

The Demand for Gender Justice: Law and Reality

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Abstract

Today gender discrimination is a burning issue not only in the field of academics but also it is a threat to society at large. To set up a just society various human rights organizations, women organizations, NGOs have launched protest movements to eradicate the social evils against women. The central government as well as different state governments have enacted various laws to this end. Despite all these, if we see the records of the National Crime Bureau and the reports of various human rights organizations the scenario is horrible and devastating. Now the time has come, the women issues should be addressed not only to render justice to them, rather for the sake of the greater interest of the society their position must be uplifted. Through this paper, a critical analysis of the existing laws of the land and the reality-based statistical records have been done.

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Introduction

The woman is a non-separable part of the process of human development. Neither can reach its creative excellence without the cooperation of others. With time, the traditional socio-religious thinking about women has been gradually changed. They are playing now a pivotal role in the mainstream of development. This inclusive approach of development admits women as an integral part of the developmental process. At this juncture, the so-called patriarchal society and its structure are not enough to provide all types of security to women. If we fix our eyes on television, newspaper and follow the records of NCRB, the situation is hopeless.

Today in the era of Industrialization numerous working fields have been created. Women are also trying to become financially independent. However, the real scenario is somehow different. Almost in all major cases in the working fields women have been victimized by the insatiable hunger of the topmost bosses of their offices. Even, very often they are physically and mentally looted and tempted by their male colleagues. Unfortunately, woman harassment and domestic violence against women, young girls, and even tender-aged girls are on the rampant increase in India. Though, Indian Constitution, as well as various enactments, protect the woman rights. Present male-dominated human society has given them freedom but has failed to provide them with working security.

Whatever we bully for globalization as well as for liberalization, factually women are still been four-walled. Veil covered room is her only world. We have given freedom, viz., freedom of speech and expression, freedom of movement and freedom of occupation. Perhaps, everything is ok. Till the day women cannot carry on their lives freely in this society according to their likes and dislikes. From the very advent of adolescence, their ways of life and bread are controlled under the utmost control of their family seniors. In most cases, they still have to blindly offer bridal garlands to the grooms selected by their parents. And not any scope for little learned pauper women is at all facilitated. Suicide becomes the utter destiny that helps her get rid of social & mental torture to many unnamed lasses.

Today, so many unknown lasses are cruelly thrashed to death dubiously linking her witch even in this epoch of computer and software technology. Then it seems – ruthless in our destiny (God). Can beautiful creation of Him not tender a minimum of solace to these out destined fellow ill lucked women? Woman trafficking, prostitution, honor killing, dowry death, incest, female feticide are some of the burning examples in hands.

Screams, suffocating cries of many helpless women reach us easily whenever we fix our eyes and ears on daily news and magazines. A woman very often meets

threat of ransom, eve-teasing and sometimes also with a virulent attack of night beasts. Post mortem report of the ravaged corpse rescued from dustbin reveals to be so as – “murder after rape.”

Legal Measurements:-

In India, several Constitutional safeguards and other legal mechanisms have been provided to ensure their life and security.

Indian Penal Code and Women Protection

Various provisions under IPC deal with the various crimes against women.

Section -304 B (I.P.C) deals with dowry death.

Sec: 375 and 376 deal with the definition of Rape and its punishment.

Sec: 376(A) 376(B), 376(C) and 176(D) deal with other sexual offenses.

Section 498 -A much known Indian penal code that deals with cruelty over the woman by husband or relative of the husband may be the outcome of that. The lovable daughter leaves their paternal home only to accompany the husband while emerging in dreams. But alas! Sometimes she has to meet inexplicable scolds by mother in law due to non – payment of dowry, sometimes with mental and physical torture of her drunkard husband. Even after all deception, deprivation and dereliction, she is used as consumable goods up to the last day – whose rhetoric name is ‘Marital Rape’.

Sec: 509 deals to insult the modesty of a woman. (Mode of insult – Word gesture or act intended to insult.)

Sec. 125 of CRPC provides order for maintenance of wives, children and parents;

If any person having sufficient means neglects or refuses to maintain –

- a) his wife, unable to maintain herself, or,
- b) his father or mother, unable to maintain himself or herself

A magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child father or mother at such monthly rate, as such magistrate thinks fit,

A married Hindu woman has an additional right to maintenance under section 18 of the Hindu Adoptions and Maintenance Act, 1956.

The Protection of Women from Domestic violence Act, 2005

It is an important step towards the protection and security of women from various kinds of abuse, harassment and violence and to provide relief to the aggrieved woman. Under the said Act the woman is entitled to get the following rights.

- (A) Right to reside in a shared household: If a woman is a victim of domestic violence she has the right to live in the 'shared homes'. That is a home or houses she shares with the abusive partner. As per section 17 of the Act, the right to live in the same house separating from a partner, not only that she is entitled to get alternative accommodation provided by her husband or partner if it requires.
- (B) Right to obtain assistance and protection:
The victimized woman has the right to get services and assistance from a police officer or protection officer, shelter and medical establishments. She can also file her complaint under section 498-A of the Indian penal code for matrimonial cruelty.
- (C) Right to seek orders :
- If *prima facie* domestic violence is established, a woman can seek the following orders from the competent court.
- 1) Protection order: The court can pass a protection order to prevent the accused from committing an act of domestic violence, entering the workplace, school, or other places frequented by the aggrieved person.
 - 2) The aggrieved person is entitled to get the shared household as well as if requires an alternative accommodation is provided to the victim of domestic violence.
 - 3) Monetary relief: The respondent has to pay all expenses incurred and loss suffered by the aggrieved person and her children due to the infliction of domestic violence.
 - 4) Custody orders: By the virtue of this order aggrieved woman or an applicant on behalf of her gets the custody of children, in this case, the respondent may or may not be allowed to visit the children.
 - 5) Compensation order: The aggrieved person is entitled to get compensation from the respondent due to the damage and injuries; it may also include mental torture and emotional distress caused to her.
 - 6) An order for removing the respondent from the common dwelling house for a specified period by the court.
 - 7) This Act also provides the scope for a protective injunction against violence, dispossession from the matrimonial home.

Of late, for the woman education and prevention of their problems various national and international woman forums have been set up. Not only that even Human Rights Commission has necessarily taken an efficacious effort on its onset journey.

In the Prevention of Family, violence Act lives together and other types of Family relationships other than marriage have equally been given importance. Besides physical torture, mental torture and oral infliction have been taken into account. Regarding oral and mental infliction there are scurrility, defamatory statement, the blame of chastity, hatred for barrenness and also stop to meet any near and dear one. Even, if a sister is repeatedly insisted to give consent in marriage it will be regarded as blackmail upon her.

In Vishakha vs. the State of Rajasthan,(1997) the Supreme Court of India held that all employers or persons in charge of the workplace must have to take the following steps to prevent sexual harassment of a working woman.

Express prohibition of sexual harassment, which includes physical contact and advances, a demand on request for sexual favor, sexually colored remarks, showing pornographic or any other unwelcome physical, verbal or nonverbal conduct of sexual nature should notice, published and circulated in inappropriate ways.

The Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressed) Act, 2013.

As per the provisions of the Act, the employers are directed to ensure a safe working environment for women and to constitute an internal committee to look after the matter. As per chapter VI of the said Act, the employers are also directed to maintain the following steps.

1. Display at any conspicuous place in the workplace, the penal consequences of sexual harassments: and the order constituting, the Internal Committee under subsection (1) of section 4.
2. Organize workshops and awareness programs at regular intervals for sensitizing the employees with the provisions of the Act and orientation programs for the member of the Internal Committee in the manner as may be prescribed;
3. Provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
4. Make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under sub-section(1) of section 9.
5. Assist the woman if she so chooses to file a complaint about the offense under the Indian Penal Code or any other law for the time being in force.

6. Cause to initiate action, under the India Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place.
7. Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct.
8. Monitor the timely submission of reports by the Internal Committee.

There is no uniform civil law relating to domestic violence in India but criminal law is equally applicable to all citizens of India irrespective of their religion.

There are different laws relating to marriage, divorce, maintenance, guardianship and succession governing the Hindu, Muslims and Christians. The several existing personal laws are as follows.

- The Hindu Marriage Act, 1955
- The Special Marriage Act, 1954
- The Hindu Succession Act, 1956
- The Shariat Act, 1937
- The Dissolution of Muslim Marriage Act, 1986
- The Muslim Women and Girls Act (Protection of Rights on Divorce), 1986
- The Christian Marriage Act, 1872
- The Indian Divorced Act, 1869
- Cochin Christian Succession Act, 1921
- Persi Marriages and Divorced Act, 1939

To promote conciliation in and secure speedy settlement of disputes relating to marriage and family affairs the Family Court Act, 1984 was enacted.

The real position of women in India

Despite having such great laws the records and data analysis shows a different reality.

Table 1: Crime Head-wise Cases Registered under Crime against Women- 2019

Crime head	No. of Incidences/ Cases	No. of Female Victims
Murder with Rape/Gang Rape	283	286
Dowry Deaths	7115	7162
Abetment to Suicide of Women	5009	5088
Miscarriage	221	222
Acid Attack	150	156
Attempt to Acid Attack	42	45
Cruelty by Husband or his relatives	125298	126575
Kidnapping & Abduction of Women	72780	73844
Human Trafficking	966	1991
Selling of Minor Girls	22	26
Buying of Minor Girls	8	8
Rape	32033	32260
Attempt to Commit Rape	3944	4038
Assault on Women with Intent to Outrage her Modesty	88367	89292
Insult to the Modesty of Women	6939	7169
Total IPC Crimes against Women	348162	348162
Dowry Prohibition Act,1961	13297	13674
Immoral Traffic (Prevention) Act 1956	1185	1845
Protection of Women from Domestic Offences Act	553	554
Cyber Crimes/Information Technology Act	1621	1645
Protection of Children from Sexual Offences Act	46005	46682
Indecent Representation of Women (Prohibition) Act, 1986	23	23
Total SLL Crimes against Women	62684	64423
Total Crime against Women (IPC+SLL)	405861	412585

Source: www.ncrb.gov.in

Figure 1: Total crime against Women (IPS+SLL)-2019

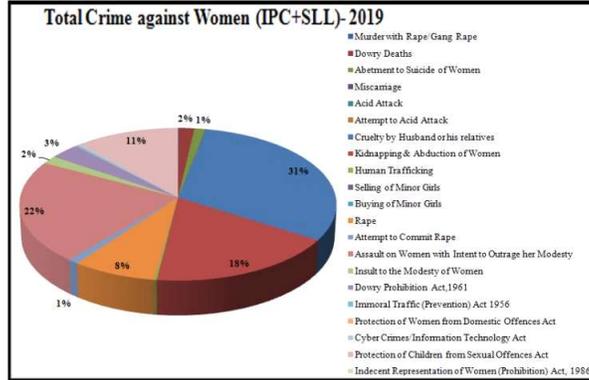


Figure 2: Crime against Women (IPC + SLL) - 2017-2019 (State Wise)

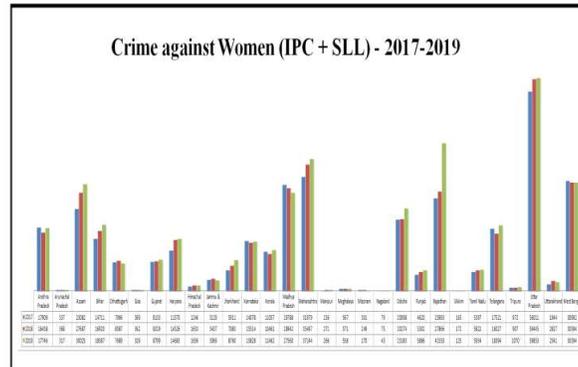


Figure 3: Crime against Women (IPC + SLL) - 2017-2019 (UT Wise)

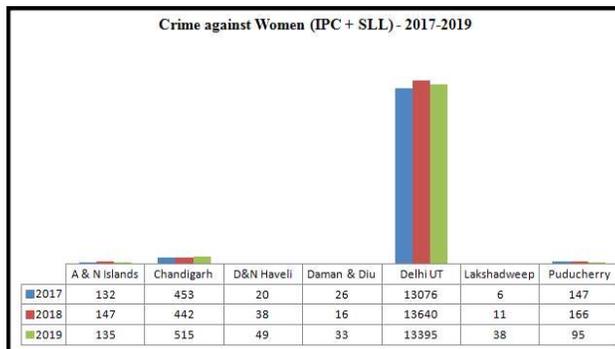


Table 2: Crime against Women (IPC + SLL) - 2017-2019

Sl.No.	State/UT	2017	2018	2019	Percentage State Share To All-India (2019)	Mid-Year Projected Female Population (In Lakhs) (2019)	Rate of Total Crime against Women (2019)+
STATES:							
1	Andhra Pradesh	17909	16438	17746	4.4	261.4	67.9
2	Arunachal Pradesh	337	368	317	0.1	7.3	43.3
3	Assam	23082	27687	30025	7.4	168.9	177.8
4	Bihar	14711	16920	18587	4.6	576.2	32.3
5	Chhattisgarh	7996	8587	7689	1.9	143.8	53.5
6	Goa	369	362	329	0.1	7.6	43.1
7	Gujarat	8133	8329	8799	2.2	324.9	27.1
8	Haryana	11370	14326	14683	3.6	135.3	108.5
9	Himachal Pradesh	1246	1633	1636	0.4	36.1	45.4
10	Jammu & Kashmir	3129	3437	3069	0.8	64.2	47.8
11	Jharkhand	5911	7083	8760	2.2	183.3	47.8
12	Karnataka	14078	13514	13828	3.4	325.1	42.5
13	Kerala	11057	10461	11462	2.8	182.9	62.7
14	Madhya Pradesh	29788	28942	27560	6.8	399.6	69.0
15	Maharashtra	31979	35497	37144	9.2	588.5	63.1
16	Manipur	236	271	266	0.1	15.5	17.2
17	Meghalaya	567	571	558	0.1	16.1	34.6
18	Mizoram	301	249	170	0.0	5.9	28.7
19	Nagaland	79	75	43	0.0	10.4	4.1
20	Odisha	20098	20274	23183	5.7	223.9	103.5
21	Punjab	4620	5302	5886	1.5	141.9	41.5
22	Rajasthan	25993	27866	41550	10.2	376.4	110.4
23	Sikkim	163	172	125	0.0	3.1	39.8
24	Tamil Nadu	5397	5822	5934	1.5	379.2	15.6
25	Telangana	17521	16027	18394	4.5	185.3	99.3
26	Tripura	972	907	1070	0.3	19.7	54.5
27	Uttar Pradesh	56011	59445	59853	14.7	1081.4	55.4
28	Uttarakhand	1944	2817	2541	0.6	54.6	46.5
29	West Bengal	30992	30394	30394	7.5	474.9	64.0
TOTAL STATE(S)		345989	363776	391601	96.5	6393.3	61.3
UNION TERRITORIES:							
30	A & N Islands	132	147	135	0.0	1.9	72.2
31	Chandigarh	453	442	515	0.1	5.4	95.2
32	D&N Haveli	20	38	49	0.0	2.3	21.6
33	Daman & Diu	26	16	33	0.0	1.3	25.2
34	Delhi UT	13076	13640	13395	3.3	93.1	144.0
35	Lakshadweep	6	11	38	0.0	0.3	115.2
36	Puducherry	147	166	95	0.0	7.9	12.1
TOTAL UT(S)		13860	14460	14260	3.5	112.1	127.2
TOTAL ALL INDIA		359849	378236	405861	100.0	6505.4	62.4

Source : www.ncrb.gov.in

Conclusion and Suggestions

We take and have taken many steps to eradicate these evils in respect of articles ever written. Some success might have come. But that is very insignificant. Beyond all, we need a unified effort and the spread of mass awareness through mass education.

We should keep in mind that woman is not a commodity at all, she is the emblem of the lovable – affectionate mother; the only symbol of eternal love, which cannot be perished. So for the sake of evacuating the entity of unending, the non-divided cosmic interest we need to be preservers, admirers, and worshippers of this benignant – gracious womanhood.

Women have been looked at from the tender perspective, while the policy makers are treating them as the weaker and vulnerable. I have a strong objection to this perspective; whenever the policymakers are granting some rights to them. I object that why they will be assessed from that perspective, the approach of assessment should be changed. Who are you to grant? They are as equal as men are, that is why to ensure their accessibility in an equal way should be protected, not like this they will be granted certain rights, they should be protected in every field of society so that they can enjoy their rights and flourish themselves in their way.

The so-called patriarchal mentality of the society that women will be veil covered and confined in the four-wall room should be changed, they should be treated equally as treated a brother in a family. Changing the patriarchal society into a society free from gender inequalities can uphold the status of womenkind.

It would be kept in mind that gender-biased law should immediately be made crime-based instead of any assumption that all women lie and all the men are born as a criminal. A protective mechanism should be there for the husband also so that the misuse of the domestic violence act would be stopped and trust upon law and relationship would be set up. Any allegation without proper investigation should not be entertained so that no other family members are harassed unnecessarily. The Well trained police forces for this purpose should be created to deal with domestic violence matters.

Pt. Jawaharlal Nehru rightly observed “Legislation cannot by itself solve deep-rooted social problems. One has to approach them in other ways too, but legislation is necessary and essential so that it may give that punch and have that educative factor as well as the legal sanctions behind it, which helps public opinion to be given a certain shape. The matters relating to women harassment and torture is not a personal problem at all, it can be realized that it is the issues of the society so it

should be addressed from the holistic perspective”. In the great words of Swami Vivekananda “Country and Nation which do not respect women have never become great nor will ever be in future”.

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