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Women's safety through law: An analysis of pro-women legislation

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Abstract

In India, women are frequently denied their basic right to dignity, not to mention the issue of gender parity. Beginning at birth, when the foetus enters the mother's womb through female foeticides and pre-birth sex selection, infanticide and the widespread preference for a male offspring are crimes against women and an infringement on the constitutionally protected right to life. One of the most pervasive abuses of human rights is crime against women. It transcends age, colour, culture, money, and location and can involve physical, sexual, psychological, and financial abuse.

It happens in households, on the streets, at work, in agricultural areas, in camps for displaced people, and during emergencies and conflicts. It can take many different forms from the most common types of sexual and domestic abuse. Laws are being developed to protect women from violence in their families and communities and to grant them ownership rights over their property. The purpose of this study is to better comprehend crime against women in the current context. To that end, the author attempts to list the various enacted laws passed thus far that have the potential to empower women and reduce crime against them.

Keywords: Women's rights, crime against women, constitutional rights, legal provisions

Introduction

Crime against women in India has increased in India, within the past 20 years. Molestation and dower deaths are positively associated with torture and rape. It's also noteworthy that, as more people access different online media platforms, cybercrimes are rising daily ^[1]. Crime against women affects women of all races, ages, ethnic groups, and socio-economic classes many threats of violence to the lives of women have been identified, even though the Indian Constitution has assured gender equality in a broad sense. The Crime against Woman emerges before her life begins in her mother's womb ^[2]. Women work in every field, from creating inventions to taking care of the family. A woman is an amazing creation of God; she has a complex personality and the capacity for kindness, flexibility, honesty, and tolerance ^[3].

When we go back in time to our nation's founding, we can see the appalling state of affairs for women. Studies indicate that in the early and ancient Vedic periods, women had equal positions and rights. However, the status of women started to deteriorate around 500 B.C., and later on, women's freedom and rights were further restricted by Christianity, the Islamic invasion of Babur, and the Mughal Empire. The medieval era saw a further decline in the status of Indian women as societal norms in certain tribes included child marriages and the prohibition against widows getting married again. Indian society adopted purdah after the Muslim invasion of the Indian subcontinent. Several Devadasis were sexually abused in various regions of India. Political factors led to the prevalence of polygamy among Hindu Kshatriya monarchs. However, numerous feminists worked to improve women's conditions during the British colonial era, and as a result, women's conditions began to improve ^[4].

In India, women's rights to equality, freedom, opportunity, and protection are guaranteed by the Constitution and many laws. Despite this, the male-dominated society nevertheless allows them to be victims of all kinds of violence. Crime against women has increased during the previous few decades. There are several types of crimes against women. It covers sexual assault, forced prostitution, rape, trafficking in women and girls, domestic abuse, and violence during armed conflicts, including forced pregnancy, systematic rape, murder, and sexual slavery. It also encompasses other detrimental customs and practices such as female genital mutilation, honour killings, violence associated with dowries, female infanticide, and prenatal sex selection favouring male newborns ^[5].

It was during the 1993 Vienna World Human Rights Conference that gender-based violence was first recognized as a violation of human rights.

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"Any act of gender-based violence that results in or is likely to result in physical, sexual, or psychological harm or suffering to a woman, including threats of such acts, coercion, or arbitrary deprivations of liberty, whether occurring in public or private life", is the United Nations Declaration of 1993's definition of violence against women. Each of them is an infringement on the most fundamental human rights^[6].

As per the National Crime Record Bureau (NCRB) report, there is a crime against women every three minutes. Additionally, the International Men and Gender Equality survey (2010) revealed that 65% of Indian men thought that women should put up with violence to maintain family unity and that there are instances when women should be physically assaulted (Barker *et al.*, 2011). With the advancement of technology, women are now more susceptible to various forms of abuse, including modified sexual photos, cyberbullying, defamation, stalking, and blackmail. Due to certain Indian cultural attitudes and beliefs, violence against women is more common in India than it may initially seem because many forms of it are either not recognized crimes or may otherwise go unreported or unrecorded^[7].

In India, a woman is raped every 16 minutes, and every 4 minutes, a woman is mistreated by her in-laws. There are 88 rape incidents reported every day in 2019. The Indian Penal Code (IPC), which was recently amended as the Bharatiya Nyaya Sanhita, 2023, lists "assault on women with intent to outrage her modesty" (21.8%), "kidnapping and abduction of women" (17.9%), "cruelty by husband or his relatives" (30.9%), and "rape" (7.9%) as the most common crimes against women. The crime rate per lakh female population increased from 58.8 in 2018 to 62.4 in 2019. The highest number of reported rape instances (3,065) and Rajasthan (6,000) were found in Uttar Pradesh^[8].

Understanding crime against women

Crimes specifically targeted at women and involving "only women" as the victims are classified as crimes against women, albeit women can fall prey to any kind of crime, including robberies, murders, cheating, and so on. Generally speaking, crimes against women fall into two categories^[9]:

- **Crimes covered by the Bharatiya Nyaya Sanhita, 2023:** The seven crimes are as follows: i) Rape (Section 63 BNS) Kidnapping and abduction (Sections 137& saction138 BNS), Dowry deaths (Section 80 BNS), Physical and mental torture (Section 84 BNS), Molestation (Section 74), Sexual harassment (Section 79 IPC), and Importation of girls (Section 141–BNS) are among the cases that fall under this category.
- **Crimes covered by Special and Local Laws (SLL):** While gender is not a determining factor in any law, laws that impact women have undergone frequent reviews and revisions to keep up with changing needs. The Immoral Traffic (Prevention) Act of 1956, the Maternity Benefit Act of 1961 (Amended in 1995), the Dowry Prohibition Act of 1961, the Equal Remuneration Act of 1976, the Child Marriage Restraint (Amendment) Act of 1979, the Medical Termination of Pregnancy Act of 1971, the Indecent Representation of Women (Prohibition Act, 1986), the Commission of Sati (Prevention) Act of 1987, the Domestic Violence Act of 2005, and the Sexual Harassment Act of 2013 are a few Acts with special

provisions to protect women and their interests.

Therefore, many aspects of society are impacted by crimes such as rape, kidnapping, murder, dowry deaths, wife beatings, sexual abuse, mistreating widows and elderly women, and eve-teasing. Crimes such as forcing a young widow to commit Sati or a wife or daughter-in-law to commit feticide are examples of social violence^[10].

India's crime rate against women is highest in the north and lowest in the west^[11]. The 2012 Nirbhaya gang rape case in Delhi's capital city led to a significant legal move to protect women from rape: the concept of 'rape' was redefined and the death sentence was imposed. The present rape laws have also undergone some substantial revisions as a result of the 1983 and 2013 amendments, however, most convicted individuals often only receive a very minor fine and three to four years of hard imprisonment. It establishes several new offences, including stalking, voyeurism, sexual harassment, and violent assault via acid attack^[12].

Many legislative and constitutional measures have been implemented in India for the protection of women. Women are granted equality under the Indian Constitution, and they are empowered to make proactive efforts to counteract social, economic, and political drawbacks. In addition to preventing discrimination against any citizen based on race, religion, caste, sex, or place of birth, fundamental rights also ensure that everyone has equal opportunity in the workplace and equality before the law. While the efficient implementation of these laws and regulations can reduce criminal activity against women, other factors, such as the abuse of legislative authority, apathy on the part of law enforcement, obstacles in the legal system, and drawn-out legal proceedings, are unfortunately contributing to the rise in crime against women. Since then, India has witnessed numerous horrific crimes, such as the gang rape of a 17-year-old girl in the Unnao district of Uttar Pradesh in 2017 and the gang rape of a 19-year-old Dalit woman in the Hathrash region of Uttar Pradesh in 2020. These crimes occurred even after the Nirbhaya gang rape case in Delhi in 2012^[13].

Crime committed under social practice

which are penalized by specific social laws designed to protect women's rights and welfare. Social activists have been advocating for laws that impose strict penalties on various forms of violence, including sati, dowry demands, indecent depictions of women, female foeticide, domestic abuse, and other violent acts. In response, the Indian government has passed new laws or amended old ones. In 1829, a law was passed outlawing the habit of burning widows on their husbands' funeral pyres. This problem came up again in the Sati case of Roop Kanwar in 1987. Women's organizations around the nation staged a massive protest against Sati and her elevating influence. The Commission of Sati (Prevention) Act 1987 was subsequently enacted by Parliament in December 1987. Its acceptance of Sati as a suicide, however, was one of its flaws. Women typically have no options, yet the Act ignores this fact. Demanding and accepting a dowry from the bride's family became illegal in 1961 when the Dowry (Prohibition) Act was passed^[14].

The Act was later amended to increase the severity of the penalties for offences and to place the onus of proving that no dowry was demanded on the individual accused of taking

or aiding in the taking of dowry. It is now illegal to promote any deal that involves giving away a portion of property in exchange for marriage. The Indecent Representation of Women (Prohibition) Act, of 1986, forbids the representation of women in books, pamphlets, ads, and other media. This extends to the image of women as well. The increasing utilization of technology to figure out the sex of the foetus to abort it if it is female is one of the worst crimes against women that result from the misuse of technological and scientific developments in modern times. By prohibiting sex selection, the "Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act of 1994" seeks to eliminate this crime against the unborn female child. Under the Bharatiya Nyaya Sanhita, 2023, infanticide is the same as murder and the killing of a is an unlawful act ^[15].

Women's rights violation in social, economic, cultural, and educational rights

Child Marriage

Despite India's laws that forbid young marriages, this practice is nonetheless widespread in several areas of the nation. Under the Child Marriage Act of 2006, child marriage is prohibited, and girls and boys can get married at the ages of 18 and 21, respectively. Child marriage robs girls of their innocence throughout their early years, which is crucial for their physical, emotional, and psychological growth. Child abuse, especially sexual abuse by spouses, has a significant effect on the victim's vulnerable body and mind.

Sati

Even though it was illegal in pre-colonial India to set widows on their spouses' funeral pyres (a practice known as Sati), this custom persisted in post-colonial India. When a young Rajasthani bride named Roop Kanwar was burned alive on her husband's funeral pyre in 1986, it sparked a renewed conversation about sati in postmodern India. This led to the passing of the Sati Prevention Act in 1987, which made the practice of sati a criminal for which offenders may also be executed. According to the statute, it is also forbidden to glorify Sati by building a shrine and treating the deceased woman like a god.

Dowry Deaths

Unusual dowry deaths at the homes of newlywed women in India have been happening at an alarming rate. Dowry disputes represent a significant issue. Even though Section 498A of the Indian Penal Code makes taking and paying dowries illegal and severely punishes those responsible for marital cruelty, the practice is nonetheless common in India. India has not implemented "The Dowry Prohibition Act" sufficiently.

Domestic Violence

Despite the existence of the "Protection of Women from Domestic Violence Act 2005" in India, domestic violence is still a significant issue. The realm of domesticity is associated with a significant amount of violence against women in India. Indian society is patriarchal, which encourages violence at home, and this is one of the main causes of domestic aggressiveness. In addition to this, additional issues that contribute to domestic violence in India include the problem of an alcoholic spouse, the desire for inheritances, or having a male child.

Female foeticide

The practice of infanticide, foeticide, and sex-selective abortion, which has become widespread thanks to amniocentesis technology, along with undernourishment among female offspring, all contribute to the poor status of women. Even though the Indian government has proclaimed the practice of amniocentesis for pre-birth sex determination to be illegal, the practice of illegally terminating female foetus by unskilled nurses and personnel remains common, especially in the country's northern states of Haryana, Rajasthan, and Punjab. Because of all of these, the rate of maternal death has increased ^[16].

Education

Education is one of the most important ways for women to be empowered. While the Indian government is required by law to give free education to all citizens under Article 21A of the right to education, the large percentage of women educated remains a pipe dream. As girls advance to more advanced schools, there appears to be a progressive dropout rate among them. The primary cause of this is that parents expect girls to take care of their siblings while the boys are at work, work alongside the parents as seasonal labourers during the farming season, and handle household chores while the parents are away. Additionally, parents are more interested in their sons' education than in their daughters' because they believe that girls should be married off, which drives up the expense of education, among other things. For women, therefore, the goal of making elementary education universal in India remains a distant pipe dream.

Forced evictions and exclusion

In India, widows are often evicted from their married homes after the death of their spouses and left to take care of themselves and their children alone. A separated or divorced woman often finds herself in an urban slum where her security of tenure is, at best, questionable because she lacks land and has a family to support ^[17].

Societal violence against women

The patriarchal normative universe that most Indian groups and societies are enmeshed in makes it difficult for women to receive meaningful justice. Men and women are rarely treated equally in religious groups, village communities, or man-made organisations such as professional associations. By requiring them to follow orthodox, destructive traditions, religious communities have frequently made women's lives worse.

Sexual harassment at the workplace

The initiative on a discourse on sexual harassment of women at their workplace in India started with the Supreme Court's Vishaka guidelines in 1997. However, it was the passage of the 'Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill 2013' that helped in translating these guidelines into concrete rules that are to be implemented. But even today "the issue of sexual harassment has largely been swept under the carpet in India. The provisions have never been successfully invoked because of social taboos still associated with sexual harassment". The payment of compensation for work is one area where, women in India face discrimination. In both urban and rural regions, this is accurate. The process of obtaining loans to launch their enterprises is frequently

more difficult for female entrepreneurs.

Constitutional Rights

Women's fundamental rights to equality including the ability to vote and participate in politics are guaranteed by our Constitution to all of them. Due to its strong foundation in the ideals of liberty, fraternity, equality, and justice, our Constitution includes numerous clauses aimed at empowering women. Women in India are empowered by the Constitution in addition to being granted equality. It also directs the State to implement policies that empower women through positive discrimination ^[18].

Fundamental Rights:

- **Article 14:** It protects women's equality before the law. Under this article, no law is discriminatory.
- **Article 15 (i):** This article prohibits the State from treating any citizen unfairly based merely on their place of birth, race, caste, religion, or any combination of these.
 - This article prevents the State from treating any citizen unfairly based merely on their place of birth, race, caste, religion, or any combination of these.
 - This article prevents the State from treating any citizen unfairly based merely on their place of birth, race, caste, religion, or any combination of these.
- **Article 15 (3):** Any special provisions made by the State in favour of women and children are made under this article.
- **Article 16:** This guarantees all individuals equal opportunities in matters of employment or appointment to any state office.

Guideline for State Policy

- **Article 39(a):** Under this article, the State shall tailor its policies to ensure that men and women have equal access to a sufficient means of subsistence.
- **Article 39(d):** This article requires the State to compensate men and women equally for labour of equivalent quality
- **Article 39 A:** To ensure that no citizen's opportunity to secure justice is ever denied due to financial or other impediments, the State shall promote justice based on equal opportunity and provide free legal aid by appropriate laws or schemes, among other measures.
- **Article 42:** Under this article, the State shall provide for the protection of fair and humane working conditions as well as maternity leave.
- **Article 46:** Under this article, the State must protect the less fortunate groups in society from exploitation and social injustice, as well as carefully advance their interests in the economy and education.
- **Article 47:** The State guarantees the people's food and standard of living under this article.

Fundamental Duties

Article 51 (A) (e): This article promotes unification and an understanding of brotherhood among all Indians and condemns practices that degrade the intrinsic value of women.

Constitutional Rights

- **Article 243 D (3):** Women shall be granted at least one-

third of the seats to be filled by direct election in each Panchayat (including the seats set aside for women who belong to Scheduled Castes and Scheduled Tribes); these seats shall be allocated among the Panchayat's constituencies in a rotating manner.

- **Article 243 D (4):** Women shall be eligible to hold nearly one-third of the positions of Chairperson in the Panchayats at all levels under this article.
- **Article 243 T (3):** Women shall be granted approximately one-third of the total seats to be filled by direct election in each municipality (including the number of seats reserved for women who are members of Scheduled Castes and Scheduled Tribes). Within a municipality, these seats will be rotated among the several constituencies.
- **Article 243 T (4):** Provides that women, Scheduled Castes, and Scheduled Tribes will be granted the right to hold the post of Chairperson in municipalities, subject to the provisions made by the state assembly.

Equality before the law and equal protection under the law are guaranteed by the Fundamental Rights, Duties, and Directive Principles, which also forbid discrimination against any citizen based on their race, gender, religion, caste, or place of birth and ensure that all citizens have equal access to opportunities in the job market. It lays up safeguards for the freedom of speech, assembly, association formation, and voting, among other rights. These clauses of the Constitution aim to eliminate gender inequality by outlawing forced labour and human trafficking, forbidding sex-based discrimination, and allocating elected seats to women ^[19].

Different Acts so far that are related to women's rights

The following are a few acts that demonstrate the Indian government's attempts to protect women's lives:

Factories Act of 1948: Women play a crucial role in our nation's workforce. Many measures on women and their health, safety, well-being, and benefits are included in the Factories Act of 1948, including

This Act forbids women from working more than eight hours, save between the hours of six and seven in the morning, and forbids women from working in factories between the hours of ten at night and five in the morning.

- **Safety:** The act provides safeguards for female employees, including prohibitions on working in close range to cotton openers and heavy-weight lifting. Additionally, women are not permitted to lubricate, adjust, or clean any machine parts while the machine is operating.
- **Modification by the state government:** By publishing a notice in the Official Gazette, the state government may alter the operating hours for a factory, group, class, or classification of factories. But the change prevents women from working from 10 PM to 5 AM.

The Maternity Benefit Act of 1961

To support women's maternal responsibilities, preserve their economic rights, and guarantee employment security, employers must provide maternity benefits. Maternity benefits under the Act are extensive and include nursing breaks, paid leave, and medical bonuses. The Act helps women give birth to their children. In addition to giving women the time to care for themselves and their babies, it

protects the livelihood and interests of female employees. The Act allows women employed in approved factories and organizations to take up to six months of paid maternity leave. For a maximum of six months, female employees are permitted to take maternity leave both before and after giving birth. The business is required to pay the female employee her full compensation during this time off ^[20].

The Dowry Prohibition Act, 1961

It is illegal to demand dowry before, during, or after a marriage. According to Section 80 of the Bharatiya Nyaya Sanhita, 2023, "dowry death" refers to a woman's death caused by burns or other physical harm that happens outside of normal circumstances within seven years of her marriage. It also shows that, just before her death, she was the victim of abuse or harassment for any reason related to her husband or his relatives' demands for dowry. In these cases, the woman's death is considered "dowry death" and her husband or relatives are deemed to be the ones who caused it. Anyone found guilty of dowry death faces a minimum sentence of seven years in jail and a maximum sentence of life in prison.

Equal Remuneration Act of 1976

This act guarantees equal pay for equal labour, meaning that men and women workers must get the same remuneration for identical or comparable labour. It forbids discrimination against women in the hiring process as well.

The Child Marriage Restraint Act, 1976

The legal age of marriage for women was raised from 14 to 18 years old by this Act. Girls were able to finish their education as a result. To save children from the negative impacts of child marriage, the Act outlawed child marriage regardless of faith or community. The Act increased public awareness of the negative effects of child marriage and the value of education for females. Under this act, a girl's marriageable age is now 18 instead of 15, and a boy's is now 21.

The Bharatiya Nyaya Sanhita, 2023

According to Section 74, "Anyone who assaults or uses criminal force against a woman to upset her or know that he will likely do so will be punished with imprisonment of either kind for a term that shall not be less than one year but which may extend to five years, and shall also be liable to fine." And subsection 79: "Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object in any form, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon her privacy, shall be punished with up to three years of simple imprisonment in addition to a fine". Offenses connected to marriages.

The Medical Termination of Pregnancy Act of 1971

Under this law, a pregnancy may be terminated by a single RMP if any of these conditions are met; however, a pregnancy may not be terminated between 12 and 20 weeks of gestation unless dual RMP consent is obtained. Only in cases where the continuation of the pregnancy poses a risk to the pregnant woman's life is a permitted termination under the Act after 20 weeks of gestation. The Act specifies that the pregnant woman's agreement is the only

requirement for MTP to be carried out. The consent of a guardian is necessary in the case of a woman with mental illness or a minor under the age of eighteen. Women are protected by the Act from needless and forced abortions. Amendments to the Criminal Law of 1983, which stipulates that a regular prison sentence is seven years ^[21].

The National Commission for Women Act, 1990

The National Commission for Women Act, 1990: Established as a statutory body in January 1992 under the National Commission for Women Act, 1990 (Act No. 20 of 1990 of the Government of India), the National Commission for Women's duties include reviewing the legal and constitutional protections for women, recommending corrective legislative measures, assisting in the resolution of grievances, and advising the Government on all matters on women's policy ^[22].

The goal of the national plan of action for the female child (1991-2000) was to guarantee the girl child's existence, growth, and survival with the ultimate goal of preparing her for a brighter future. The goal of the 2001 National Policy for the Empowerment of Women was to promote the growth, advancement, and empowerment of women.

The Protection of Human Rights Act, 1993

The rights to life, liberty, equality, and dignity are human rights under this Act. According to the statute, Indian courts have the authority to uphold these rights, protected by the Constitution and International Covenants. Women's rights under the Protection of Human Rights Act include the following: ^[23]

- **Equality:** It is recommended that national constitutions and other legal documents incorporate the principle of equality between men and women.
- **Protection from discrimination:** States must outlaw any kind of discrimination against women.
- **Protection from violence:** Violence against women needs to be prevented.
- **Property ownership:** Property ownership should be allowed for women.
- **Education:** Equitable access to education for women is necessary.
- **Participation in government:** Women deserve to be granted the opportunity to participate in politics.

Protection of Women from Domestic Violence Act, 2005

This Act safeguards women against any act, action, omission, or commission that could be construed as domestic abuse and that causes harm or injury to them. It shields women against violence on all physical, sexual, emotional, verbal, psychological, and financial.

Protection of Women against Sexual Harassment at Workplace Bill, 2010

The government introduced the Protection of Women Against Sexual Harassment at Workplace Bill, 2010 on November 4, 2010, intending to safeguard women in the workplace, including female employees, female clients, female customers, female students, female research scholars in colleges and universities, and female hospital patients. On 3.9.2012, the Bill was approved by the Lok Sabha.

Conclusion

Indian women have been the victim of an unacceptable rise

in crime in recent times. Consequently, by ascertaining the relative positions of the Indian states, a picture of crime against women in India can be painted. The prevalence of horrible crimes like "rape" and "dowry death" has somewhat declined among other crimes. However, other offences such as "assaults on women with intent to outrage her modesty," "kidnapping and abduction of women", "cruelty by husband or his relatives," and "human trafficking" persisted in their growth. Identification of the variables that can influence crime against women may aid in crime control in addition to enforcement and punishment.

Even though the criminal law transformation addresses a number of these problems, there are still numerous gaps that remain. People must understand that other, more understanding sides to this problem go beyond judicial change. Amendments to the criminal justice system to increase conviction rates may serve as a deterrent to such behaviour. Though women's empowerment and education are part of a larger social process to which we may not be able to directly contribute, we still urge professionals to help women have better access to, use of, and coverage in the services that we organize, carry out, assess, and study.

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