

## WOMEN, JUSTICE, SAFETY AND SECURITY

- Medha Bhatt\*

### *Abstract*

*“Violence against women remains pervasive worldwide. It is the most atrocious manifestation of the systemic discrimination and inequality women continue to face, in law and in their everyday lives, around the world.”*

- Kofi Annan

*The subject of gender justice and women empowerment has been an anxiety in many nations and in many an arena. Despite the fact that there has been formal elimination of institutionalized discrimination, yet the approaches embedded in the subliminal have not been erased. Women, irrespective of their class, caste and educational eminence, are not safe. In the contemporary society women have been the victims of exploitations since long time in diverse fields in their life both physically, socially, mentally and economically. Women are facing exertions in every sphere of life whether employment, access to health care or property rights. Social inhibitions and discriminatory practices against them continued to exist during the ‘enlightened’ and ‘civilised’ imperial rule. The leadership of independent movement was, however, committed to accord an equal status to women and give them a place of honour, and dignity in the society. Accordingly, the fundamental law- as emerged out of the constituent assembly treated both men and women equally and also provided for protective discrimination for women in view of their peculiar position in the human society. The paper explores the primary acts of violence are defined and examined: dowry abuse, sexual harassment, and human trafficking etc. and the role of judiciary in providing security and safety to the WOMEN as in Past Present and Future.*

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## INTRODUCTION

*“I am Chandrika, I am Gayatri, I am Fatima, Banu, Uma, I am Jayalakshmi, I am Saraswati...*

I am ones of those faceless women who die every day in your morning newspapers,

And go on to become crime number in the Police Station,

And then a file to be pushed around in the Courts.....”

*(Poem published in “I cry for help, no one’s there”, pamphlet by Vimochna, Bangalore)*

Empowerment can be viewed as means of creating a social environment in which one can make decisions and make choices either individually or collectively for social transformation. It strengthens the innate ability by way of acquiring knowledge, power and experience (Hashemi Schuler and Riley, 1996). In other words empowerment is the route of enabling or authorizing personage to think, take action and control work in a sovereign way. As we talk about Women Empowerment it is one of the debateable and the most concerning topic of the scenario. Women empowerment in core areas like social status, gender bias, health, security and empowerment are of urgent necessity.

The subject of gender justice and women empowerment has been an anxiety in many nations and in many an arena for some centuries. In the 21st century India is fast emerging as a global power but for half of its population, the women across the country, struggle to live life with dignity continues. Women are facing problems in every sphere of life whether employment, access to health care or property rights. The attention required is still not being paid to the issues that concern this section of population on the other hand. India is fast developing but women's in India continue to be discriminated. The declining sex ratio in India amply portrays the discrimination shown towards women at the stage of birth. Women may be have stardom in any stream but are getting harassment every day by their surroundings. They are victims of crime directed specifically at them, *rape, kidnapping and abduction, dowry-related crimes, molestation, sexual harassment, eve-teasing, etc.* The crimes against women in India are growing at a rampant speed. Women, irrespective of their class, caste and educational status, are not safe.

Violence against women, of which detrimental practices against women is a part, has been accredited as “*one of the crucial social mechanisms by which women are forced into a subordinate position compared with men*”<sup>1</sup> and consequently a violation of women’s equality rights. In other words 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. Accordingly, violence against women encompasses but is not limited to the following:

- a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs. Acts of violence against women also include forced sterilization and forced abortion, coercive/forced use of contraceptives, female infanticide and prenatal sex selection.<sup>2</sup>

The above definitions are the most elaborated and expandable one and covers the most heinous crime against women. Our Preamble and the very Indian Constitution guarantees women equality before the law and the equal protection of laws under Article 14<sup>3</sup> and prohibits discrimination on grounds of sex under Article 15<sup>4</sup>. A unique feature of the Indian Constitution is

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<sup>1</sup> UN Declaration on Violence against Women, 1993

<sup>2</sup> United Nations General Assembly. Declaration on the Elimination of Violence against Women, In: 85<sup>th</sup> Plenary Meeting. December 20, 1993. Geneva, Switzerland; 1993

<sup>3</sup> Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

<sup>4</sup> Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth:

Article 15(3), which empowers the State to take special measures for women and children. Indian state have made various legislations with concern to women's related issues which will be further explained but despite of these guarantees and the very legislative provisions the position of women in India remains unequal.

## TRACING CRIMES AGAINST WOMEN

Females can bear from violence throughout their 'life cycle' as foetuses may be aborted just because they are female, infants may be killed because they are female, girls may be neglected or subjected to various other types of abuse, adolescents may be raped, married women may be beaten, raped or killed by their husbands and widows may be neglected. The female infanticide and sex selective abortions that are caused by son preference have led to an imbalance in sex ratios characterized by millions of females "missing" from populations in India. The Semantic gist of 'crime against women' is direct or indirect physical or mental cruelty to women. Crimes which are 'directed specifically against women' and in which only 'women are victims' are characterized as "Crime Against Women"<sup>5</sup> Social evils like dowry deaths, child marriage, domestic violence, rape, sexual harassment, Forced Prostitution exploitation of women workers are rampant in different parts of India. Humiliation, rape, kidnapping, molestation, dowry death, torture, wife-beating etc. have grown up over the years<sup>6</sup> and Marital Rape has taken a blow in past decades. Various 'crime against women' has been discussed below:

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1. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them
  2. No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to
    - (a) access to shops, public restaurants, hotels and palaces of public entertainment; or
    - (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public
  3. Nothing in this article shall prevent the State from making any special provision for women and children
  4. Nothing in this article or in clause ( 2 ) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes

<sup>5</sup> *Violence against Women and Children-Issues and Concerns*, By Awadhesh Kumar Singh and Jayanta Choudhury, New Delhi, Serials Publications, 2012, p.2

<sup>6</sup> Ibid, p.1

**DOMESTIC VIOLENCE:** When we listen the term ‘Domestic Violence’ the first thought in our mind is cruelty by husband or other in-laws but domestic violence also comprises of more heinous crimes like dowry abuse, forced abortion etc. Moreover studies estimate that, from country to country, between 20 and 50 per cent of women have experienced physical violence at the hands of an intimate partner or family member.<sup>7</sup> Domestic violence is a form of gender-based violence, intended at subordinating women. The global dimensions of domestic violence are of great concern, both in terms of their scope and extent. Domestic violence is perhaps the most universal, yet one of the most invisible forms of violence against women. No country or society can claim to be free of domestic violence, but the patterns and trends may vary across regions and countries. The United Nations Declaration on the Elimination of Violence Against Women, 1993, defines violence against women as “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 in private life.”<sup>8</sup> In India, domestic violence was recognised in 1983 as a specific criminal offence by the introduction of section 498-A<sup>9</sup> into the Indian Penal Code and The Protection of Women from Domestic Violence Act (or the Domestic Violence Act) is a laudable piece of legislation that was enacted in 2005 to tackle this problem. The Act in theory goes a long way towards protection of women in the domestic setup. It is the first substantial step in the direction of vanquishing the questionable public/private distinction traditionally maintained in the law, which has been challenged by feminists time and again.

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<sup>7</sup> World Health Organization (1996) ‘Violence Against Women’. WHO Consultation, Geneva: WHO.

<sup>8</sup> General Assembly Resolution 48/104 of 20 December 1993.

<sup>9</sup> 498A. 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. Explanation. For the purpose of this section, “cruelty” means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

**RAPE:** Rape<sup>10</sup> is crucially erroneous. It is *malum in se*<sup>11</sup> and can have stern consequences for victims. It has been happening since the prehistoric times across cultures. It has too often been ignored and mischaracterized. Rape is a multifaceted phenomenon with many dimensions. It is one of the generally controversial issues, and is a challenge to the contemporary thinking. Delhi Rape Case was a turning point for the Rape Laws as specified under Indian Penal Code, 1860 made by Justice Verma's Committee Report which was setup on December 23' 2012 which consist of a three member Committee headed by Justice J.S. Verma, former Chief Justice of the Supreme Court, was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women.

**FORCED PROSTITUTION AND GIRL CHILD TRAFFICKING:** Prostitution in India is as old as in some of the other countries in the world. "The origin of this institution is shrouded in mystery, yet some of the authorities on the problems associate it with religious practices, which

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<sup>10</sup> The English word rape is derived from Latin word rapere. The Merriam Webster dictionary defines rape as "unlawful sexual activity". However there can be several types of rapes like penetrative, non-penetrative, consensual, marital, and the crime of rape varies culturally. The word "Rape" literally means a forcible seizure and that element is a characteristic feature of the offence. According to Wharton Rape is defined as unlawful carnal knowledge of a woman by force against her will. Section 375 of the Indian Penal Code, 1860, defines rape and gives seven instances when it would be considered a rape. The circumstances being:-

*Firstly* - against her will,

*Secondly* - without her consent,

*Thirdly* - with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt,

*Fourthly* - with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

*Fifthly* - With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

*Sixthly* - with or without her consent, when she is under eighteen years of age,

*Seventhly* - when she is unable to communicate consent.

<sup>11</sup> Latin phrase meaning wrong or evil in itself

in the beginning were of a customary nature. The cause of shame prevented it for a time from degenerating into license, but the string tide of circumstance forced it into a mercenary affair.”<sup>12</sup> No doubt, prostitution cause personal, family and social disorganization. There are more than 20 million prostitutes in India if a *Human Rights Watch* report is to be believed — and as many as 35% of them enter at an age less than 18. Prostitution was once upon a time a theme of Indian literature and arts for centuries. Exploring through the causes of prostitution, the first and the foremost factor is Poverty and second but the most concerning one is girls trafficking and forced prostitution. Many tender girls are kidnapped from their homes by unscrupulous gangsters. They properly train them in the art of prostitution and when these girls mature they are sold.<sup>13</sup>

An effective check on prostitution goes to Bombay state when the Bombay Prevention of Prostitution Act was passed in 1923. Some separate other acts were also passed to protect certain girls who were made prostitutes under certain social custom. These acts were the U.P. Naik Girls Protection Act 1929, the Bombay Devdasi Protection Act 1934, Madras Devdasi (Prevention of Dedication) Act 1947. In spite of all these Acts, The problems of prostitution could not be easily tackled. Some of the reasons for this are stated as follows:

- Firstly prostitution by itself was no crime and the acts dealt with activities connected with its practice.
- Secondly, law defines its policy towards the problem and provides the tools to the officials entrusted with its enforcement. But the mere existence of law is no guarantee that the problem itself is being tackled effectively. Besides, it is difficult to get at the pimps, the procurers and the property owners who let their premises for this purpose.
- Thirdly, many a time the police officials were apathetic or corrupt and there was no special police or special courts for this purpose.
- Fourthly, the enactment passed for the suppression of immoral traffic also is varied from state to state and some time there were many deficiencies in the law, for ex, there was no restriction on brothels away from educational institutions, religious places or any other

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<sup>12</sup> International Research Journal of Social Sciences ISSN 2319-3565 Vol. 2(3), 31-39, March (2013), <http://www.isca.in/IJSS/Archive/v2i3/6.ISCA-IRJSS-2013-027.pdf> P.32

<sup>13</sup> Ibid, p. 35

public place. In some states there were no such special acts and no actions could be taken only through the Indian Penal Code which was not sufficient for suppression of Immoral Traffic.

- Fifthly, Sometimes it is also asserted that that prostitution is any ancient profession as old as the world itself and it has been impossible to stop it, Further, it was thought that prostitution acts as a safety valve absorbing the violent passions of the dissolute and saves society from ugly overture.

**MARITAL RAPE:** Rape in India is one of the most common crimes against women<sup>14</sup> and a serious national problem.<sup>15</sup> The term ‘marital rape’ refers to unwanted intercourse by a man on his wife obtained by force, threat of force or physical violence or when she is unable to give consent.<sup>16</sup> It is a crime against basic human rights one is entitled to and a clear violation of the Right to Life enshrined in Article 21 of our Constitution.<sup>17</sup> Marital Rape is the non-consensual sexual invasion of one spouse of the other; And in that it counts as both, sexual abuse and domestic violence, and can be prosecuted under both rubrics. Under present provisions of the IPC, a husband can be charged with marital rape only if his wife is below 16. According to the UN Population Fund, “more than two thirds of married women in India, aged 15 to 49, have been beaten, or forced to provide sex.” More recently, women's groups petitioned the Justice J S Verma committee instituted after Nirbhaya to strengthen anti rape laws to include marital rape in its purview and in view of the recommendations of the Law Commission and the growing protest from the general public in response to gang rape of a Delhi girl in December 2012,<sup>18</sup> the Indian Parliament introduced the Criminal Law (Amendment) Bill, 2013, which was passed by both the houses in

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<sup>14</sup> Kumar R. New Delhi: Zubaan; 1993. The History of Doing: An Account of Women’s Rights and Feminism in India; p. 128

<sup>15</sup> Kinnear KL. Santa Barbara: ABCCLIO; 2011. Women in developing countries: A Reference Handbook; pp. 26-27

<sup>16</sup> Indian Journal of Applied Sciences, Volume: 3, Issue: 12, Dec 2013 | ISSN - 2249-555X; Marital Rape: A Legalised Sin, p.1

<sup>17</sup> Binion G. Human rights: A feminist perspective. Human Rights Q. 1995;17:509–26.

<sup>18</sup> Mandhana N, Trivedi A. The New York Times: Archived from the original on December; 2012. [Last accessed on 2015 Jan 30]. Indians outraged by account of gang rape on a bus.



March and received President's assent in April 2013.<sup>19</sup> It provides for amendment of IPC, IEA, and Code of Criminal Procedure, 1973 on laws related to sexual offences. The offence of rape under Section 375 of IPC, have made both penile and non-penile insertion into bodily orifices of a woman by a man an offence.

It is argued that declaring marital rape an offence will bring “the potential of destroying the institution of marriage.” This argument assumes that marriage as an institution is not based on mutual consent and equality of rights. The fundamental right of a person over one's body, male or female, is ignored in this assumption. In practice, this results in the wife's body being considered the property of her spouse, regardless of her consent.<sup>20</sup>

The marital rape victims have to take refuge in Section 498A of the IPC (“perverse sexual conduct by the husband”), or to the Protection of Women from Domestic Violence Act 2005. This Act came into force in 2006, effectively provides protection against marital rape or other forms of sexual perversions and domestic violence. However, it offers only a civil remedy for the offence.

**CYBER HARASSMENT:** Cyber crime is a global phenomenon. With the advent of technology, cyber crime and victimization of women are on the high and it poses as a major threat to the security of a person as a whole. Indian society is predominantly patriarchal in nature, and this is a major reason for women becoming victims of cyber crime (Halder & Jaishankar, 2011b). The developments of technologies have made it easy to communicate, and also to exchange information, which has led to the increase in cyber harassment because it enables the perpetrators to hide their identity in the virtual world.<sup>21</sup> Halder and Jaishankar, in their book *“Cyber Crime and the Victimization of Women: Laws, Rights and Regulations”*, have said that, *“The issues of women’s rights in cyber space could be contributed largely to the sluggish modes of the governments in executing the gender equality and gender justice promises made by the*

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<sup>19</sup> President signs ordinance to effect changes in laws against sexual crimes. India Today. [3 February 2013].

<sup>20</sup> Rath P. Marital rape and the Indian legal scenario. Indian Law J. 2012;5:212.

<sup>21</sup> <http://www.cybercrimejournal.com/sahasrivastavatalijcc2014vol8issue1.pdf>, (Accessed on 9 feb’ 2015 )

*States in the form of fundamental rights*” Several Harassment are faced by women on day to day basis which are examined below:

- I. **Harassment through e-mails** is not a new concept. It is very similar to harassing through letters. Harassment includes blackmailing, threatening, bullying, and even cheating via email. E-harassments are similar to the letter harassment but creates problem quite often when posted from fake ids.
- II. **Cyber Stalking** is one of the most talked about net crimes in the modern world. The Oxford dictionary defines stalking as "pursuing stealthily". Cyber stalking involves following a person's movements across the Internet by posting messages on the bulletin boards frequented by the victim, entering the chat-rooms frequented by the victim, constantly bombarding the victim in the chat rooms frequented by the victim, constantly bombarding the victim with emails etc. Cyber Stalking usually occurs with women, who are stalked by men, or children who are stalked by adult predators or paedophiles.
- III. **Cyber Pornography** is the other threat to the female netizens. This would include pornographic websites; pornographic magazines produced using computers and the Internet. Internet has provided a medium for the facilitation of crimes like pornography. Cyber porn as it is popularly called is widespread.
- IV. **Cyber Defamation:** Cyber tort including libel and defamation is another common crime against women in the net. This occurs when defamation takes place with the help of the Internet. Example someone publishes defamatory matter about someone on a website or sends e-mails containing defamatory information to all of that person's friends

Even though India is one of the very few countries to enact IT Act 2000 to combat cyber crimes, issues regarding women still remain untouched in this Act. The said Act has termed certain offences as hacking, publishing of obscene materials in the net, tampering the data as punishable offences. But the grave threat to the security of women in general is not covered fully by this Act.

## THE LEGAL REGIME IN INDIA

The Indian State has, however, legislated on many issues relating to women's equality rights. Currently, there are approximately 45 Central laws<sup>22</sup> that have a direct impact on women's rights. Some of these are- the 73<sup>rd</sup> and 74<sup>th</sup> amendments to the Constitution that mandates 33% representation of women in elected village (*Panchayat*) and municipal bodies, adoption of special laws<sup>23</sup> and provisions in the employment sector to promote equality rights and to counter historical and social disadvantage.<sup>24</sup> In 1997, the Supreme Court of India laid down guidelines on sexual harassment at the workplace with the objective of realizing women's right to a safe working environment.<sup>25</sup> After these guidelines by Supreme Court, **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** was passed with objective of providing security to women at their workplace.

Over the years, the Indian State has enacted special laws in addition to gender specific provisions in general criminal laws to counter harmful practices against women. Some illustrations are - the **Dowry Prohibition Act, 1961 (DPA)** to prohibit the practice of giving and taking dowry, **the Commission of Sati (Prevention) Act, 1987** that penalizes those involved in the commission of sati<sup>26</sup> and its glorification, **the Prohibition of Child Marriages Act 2006,**<sup>27</sup> and **the**

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<sup>22</sup> Under Article 245 of the Constitution, a quasi-federal system of governance has been adopted, which means that legislative powers are divided between the Center and the states. Various matters of legislation have been enumerated in three lists contained in the VII Schedule of the Constitution- List I (Union or Central List), List II (State List), List III (Concurrent List, which includes subject matters over which both the Union and State Government can make laws on the understanding that a Central/Union law may over ride a state law in the event of conflict between the two). Hence there are many more laws that impact on women's rights that have been promulgated by different state governments. This paper limits its scope to the analysis of developments on four issues legislated upon by the Center/Union Government.

<sup>23</sup> Including the Equal Remuneration Act, 1976- to ensure equality in remuneration between men and women workers and to prevent discrimination on grounds of sex by imposing duties on employers and providing for penalties in cases of breach, Maternity Benefit Act- applicable to all public/ government establishments, this law is aimed at "protecting dignity of motherhood" by imposing duties on employers to not employ a woman in the period of 6 weeks immediately following her pregnancy and to pay average daily rates for the period of her absence.

<sup>24</sup> NB- these provisions primarily apply to the public and/or the organized sector, which represents less than 10% of the Indian workforce. Protection accorded by these laws is limited due to low coverage as 90% of women are employed in the unorganized sector as also due to ineffective implementation.

<sup>25</sup> *Vishaka and Others v. State of Rajasthan and Others* (AIR 1997 SC 3011)

<sup>26</sup> 'Sati' is the ritualistic public burning of a widow on her husband's pyre.

**Preconception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PC&PDT Act)** to prevent the misuse of diagnostic techniques resulting in sex selective abortions. Many of these laws and legal provisions have been enacted as a consequence of active lobbying by the women's movement particularly in the 1980s.<sup>28</sup> In 2006, **the Protection of Women from Domestic Violence Act, 2005 (PWDVA)** was brought into force as a result of a nearly decade long campaign by the Indian women's movement, which also played a lead role in the drafting of the law.

After Delhi Rape case (Nirbhaya Case) various amendments were made to rape laws specified under Indian Penal Code, 1860 by Justice Verma's Committee Report which was setup on December 23' 2012 which consist of a three member Committee headed by Justice J.S. Verma, former Chief Justice of the Supreme Court, was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. The other members on the Committee were Justice Leila Seth, former judge of the High Court and Gopal Subramaniam, former Solicitor General of India. The Committee submitted its report on January 23, 2013. It made recommendations on laws related to rape, sexual harassment, trafficking, and child sexual abuse, medical examination of victims, police, electoral and educational reforms.

## JUDICIARY: ROLE AND CHALLENGES

Upliftment and progression of women has been at the centre of constitutional mechanism. Various provisions of the Constitution as former stated and the amendments providing 33.3 percent reservation for women in local self governance aim at achieving the two ideals of the Preamble i.e. equality of status and equality of opportunity. Judiciary has attempted to endeavour into the decisive role of a social reformer by safeguarding the rights of women. It continues to

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<sup>27</sup> The Prohibition of Child Marriages Act, 2006 (PCMA) repeals the earlier Child Marriages Prevention Act, 1929. However, PCMA is yet to be brought into force.

<sup>28</sup> Notably, the Commission of Sati Prevention Act, 1987 following protests against the immolation of Roop Kunwar as "sati" in 1986, amendments to the DPA, amendments to the Indian Penal Code to bring in provisions on dowry death (Section 304B), cruelty within marriages (Section 498A), custodial rape (Section 376) and corresponding amendments to the criminal procedural law, namely the Code of Criminal Procedure, and the Indian Evidence Act. Finally PC&PNDT Act, which was a result of campaigns, led by the women's and health movements, in the late 80s.

play a progressive, vibrant, creative and proactive role for social, economic and cultural transformation. The role of the judiciary can be further discerned from a number of progressive decisions rendered over the decades.

Article 21 contains provisions for protection of life and personal liberty<sup>29</sup> of persons. In the case of **State of Maharashtra v. Madhukar Narayan Mandikar**,<sup>30</sup> it was held that even a woman of easy virtue is entitled to privacy and no one can invade her privacy. This article has also been invoked for the upliftment of and dignified life for the prostitutes.

Apex court has given its view on Prostitution in the case of **Gaurav Jain v. Union of India**<sup>31</sup>

*“Women found in flesh trade, should be viewed more as victims of adverse socioeconomic circumstances rather than as offenders in our society. The commercial exploitation of sex may be regarded as a crime but those trapped in custom-oriented prostitution and gender-oriented prostitution should be viewed as victims of gender oriented vulnerability.” “Economic rehabilitation is one of the factors that prevent the practice of dedication of the young girls to the prostitution as Devadasis, Jogins or Venkatasins. Their economic empowerment and education gives resistance to such exploitation; however, economic programmes are necessary to rehabilitate such victims of customs or practices. They are being rehabilitated with the help of vocational training centres in some States by giving them preferential admission into educational training institutes”.*

“The society should make reparation to prevent trafficking in women, rescue them from red light areas and other areas in which the women are driven or trapped in prostitution. Their rehabilitation by socio-economic empowerment and justice is the constitutional duty of the State. Their economic empowerment and social justice with dignity of person are the fundamental rights and the Court and the Government should positively endeavour to ensure them”

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<sup>29</sup> The personal liberty includes rights of women to make reproductive choices. She can refuse to participate in sexual act; *Suchitra Srivastava v. Chandigarh Administration*, AIR 2010, SC 235

<sup>30</sup> AIR 1991 SCC 57

<sup>31</sup> AIR 1997 SC 30218

The right to life enshrined in Article 21 of the Constitution also includes the right to live with human dignity and rape violates this right of women was held in **Shri Bodhisattwa Gautam v. Subhra Chakraborty**,<sup>32</sup> and **Chairman, Railway Board v. Mrs. Chandrima Das**<sup>33</sup> Rape and other sexual offences related to women the courts have expected to deal with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized judge is better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.”<sup>34</sup> In this judgment, Hon’ble the Apex Court has also held that two finger test is illegal and unconstitutional being against the dignity of women. Hon’ble the Apex Court has directed not to conduct such test in future during investigations, and if the test has been conducted, further directed the courts at its threshold not to rely upon this evidence.

Judiciary has played vital role in women related issues and the very most it was glittered in **Vishakha v. State of Rajasthan**<sup>35</sup>, a non-governmental organization working for gender equality, had filed a writ petition seeking the upholding of the fundamental rights of working women under Article 21 of the constitution. The immediate reason for the petition was the gang rape of a saathin (a social worker involved in women’s development programmes) of Rajasthan in 1992. The assault was an act of revenge as the saathin had intervened to prevent a child marriage. Supreme Court provided a landmark judgment on the area of sexual harassment against women. As in his particular aspect there is no law or enactment by the legislature that is why here the judiciary applied its activist power and provides the some guide lines. Some of the guidelines are as follows:-

- Duty of Employer or other responsible persons in work places and other institution to women employees to prevent the commission of acts of sexual harassment.
- Court also defines sexual harassment. Sexual harassment includes: such unwelcome sexually determined behaviour as:

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<sup>32</sup> AIR 1996 SCC 490

<sup>33</sup> AIR 2000 SCC 465

<sup>34</sup> **State of Punjab v. Ram Dev Singh** (2004) 1 SCC 241

<sup>35</sup> AIR 1997 SC 3011

- a) Physical contact and advances;
- b) a demand or request for sexual favour;
- c) Sexually coloured remarks;
- d) Showing pornography;
- e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.
- Court also provided guidelines to all employers public or private for taking preventive steps.
- What type of criminal proceeding is required for this offence that is also suggested by the court?
- Disciplinary action should be taken against the offender.
- Complaint Mechanism is also suggested by court.
- Complaint committee is required.
- There is a need of worker's initiative.
- There is need of awareness among female employees about their rights.
- Court provided the guideline in case of third party harassment.

Article 21 has to be read together with Article 51 A Clause (e) as added by the Forty-Second Amendment which gives a mandate and imposes a duty on Indian citizens "to renounce practices derogatory to the dignity of women". The duties under Article 51- A are obligatory on citizens, but it should be invoked by the Courts while deciding cases and also should be observed by the State while making statutes and executing laws.

- central/ state Government are requested to enact the specific law in this regard
- These guidelines will not prejudice any rights available under the protection of Human Rights Act, 1993.

After providing the guidelines court said "Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the rights to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field".

Privacy of women is one of the concerns in present scenario and In **Rayala M Bhuvneshwari v. Nagaphanender Rayala**<sup>36</sup> with context to married woman it was held that the act of recording conversation of his wife by husband without her knowledge would amount to infringement of her right to privacy.

While dealing with violation of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition on Sex-Selection) Act, 1994, apart from giving series of directions, emphasis was also made on practice of female foeticide in **Voluntary Health Association of Punjab**<sup>37</sup>. In the said case it has been said that Female foeticide has its roots in the social thinking which is fundamentally based on certain erroneous notions, ego-centric traditions, pervert perception of societal norms, and obsession with ideas which are totally individualistic sans the collective good. All involved in female foeticide deliberately forget to realize that when the foetus of a girl child is destroyed, a woman of future is crucified. To put it differently, the present generation invites the sufferings on its own and also sows the seeds of suffering for the future generation, as in the ultimate eventuate, the sex ratio gets affected and leads to manifold social problems. I may hasten to add that no awareness campaign can ever be complete unless there is real focus on the prowess of women and the need for women empowerment. Further discussing about the repercussion of female foeticide it has been opined that every woman who mothers the child must remember that she is killing her own child despite being a mother. That is what abortion would mean in social terms. Abortion of a female child in its conceptual eventuality leads to killing of a woman. Law prohibits it; scriptures forbid it; philosophy condemns it; ethics deprecate it, morality decries it and social science abhors it.

## CONCLUSION AND SUGGESTION

Though the status of women in India, both historically and socially, has been one of the reverences, but the hard truth is that even today, they are struggling for their own identity, uproar for diffusion of their voices and fighting for their own esteem. Every day, they cross among the fears and fraught for individuality. Despite the constitutional guarantee of equality of sexes,

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<sup>36</sup> AIR 2008 AP 98

<sup>37</sup> 2013 (3) SCALE 195



rampant discrimination and exploitation of women in India continues. The incidence of bride burning, woman battering, molestation, marital rape and ill treatment of women are on increase. It is high time now that women should get a respectable and dignified position in the Indian society.

It is common knowledge that despite constitutional safeguards, statutory provisions and plethora of pronouncements to support the cause of equality of women, changes in social attitudes and institutions have not significantly occurred. But, there has to be total optimism to achieve the requisite goal. It is necessary to accelerate this process of change by deliberate and planned efforts so that the pernicious social evil of gender inequality is buried deep in its grave. Laws written in black and white are not enough to combat the evil. A socially sensitive judge is indeed better statutory armour in cases of crimes against women than penal statutes.

Swami Vivekananda rightly said that “The nation which doesn't respect women will never become great.....” Therefore, in pursuit of making India a great nation, media should work towards giving women their much deserved status.

## **SUGGESTIONS**

- Fast and fair settlement of matrimonial disputes can bring just relief to them.
  - Lack of well-planned educational, economic and social programmes from grass root level is highly responsible for such acute and pitiable scenario of the women in the country. In this context it should be mentioned that women being vulnerable by this sort of negligence are compelled to divert themselves to choose dark route of survival in the form of abused or sexually exploited product of consumption. Adopt and enforce national laws to address and punish all forms of violence against women and girls. .
  - Strengthen data collection on the prevalence of violence against women and girls.
  - Increase public awareness and social mobilization for zero tolerance and prevention, including engagement of communities, men and young people.
- Systematically address sexual violence in conflict and its aftermath.