

## “Women and Crime”

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### Introduction

The women in the modern-day society are well educated, working and attained economic stability in comparison to previous generations. On the flipside crime against women are also increasing. The new age females are facing new problems such like harassment at work place, acid attack etc.

### Women as victims of crime

In Manusmriti (ancient legal text of Hinduism), it is stated that women are to be protected at all times. It may be because women are more vulnerable to crime.

The United Nations Declaration on the **Elimination of Violence against Women** defines "violence against women" as:

*“any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.*

*and identifies three forms of such violence: that which occurs in the family, that which occurs within the general community, and that which is perpetrated or condoned by the State. It also states that "violence against women is a manifestation of historically unequal power relations between men and women.”*

In every three minutes, a crime gets committed against a woman. In India, the crime against women include:

- (a) **Dowry death:** When a married woman is killed or driven to suicide by incessant persecution and torment by their husbands and in-laws over a dispute about their dowry; it amounts to dowry death.

The demand, payment or acceptance of a dowry, "as consideration for the marriage", where "dowry" is defined as a gift demanded or given as a precondition for a marriage is prohibited by the **Dowry Prohibition Act of 1961**.

In the **Indian Penal Code, 1860**, section **304B** was added which made dowry death a specific offence punishable with a minimum sentence of imprisonment for 7 years and a maximum of life imprisonment. It provides that if the death of a woman is caused by burns or bodily injury or occurs in suspicious circumstances within 7 years of her marriage, and there's evidence to show that before her death, she was subjected to cruelty or harassment by her spouse or his kin regarding the demand for dowry, then the spouse or the kin shall be deemed to have caused her death.

In the **Evidence Act, 1872**, section 113B creates an additional presupposition of dowry death when it is revealed that prior to her death, the woman had been exposed to cruelty on account of dowry demand. Section 304B IPC along with section 113B of the Evidence Act have aided the conviction of many who were not caught by the Dowry Prohibition Act, 1961. Section 113A of the Evidence Act provides a similar presumption of abetment of suicide (which is an offense under section 306 IPC), in case of death of a married woman within a period of seven years of her marriage.

(b) **Female infanticide and sex-selective:** Female infanticide is the elected killing of a newborn female child or the termination of a female fetus through sex-selective abortion. Government of India passed **Pre-Conception and Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) (PCPNDT) Act** in 2004 to deter and punish prenatal sex screening and female foeticide. Since dowry system in India is a big reason for female foeticide, enactment of **Dowry Prohibition Act, 1961** also aimed to decrease female foeticide.

(c) **Rape:** Rape is a type of sexual assault usually involving sexual intercourse or other forms of sexual penetration carried out against a person without that person's consent. The act may be carried out by physical force, coercion, abuse of authority, or against a person who is incapable of giving valid consent, such as one who is unconscious, incapacitated, has an intellectual disability or is below the legal age of consent.

**Section 375 of Indian Penal Code** deals with offence of rape and **section 376** deals with punishment for rape. In order to constitute the offence of rape, penetration is sufficient. An attempt to commit rape is punishable under section **376 read with section 511** of the IPC.

(d) **Domestic Violence:** Domestic violence (also named domestic abuse or family violence) is violence or other abuse by one person against another in a domestic setting, such as in marriage or cohabitation.

**Domestic Violence Act, 2005** gives protection for the women against all the domestic violence she has to suffer. However, no female relative of the husband or the male partner can file a complaint against the wife or the female partner, for e.g. the mother-in-law cannot file an application against a daughter-in-law, but she can file an application against her daughter-in-law for abetting her son to commit violence against her.

(e) **Forced and child marriage:** Girls are forced into marriage at young ages, suffering from a double vulnerability, both for being a child and for being female. Child marriage is a violation of human rights that robs girls of their childhood. Child brides are forced to drop out of school, have children before they are ready and are often subjected to a life of violence and abuse.

**The Prohibition of Child Marriage Act, 2006** restrains child marriage (marriage under 18 years for girls and 21 years for boys). Boys and girls forced into child marriages as minors have the option of voiding their marriage up to two years after

reaching adulthood, and in certain circumstances, marriages of minors can be null and void before they reach adulthood. All valuables, money, and gifts must be returned if the marriage is nullified, and the girl must be provided with a place of residency until she marries or becomes an adult

- (f) **Acid throwing or acid attack:** Acid throwing is the act of throwing acid or an alternative corrosive substance onto a person's body "with the intention to disfigure, maim, torture, or kill." Acid attacks are usually directed at a victim's face which burns the skin causing damage and often exposing or dissolving bone. Acid attacks can lead to permanent scarring, blindness, as well as social, psychological and economic difficulties.

The Indian legislature has regulated the sale of acid. Compared to women throughout the world, women in India are at a higher risk of being victims of acid attacks. At least 72% of reported acid attacks in India have involved women. India has been experiencing an increasing trend of acid attacks over the past decade.

Till recently there was not any specific law in India to deal with the cases of acid attack. The **eighteenth law commission of India** which was headed by **Justice A.R. Lakshmanan** then proposed new sections **326A and 326B in the India Penal Code and section 114B in the Indian Evidence Act**. Acid Attack was recently introduced as a separate offence under the Indian Penal Code through Criminal (Amendment) Act, 2013.

The proposed section 114B of the Indian Evidence Act shall read as under:

Presumption as to acid attack– If a person has thrown acid on, or administered acid to, another person the court shall presume that such an act has been done with the intention of causing, or with the knowledge that such an act is likely to cause such hurt or injury as is mentioned in section 326 A of the Indian Penal Code.

This section was introduced to give wide perspective to acid attack.

**Section 326A and Section 326B** of Indian Penal Code includes punishment. Section 326A lays down the punishment for acid throwing. The minimum punishment is 10 years imprisonment. It can extend up to life imprisonment with fine. Section 326 B lays down the punishment for attempted acid throwing. The minimum punishment is 5 years imprisonment. It can extend up to 7 years imprisonment with fine.

- (g) **Abduction:** Abduction is the action of forcibly taking someone away against their will. Incidents of reported kidnappings and abductions of women increased 7.6% in the recent years.

In Indian penal Code 'Abduction' is Defined under section 362, as an act compelling or taking away a person by deceitful means inducing him to go from any place and section 363 deals with punishment on abduction.

- (h) **Insult to modesty:** Indian Penal Code does not define the term "modesty of woman". What constitute outraging the modesty of a woman depends upon the facts and circumstance of each case. **Section 354 of IPC** defines the offence of outraging the modesty of a woman and prescribes the punishment for the same. **Section 509 of IPC**

prescribes punishment for intentional insult to the modesty of woman by words, sound, gestures or exhibition of objects.

**In Ramkripal v. State of Madhya Pradesh<sup>1</sup>**, the Supreme Court defines that “The essence of a woman's modesty is her sex.” “The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence.”

- (i) **Human trafficking and forced prostitution:** Human trafficking of girls and women, often leads to forced prostitution and sexual slavery. "Forced prostitution" refers to conditions of control over a person who is coerced by another to engage in sexual activity.

**The Immoral Traffic (Prevention) Act, or ITPA**, also called the Prevention of Immoral Trafficking Act (PITA) is a 1986 amendment of legislation passed in 1956 as a result of the signing by India of the United Nations' declaration in 1950 in New York on the suppression of trafficking. The Act, then called the All India Suppression of Immoral Traffic Act (SITA), was amended to the current law. The laws were intended as a means of limiting and eventually abolishing prostitution in India by gradually criminalising various aspects of sex work.

- (j) **Sexual harassment:** Sexual harassment is unwelcome sexual behaviour that's offensive, humiliating or intimidating. It is a type of harassment technique that relates to a sexual nature and the unwelcome or inappropriate promise of rewards in exchange for sexual favors. Sexual harassment includes a range of actions from mild transgressions to sexual abuse or assault. Harassment can occur in many different social settings such as the workplace, the home, school etc.

The **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** is a legislative act in India that seeks to protect women from sexual harassment at their place of work. The Act will ensure that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realisation of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.

In **Indian Penal Code**, the provisions under sections **354A, 354B, 354C** and **354D** deals with sexual harassment of women and punishment for that.

### **Women as offenders of crime**

Statistics have been consistent in reporting that men commit more criminal acts than women. Female offenders are usually much less dangerous than male suspects and their crimes are

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<sup>1</sup> <https://indiankanoon.org/doc/1308370/>

linked to poverty or mental health problems. Females are mostly charged with the cases of prostitution, larceny-theft, fraud, forgery, and embezzlement. Females are less likely than males to become repeat offenders. Long-term careers in crime are very rare among women. Some pursue relatively brief careers (in relation to male criminal careers) in prostitution, drug offenses, or minor property crimes like shoplifting.

### **Rights of women in criminal matters**

Law has given some privileges for women when they have to meet the procedures under criminal matters. They are the following:

- (1) According to National Human Rights Commission guidelines on arrest, as far as practicable, women police officers should be associated where women are arrested.
- (2) According to section 46(4) of Criminal Procedure Code, 1973, (CrPC), a woman cannot be arrested after sunset and before sunrise. In exceptional circumstances, arrest can be made by obtaining the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.
- (3) According to section 51(2) of CrPC, when it is necessary to cause a female to be searched, the search shall be done by another female with strict regard to decency. Body searches of females should only be carried out by women and with strict regard to decency.
- (4) According to section 53(2) of CrPC, whenever the person of a female is to be examined by a medical practitioner, the examination shall be made only by, or under the supervision of, a female registered medical practitioner. Explanation.- In this section and in section 54, "registered medical practitioner" means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956 ) and whose name has been entered in a State Medical Register.
- (5) Women cannot be called to the police station for interrogation under **section 160** of the CrPC. The police can interrogate a woman at her residence in the presence of a woman constable and family members or friends.
- (6) Section 47(2) CrPC says, if the accused hides in the house of a female who according to custom does not appear in public, the police cannot enter the house or break the house open unless notice is given to such female to withdraw and give her reasonable facility to withdraw herself.
- (7) When a women is being arrested, provisions should also be made for the custody of minor children of the woman at the time of arrest. She must provide in writing the name and details of the person with whom she wishes her minor children to stay during her period of incarceration, and this must be complied with strictly. In case where no family/friends are available to care for the child and he/she cannot accompany the mother to prison, the child should be appropriately placed in a Child Care Institution.

- (8) According to the National Prison Manual, pregnant and lactating women should be provided with special diet. Mothers in postnatal stage should also be allowed separate accommodation to maintain hygiene and protect their infant from contagion, for at least a year after childbirth. Further, instruments of restraint, punishment by close confinement or disciplinary segregation should never be used on pregnant or lactating women.
- (9) In case of pregnant prisoners, the provisions of the National Model Prison Manual must be followed strictly to make arrangements for temporary release for delivery of children in a hospital outside the prison. Suspension of sentence may be considered in the case of casual offenders. Information about a woman's pregnant status should also be made to the Court that has ordered the detention, to enable the Court to grant bail (where appropriate) or modify the detention order as deemed necessary.
- (10) Section 416 of CrPC provides that if a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed and if it thinks fit, commute the sentence to imprisonment for life.
- (11) Under no circumstances can the identity of a rape victim be revealed. Under section 228A of the Indian Penal Code, the person revealing the identity of rape victim should undergo imprisonment for a term which may extend to two years and shall also be liable to fine.
- (12) Under section 164 of CrPC, a woman who has been raped can record her statement before District Magistrate when the case is under trial and no one else needs to be present. Alternatively, she can record the statement with only one police officer and woman constable in a convenient place that is not crowded and does not provide any possibility of the statement being overheard by the third person.
- (13) In cases of rape or molestation, police cannot refuse to register an FIR even if a considerable period of time has elapsed since the incident.
- (14) A rape victim can register her complaint from any police station under Zero FIR ruling by the Supreme Court<sup>2</sup>. Sometimes, the police station under which the incident occurs refuses to register the victim's complaint in order to keep clear of responsibility and tries sending the victim to another police station. In such cases, she has the right to lodge an FIR at any police station under the provision of Zero FIR.
- (15) According to the new guideline issued by the government, a rape survivor can approach a doctor for medical examination without filing an FIR. According to section 357C, all hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code, and shall immediately inform the police of such incident. If there is any failure in this procedure, the person concerned will face jail for one year or fine or both.

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<sup>2</sup> *Stavanger Kaur v. State (Government of NCT Delhi)*, 1999 Supp(3) SCR 348

- (16) A case of rape can't be dismissed even if the doctor says that rape has not taken place. Report of the doctor can only act as a proof. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion and doctor cannot decide on this.
- (17) It is mandatory for all firms, public and private, to set up committees to resolve matters of sexual harassment. Every employer with more than 10 employees is required to have an 'internal complaints committee' of a minimum of four members to address complaints related to sexual harassment. It should be headed by one senior woman employee and have at least one external member belonging to an organisation dedicated to women's safety. According to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 Act, the committee has the same powers as that of civil court.
- (18) A National Policy on Prison Reforms and Correctional Administration had been framed in 2007, which gave a number of directives relevant to women prisoners – maintenance of human rights of prisoners, avoiding overstay of under trials etc. It further states, "Women prisoners shall be protected against all exploitation. Work and treatment programmes shall be devised for them in consonance with their special needs."

### **Landmark decisions**

#### **1. Vishaka v. State of Rajasthan<sup>3</sup>**

A social worker from Rajasthan, was brutally gang-raped by five men. The trial court acquitted all five accused. Vishaka, a Group for Women's Education and Research, took up the cause and joined with four other women's organisations, and filed a petition before the Supreme Court of India on the issue of sexual harassment at the workplace. The Supreme Court commissioned the Vishaka guidelines that defined sexual harassment and put the onus on the employers to provide a safe working environment for women.

#### **2. Sheela Barse v. State of Maharashtra<sup>4</sup>**

A writ petition was filed complaining of custodial violence to women prisoners confined in police lock-up in the city of Bombay. The court held that it is the duty of the police officer making arrest to see that arrested females are segregated from men and kept in female lock-up in the police station. In case there is no separate lock-up, women should be kept in a separate room.

#### **3. Lata Singh v. State of Uttar Pradesh<sup>5</sup>**

Lata Singh was an adult when she left her family home to be joined in matrimony with a man from a lower caste. Her brothers, who were unhappy with the alliance, filed a missing person report, and alleged Lata had been abducted. This resulted in the arrest of three people from her husband's family.

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<sup>3</sup> AIR 1997 SC 3011

<sup>4</sup> AIR 1983 SC 378

<sup>5</sup> (2006) 5 SCC 475

The Supreme Court held that an adult woman has the right to marry or live with anyone of her choice.

**4. Tamil Nadu v. Suhas Katti**

This was the first case in India where a conviction was handed down in connection with the posting of obscene messages on the internet under the controversial section 67 of the Information Technology Act, 2000. In the case, a woman complained to the police about a man who was sending her obscene, defamatory and annoying messages in a Yahoo message group. The accused also forwarded emails received in a fake account opened by him in the victim's name. The victim also received phone calls by people who believed she was soliciting for sex work. The magistrate found the accused guilty of offences under section 469, 509 IPC and 67 of IT Act 2000. He was sentenced to rigorous imprisonment for 2 years under 469 IPC and to pay a fine of Rs.500/-, one year simple imprisonment and Rs 500 fine under 509 IPC and two years imprisonment with a fine of Rs 4,000 under section 67 of IT Act 2000. All sentences were to run concurrently.

**5. Laxmi v. Union Of India<sup>6</sup>**

In 2006, Laxmi, an acid attack victim, filed a petition seeking measures to regulate the sale of acid and provide adequate compensation to the victim. Taking cognizance of the number of cases relating to acid attacks against women on the rise, the Supreme Court imposed stringent regulations on the sale of acid in 2013. The ruling banned over the counter sale of acid. Dealers can sell the acid only if the buyer provides a valid identity proof and states the need for the purchase. It is mandatory for the dealer to submit the details of the sale within three days to the police. It also made it illegal to sell acid to a person below 18 years.

**6. Centre for enquiry into Health and Allied themes (CEHAT) v. Union of India (2003)**

With the advent of pre-natal diagnostic techniques that could determine the sex of a fetus, the growing trend of aborting female fetuses was observed. The Centre for Enquiry into Health and Allied themes filed a petition to curtail female foeticide. The Supreme court directed the Central and State governments to enact the provisions of the PNDT Act immediately, and banned all advertisements relating to pre-natal sex determination techniques.

### **Conclusion**

Thus we can see that Legislature and Judiciary are trying to cop up with the new trends in crime particularly against women. Rape victims and Sexual harassment cases are increasing day by day. There is a need that provision in the Indian Penal Code has to be amended closing all the loop holes and severe punishment such as genital mutilation should be incorporated under the punishment provisions.

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<sup>6</sup> [2014] 4 SCC 427