



A study on victimization of women in criminal offences in India

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Abstract: Sexual harassment in India is termed "Eve teasing" and is described as: unwelcome sexual gesture or behavior whether directly or indirectly as sexually colored remarks; physical contact and advances; showing pornography; a demand or request for sexual favors; any other unwelcome physical, verbal/non-verbal conduct being sexual in nature. The critical factor is the unwelcome behavior, thereby making the impact of such actions on the recipient more relevant rather than intent of the perpetrator.

Key words: harassment to women, Crime Records, public services

Introduction

The semantic meaning of 'crime against women is direct or indirect physical or mental cruelty to women. Various kinds of violence against women are eve-teasing, molestation, bigamy, fraudulent marriage, adultery and enticement of married women abduction and kidnapping, rape, harassment to women at working place, wife beating, dowry death, female child abuse and abuse of elderly female etc. Almost every woman has experienced the feeling of being mistreated, trivialized, kept out, put down, ignored, assaulted, laughed at or discriminated against because of her gender.¹

The alarming rate in the crimes against women can to a large extent be attributed to the lack of infrastructures for single working women who have to leave their families at an early age to work away from home. The most effective strategies are likely to be those that support women to organize peer groups and mobilize community resources and public services, including women's health services. Such approaches enable women to overcome resignation to the legitimacy of the

established order are important factor in the perpetuation of imbalances of power between women and men. If women are to implement their reproductive preferences, then it is essential that their empowerment occur not only within their personal spheres, but also in the broader spheres of the community and the state.

Sexual Crimes: The very offence of Rape seems to be a common one in India. Rape is a social disease, Hardly a day passes without a case of rape being reported in Indian newspapers and media. Women belonging to lower castes and tribal communities are seems to be more at risk. What seems to be sad about rape in India is the lack of seriousness with which the crime is often treated. Statistics of National Crime Records Bureau (NCRB) for the year 2013 shows, 93 women are being raped in India every day. According to NCRB data, there is a gradual increase in the number of rapes reported in India - from 24,923 in 2012 to 33,707 in 2013. Women's groups attest that the strict and conservative attitudes about sex and family privacy contribute to ineffectiveness of India's rape laws. Victims are often reluctant to report rape. In an open court victims must prove



that the rapist sexually penetrated them in order to get a conviction. This can be especially damaging. After proving that she has been raped, a victim is often ostracized from her family and community. This problem is exacerbated by the fact that rape laws are inadequate and definitions so narrow that prosecution is made difficult.

Factors of Rape Victims: Another cause for increasing crime against women is less conviction rate in crime against women. This is result of apathy towards these crimes tendency of our phallogocentric society to condone this type of crime or to take them lightly and for granted. Recent police data has confirmed the above view held by our patriarchal society as it shown that there is only 19% conviction in rape cases.

For years, rape victims in India were too afraid to speak out, traumatised by the assault and fearful they would be blamed themselves. Many don't trust the police. Molestation, especially on crowded public transport, is rampant, particularly in northern India. Activists say there are two rapes every hour across the country. Instead of providing protection, the police are sometimes the perpetrators. Recently, a constable in Bombay was arrested for raping a teenager on Marine Drive, the famous sea-hugging road in India's financial capital.²

The Criminal Law Amendment Act has substantially changed Sections.375 and 376 of the IPC. These new sections have been introduced with a view to stop sexual abuse of women in custody, care and control by various persons- which though not amounting to rape were nevertheless considered highly reprehensible.

Attempt to Rape: In cases where an indecent assault is made upon the person of a woman, but where rape is not committed- the culprit is charged with Section.354 of IPC, because unless the Court is satisfied that there was determination in the accused to gratify his passion at any cost, and inspite of all resistance, such person is not charged with rape. Section.354 of the IPC prescribes punishment for anyone who assaults or uses criminal force to any woman with an intent to outrage her modesty.

The National Commission for Women be asked to frame schemes for compensation and rehabilitation to ensure justice to the victims of such crimes.³

Girl and Women Trafficking in India:

Trafficking is defined as a trade in something that should not be traded in for various social, economic or political reasons. Thus we have terms like drug trafficking, arms trafficking and human trafficking. The concept of human trafficking refers to the criminal practice of exploiting human beings by treating them like commodities for profit. Even after being trafficked victims are subjected to long term exploitation.

Trafficking both for commercial sexual exploitation and for non-sex based exploitation is a transnational and complex challenge as it is an organized criminal activity, an extreme form of human rights violation and an issue of economic empowerment and social justice. The trafficking of women and children causes untold miseries as it violates the rights and dignity of the individual in several ways. It violates the individual's rights to life, dignity, security, privacy, health, education and redressal of grievances.⁴



Crime against Life, Liberty and Health of Women

Official statistics show a steady rise in dowry crimes. More than 95,000 women are killed every year in India over dowry. Bihar and Uttar Pradesh still record the maximum number of dowry crimes, four women reportedly die every day because of dowry harassment and domestic violence. The cases of dowry torture are the highest accounting for 32.4% of crimes against women in the country.

The dangerous outcome of this tradition is sex-ratio. The girls are killed prior to birth and sex-ratio is decreased very much in India (914/1000 as per 2011 census). Despite protest by women's organizations, serious activism, legal amendments, special police cells for women, media support and heightened awareness of dowry being a crime, the practice continues unabated on a massive scale. Despite every stigma, dowry continues to be the signature of marriage. Women need real social, political, financial and moral support in their fight against the system. They have to be empowered so that they can take their decisions about their own life by refusing the dowry system. "Everyday at least 50 cases of dowry-related violence are reported in India.⁵

Female Infanticide and Feticide

India's sex ratio, among children aged 0-6 years, is alarming. The ratio has declined from 976 females (for every 1000 males) in 1961 to 914 in 2011. Every national census has documented a decline in the ratio, signaling a ubiquitous trend. Preliminary data from the 2011 census have recorded many districts with sex ratios of less than 850. The ratio in urban areas is significantly lower than those in rural parts of the country. Reports

suggest evidence of violence and trafficking of poor women and forced polyandry in some regions with markedly skewed sex ratios. The overall steep and consistent decline in the ratio mandates serious review.⁶

Converting crimes into sins is dangerous as it will only fuel further decline in sex-ratios. There are attempts by some politicians to limit abortion as a means to stop female feticide. Such anti-women actions would endanger women's health though it may be acceptable to religious fundamentalists.

Crime against Modesty of Women

Obscenity is a term which is used to describe expressions (words, images, actions) that offend the prevalent sexual morality of the time. The term **—obscenity** is, however, not capable of a precise definition and it keeps on changing as per the norms and ideologies of the contemporary society. Many cultures have produced laws to define what is considered to be obscene, and censorship is often used to try to suppress or control materials that are obscene under these definitions: usually including, but not limited to pornographic material. As such censorship restricts freedom of expression, crafting a legal definition of obscenity presents a civil liberties issue.

Thus, obscenity may be described as the **—culpable aspect of a perverse work**, which is devoid of any artistic value or public interest. The contemporary morals, ideologies, notions and standards will determine the **—merit** or the **—culpability** of the work. Even the most **—liberal** and **—open minded** societies cannot allow the obscenity to operate under a blanket protection and some



form of protection is provided by all the countries of the world.⁷

Sexual Harassment

Sexual Harassment is intimidation, bullying or coercion of a sexual nature, or the unwelcome or inappropriate promise of rewards in exchange for sexual favors.¹²⁸ In some contexts or circumstances, sexual harassment may be illegal. It includes a range of behavior from seemingly mild transgressions and annoyances to actual sexual abuse or sexual assault.⁸

Sexual harassment is a form of illegal employment discrimination in many countries, and is a form of abuse (sexual and psychological) and bullying. For many businesses, preventing sexual harassment, and defending employees from sexual harassment charges, have become key goals of legal decision-making. In contrast, many scholars complain that sexual harassment in education remains a "forgotten secret," with educators and administrators refusing to admit the problem exists in their schools, or accept their legal and ethical responsibilities to deal with it.

Sexual harassment in India is termed "Eve teasing" and is described as: unwelcome sexual gesture or behavior whether directly or indirectly as sexually colored remarks; physical contact and advances; showing pornography; a demand or request for sexual favors; any other unwelcome physical, verbal/non-verbal conduct being sexual in nature. The critical factor is the unwelcome behavior, thereby making the impact of such actions on the recipient more relevant rather than intent of the perpetrator. According to India's constitution, sexual harassment infringes the fundamental right of a woman to

gender equality under Article 14 of the Constitution of India and her right to life and live with dignity under Article 21 of the Constitution. Although there is no specific law against sexual harassment at workplace in India but many provisions in other legislations protect against sexual harassment at workplace, such as Section 354, IPC deals with assault or criminal force to a woman with the intent to outrage her modesty, and Section 509, IPC deals with word, gesture or act intended to insult the modesty of a woman.

Pornography

Pornography or porn is the portrayal of explicit sexual subject matter for the purposes of sexual excitement and erotic satisfaction. Pornography may use any of a variety of media, ranging from books, magazines, postcards, photos, sculpture, drawing, painting, animation, sound recording, film, video, or video game. However, when sexual acts are performed for a live audience, by definition it is not pornography, as the term applies to the depiction of the act, rather than the act itself.

Pornography has often been subject to censorship and legal restraints on publication on grounds of obscenity. Such grounds and the very definition of what is or is not pornography have differed in different historical, cultural, and national contexts.¹³² The world's first law criminalizing pornography was the United Kingdom Obscene Publications Act, 1857 enacted at the urging of the Society for the Suppression of Vice. The Act, which applied to the United Kingdom and Ireland, made the sale of obscene material a statutory offence, giving the courts power to seize and destroy offending material.



Matrimonial Crimes against Women

Section 498A of IPC do explicitly provides for punishing the crime of torture by defining cruelty as— Husband or relative of husband of a woman subjecting her to cruelty. Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Bigamy is the condition of having two wives or two husbands at the same time. A marriage in which one of the parties is already legally married is bigamous, void, and ground for annulment. The one who knowingly enters into a bigamous marriage is guilty of the crime of bigamy. Unfortunately, it is seldom prosecuted unless it is part of a fraudulent scheme to get another's property or some other felony. Having several wives at the same time is called "polygamy" and being married to several husbands is "polyandry."

Bigamy i.e. second marriage during the lifetime of a first spouse is illegal in India. Second marriage and the relationship arising out of it do not have any validity. Section 5 of the Hindu Marriage Act, 1955, clearly states that a marriage could be valid only if neither of the party has a living spouse at the time of marriage. Section 11 of the Act declares second marriage to be null and void. A person commits bigamy when he/she:

- has a husband or wife living,
- marries in any case in which such marriage is void,
- by reason of its taking place during the life of such husband or wife.

Adultery

Adultery means voluntary sexual intercourse of a married person other than with spouse. The legal definition of adultery however varies from country to country and statute to statute. While at many places adultery is when a woman has voluntary sexual intercourse with a person other than her husband, at other places adultery is when a woman has voluntary sexual intercourse with a third person without her husband's consent.

Though the modern trend is to decriminalize adultery, historically, many cultures have regarded adultery as a crime. Jewish, Islamic, Christian and Hindu traditions are all unequivocal in their condemnation of adultery. In most cultures both the man and the woman are equally punishable. However, according to ancient Hindu law, in ancient Greece and in Roman law, only the offending female spouse could be killed and men were not heavily punished.

Dowry Harassment

The dowry system is so deeply rooted in Indian culture, that sometimes one feels that there's going to be no way out – at least not for another century. □ □Bride-burning,' a term which is very common now a days is used to describe the increasing number of young Indian housewives found murdered each year, has become commonplace in young marriages Hardly is there a day when one does not read of dowry deaths in the national daily newspapers. Brides bringing less than expected dowry are ill treated by their inlaws and other relatives.

Domestic Violence against Women

The term 'domestic violence' includes violence by an intimate partner and by



other family members, wherever this violence takes place and in whatever form. Domestic violence is a serious issue faced by several Indian women. Indian women are known to tolerate it in silence because they want to protect family honor and endure it for the sake of their children.

A growing body of research studies confirms the prevalence of physical violence in all parts of the globe, including the estimates of 20 to 50 per cent of women from country to country who have experienced domestic violence. Statistics are grim no matter where in the world one looks. Data from industrialized and developing countries as well as from transitional countries provide an overview of the global problem. The data in this table focus only on physical assault. There are few comparable statistics on psychological violence, sexual abuse, and murder of women at the hands of intimate partners and other family members. As already mentioned, physical violence is usually accompanied by psychological abuse, and in many cases by sexual assault.

Right against Exploitation

The Supreme Court while interpreting Article 23 prohibiting forced labour struck a blow to the system of bonded labour and pledging of Child labour. The Supreme Court also held when interpreting that article, that non-payment of minimum wages would amount to "forced labour" and forced labour is prohibited under by Article 23 of the Constitution. This is another shot in the arm for those who are fighting for better service conditions for child labour.

CONCLUSION

Under the Constitution the state has been given power to make laws relating to women and children but such laws shall not be violative of Article 15 of the Constitution. Article 15(1) prohibits gender discrimination. Article 15(3) lifts that ignominy and permits the state to positively discriminate in favour of women and children to make special provisions to ameliorate their social, economic and political condition and accord them parity. The Courts have always approved the validity of such special legislation rather special measures. Article 15(3) is an exception to the rule against discrimination provides by Art. 15(1),15(2) or 14.

In **Gaurav Jain v Union of India**⁹, the Supreme Court held that the children of the prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the mainstream of social life without any pre-stigma attached on them. The Court directed for the constitution of a committee to formulate a scheme for the rehabilitation of such children and child prostitutes and for its implementation and submission of periodical report of its Registry.

As guardians of the Constitution, the Hon^{ble} Supreme Court of India has made remarkable contribution towards protection of children. The role of the India Judiciary and the scope of judicial interpretation have expanded remarkably in recent times, partly because of the tremendous growth of statutory intervention in the present era. The activism of the Indian Supreme Court to protect the children from various type of exploitation is many instances to protect basic rights of poor children, unfortunately these directions and suggestions are not followed and



implemented by the government machinery effectively. In this regard, the performance of the Indian Judiciary stands out as a signal contribution to the implementation of human rights generally and that of Child Rights in particular.

The judiciary has even directed the states that it is their duty to create an environment where the child workers can have opportunities to grow and develop in a healthy manner with full dignity in consensus of the mandate of our constitution.

The underlying Principles of the Directive Principles of State Policy are -to fix certain social and economic goals for immediate attainment by bringing about a non-violence social revolution-. Through such a social revolution the

constitution also seeks to achieve the objectives of the child welfare. To achieve the goals of child welfare, the constitution has some provisions in part IV. The Directive Principles of State Policy have been designed with an earnest zeal to strive to promote the welfare of people by securing and protecting as effectively as it may a social order in which justice, social, economical and political shall inform all the institution of national life.

Since these directives relating to the welfare of children have also been embodied in the constitution, the governments are apt to implement them. Though they do not have legal force behind them but they have the highest tribute, i.e., public opinion behind them.

References

- ¹ Rebecca Walker, —Becoming the Third Wave, from Ms. Magazine, in Leslie L. Heywood (ed.), *The Women's Movement Today- An Encyclopedia of Third –Wave Feminism* 6 (Greenwood Press, U.S.A., 2006)
- ² Indian women fight back against rape epidemic, || *Reuters*, June 19, 2005.
- ³ *Delhi domestic working women forum v. Union of India*(1995) 1SCC14
- ⁴ <http://www.azadindia.org/social-issues/WomenTrafficking-in-India.html>
- ⁵ Available at: www.decanherald.com/contents/95614/crime-against-women-rising-india.html
- ⁶ Available at: www.azadindia.org/social-issues/femaleinfanticideinindia.htm
- ⁷ http://cbi.nic.in/emag/vol16/law_obscenity.php
- ⁸ Paludi, Michele Antoinette, et.al., *Academic and Workplace Sexual Harassment 2-5* (SUNY Press,1991).
- ⁹ (1997) 8 SCC 114; AIR 1997 SC 3021