

GENDER TARGETED OFFENCES

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ABSTRACT: *Gender targeted offences or sex targeted offenses are essentially the kind of offences which are foisted on a person due to his sex. The current paper basically enumerates gender targeted offences in India which is an outcome of a stereotypical outlook of society in respect of women considering them inferior to men. The continuation of existing patriarchal social structure is also responsible for such offences. Patriarchy and stereotypical attitude has contributed to an unequal share of power and socio-economic resources of the country. Consequently, even after advocating the idea of gender equality and enshrining the concept of equal opportunity to men and women in the Constitution, India is a country that contributes more to gender targeted offences and ultimately gender inequality.*

Violence against women is a facet of gender targeted offences. Women have been abused since ages due to a feudal mind set of the society. They face discrimination at all stages of their life. Women are the prime victims of infanticide or foeticide and if anyhow they manage to survive, they are treated with ignorance.

At first, this paper gives a general introduction of violence against women and some basic causes of it. Secondly, the paper defines gender targeted offences and what is included in violence against women in accordance with the definition given by the United Nations General Assembly in their Declaration of 1993. Thirdly, five most common and repeated offences against women have been enlisted which include- domestic violence, female infanticide or foeticide, rape, dowry death and female genital mutilation. Further, the current paper elaborates the aforementioned crime along with the laws and Acts that deal with penalizing it. At last, in the concluding portion of the paper, some suggestions have been discussed.

Key Words:

INTRODUCTION

Violence against women or gender targeted violence is a very well known phenomenon. Be it any society or culture or religion, women are always targeted with violence.

As per Manu's statement- women are supposed to be in the custody of their father when they are children, they must be under the custody of their husband when married and under the custody of her son in old age or as widows; in no case should she be allowed to assert her independence¹.

Prevalence of a feudal mind-set, gender discrimination and objectification of women has continually materialized a kind of structure in the society where patriarchal ideology is supreme. The dominance of male in society has always led to the victimization of a woman either emotionally or mentally or physically by the infliction of violence against her. Considering a woman inferior to men not only attacks the self-esteem of a girl or a woman but also pushes her to the verge of helplessness and alienation.

Gender based violence are the offences or the crimes which are committed against the male or female due to their sex or gender roles. The most common gender targeted crimes include domestic violence, female foeticide and infanticide, dowry death, rape, genital mutilation etc. which are inflicted on women just because of the reason of their gender. In a traditional society like India, patriarchy is so deeply rooted that without change in attitude and mind-set of the society the legislative measures taken for the upliftment and betterment of women could not succeed.

In a traditional society like India, patriarchy is so deeply rooted that without change in attitude and mind-set of the society the legislative measures taken for the upliftment and betterment of women could not succeed. If the issue of general targeted offense is not addressed separately and comprehensively, women's potential to assist in creating an ideal society would be incapacitated.

Regrettably, discrimination against women and girls is so extensive and prolonged in India that it is counted amongst one of the characteristics of Indian society. Moreover, this, India has proved this to be correct by categorizing itself at 1st rank for discrimination against women in the world in 2018.²

¹Nirmukta.com/2011/08/27/the-status-of-women-as-depicted-by-manu-in-the-manusmriti (last visited on 24th March, at about 13:23 pm)

²<https://poll2018.trust.org> (last visited on 24th March, at about 13:55)

WHAT IS GENDER TARGETED VIOLENCE

Declaration on the Elimination of Violence against Woman of United Nation General Assembly was introduced in 1993 in order promotes gender equality and gender justice universally. The Declaration aimed for encouraging global contribution to eliminate any kind of violence against the women and to ensure security and dignity of women in the world.³

Article 1 of the Declaration defines violation against women as any act or coercion due to which a woman goes through the physical, sexual or psychological harm and is inflicted on her just because of her sex. The arbitrarily depriving a women from her liberty is also within the ambit of the definition as it is also responsible for physical, psychological or sexual sufferings.⁴

Article 2 of the Declaration provides for the inclusive definition of what to include in violence against women. As per the article, following are to be counted under violence against women-

- Clause (a) of the said Article provides that any kind of physical, psychological and sexual violence that occurs within the family. Such violence includes battering, marital rape, sexual abuse of female children in the household, violence relating to dowry, female genital mutilation. Under this clause, non-spousal violence and violence relating to exploitation in the family is also included.
- Clause (b) talks about the physical, psychological and sexual violence that occurs within general community. This clause categorise rape, sexual abuse, sexual harassment and intimidation. Forced prostitution and trafficking in women is also within the ambit of the violence within general community
- Clause (c) provides that any physical, sexual and psychological violence which is perpetrated or condoned by the state itself.⁵

TYPES OF GENDER TARGETED CRIMES

The most repeated and common crimes that prevail against women in India are:

1. Domestic Violence;
2. Female Infanticide and Foeticide;
3. Dowry Death
4. Rape
5. Female Genital Mutilation

Such gender biased crimes creates a ruinous and lifelong mental and physical strain, sometimes resulting in death among women and girls. It would be justified to consider that women and girls in India are born in such a complicated cultural and social system that is naturally inclined towards discrimination and inequity. It hampers a woman's capability to enjoy rights and freedom she is entitled to, which are also granted to man.

DOMESTIC VIOLENCE

In verbatim sense, domestic violence refers to any aggressive conduct or behaviour of any person against another person within home or it can be said to be committed by a person who shares a domestic relationship with the victim. It is a wide concept whose definition cannot be confined to a narrow meaning by attaching commission of physical violence only within its ambit. It is generally committed in consequence of rapacity to acquire domination over the other in an intimate relationship.

Though, in present scenario domestic violence can be considered as gender neutral violence as it is committed by both gender but particularly women are considered as the most common victim.

In India, Protection of Women from Domestic Violence Act, 2005 is the first legislation that defined the term "domestic violence" and was implemented exclusively to deal with such violence. At the first place, the Act extends protection to the wife or female live in partner from domestic violence by dint of husband or male live-in partner or his relative. Further, the Act also extends support to other women, living in domestic roof, such as widows' sisters or mother.

Section 3 of the Act provides constitutive definition of domestic violence. As per the section, any act omission or commission or conduct of the respondent shall constitute domestic violence in case it-

³<https://www.un.org/documents/ga/res/48/a48r104.htm> (last visited on 24th march, at about 13:55 pm)

⁴Ibid.

⁵Ibid.

- (a) Harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes cause and physical abuse sexual abuse verbal and emotional abuse and economic abuse; or
- (b) Harasses, harms, injures or endangers the aggrieved person with a view to course her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) Has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- (d) Otherwise injured or causes harm, whether physical or mental, to the aggrieved person⁶

Hence domestic violence under the Act includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. It is for the first time that the Act addresses “invisible violence” at home-physical and verbal abuse, withholding of financial rights, and sexual cruelty.⁷

In essence, the Act is a civil law which provides for monetary relief to the victim primarily. However, if the respondent breach the Protection Officer’s order or if the Protection Officer himself does not comply with his duties provided under the Act, penalty of imprisonment which may extend to 1 year or fine of Rs20,000 or both can be imposed.⁸

Earlier, Section 498A of Indian Penal Code was most commonly used by the female to counter domestic violence. However, complaints were mostly avoided as Section 498A talks about cruelty to married women and not explicitly define domestic violence. Hence, the women who were victimized by cruel conduct of the male counterpart were not able to report.

Therefore, the Act was considered revolutionary as it bring hope for the queue of women who were going through miserable conditions at the hands of male under the domestic roof.

In spite of the implementation of the Act with the object to provide speedy remedy and relief to the victims of domestic violence there has been increase in the Act by 8.2% from 2014 to 2015⁹.

In the case of Hiral P.Harsora and others v. Kusum Narottamdas Harsora¹⁰, Supreme Court has now widened the scope of Domestic Violence Act by deleting the ‘adult male’ before person from section 2(q) of the Act considering it to be violative of object of the Act to afford protection to women who have gone through domestic violence of any kind and now any person who inflict violence came under the ambit of the Act.¹¹

In landmark case of D. Veluswamy v. Dy Patchaiammal ¹²Supreme Court expounded that section 2(f) of Domestic Violence Act,2005 do not explicitly mention live in relationships, but the expression relationship in nature of marriage can be extended to unmarried women who can claim maintenance under the Act, only if the couple satisfies the following conditions-

- Must have hold themselves out to society is being akin to spouses;
- must be of legal age to marry;
- must be otherwise qualified to enter into legal marriage including being unmarried;
- Must have voluntarily cohabited and help themselves out of the world as being akin spouses for significant period of time.¹³

FEMALE INFANTICIDE AND FOETICIDE

Female infanticide is a conscious and intentional killing of a female child who is generally in the age group of 0 to 1 year whereas female foeticide refers to the Killing of foetus in the mother’s womb. Both of these wicked practices contribute in distorted sex proportion which in turn is giving constant threat to progress of human beings. The increasing gap between sex ratio is not opening any gate for gender equality rather it

⁶The Protection of Women from Domestic Violence Act, 2005, No.43 of 2005.

⁷Datta Damyanti (4 December, 2006) “The New Laws of Marriage” India Today. Retrieved on 25th March,2018

⁸Section 31,33 of Act No. 43 of 2005

⁹www.ncrb.gov.in/StatPublication/CII/CII2015/chapters/chapter5-15.11.16.pdf (last visited the site on 26thmarch, at about 11:17 am)

¹⁰Civil Appeal No.10084 of 2016

¹¹<https://www.livelaw.in/sc-strikes-words-adult-male-definition-respondent-section-2q-dv-act-relief-possible-minors-women/>(last visited the site on 26th march, 2019 at about 14:42 pm)

¹²Criminal Appeal No. 2028-2029 of 2010

¹³<https://indiankanoon.org/doc/1521881/> (last visited the site on 26th march, 2019 at about 15:00)

triggers the gender targeted offense more such as illicit trafficking, polygamy, rape etc. Consequently, the world is turning more unsafe for a girl at any stage of a life.

As claimed by UN Population Fund, at least 126 million girls around the world go demographically missing due to sex selective abortion¹⁴.

The Homo sapiens are now getting so negatively advanced that they justify their odious practice of killing an infant or sex selective abortion valid following their desire for a son and to reduce the economic burden which they might face for payment of dowry at the time of their daughter's marriage. It is completely unknown that out of which modern philosophy society considers a girl equivalent to liability and a boy as an asset.

"To kill a person who may have opportunity to defend himself is a very serious offence, but even more serious is the offence where a person killed someone who is not even in a stage to defend himself" was rightly quoted by the Court while it convicted the doctors for revealing the sex of the foetus by misusing sex selective techniques¹⁵.

Medical Termination of Pregnancy Act, 1971, was the first legislation passed in India that legalized abortion on specified conditions only, such as medical risk to mother and rape. Further, it also specifically provided about the physician who can legally proceed with abortion. However the Act proved to be feeble with the rapid widespread of sex screening technology in India.

To counter the evil practice of sex selective abortion by extensive use of sex selection techniques such as ultrasound, the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 was enacted which was supplementary to the Act of 1971. The Act was again amended in 2003 and was renamed as Preconception and Prenatal Diagnostic Techniques. The main objective of the Act was to prevent and penalize pre-natal sex screening and female foeticide.

In spite of introducing a separate legislation for prohibiting female infanticide, India's census clearly indicates decline in child sex ratio from 927 girls 1000 boys in 2001 to 919 girls 1000 boys in 2011. Apart from this, 2011 census figure also reveal that sex ratio in urban areas is low with 926 female for every 1000 male whereas it is relatively high in rural areas with 947 female per 1000¹⁶.

Globally, India is ranked at 4th place amongst the countries with skewed sex ratio at birth with sex ratio of 112 male for every 100 female in 2016¹⁷.

Sex selection or sex determination adds to discrimination against girl child. Advanced technology is increasingly used for removal of foetus but it certainly affects sex ratio. It is Immortal and unethical as well as it may amount to offence. It has affected the overall sex ratio in various States where female infanticide is prevailing without any hindrance.¹⁸

DOWRY DEATHS

The expression "Dowry" as contemplated by Dowry Prohibition Act is a demand for property of valuable security having and inextricable nexus with the marriage, i.e., it refers to the gifts in cash or property given from the side of the bride's parents or relatives to the groom or his parents and/ or guardian as the consideration for agreement to wed the bride-to-be. But if the demand for property or valuable security is not connected with the consideration of marriage, it will not amount to a demand for dowry.¹⁹

Dowry system means substantial goods movable or immovable property and cash that the bride's family give as a condition of marriage to the bride groom and his relatives.

Customary payment in connection with birth of child or other ceremonies are not involved within the ambit of dowry.²⁰

Most of the time the demand for dowry and unwillingness of bride or her family to fulfill the demands leads to crime against women which can range from emotional and physical abuse to even death.

Patriarchy is so deep rooted in India that women are mostly not allowed to work after marriage which makes her economically and socially dependent on the husband. Consequently, it becomes obligatory on the

¹⁴<https://www.unfpa.org/gender-biased-sex-selection> (last visited the site on 26th march, at about 15:46 pm)

¹⁵State v. Dr. Anil Sabhani and Others, Case NO.295/2 of 2001

¹⁶<https://www.census2011.co.in/sexratio.php> (last visited the site on 27th march, at about 10:00am)

¹⁷<https://www.cia.gov/lib./publication/the-world-factbook/fields/351.html> (last visited the site on 27th march, at about 10:53 am)

¹⁸CEHAT v. Union of India and Others, Case No. writ petition (civil) 301 of 2000

¹⁹Arjun Dhondiba Kamble v. State of Maharashtra, 1995 AIHC 273

²⁰Satbir Singh v. State of Punjab AIR 2001 SC 2828

parents to meet the demands of the bridegroom to make the marriage successful and make marriage as a happy note and not a prison for their daughter

However, in some cases dowry is taken as an advantage by the greedy bridegroom and his family to extort and extract as much property as they can from bride and her family. Gradually the newly wed bride starts losing her self-esteem and turns vulnerable in the situation.

Dowry is followed up with a chain of violence including domestic violence, female infanticide etc. It is degrading women's condition in the society which may include emotional abuse and physical abuse and sometimes murder of bride which is also known as dowry death.

Dowry death and murder refers to suicide by bride or killing of the bride by the husband and his family by poisoning her and even brutally setting her to fire. Afterwards it is shown that it happened out of accident. Most dowry death resulted due to an inability of bride to handle the harassment and feeling of being trapped in the marriage which made her to kill herself by hanging.

Domestic violence is also one of the consequences of dowry. Domestic Violence Act has been introduced to counter it but it is not much effective in its approach.

Dowry prohibition Act, 1961 is one of the most notable Acts introduced to improve women's status culturally, morally and socially in the society. It is remarkable as it attempted to combat the dowry system even from its inception i.e. before marriage when it is demanded. Section 3 of the Act imposes penalty on giving or taking of dowry with imprisonment not less than 5 years and fine of rupees 15000 or amount of value of such dowry whichever is less.²¹

Section 304B has been effectively added to Indian Penal Code, 1860, which made dowry death a specific offence punishable with a minimum sentence of imprisonment for 7 years and a maximum imprisonment for life. Following ingredients are to be satisfied in order to invoke section 304B:

- Death of women should be caused by burns or bodily injury or otherwise then under normal circumstances ;
- such death should have occurred within 7 years of her marriage;
- such woman must have been subjected to cruelty or harassment by husband or any relative of a husband;
- such harassment or cruelty should be for or in connection with demand for dowry;
- such cruelty or harassment is shown to have been meted out to women soon before her death.²²

Section 113 B of the Evidence Act 1872 creates an additional presumption of dowry death when it is shown that before her death the woman had been subjected to cruelty on account of dowry demand.

As per National Crime Statistics Report, the dowry death cases reported across India has been reduced to 1.5% i.e. from 8233 in 2012 to 8083 in 2013.²³

Impact of dowry can leave a woman with everlasting depression. It simply points out the degrading status of women. Dowry system is followed up by a chain which widens gender inequality, promotes domestic violence, deteriorates bride's family's financial status and tags a woman with liability character on a family.

RAPE

Rape is categorised amongst one of the heinous crime foisted on a woman in India which is responsible for physical, mental, emotional and spiritual molestation of women.

Rape is such an aggressive intimidation with the victim that not only cause physical injury but also degrades and ravages soul of a victim. A woman's life turns woeful with constant trauma fear depression accompanied by suicidal action.

Even after acknowledging the miserable situation of women in the nation, the unfortunate part is a building of rape culture by showing tolerance towards the most intolerable offence.

Nirbhaya Rape Case is the incident which was a rude shock to the society. The nation was filled with wrath and agony for the viciousness inflicted by the rapist on the 23 year college going girl. The United Nation

²¹Dowry Prohibition Act, 1961. Act No.28 of 1961

²²Section 304B of Indian Penal Code

²³National Crime Statistic 2012 (p 196), National Crime Statistic 2013 (p 81) (last visited the site on 1st april, at about 12:33 pm)

Entity for Gender Equality and the Empowerment of Woman highly condemned the ghastly gang rape and stressed that India is in alarming need to promote and protect woman safety and to ensure no violence.²⁴

Followed by the nationwide protest and international critics Criminal Amendment Act, 2013 was introduced for amending criminal laws on provisions relating to sexual offence.

Following changes were introduced by the Criminal Law Amendment Ordinance, 2018 in the Indian Penal Code, Criminal Procedure Code, Indian Evidence Act and POCSO:

- minimum imprisonment of 10 years in rape case and 20 years in case of rape of a woman below 16 years
- minimum imprisonment for life in case of a gang rape
- capital punishment can be imposed in case of a woman below age of 12 years
- no anticipatory bail can be granted to a accused of rape of woman below age of 16 years
- Investigation in rape case is to be done within 3 months of reporting of offence.

Section 376, 376A, 376B, 376C, 376D and 376E of Indian Penal Code exclusively deals with punishment for rape. Section 376 provides for rigorous imprisonment of minimum of 7 years but which may extend to life and also with fine. In case rape leads to death or result in vegetative state of victim would impose imprisonment of minimum of 20 years which may extend to life imprisonment under section 376A. Similar punishment is imposed in case of gang rape under section 376D.²⁵

Grievously, it's been six years after of the heinous Delhi 2012 Rape case and apparently India has become the most unsafe country for women. It seems like rapists are not afraid of laws and subsequently Unnao Rape Case, Kathua Rape Case, Surat Rape Case and many more were committed.

FEMALE GENITAL MUTILATION

Female genital mutilation has been defined by World Health Organization as “all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons.”²⁶

The practice is traditionally practiced by the Dawoodi Bohra, a sect of Shia Islam in India who covers over 1 million population of India. FGM or khatna is one of the darkest secret of India wherein total or partial part of clitorises of an innocent girl between age group of 6 to 9 years is cut out by a traditional circumcisers. The orthodox practice advocated by the principle of maintaining purity and modesty of women by excluding her from getting acquainted with any sexual pleasure. Further, they contend that it would probably help the community and the families to maintain its dignity which might get spoiled if the girl would start recognizing the pleasure and would run away.

In 2011, a woman named Tasneem, from this tightly woven community posted online petition requesting to ban the khatna. This petition give momentum to the anti-Khatna movement²⁷. In 2017, Sunita Tiwari filed public interest litigation to seek ban on female genital mutilation which is practiced in the name of religion. In response to the PIL, the Supreme Court issued notices to Delhi, Rajasthan, Gujrat and Maharashtra to sought replies on the raised issue. Since, no law or ordinance has been passed to criminalise the demonic activity.²⁸

The evil practice trapped the women in between shock and trauma. It is performed on the innocent, without her consent, in a secretly and clandestine manner. Women are scared to report about the procedure they went through. FGM inflicts physical as well as psychological damage on the woman. The practice is not mentioned in their religion but is part of their culture which is being performed without any health benefits.

Conclusion

Gender targeted of pencils leads to severe social, economic and health issues. It does not only haunt the women but also their families. Violence against women restraint the woman's capability to make her independent decisions and discourage them from actively participating in the nation's economic activities. It

²⁴www.unwomen.org/en/news/stories/2012/12/un-women-cndemns-gang-rape-of-delhi-student (last visited the site on 1st april, at about 14:20 pm)

²⁵Indian Penal Code, 1860. Act no. 45 of 1860.

²⁶<https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> (last visited the site on 1st april, at about 14:30 pm)

²⁷<https://www.dawn.com/news/712748/female-circumcision-anger-aired-in-india-fm> (last visited the site on 2nd april, at about 13: 45 pm)

²⁸<https://www.livellaw.in/sc-issues-notice-on-pil-seeking-complete-ban-on-female-genital-mutilation-read-petition/> (last visited the site on 4th April, at about 17:35 pm)

does not only block the development of women but also the development of society. Perhaps forceful implementation of the strict laws on the society would check the ever increasing rate of crime against women in each category.

State must emphasize on such pattern of education that could ensure modification in the social and cultural attitude of both men and women in the society. Education must focus on promoting equality's principles and eliminate stereotype mindset of the society.

Ironically, at one place India advocates the idea of peace and non-violence and on the very other place women have to face the brunt of violence. Increasing violence against women implies increasing violence in the society in whole. Woman and man of the right thinking society must unite themselves and raise collective voice against the violence against women for the upliftment of the woman as woman holds half the sky. Legislature and executive must cooperate with each other in this wake. Legislature must enact stringent laws for protection of women and executive must implement the laws forcefully. Judiciary must interpret the laws in consistent with best interest of the society and to ensure speedy remedy to the victims. Media must highlight the actual scenario in the society. Awareness programmes must be held to make the society especially the women about their rights. Women are no in wayless than man. Women are not meant to be left behind in the society but they are meant to be took along for the development of society. They deserve to be treated with dignity and love.