

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 2

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Sexual Violence against Women: A Serious Human Rights Violation

BONNIE SARMA¹

ABSTRACT

India in the 21st century has been developing fast as a global power country in the world context, but still today women in the Indian society irrespective of their class, caste and educational background are subjected to sexual harassment, exploitation are considered to be the weaker of the two sexes and in many parts of India, atrocities against women still continue to be seen in various forms be it physical, social, psychological and economical.

India is seen as a fast developing economy but the women in Indian society are still continue to face discrimination and violence in some aspect or the other. Problems like poverty, unemployment, lack of proper education etc are seen in almost all countries of the world especially in case of women. The Constitution of India, The Universal Declaration of Human Rights strictly condemns any form of exploitation against women. The reason why such exploitation is because that the mindset that males are the more superior in all aspects mindset still continues to be seen in patriarchal Indian societies. Women still are being used for sex trafficking, prostitution, dowry in some parts of India. Statistics show us those 59% women in India experience physical, sexual abuse from their husbands or boyfriends. Children especially girls of tender age are at greater risk of sexual abuse as they are unaware of their rights and are easily victimised.

This research paper is an attempt to understand about the different forms of sexual violence that women are subjected to in some form or the other and highlights the main reasons why such abuse takes place and suggest remedial measures to curb this menace.

Keywords: Sexual Exploitation, Patriarchal, Sex-trafficking, Dowry

I. INTRODUCTION

Women in the Indian society have been described as a symbol of self-sacrifice, physical and mental endurance having compassion among the two sexes in a male dominated society. In the 21st century, India is seen as a developing global power but the women in the Indian society are still facing a lot of hurdles to live their live with dignity and in some parts of India especially

¹ Author is a LLM Student at Royal Global University, India

in the backward communities the birth of a girl child still continues to be a burden for the family. This happens to be one of the causes why women in India are still subjected to various forms of abuse either at their homes or at their workplace. The recent news of the Gang Rape case of a 23 Old Women who was raped by six people in a city like Delhi in the year 2012 still send chills down people spine whenever cases of sexual violence, molestation, harassment cases are discussed among the masses. Cases of sexual harassment, dowry, rape, marital rape are reported daily on a regular basis on the news channels which forces us to ask the question “Whether India as a country has done her fair share in fighting and protecting the women in our country?”

(A) Scope of the Research

Sexual violence against women in India is a serious criminal offence that is exceeding at an alarming rate. Implications of sexual offences against women are extensive. Sexual assault may be of various forms either physical or verbal. Some of the most heinous sexual offences that are committed against women include voyeurism, exhibitionism, and sexual assault which can happen in an isolated place or at home by someone one is associated with. Although there are various measures and initiatives the government has taken to curb this menace, still there is more that can and should be done to protect the women in our society. Hence, the purpose of this research paper is to make an analysis and in-depth study of the various forms of sexual violence that are committed against women and the steps that can be taken to eradicate this evil that that has plagued the women in our society and our country as a whole.

(B) Aims and Objectives of Research

The study of sexual violence against women in a country like India is a very important are of concern as it poses a serious question-“Are women in a vast developing country like India are unsafe”?. So it is very important for us as a country to take a stand and do the best we can to safeguard the rights and dignity of women in our country

(C) Research Methodology

For the purpose of preparing this research paper, the researcher has opted for the use of doctrinal method of research. The doctrinal method of research refers to a way of research that primarily focuses on case-laws, statutes and other legal sources. This method of research involves an analysis and systemising of legal propositions and it uses legal reasoning or rational deductions as a measuring tool.

II. NATURE OF SEXUAL VIOLENCE

Across different parts of the world and especially in a country like India, the nature of sexual violence can be understood and is described as a gross violation of women's rights. The reason why such violations take place against women is because there is a social construct created by the people in our community that male dominance still continue to exist in some parts of India and the women are still considered to be the weak link in the family. In such places as a result of this mindset, women are forced to submit themselves to traditional gender roles. Violence against women does not only mean physical. The scope of this problem is much wider and includes sexual, emotional, psychological, financial abuse. On an international level, the United Nations Declaration on the Elimination of Violence against Women provides the following definition²-

The term violence against women means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.'

(A) Different Kinds of Sexual Violence

Sexual Violence is one of the major problems faced by women and girl in India. This problem can be seen as a challenge for those people who have survived such assault to seek and get justice from the Indian legal system and those from the countries marginalised communities face even more major barriers. A recent study has shown that about 100 new cases are reported to the police in a single day, with one government survey finding that 99.1 percent of the cases go missing. In recent years, New Delhi has earned the title of "rape capital" of India, with quite 560 rape cases reported on a day to day , Here are some of the different kinds of sexual violence which have discussed in the following points³-

1. Rape

The serious offence of rape committed against women can be defined as an act when a person penetrates another's vagina, anus or mouth with a penis without the other person's consent. Assault buy penetration is when a person forcefully penetrates another person's anus or vagina with any part of the body other than a penis or by using an object without the other person's consent. One common myth about rape culture is in most cases the person who has committed

²National Plan to Reduce Violence against Women and their Children, AUSTRALIAN GOVERNMENT(Dec 26, 2020, 9:55 PM), <https://plan4womenssafety.dss.gov.au/implementation-plan/>

³Gunilla Krantz1 & Claudia Garcia-Moreno, Violence against women, 59 JOECH

rape against the victim is a stranger, but the truth is the majority of the people who commit this heinous offence are either the victim's friends, colleagues or even their family members. The impact of such a heinous crime is traumatic in nature as the victim is subjected to psychological, emotional, physical traumas as a result of which many of the girls and women which are raped by the perpetrator dies even before they can be given treatment. A recent example of sexual harassment faced by young girls and women who want to make a name for them is the much talked about THE METOOMOVEMENT in the Bollywood film industry has taken the country by storm where women are asked for sexual favours by the producers, directors has forced the general public to put a question mark on the industry, A recent statistics has shown that maximum rape cases are reported from Rajasthan and Uttar Pradesh. Nearly 6000 rape cases were reported in Rajasthan, followed by 3065 cases in Uttar Pradesh in the year 2019.

The Supreme Court has within the case of *State of Maharashtra Vs. Madhukar N. Mardikar*, held that "the unchastely of a woman does not make her open to any and every person to violate her person as and when he wishes. She is entitled to guard her person if there's an effort to violate her person against her wish. She is equally entitled to the protection of law. Therefore merely because she is of easy virtue, her evidence can't be thrown overboard.

2. Female Prostitution

Sexual Violence is one of the major problems faced by women and girl in India⁴. This problem can be seen as a challenge for those people who have survived such assault to seek and get justice from the Indian legal system and those from the countries marginalised communities face even more major barriers . A recent study has shown that about 100 new cases are reported to the police in a single day, with one government survey finding that 99.1 percent of the cases go missing. In recent years, New Delhi has earned the title of "rape capital" of India, with quite 560 rape cases reported on a day to day , Here are some of the different kinds of sexual violence which have discussed in the following points-

If reports are to be believed there happens to be an estimate of nearly 3 million female sex workers across Indi who are voluntarily offering services voluntarily, those who have been voluntarily forced or coerced into sex work according to the Ministry of Women and Child Development, 2008 . The extent and number of sex workers in India which have been coerced and are under age is difficult to ascertain because there is hardly any research available. Human Rights Watch estimates a figure that is 15 million n 2012. The reason why many women and

⁴ Sanjoy Roy & Chandan Chaman, Human rights and trafficking in women and children in India, MEDCRAVE (Aug 23, 2017) , <https://medcraveonline.com/JHAAS/human-rights-and-trafficking-in-women-and-children-in-india.html>

girls enter this profession are numerous and varied. All child sex workers, since they do not have the capacity to consent are forcefully trafficked in and across India for commercial sex exploitation. Some women and girls are sold by relations or family friends into sex work, typically within the context of rural poverty, food insecurity and enormous families. For some women, therefore sex work or prostitution provides them with a flexible occupation especially for women who are unskilled and this profession which is considered by the world community as a serious human right violation. The Delhi High Court in the case of *Vineet Jain Vs Nct of Delhi & Ors*. On enquiry had discovered that the facts of the case were those Bar Girls belong to poor families and they are in this profession, since their minor age, due to compelling circumstances. The Bar Girls, within the age of 20 to 30 years, are during this profession for years together. However, the Patiala Court has granted Bail to those Bar Girls.

3. Dowry Death

“Dowry deaths” comprises of a unique category of deaths of India. The custom of dowry which is still practiced in some remote parts of India, involves the act or custom of payment of dowry by the bride’s family to the bridegroom’s family as compensation for marrying the bride and for sheltering the women for life. When demands for cash, jewellery or goods remain unfulfilled in arranged marriages, or when the dowry is deemed unsatisfactory, the resulting tensions may cause the husband or his extended family harassing the woman; sometimes to the extent of killing her or creating such intolerable conditions that she decides to take her own life. Such deaths are termed ‘dowry deaths’ within the Indian legal code (defined in section 304B). This evil menace of dowry is persistent in the Indian society is not because the law which has been enacted for the safety of women is ineffective or difficult to enforce but because of the societies pressure on the bride’s parents of not finding a suitable groom for their daughter. Crimes against women have roots within the male dominated socio-economic, legal and political order. Assaults on women are often visibly related to their social station, their communal, ethnic and caste identities. Implicit in all this is the treatment of women as private property, to be protected by men of particular family, social, communal and caste groups. The notion that ladies need protection is linked to the normal value placed upon their virginity and chastity.

In the case of *Pawan Kumar Vs State of Haryana*, the deceased, the wife of appellant died of burn injuries within seven years of marriage. The wife committed suicide because of mental cruelty and maltreatment at the hands of her husband on the account of non fulfilment of dowry demands. The Supreme Court held that the appellant was liable for causing dowry death under section 304-B and section 498-A as well as abetting suicide under section 306, of the Indian

Penal Code as because of his treatment, the wife had committed suicide.

4. Domestic Violence

Domestic Violence against women is one of the very serious abuses that women in our society have to go through. The most important factor in this issue that needs to be addressed is the question- What leads to domestic violence? The common cases which we hear in our society are cases of exploitation of women for dowry, physical abuse, and alienation of women's self acquired property. If statistics are to be believed In India, more than 55 percent of the women suffer from Domestic Violence, especially in the states of Bihar, U.P., M.P. and other northern states Violence against women is a widespread problem, with appalling physical, sexual, emotional, psychological and economic consequences for girls and women (Gill & Rehman,2004). It affects women of each age, in every society and in every socio-economic group. "Violence against women refers to any act of gender based violence that leads to , or is probably going to end in physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

5. Female Foeticide

This happens to be one of the vicious manifestations of gross human rights violation against women in our country. The crime of female foeticides involves the murdering of a girl child while she is still in her mother's womb. This crime has shown its significance in lop sided sex ratio in some remote parts of the country, In some backward parts of the county, this evil menace is still prevalent as because of lack of education and those families have got a mindset that the girl child will create an unnecessary burden on the family. Sex selective abortion has also been common within the country. It's dangerous to abort the foetus after 18 weeks of pregnancy and quiet harmful for mother too at such a late stage.

III. STATISTICS DEPICTING SEXUAL VIOLENCE AGAINST WOMEN IN INDIA

Taking about sexual crimes that take place against women in our country, recent incidents of rape have stirred the conscience of the nation. Even as India reels from the shock of the cases in Kathua (Jammu and Kashmir) and Unnao (Uttar Pradesh), there are more such incidents being reported almost on an everyday basis, like those in Surat (Gujarat) and Nadia (West Bengal)⁵. This has led the Indian judicial system to pass stricter sexual laws against the perpetrators of such violence. The violence and the cases which are being reported on a daily

⁵ Dipankar Ghose, NCRB data: 7% rise in crimes against women, THE INDIAN EXPRESS(Sep 30, 2020, 1.48 A.M), <https://indianexpress.com/article/india/ncrb-data-7-rise-in-crimes-against-women-6636529/>

basis have put India on a tight footing and now the question has arisen whether laws which have been passed by the legal system are doing its bit in protecting the women in our society.

India's average rate of reported rape cases is about 6.3 per 100,000 of the population. However, this masks vast geographical differences with places like Sikkim and Delhi having rates of 30.3 and 22.5, respectively, while Tamil Nadu features a rate of but one. Of course, one must take care in interpreting these state-wise differences as these are 'reported' cases and will suffer from under-reporting .

IV. LAWS REGARDING SEXUAL VIOLENCE AGAINST WOMEN IN INDIA

The Indian judicial system has enacted a variety of laws regarding different kinds of sexual violence against women in our country. Sexual violence may be a crime rooted on top of things and patriarchy, including male entitlement. In India, society often still shifts blame onto survivors, shaming a survivor and her family into silence. This is very true among those already marginalized within Indian society, leaving them particularly susceptible to sexual violence. This culture of shame follows survivors into enforcement , the court system and into hospitals, further silencing survivors' voices. Some of the laws and enactments are being discussed in details⁶ -

(A) Sexual Harassment at Workplace

Sexual-harassment-at-work-place Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was passed with the objective of providing protection to the women at workplace. Sexual harassment happens when one person subjects another person to an unwelcome act of physical intimacy like grabbing, brushing, touching, pinching, eve teasing, makes an unwelcome demand or request directly or by implication for sexual favours from another person, shows a person any sexually explicit visual material, in the form of pictures/cartoons/pin-ups/calendars/ screensaver version computers/any offensive written material / pornographic e-mails or any other form of unwelcome conduct of a sexual nature, eve teasing, jokes likely to cause awkwardness or embarrassment, innuendos, sexist remarks. The Act covers students in schools and colleges also as patients in hospitals, employers and native authorities will need to found out grievance committees to research all complaints. Any aggrieved woman may file a complaint in writing to the internal committee/ Local Committee within 3 months from the date of incident or the date of the last incident in case of a series of incidents. The victim also can file a complaint with Police under Indian legal code 1860 under

⁶ *Crimes against women*, WomenlawsIndia.com, <http://www.womenlawsindia.com/legal-awareness/crimes-against-women/>

Sections 294,354, 354A, 509.

(B) Acid attack

Acid throwing, also called an acid attack may be a sort of violent assault defined because the act of throwing acid or a similarly corrosive substance onto the body of another with the intention to disfigure, maim, torture, or kill. Perpetrators of those attacks throw acid at their victims, usually at their faces, burning them, and damaging skin tissue, often exposing and sometimes dissolving the bones. Section 326A and Section 326B of the Indian legal code, 1860 provide the punishment for voluntarily causing grievous hurt by use of acid and voluntary throwing or attempting to throw acid respectively. Section 100 of the Indian legal code allows the proper of personal defence to the extent of causing death if there's acid is thrown or there's an effort.

(C) Domestic Violence

Domestic Violence are often described as where one adult during a relationship misuses power so as to regulate another. It is the establishment of fear during a relationship through violence that has other sorts of abuse. The violence may involve physical abuse, sexual abuse and threats. At times it are often more subtle, like making someone feel worthless, not letting them have any money, or not allowing them to go away the house . An Application are often filed to the Magistrate under Section 12 of the violence Act, 2005. Orders like residence, protection, monetary relief, compensation order are often gone by the Magistrate. Complaint also can be filed under Section 498A for cruelty by husband or his relatives alongside demand for dowry

(D) Cruelty/ Dowry demand

To curtail the growing incidents of dowry torture and dowry death , a new Section was incorporated into Indian Penal Code , that is, Section 498A .According to this Section, whoever being husband or relative of husband of a woman , subjects her to cruelty shall be punished with imprisonment for a term which may extend to three years and fine. Cruelty herein means any wilful conduct that is likely to drive a woman to commit suicide or to cause grave injury or danger to her life, limb or health (whether physical or mental) of the woman Or harassment to force her to meet any unlawful demand for any property or security or on failure to meet the demand. Later, Section 198A was added to the Criminal Procedure Code in 1983. In 2005, the Protection of Women from Domestic Violence Act was passed, which added to protect women from dowry harassment. Section 304B was added to the Indian Penal Code, 1860 (“IPC”), which made dowry death a specific offence punishable with a minimum sentence of imprisonment for 7 years and a maximum imprisonment for life. Further, under Section 4 of

the Dowry Prohibition Act, 1961 a demand for Dowry is an offence wherein demand is made at the time of or even after marriage even where no cruelty is involved.

V. CONCLUSION

A woman has the right to live her life to the fullest free from any kind of violence whether physical, sexual. Psychological, emotional and there are provisions in international agreements such as The Convention on the Elimination of all forms of discrimination against women and the 1993 UN Declaration on the Elimination of Violence against Women. The government as well as the various organizations like NGO's have been initiating societal laws that promote gender equality, laws that promote women's access to formal employment and the judiciary has strict penal provisions that address violence against women but the battle is far from being won as the statistics still reveal that globally 30 % women experience sexual violence on a daily basis from their intimate partner. It is important for a country like India as well as the international community to implement a strategically and well as practically look into this problem to prevent the atrocities that women suffer in our society and it is of utmost importance for the men in our society to develop a theory of change in our belief system which will enable us to approach this problem in a holistic way. Some of the measures through which we can achieve this fleet is by strengthening ones relationship skills, taking steps for the empowerment of women, making the environment safe for women, by preventing child and adolescent abuse, and ensuring equal services for women.
