article 39(d):** That there is equal pay for equal work for both men and women<sup>[10]</sup>.

**Article 39(e):** The State is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength<sup>[11]</sup>.

**Article 42: Provision for just and humane conditions of work and maternity relief:** The State shall make provision for securing just and humane conditions of work and for maternity relief<sup>[12]</sup>.

### **3. Fundamental Duties towards woman expressed in the Constitution.**

Article 51A under Part IVA of the Constitution of India lays down certain fundamental duties upon every Citizens of India, which were added by the 42nd Amendment of the Constitution in 1976<sup>[13]</sup>. Article 51A(e),

which related to women, imposes a duty on Indian citizens “to renounce practice derogatory to the dignity of women”<sup>[14]</sup>.

#### 4. **Reservation for Women.**

Part IX and IXA has been added to Constitution by 73rd and 74th Amendments. It deals with the provisions concerning the reservation of seats for women in election to the Panchayat and the Municipalities<sup>[15]</sup>. Reservations of Seats for women in Panchayat and Municipalities have been given in Articles 243 D and 243 T of the Constitution of India. According to Article 243 D (3), “not less than one-third, (including the number of seats reserved for women belonging to the Schedule Castes and the Schedule Tribes) of the total number of seats to be filled up by direct election in every Panchayat, shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat<sup>[16]</sup>, Article 243 T (3) of the constitution provides similar provisions for reservation of seats for women in direct election in every Municipality<sup>[17]</sup>”.

### **VIOLENCE AGAINST WOMEN : SITUATION IN INDIA**

#### 1. **Report of the Special Rapporteur on violence against women**

This report includes the findings of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, on her visit to India from 22 April to 1 May 2013. In the report, the Special Rapporteur scrutinised violence against women in the country, including root causes and consequences, and the implications of such violence on the effective exercise of human rights by women. She also discusses the State’s responses and provides recommendations. She exposed that violence against women in India is systematic and occurs in the public and private spheres. Women are discriminated against and subordinated not only on the basis of sex, but on other grounds, such as caste, class, ability, sexual orientation, tradition and other realities. That uncovers many to a continuum of violence throughout the life cycle, commonly referred to as existing “from the womb to the tomb”. The violence against women are a reflection of the structural and institutional inequality that is a reality for most women in India<sup>[18]</sup>.

In this report she discussed how the Indian women face violence as following

**Violence against women in the family:** The perpetrators include husbands, in-laws and other family members such as crimes linking to dowry and honour killing

**Violence against women in the community:** According to the National Crime Records Bureau, in 2012, 2.84 cases of rape were reported every hour. Women are easy targets of attacks, including sexual violence, acid attacks and women trafficking

**Violence against women condoned or perpetrated by the State :** Women living in militarized regions, such as Jammu and Kashmir and the north-eastern states, live in a constant state of siege and surveillance, whether in their homes or in public and women in prison.

**Violence against women in the transnational sphere:** any women refugees and asylum seekers are unskilled workers who often perform hazardous labour in urban and informal settings as they are frequent targets of attacks and harassment by employers, landlords and community members in public and private spheres<sup>[19]</sup>.

#### 2. National Crime Records Bureau

Data have been collected under the revised proforma for ‘Crime in India 2014’. The crime head-wise details of reported crimes during the year 2010 to year 2014 along with percentage variation are presented in Table 1<sup>[20]</sup>. The crime against women during the year 2014 has increased by 9.2% over the year 2013 and by 58.2% over the year 2010. The Indian Penal Code (IPC) component of crimes against women has accounted for 96.3% of total crimes and the remaining 3.7% were the crimes under the Special & Local Laws (SLL) crimes against women<sup>[21]</sup>.

**Table 1**

<b>Crime Head</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>% variance in 2014 over 2013</b>
<b>Rape</b>	22,172	24,206	24,923	33,707	36,735	9.0
<b>Attempt to commit rape</b>					4,234*	-
<b>Kidnapping &amp; abduction of women</b>	29,795	35,565	38,262	51,881	57,311	10.5
<b>Dowry deaths</b>	8,391	8,618	8,233	8,083	8,455	4.6
<b>Assault on women with intent to outrage her/their modesty</b>	40,613	42,968	45,351	70,739	82,235	16.3
<b>Insult to the modesty of women</b>	9,961	8,570	9,173	12,589	9,735	-22.7
<b>Cruelty by husband or his relatives</b>	94,041	99,135	1,06,527	1,18,866	1,22,877	3.4
<b>Importation of girl from foreign countries</b>	36	80	59	31	13	-58.1
<b>Abetment of suicide of women</b>					3,734	
<b>Total IPC crime against women</b>	2,05,009	2,19,142	2,32,528	2,95,896	3,25,329	9.9
<b>Commission of Sati Prevention Act</b>	0	0	0	0	0	
<b>Indecent Representation of Women(P) Act</b>	895	453	141	362	47	-87.0
<b>The Dowry Prohibition Act</b>	5,182	6,619	9,038	10,709	10,050	-6.2
<b>Protection of women from domestic violence Act</b>					426	-
<b>Immoral Traffic(Prevention) Act#</b>	2,499	2,436	2,563	2,579	2,070#	-
<b>Total SLL crime against women</b>	8,576	9,508	11,742	13,650	12,593	-7.7
<b>Total(A+B)</b>	2,13,585	2,28,650	2,44,270	3,09,546	3,37,922	9.2

**The crime head-wise details of reported crimes during the year 2010 to year 2014 along with percentage variation**

\*Attempt to commit rape has been newly included crime head

# Immoral Traffic(Prevention)Act refer to women related crimes only.

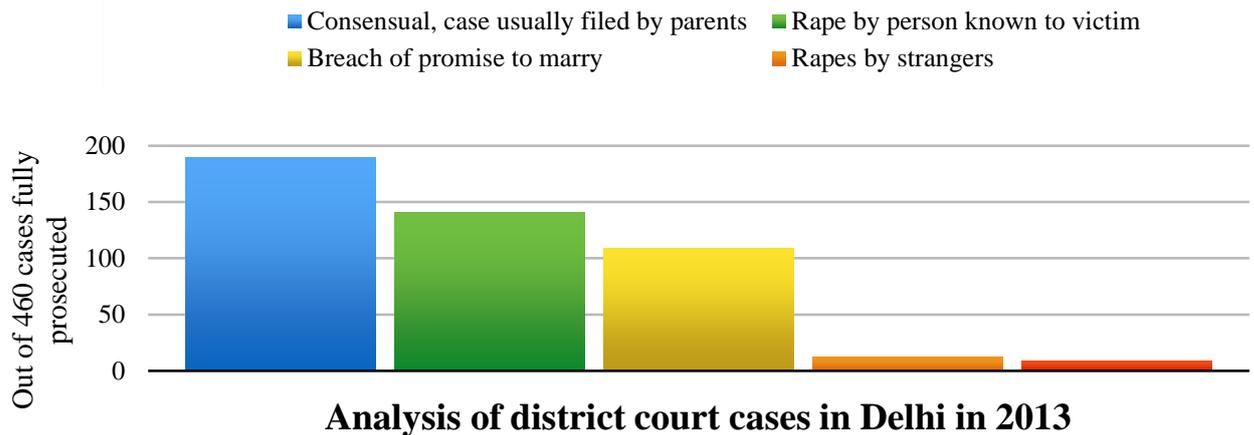
Whereas, the proportion committed against women towards total IPC crimes has increased during last 5 years from 9.6% in the year 2010 to 11.4% during the year 2014 as shown below in Table 2<sup>[22]</sup>.

S.NO.	YEAR	TOTAL IPC CRIMES	CRIME AGAINST WOMEN (IPC CASES)	PERCENTAGE TO TOTAL IPC CRIMES
1	2010	22,24,831	2,13,585	9.6
2	2011	23,25,575	2,19,142	9.4
3	2012	23,87,188	2,44,270	10.2
4	2013	26,47,722	12,95,896	11.2
5	2014	28,51,563	3,25,327	11.4

Finally, as shown in Table 3<sup>[23]</sup> Delhi has the highest rate of crimes against women overall. With 17,104 cases, the capital recorded a crime rate of 184.3 per 1 lakh female population. Assam is second with a rate of 148.2, with 23,258 cases. However, the high rate of crime is often a reflection of police registering cases and dealing with the crime.

State	Cases	Per 1 lakh female population	%age contribution to all-India tota
Delhi	17,104	184.3	5.2
Assam	23,258	148.2	7.1
Telangana	15,135	83.1	4.6
Odisha	17,144	81.9	5.2
Rajasthan	28,165	81.5	8.6
Haryana	9,446	75.7	2.9
West Bengal	33,218	73.4	10.1
Tripura	1,267	68.2	0.4
Madhya Pradesh	24,135	65.5	7.4
Chandigarh	463	64.8	0.1

Moreover, The conviction rate in rape cases remains far lower than that of IPC crimes in general. But it bears repeating that the NCRB is only a collection of FIRs. In court cases come for all crimes and not just for rape case, hence it can be vastly different from what an FIR said.



An analysis of district court cases has been done by the Hindu's shows that the largest proportion of cases involved the parental criminalisation of consenting couples<sup>[24]</sup>. It shows that total in rape cases, rape by known person to victim is involved whereas figure of the rapes by strangers is quite low. Hence it reveals that mostly crime is done by the known persons although the factor of strangers can not be denied<sup>[25]</sup>.

#### CONCLUSION:

As we have discussed the various provision provided for women in Indian Constitution, at the same time analysed the report by Rashi Manjoo, and data from National Crime Records Bureau which reveals the fact that violence against women in society is increasing day by day. The most important finding is that crime against women involved the known factor which means, the victim know the person who raped her, whereas the stranger people involved in rape are very less. Apart from this, if see the programs like "crime patrol" and "Savdhaan India" which claims to be based on true stories suggest that in most cases the known factor is involved. It means that it is necessary to provide women with effective protection from violence, and to give clear message to perpetrators of violence that they will be punished according to the law for causing violence. Dominance on women in the society resulted into backwardness of women. Although, fundamental and legal framework are in existence in India but still women are fail to get respect and justice. In India, we have law in place but the strong implementation will definitely change the current situation. Quality education to children at primary stage to eradicate gender inequality and will bring change in the society. Apart from this, the boy and girl should be raised equally in the society so that there should not develop inequality in the mind of single person. All these, the united nation's report and data both about the violence done against women raises the question that are these special rights being given to women are helping and benefiting them? The answers to these questions is far away. It is necessary to make women more aware about the various crimes and give them training how to be proactive and how to deal the situation if arises. However, **The Maternity Benefit (Amendment) Act, 2017**, which allows now have a maternity leave for 26 weeks for biological mothers and for mothers who have adopted a child could get a leave for 12 weeks. It is definitely a step towards the respect of women in India at workplace. Moreover, these laws should get the practical shape it should not remain in theory only in order to improve the quality of life of women.

#### SUGGESTIONS:

As mentioned in the report of United Nations, Rashida Manjoo, it can be suggested that government should monitor the implementation of judicial decisions on cases relating to violence against women, and ensure that victims have prompt access to effective remedies. Secondly, ensure that all allegations of violence against women are adequately investigated by the police, and that perpetrators are punished. Thirdly, to make sure that women and family members wishing to lodge complaints are free from any act of intimidation, threat or

harassment, and that protection is provided free of cost for the victim, if necessary. Additionally, In cooperation with civil society organisations, develop monitoring and evaluation tools to assess progress in eradicating violence against women and integrate such tools in the design of relevant schemes and programmes. Moreover, there is need of more courts and judges to deal with the cases within reasonable time so that criminals could not get away. In this way , criminals will think before doing anything as strict action can be taken within time. Apart for this, in the Indian express it has been stated that in 95% cases the offender was known to victim. Total rape cases were 34,651, out of which in 33, 098 cases offender were known to the victim.

<sup>[1]</sup> INDIA CONST. art. 14

<sup>[2]</sup> INDIA CONST. art. 15(1)

<sup>[3]</sup> INDIA CONST. art. 15(2)

<sup>[4]</sup> INDIA CONST. art. 15(3)

<sup>[5]</sup> AIR 1953 Bom 311

<sup>[6]</sup> INDIA CONST. art. 16(1)(2)

<sup>[7]</sup> INDIA CONST. art. 19(1)(g)

<sup>[8]</sup> INDIA CONST. art. 23(1)

<sup>[9]</sup> INDIA CONST. art. 39(a)

<sup>[10]</sup> INDIA CONST. art. 39(d)

<sup>[11]</sup> INDIA CONST. art. 39(e)

<sup>[12]</sup> INDIA CONST. art. 42

<sup>[13]</sup> INDIA CONST. art. 51 A

<sup>[14]</sup> INDIA CONST. art. 51A(e)

<sup>[15]</sup> 73rd and 74th Amendments of the constitution.

<sup>[16]</sup> INDIA CONST. art. 243 D(3)

<sup>[17]</sup> INDIA CONST. art. 243 T(3)

<sup>[18]</sup> United Nations, General Assembly, Human Rights Council, Twenty-sixth session, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo

<sup>[19]</sup> Ibid

<sup>[20]</sup> Crime against women (Oct. 09, 2017, 09:18 AM) <http://ncrb.nic.in/StatPublications/CII/CII2014/chapters/Chapter%205.pdf> p 83

<sup>[21]</sup> Ibid

<sup>[22]</sup> Crime against women, Crime in India 2014 (Oct. 09, 2017, 10:04 AM) <http://ncrb.nic.in/StatPublications/CII/CII2014/chapters/Chapter%205.pdf> p85

<sup>[23]</sup> National Crime Records Bureau data, 2015, (Oct. 10, 2017, 05:34 AM) <http://indianexpress.com/article/explained/national-crime-records-bureau-data-2015-slight-dip-in-rape-crime-against-women-3004980/>

<sup>[24]</sup> Demystifying NCRB data in six charts, (Oct. 10, 2017, 10:04 AM) <http://www.thehindu.com/data/the-spike-in-reported-rape-might-be-tapering-off-in-india/article7557843.ece>

<sup>[25]</sup> National Crime Records Bureau data, 2015, (Oct. 10, 2017, 05:34 AM) <http://indianexpress.com/article/explained/national-crime-records-bureau-data-2015-slight-dip-in-rape-crime-against-women-3004980/>