CHAPTER – 3
CRIME AGAINST WOMEN : TYPES AND CAUSES

3.1 Introductory

“As long as there is one person suffering injustice;
As long as one person is forced to bear an unnecessary sorrow;
As long as one person is subject to an undeserved pain,
the worship of God is demoralizing humiliation”.

---Joseph Lewis

The semantic meaning of ‘crime against women’ is direct or indirect physical or mental cruelty to women. Various kinds of violence against women are eve-teasing, molestation, bigamy, fraudulent marriage, adultery and enticement of married women abduction and kidnapping, rape, harassment to women at working place, wife beating, dowry death, female child abuse and abuse of elderly female etc. Almost every women has experienced the feeling of being mistreated, trivialized, kept out, put down, ignored, assaulted, laughed at or discriminated against because of her gender\(^1\). The alarming rate in the crimes against women can to a large extent be attributed to the lack of infrastructures for single working women who have to leave their families at an early age to work away from home. The most effective strategies are likely to be those that support women to organize peer groups and mobilize community resources and public services, including women’s health services. Such approaches enable women to overcome resignation to the legitimacy of the established order are important factor in the perpetuation of imbalances of power between women and men. If women are to implement their reproductive preferences, then it is essential that their empowerment occur not only within their personal spheres, but also in the broader spheres of the community and the state.\(^2\)

Crime against women are rising at an alarming rate. The authorities failed to curb high

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levels of sexual and other violence against women and girls, even as reports of such incidents increased\(^3\). In modern world where we talk of a civilized society, women liberty and empowerment, every day the pace of crime against women is rapidly increasing. The crimes against women and their causes can be categorized under following heads.

### 3.2 Sexual Crimes against Women in India

In an age so often characterized as “empowering” for women-and with so much rhetoric devoted to women’s supposed choices about their bodies and sexualities-the occurrence of rape and sexual coercion of women serve as a sobering reminder of patriarchy’s widespread influence\(^4\). The very offence of Rape seems to be a common one in India. Rape is a social disease. Hardly a day passes without a case of rape being reported in Indian newspapers and media. Women belonging to lower castes and tribal communities are seems to be more at risk. What seems to be sad about rape in India is the lack of seriousness with which the crime is often treated. Statistics of National Crime Records Bureau (NCRB) for the year 2013 shows, 93 women are being raped in India every day. According to NCRB data, there is a gradual increase in the number of rapes reported in India - from 24,923 in 2012 to 33,707 in 2013\(^5\). Women’s groups attest that the strict and conservative attitudes about sex and family privacy contribute to ineffectiveness of India’s rape laws. Victims are often reluctant to report rape. In an open court victims must prove that the rapist sexually penetrated them in order to get a conviction. This can be especially damaging. After proving that she has been raped, a victim is often ostracized from her family and community. This problem is exacerbated by the fact that rape laws are inadequate and definitions so narrow that prosecution is made difficult.

#### 3.2.1 Rape: Meaning and Types

Rape is a type of sexual assault usually involving sexual intercourse, which is initiated by one or more persons against another person without that person's consent.\(^6\) The act may

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\(^3\) Amnesty International Annual Report, 2013 p.120  
\(^4\) Breanne Fahs, “‘Freedom to’ and ‘Freedom from’: A new vision for sex positive politics” 269 Sexualities 17(3), March 2014. (SAGE, New Delhi, 2014)  
\(^6\) Available at: "Rape".legal-dictionary.thefreedictionary.com. (Visited on April 15, 2012).
be carried out by physical force, coercion, abuse of authority or against a person who is incapable of valid consent, such as one who is unconscious, incapacitated, or below the legal age of consent. 

"Rape is a crime not only against the person of a woman it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. Rape is therefore the most hated crime. It is a crime against basic human rights and is violative of the victim’s most cherished right, namely, right to life which includes right to live with human dignity contained in Article 21." 

Rape is one of the most heinous crimes, impacting the victim for life. Given its enormity, it should be considered next only to murder. Sadly, it has not been given the attention it needs by social scientists, law makers and justice dispensers. The deep chauvinism that runs through India’s public institutions is apparent from the level of local councils (khap panchayats) to the highest levels of the judiciary. So to save themselves from rape second time during process of so called getting justice they prefer to keep mum. Another reasons is the pressure to seek proof, the fear of fighting a superior, the likely impact on career, and adverse publicity prevent women from reporting sexual harassment. 

Sexual crime by minors are on a rise, when two Class IX boys attempt to rape a Class I girl, as in a Bathinda school recently, it is time of introspection for society. What kind of signals are we sending out to our youth? More than 50% of India’s population is below the age of 25 and over 65% below the age of 35. This way we have big human resource which can take our country to great heights, but if this asset is not channelized in the right direction, it can prove to be the biggest source of destruction. Since the people of this age group are most venerable and prone to vices. Recently we have received a very disturbing data showing that Over 33,000 juveniles, mostly between the age group of 16 to 18, have been arrested for crimes like rape and murder across the country in 

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8 Bodhisatwa v. Ms. Subhra Chakroborty (1996) 1 SCC 490
9 The Chairman, Railway Board and Ors v. Mrs. Chandrima Das and Ors AIR 2000 SC 988: 2000 (1) SCR 480
11 Shree Venkatram, The Tribune, Sept. 18, 2011
2011, the highest in last decade.\textsuperscript{13}

Rape is one of the most common and frequent of crimes against women in India. It has many forms: "landlord rape;" rape by those in authority of women employees or juniors within the workplace; "marital rape;" "caste rape," in which caste hierarchy is exercised to rape lower-caste or tribal women; "class rape;" "police rape;" and "army rape." For working class, tribal and Dalit women, rape can occur both in their homes and on their land. The scale and frequency of police rape is quite startling in India: police records show the number of rapes by "government servants" in rural and tribal areas exceed one a day in Delhi.\textsuperscript{14}

3.2.1.1 Custodial Rape

Custodial rape is a form of rape which takes place while the victim is "in custody" and constrained from leaving, and the rapist or rapists are an agent of the power that is keeping the victim in custody. When it happens in prison, it is known as prison rape. While some definitions of custodial rape define it as taking place in a state-owned institution, and perpetrated by a state agent, the term more generally refers to any situation where the power of a state agent is used to enable rape; thus, when prisoner-on-prisoner rape happens as a result of neglect by the prison authorities, it may be considered custodial rape.

Custodial rape is an endemic problem in certain nations; some police forces who have been charged with numerous instances of custodial rape have responded by instituting mandatory "virginity tests" for all female prisoners to "prove" that sexual assault has not happened during custody, despite the objection of gynecologists that virginity is not medically verifiable, and protests from human rights organizations that such tests are so invasive as to constitute sexual assault in themselves.

The rape of persons in custody was part of a broader pattern of custodial abuse. NGOs asserted that rape by police, including custodial rape, was more common than NHRC figures indicated. A higher incidence of abuse appeared credible, given other evidence of


\textsuperscript{14} Meeta Rani Jha, "Chappal Sticks and Bags," available at: SikhNet, (Visited on Sept. 19, 2011).
abusive behavior by police, and the likelihood that many rapes went unreported due to the victims' shame and fear of retribution. However, legal limits placed on the arrest, search, and police custody of women appeared to reduce the frequency of rape in custody. There were no recent NHRC data on the extent of custodial rape\textsuperscript{15}.

3.2.1.2 Gang rape

Gang rape occurs when a group of people participate in the rape of a single victim\textsuperscript{16}. Rape involving at least two or more violators\textsuperscript{17} is widely reported to occur in many parts of the world. However, systematic information on the extent of the problem, is scant. One study showed that offenders and victims in gang rape incidents were younger with a higher possibility of being unemployed. Gang rapes involves more alcohol and other drug use, night attacks and severe sexual assault outcomes and less victim resistance and fewer weapons than individual rapes\textsuperscript{18}. Another study found that group sexual assaults were more violent and had greater resistance from the victim than individual sexual assaults and that victims of group sexual assaults were more likely to seek crisis and police services, contemplate suicide, and seek therapy than those involved in individual assaults. The two groups were about the same in the amount of drinking and other drug use during the assault.

3.2.1.3 Incest

Incest is sexual activity between family members and close relatives\textsuperscript{19}. This may include sexual activity between people in a consanguineous relationship (blood relations), or related by affinity\textsuperscript{20}, such as members of the same household, step relatives, those related by adoption or marriage, or members of the same clan or lineage\textsuperscript{21}.


\textsuperscript{16} Neumann, Stephani. Gang Rape: Examining Peer Support and Alcohol in Fraternities. \textit{Sex Crimes and paraphilia}. Hickey, Eric W., 397-407

\textsuperscript{17} Neumann, Stephani. Gang Rape: Examining Peer Support and Alcohol in Fraternities. \textit{Sex Crimes and paraphilia}. Hickey, Eric W., 397-407


\textsuperscript{19} "Incest", Oxford University Press.2013 (Visited on August 27, 2013).


3.2.1.4 Digital Rape

Digital rape is manual manipulation of clitoris, vulva, vagina, or anus for purpose of sexual arousal and stimulation by use of fingers, sticks, bottles, objects etc. In a case of digital rape, where a 19-year-old used a wooden stick to criminally assault an 80-year-old destitute woman, a Sessions court awarded 10 years rigorous imprisonment to the convict, while exhorting the legislature to expand the definition of rape to include digital rape, male rape, oral rape, anal and rectal rape. Digital rape has been included in the definition of rape recently by new amendment in criminal law.

3.2.1.5 Marital Rape

Marital Rape refers to unwanted intercourse by a man with his wife obtained by force, threat of force, or physical violence, or when she is unable to give consent. Marital rape could be by the use of force only, a battering rape or a sadistic/obsessive rape. It is a non-consensual act of violent perversion by a husband against the wife where she is physically and sexually abused. The much awaited Domestic Violence Act, 2005 has also been a disappointment. It has provided civil remedies to what the provision of cruelty already gave criminal remedies, while keeping the status of the matter of marital rape in continuing disregard. Section 3 of the Domestic Violence Act, amongst other things in the definition of domestic violence, has included any act causing harm, injury, anything endangering health, life, etc., … mental, physical, or sexual. Also marital rape has not been included in definition of rape in new criminal amendment.

Marital rape occurs when one spouse forces other to take part in certain sex acts without other’s consent. It is a form of intimate partner violence, i.e., an abuse of power by which one spouse attempts to establish dominance and control over the other. Research shows that it can be equally, if not more, emotionally and physically traumatizing than rape by a stranger.

While every state has its own laws on the subject, broadly defined, marital rape includes

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22 St. v. Pahlad , FIR No. 155/11, PS Keshav Puram (Delhi)
24 Substituted by the Criminal Law (Amendment) Act 2013 (Act No. 13 of 2013) w.e.f. 3.2.2013, in sec. 375 of Indian Penal Code, 1860(45 of 1860)
26 (Act no.43 of 2005)
“any unwanted intercourse or penetration (vaginal, anal, or oral) obtained by force, threat of force, or when the wife is unable to consent.” Marital rape is a serious form of violence that can have life-shattering effects for its victims.

3.2.1.6. Factors Adding Fuel to the Agony of Rape Victims

3.2.1.6.1 Less Conviction Rate

Another cause for increasing crime against women is less conviction rate in crime against women. This is result of apathy towards these crimes tendency of our phallocentric society to condone this type of crime or to take them lightly and for granted. Recent police data has confirmed the above view held by our patriarchal society as it shown that there is only 19% conviction in rape cases\(^{28}\). According to this data in last three years i.e. from 2011 to 2013 there is 120% rise in rape crimes,\(^ {29}\) but conviction rate is miserably low and lack of evidence is generally cited as reason for this. But basic cause for this is that investigation into crimes against women continue to be shoddy and slow and, at times, are deliberately botched\(^ {30}\). This is so because a very large number of officers and men in the police force share with the backwoodsmen of the country stupid views that by coming out after dark in western clothes women provoke men to rape them.

According to 2002 records from the National Crime Records Bureau (NCRB), the latest available, courts tried 132 policemen for custodial rape, but only 4 were convicted. The Ministry of Defense reported that it filed 17 rape cases and 10 murder cases against army personnel from 2003-2004. To date, one rape case and five murder cases ended in guilty verdicts. In the remaining cases, the investigations remained ongoing or the charges were proved false.

3.2.1.6.2 Police Apathy

For years, rape victims in India were too afraid to speak out, traumatised by the assault and fearful they would be blamed themselves. Many don’t trust the police. …

Molestation, especially on crowded public transport, is rampant, particularly in northern

\(^{28}\) Jatin Anand, Only 19% Conviction in Rape Cases in 3 Years: Police Data, *Hindustan Times*, March 6, 2014

\(^{29}\) Ibid

\(^{30}\) Inder Malhotra, Unending Scourge of Rape, *The Tribune*, March 20, 2014
India. Activists say there are two rapes every hour across the country. Instead of providing protection, the police are sometimes the perpetrators. Recently, a constable in Bombay was arrested for raping a teenager on Marine Drive, the famous sea-hugging road in India’s financial capital\(^31\).

3.2.1.6.3 Abuse of Power and Authority

While rape may take the form of individual violence of men against women, often, as disturbingly, rape occurs as an instrument of repression, and is used as a political weapon. It then becomes a potent instrument for the intimidation of whole sections of people in which women are specifically the victims of a peculiarly brutal and dehumanizing form of violence. Violence by individual men on individual women is itself a serious violation of women's rights but in the context of civil liberties it is important to highlight the growing incidence of custodial rape by agencies of the State such as forest officials, army personnel, and especially by policemen\(^32\).

Women's organizations have particularly focused on custodial rape and it is hoped that it is hoped that with sustained pressure from women's organizations the laws relating to custodial rape may be revised in favor of women. Both the Mathura case and the Rameeza Bee case have receive a measure of public support. In the Rameeza Bee case widespread protests by the people resulted in the appointment of the Muktadar Commission to enquire into the incident. Subsequently, women's organizations have been active in filing a public interest review petition in the High Court against the Raichur District Court which had rejected the charge of rape against the policemen while indicting them on minor grounds. These are positive developments and it would appear that women's organizations can be most effective in the area of custodial rape by their continued vigilance.

The use of rape as a political weapon however has not received the same attention either by women's organizations or by civil liberties groups. The most reprehensible development of social and political life in recent years is that there has been an aggravation of the use of violence, and this can be directly related to the decline in the

\(^{31}\) Indian women fight back against rape epidemic,” Reuters, June 19, 2005.

\(^{32}\) Uma Chakravati, “Rape, class and the State,”( PUCL, edn., Sept. 1982)
social and political situation in India. Coercion or the threat of coercion, which had been exercised in a concealed manner is now expressed as a more direct assertion of the strength of powerful groups. The State and the ruling elites have increasingly resorted to the use of violence as a means of systematic repression of the growing articulation of the demands of the people both in rural and in urban India. Mafia tactics in crushing trade union movements and in the suppression of the organizations of the rural poor, which may take the form of armed reprisals and the wholesale burning and looting of settlements, are common occurrences everywhere in India.\textsuperscript{33} It is in this context that one must view the phenomenon of increasing violence on women and more specifically of rape.

3.2.1.6.4 Unreported Instances of Rape

Crimes against women in particular are under-reported throughout India as a largely conservative society often blames the victim. Only 6 percent of cases of rape and molestation involved strangers, the accused being known to the victims in the rest. 60% of sexual assaults are not reported to the police. 15 of 16 rapists will never spend a day in jail.

The National Crime Records Bureau had termed rape “India’s fastest growing crime”. Rape has increased by 1255.3\% (from 2,487 cases in 1971 to 33,707 cases in 2013)\textsuperscript{34}. According to a Report, there are reported cases of one rape every 54 minutes, a molestation every 26 minutes; and an act of cruelty every 33 minutes. National Crime Records Bureau (NCRB) statistic says – every 20 minutes, a woman is raped somewhere in India, not to mention the countless number of cases of molestations or rapes going unreported. Child rape cases have increased by 336\% in the last 10 years. Government data shows crimes by juveniles – especially rape and abduction of women – has seen exponential rise in the past decade – from 48.7\% in 2002 to 66.5 in 2012. There is dire need to address the issue of rape in a more powerful manner. Number of dowry-deaths is quite alarming in the country – a dowry death every one hour forty two minutes.

3.2.1.6.5 Convoluted Sense of Justice

The researcher examines some recent sentences proclaimed by our justice dispensers and

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\textsuperscript{33} http://www.angelfire.com/space2/light11/women/custodial1.html (Visited on Nov.12, 2013)
\textsuperscript{34} http://ncrb.gov.in/ (visited on Feb. 12, 2014)
\end{flushleft}
the messages these have sent out to society. For example in the recent past the Supreme Court decided to let off three farmers, who had been convicted of gang raping a woman in Ludhiana district. A sessions court had awarded a 10-year imprisonment to them. The Punjab and Haryana High Court had upheld their conviction, following which, the criminals appealed to the Supreme Court. Their sentence was cut short after a few years under a “compromise formula” that entailed paying Rs 50,000 each to the victim. By inflicting lighter punishment on attempts we communicate a sense of relief that a worst state of affair has been averted.35

The rapists had appealed to be let off as “they and the victim were happily married to their spouses” and “wanted to live peacefully.” The fact that the victim is “happily married” is no credit to the rapists. Did the judges ascertain the happiness quotient of the criminals’ marriages? Did they speak to their wives? Man who rape, make for draconian and violent husbands. As far as “wanting to live peacefully is concerned,” it is easy to say that after committing a violent crime. The fact that they can indulge in rape makes them dangerous criminals. If they could do that to one woman, they can inflict themselves on another. How does the court ensure that this does not happen? The National Council for Women has asked for a review of the case for it sets a bad precedence of reaching a compromise in rape cases, where conviction rates are extremely low anyway.

3.2.1.6.6 Wrong Signals Embolden Rapists

It is sometimes surprising when such a judgment came from our apex court. The former Chief Justice of India, K G Balakrishnan, is reported to have said that society and the state must respect the decision of a rape victim if she chooses to marry the rapist. His words as reported by a newspaper: “Due regard must be given to their personal autonomy since in some cases victims may choose to marry the perpetrator.” Imagine the trauma of a woman having to spend her life with a man who has raped her? It is like inflicting a lifelong sentence of mental and physical cruelty on her, while the man goes scot free. And then, what would prevent the rapist from marrying the victim to escape punishment and then deserting her? This type of a mindset furthers the warped view society holds that

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marriage is the be all and end all for a woman. And that it is better to marry a man who has raped her than not marry at all!

Now look at the punishment a *panchayat* in Ghaziabad meted out to a rapist uncle: It ruled that five smacks with a shoe was enough punishment for raping his niece. In another case, also in Ghaziabad, a five-year-old was raped by her 19-year-old cousin. But the family chose to keep quiet, not even getting medical attention for the little cousin. She was sent to school the next day where she complained of abdominal pain and died. It was only then that the parents approached the police. The girl’s mother said she had raised an alarm when she saw the cousin raping the child. The family elders had caught him, slapped him and let him off. Consider how these family elders and *panchayats* handle youngsters who marry outside their caste group or marry within their own *gotra*. The punishment has ranged from social ostracism to even death! Obviously, rape is considered a minor crime compared to violation of caste and kinship lines.

### 3.2.1.6.7 Compounding Victims’ Trauma

The law as it stands today is weak and archaic. Apart from woefully inadequate sentences, it only recognises vaginal rape and does not believe that children below 12 can be raped. The death penalty awarded to rapist and murderer Santosh Kumar Singh was commuted to a life sentence because of what is termed as “mitigating circumstances”. Among them were that he was “young, just 24 years old” at the time of his crime. At 24 years, one is an adult! The fact that he was “married” and “the father of a girl child” were the other “mitigating” factors. Now, how does this help either the wife or the daughter? They have to fend for themselves anyway and live with the knowledge of having a rapist and murderer as a husband and father for the rest of their lives. In fact, the law should give the wife and children of a rapist the choice to walk off from the relationship with no legal binding on their part, while retaining all their rights on the family property. If the wife has the option of being legally freed of the relationship, she can think of starting her life again. It is extremely traumatic for a young girl to grow up knowing her father is a rapist. In fact, such men are best kept away from their daughters.

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37 Court’s rider and relief for rape victims, available at: indialawyers.wordpress.com,(Visited on Nov. 2, 2013)

We have also had judgments where the sentence was commuted when the rapist passed a civil services exam. What is the message that went out? That if you pass the exam, all will be forgiven and you will occupy an important government post. In fact, the opposite should be the case. Convicted rapists who have served their term in jail should be debarred from holding a government job.

3.2.1.6.8 Social Ostracism towards the Victim of Sexual Offences

Where we are talking about change at macro level to prosecute perpetrators of sexual crime, ground reality for victims is entirely stunning and shocking. Young victims find themselves moving from well-meaning anonymity to be turned in to nonentities at the behest of social ostracism. Society don’t accept them and due to the deep engrained chauvinism victim of sexual crimes are the worst sufferers. A 13 year old girl who was raped by a 60 years old fruit vendor was expelled from school with her two younger sisters, in a similar incident the mother of a 16 year old gang rape victim was murdered for lodging F.I.R against the accused. So along with the brunt of crime victim also face non-cooperation and repellence from the society as if they are criminals. This social abhorrence towards victim is required to be removed from the society and instead victim friendly atmosphere is required for rehabilitation of victims.

3.2.2 Need for Unorthodox methods

The law must acknowledge that rape mars a person for life. The condition has been recognised as Rape Trauma Syndrome where the victim suffers from phobias and nightmares and feels emotionally crippled, unable to form meaningful relationships and friendships for life.

Kamini Lau, Delhi’s additional sessions judge, recently called for a public debate on “chemical and surgical castration” of child rapists and serial offenders as an alternative punishment. She said this while delivering a sentence for a man who raped his minor step daughter for four years.

Chemical castration is being used in parts of United States and many European countries, with the rapist’s consent. Sweden, France and Germany are among them. In Poland it is

39 Vandana Shukla, Rape Victims – from anonymity to non-entity, The Tribune, Sept.4, 2013
mandatory. A province in Argentina is the latest to adopt it. It involves an injection of an anti-pregnancy drug every three months to lower libido and uncontrolled sexual impulses. There is much evidence in the medical and psychiatric world that a rapist cannot be cured unless there is a medical intervention. It is time to act. There can be no compromises with a rapist.

3.2.3 Generally, Who are Rapists?

Approximately 2/3 of rapes were committed by someone known to the victim. 73% of sexual assaults were perpetrated by a non-stranger. 38% of rapists are a friend or acquaintance 28% are an intimate 7% are a relative.

Despite several initiatives taken by the Centre and state governments to empower women, statistics on rapes in the country shows how more than two women are raped every hour. Of the victims, nearly 80% are in the age group of 14 to 30 years. Rape has increased by 1255.3% (from 2,487 cases in 1971 to 33,707 cases in 2013).

Records supplied by the ministry of home affairs to a Delhi-based RTI activist, Ved Pal, has revealed even though situation in some states that had grim record on the matter is improving, in big states such West Bengal it's getting worse. Alarmingly, young girls bear the brunt of crime against the women. The young victims often have to live with stigma throughout their life. "Given the social norms, their parents and family members too have deal with the shame. This is something that has to be addressed and must be the priority of both Centre and state governments.

3.2.4 Rape and Evolution of Legislative Provisions in India

In the wording of Kiran Bedi, a former woman IPS officer, “the law of rape is not just a few sentences. It is a whole book, which has clearly demarcated chapters and cannot be read selectively. We cannot read the preamble and suddenly reach the last chapter and claim to have understood and applied.”

42 http://ncrb.gov.in/ (visited on Feb. 12, 2014)
43 Dipak Kumar Dash, “MHA data reveals two rapes every day in capital ” The Times of India (New Delhi), Nov. 27, 2010
44 Ibid
The law on rape has passed through various phases before coming to its present form. In the Mathura rape case\textsuperscript{46}, wherein Mathura- a sixteen year old tribal girl was raped by two policemen in the compound of Desai Ganj Police station in Chandrapur district of Maharashtra.

Her relatives, who had come to register a complaint, were patiently waiting outside even as the heinous act was being committed in the police station. When her relatives and the assembled crowd threatened to burn down the police chowky, the two guilty policemen, Ganpat and Tukaram, reluctantly agreed to file a panchnama.

The case came for hearing on 1\textsuperscript{st} June, 1974 in the sessions court. The judgment however turned out to be in favour of the accused. Mathura was accused of being a liar. It was stated that since she was ‘habituated to sexual intercourse’ her consent was voluntary; under the circumstances only sexual intercourse could be proved and not rape.

On appeal the Nagpur bench of the Bombay High Court set aside the judgment of the Sessions Court, and sentenced the accused namely Tukaram and Ganpat to one and five years of rigorous imprisonment respectively. The Court held that passive submission due to fear induced by serious threats could not be construed as consent or willing sexual intercourse.

However, the Supreme Court again acquitted the accused policemen. The Supreme Court held that Mathura had raised no alarm; and also that there were no visible marks of injury on her person thereby negating the struggle by her.

The Court in this case failed to comprehend that a helpless resignation in the face of inevitable compulsion or the passive giving in is no consent. However, the Criminal Law Amendment Act, 1983 has made a statutory provision in the face of Section.114 (A) of the Evidence Act,1872\textsuperscript{47} which states that if the victim girl says that she did no consent to the sexual intercourse, the Court shall presume that she did not consent.

In \textit{Mohd. Habib v. State}\textsuperscript{48}, the Delhi High Court allowed a rapist to go scot-free merely because there were no marks of injury on his penis- which the High Court presumed was

\begin{footnotes}
\item[46] \textit{Tukaram v. State of Maharashta} 1978 Cr.LJ 1864 S.C
\item[47] (Act No.1 of 1872).
\item[48] 1989 Cr.LJ 137 Delhi
\end{footnotes}
a indication of no resistance. The most important facts such as the age of the victim (being seven years) and that she had suffered a ruptured hymen and the bite marks on her body were not considered by the High Court. Even the eye-witnesses who witnessed this ghastly act, could not sway the High Court’s judgment.

Another classic example of the judicial pronouncements in rape cases is the case of Bhanwari Devi\(^{49}\), wherein a judge remarked that the victim could not have been raped since she was a dalit while the accused hailed from an upper caste- who would not stoop to sexual relations with a dalit.

In another instance of conscience stirring cases, Sakina- a poor sixteen year old girl from Kerala, who was lured to Ernakulam with the promise of finding her a good job, where she was sold and forced into prostitution. There for eighteen long months she was held captive and raped by clients. Finally she was rescued by the police- acting on a complaint filed by her neighbor.

With the help of her parents and an Advocate, Sakina filed a suit in the High Court- giving the names of the upper echelons of the bureaucracy and society of Kerala.

The suit was squashed by the High Court, while observing that ‘ it is improbable to believe that a man who desired sex on payment would go to a reluctant woman; and that the version of the victim was not so sacrosanct as to be taken for granted.’

Whereas, in State of Punjab v. Gurmit Singh\(^{50}\), the Supreme Court has advised the lower judiciary, that even if the victim girl is shown to be habituated to sex, the Court should not describe her to be of loose character.

The Supreme Court has in the case of State of Maharashtra v. Madhukar N. Mardikar\(^{51}\), held that, "the unchastity of a woman does not make her open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate her person against her wish. She is equally entitled to the protection of law. Therefore merely because she is of easy virtue, her evidence cannot be thrown overboard."

\(^{49}\) 2001 DNJ (Raj) 209
\(^{50}\) (1996) 2 SCC 384
\(^{51}\) (1991) 1 SCC 57
Also the Bandit Queen case\textsuperscript{52}, which depicts the tragic story of a village girl. Phoolan Devi- who was exposed from an early age to the lust and brutality of some men. She was married to a man old enough to be her father. She was beaten and raped by him. She was later thrown out of the village- accused of luring boys of the upper caste. She was arrested by the police and subjected to indignation and humiliation. Was also kidnapped and raped by the leader of dacoits and later by the leader of a gang of Thakurs- who striped her naked and paraded her in front of the entire village. This is truly one story that shows the apathy of the existing society.

In \textit{Chairman, Railway Board v. Chandrima Das}\textsuperscript{53} a practicing Advocate of the Calcutta High Court filed a petition under Article.226 of the Constitution of India against the various railway authorities of the eastern railway claiming compensation for the victim (Smt. HanufaKhatoon)- a Bangladesh national- who was raped at the Howrah Station, by the railway security men. The High Court awarded Rs.10 lacs as compensation.

An appeal was preferred and it was contended by the state that:

\begin{enumerate}
\item The railway was not liable to pay the compensation to the victim for she was a foreigner. \\
\item That the remedy for compensation lies in the domain of private law and not public law. i.e. that the victim should have approached the Civil Court for seeking damages; and should have not come to the High Court under Article 226. Considering the above said contentions, the Supreme Court observed:
\end{enumerate}

Where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the remedy would be avoidable under public law. It was more so, when it was not a mere violation of any ordinary right, but the violation of fundamental rights was involved- as the petitioner was a victim of rape, which a violation of fundamental right of every person guaranteed under Article.21 of the Constitution.

The Supreme Court also held that the relief can be granted to the victim for two reasons- firstly, on the ground of domestic jurisprudence based on the Constitutional provisions; and secondly, on the ground of Human Rights Jurisprudence based on the Universal

\begin{flushleft}
\textsuperscript{52} \textit{Bobby Art Int v. Om Pal Singh Hoon} (1996) 4 SCC
\textsuperscript{53} AIR, 2000 SC 988
\end{flushleft}
Declaration of Human Rights, 1948 which has international recognition as the ‘Moral Code of Conduct’- adopted by the General Assembly of the United Nation.

In *R v. R*[^54^], the House of Lords widened the scope of criminal liability by declaring that the husband could be charged as a principal offender in the rape of his wife.

This decision seems to have obliterated the protection of the husband from such prosecution under the doctrine of marital exemption. This exemption was based upon the belief under which the wife was regarded as the husbands’ chattel. She was supposed to have given a general consent to her husband as a natural implication of the marriage. This has now become an outdated view of marriage in England.

However, the above decision of the House of Lords has not been followed in India- where marital exemption to the husband ‘still exists’. **3.2.4.1 Criminal Law Amendment Act, 1983**

The Criminal Law Amendment Act has substantially changed Sections.375 and 376 of the IPC. Several new sections have been introduced therein- viz. Sections. 376(A), 376(B), 376(C), 376(D) of the IPC.

- Section. 376(A) punishes sexual intercourse with wife without her consent by a judicially separated husband.
- Section. 376(B) punishes for sexual intercourse by a public servant with a woman in custody.
- Section. 376(C) punishes sexual intercourse by superintendent of jail, remand house, etc. whereas,
- Section. 376(D) punishes sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital.[^55^]

These new sections have been introduced with a view to stop sexual abuse of women in custody, care and control by various persons- which though not amounting to rape were nevertheless considered highly reprehensible.

[^54^]: (1991) 4 ALL ER 481 (HL)
[^55^]: *Indian Penal Code, 1860*(45 of 1860)
**Attempt to Rape**

In cases where an indecent assault is made upon the person of a woman, but where rape is not committed- the culprit is charged with Section.354 of IPC, because unless the Court is satisfied that there was determination in the accused to gratify his passion at any cost, and inspite of all resistance, such person is not charged with rape.

Section.354 of the IPC prescribes punishment for anyone who assaults or uses criminal force to any woman with an intent to outrage her modesty. An indecent assault upon a woman is punishable under this section. Rape is punished under Section.376; but the offence under this Section is of less gravity than rape. And also because a person who is guilty of attempting rape cannot be allowed to escape with the lesser penalty of this section.

An indecent assault, i.e., an assault which right minded persons would consider as indecent- accordingly any evidence explaining the defendants conduct, or whether any admission by him or otherwise is admissible to establish whether he intended to commit an indecent assault, as is stated under Section.21 sub clause (2) of the Evidence Act, which reads:

> An admission may be proved by or on behalf of the person making it, when it consists of statements of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

### 3.2.5 Impediments towards Justice for Rape Victims

In the present scenario when offences against women are on the rise- when young girls are raped in broad daylight, the definition of rape to be of any deterrence- had become extremely inadequate. It was also not recognizing other forms of sexual assaults- like protracted sexual assault by relatives, marital rape etc. as aggravated forms of rape. This causes grave injustice to many victims. In many cases of child rape, the child has been

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56 *Ibid*

57 *Ibid*
penetrated through fingers or by objects or been force to perform oral or anal sex; yet this is not considered rape by the Courts. To overcome these amendments in criminal law has been brought in 2013\textsuperscript{58}.

Adding to this is Section-155(4) of the Evidence Act\textsuperscript{59}, which allows the victim to be questioned of her past sexual history- which the defense uses to humiliate the victim in the Courtroom.

One of the major obstacles in delivering justice into crimes against women is that investigation in these cases continue to be shoddy, slow, poor and, at times, are deliberately botched\textsuperscript{60}.

The reason behind this ranges from gender bias and corruption to the general inefficiency of the police. In many cases the police have even refused to lodge the FIR or have lodged incomplete FIR. Recent police data has confirmed the above view held by our patriarchal society as it shown that there is only 19\% conviction in rape cases\textsuperscript{61}. According to this data in last three years i.e. from 2011 to 2013 there is 120\% rise in rape crimes \textsuperscript{62}, but conviction rate is miserably low and lack of evidence is generally cited as reason for this.\textsuperscript{63}

The victims are not taken for prompt medical examination, because in cases of rape, or attempt to rape- medical examination of the victim and of the accused soon after the incident often yields a wealth of corroborative evidence. Therefore, such an opportunity should not be lost by the police.

The manner in which some courts have interpreted the law or assessed the evidence has often proved to be an obstacle also. In spite of Supreme Court judgments to the contrary, lower court judges often insist on evidence of physical resistance or marks of injuries to hold that a woman has not consented. A woman’s evidence without corroboration is not considered sufficient.

\textsuperscript{58} Substituted by the Criminal Law (Amendment) Act 2013 (Act No. 13 of 2013) w.e.f. 3.2.2013 in \textit{Indian Penal Code}, 1860(45 of 1860)
\textsuperscript{59} \textit{Indian Evidence Act, 1872} (Act No.1 of 1872)
\textsuperscript{60} Inder Malhotra, Unending Scourage of Rape, \textit{The Tribune}, March 20, 2014
\textsuperscript{61} Jatin Anand, Only 19\% Conviction in Rape Cases in 3 Years : Police Data, \textit{Hindustan Times}, March 6, 2014
\textsuperscript{62} Ibid
\textsuperscript{63} Inder Malhotra, Unending Scourage of Rape, \textit{The Tribune}, March 20, 2014
The long time that is taken to complete a rape trial often by allowing senseless adjournments; and the giving of evidence by the victim in the presence of the accused and the harsh cross examination in the Court are some other major obstacles.

As observed by Krishna Iyer, J. in Rafique’s case:\textsuperscript{64}:

When a woman is ravished, what is inflicted is not mere physical injury but the deep sense of some deathless shame… judicial response to Human Rights cannot be blunted by legal bigotry.

Therefore rape laws in order to be of great deterrence, must have a cooperative victim, professional investigation, diligent prosecution; and an expeditious trial. For otherwise it shall not be the law, that fails, but the applicants, the process and application.

Failure of law reflects the failure of the society to protect and serve humanity. In view of the above, the Supreme Court has laid down the following guidelines for the trial of rape cases:\textsuperscript{65}

- The complaints of sexual assault cases should be provided with legal representation. Such a person should be well acquainted. The Advocates role should not merely be of explaining to the victim the nature of the proceedings, to prepare for the case and assist her, but to provide her with guidance as to how she might obtain help of a different nature from other agencies- for e.g. psychiatric consultation or medical assistance.

- Legal assistance should be provided at the police Station, since the victim may be in a distressed state. Guidance and support of a lawyer at this stage would be of great help.

- The police should be under a duty to inform the victim of her right to a counsel before being interrogated.

- A list of lawyers willing to act in these cases should be kept at the police station.

- Advocates shall be appointed by the Court on an application by the police at the

\textsuperscript{64} 1980 Cr.LJ 1344 SC

\textsuperscript{65} Delhi domestic working women forum v. Union of India (1995) 1SCC14
earliest, but in order that the victim is not questioned without one, the Advocate shall be authorized to act at the police Station before leave of the Court is sought or obtained.

- In all rape trials, anonymity of the victim must be maintained.
- It is necessary to setup Criminal Injuries Compensation Board with regard to the Directive Principles contained under Article. 38(1) of the Constitution of India. As some victims also incur Substantial losses.
- Compensation for the victims shall be awarded by the Court on the conviction of the offender and by the Criminal Injuries Compensation Board- whether or not a conviction has taken place. The Board will take into account pain, suffering, shock as well as loss of earnings due to pregnancy and child birth if this accrued as a result of rape.

The National Commission for Women be asked to frame schemes for compensation and rehabilitation to ensure justice to the victims of such crimes\textsuperscript{66}.

The courts and the legislature have to make many changes and there is a need to sensitize the law and society towards crime against women. It is outright clear that sexual offences are to be excoriated, but if death sentence is given to such convicts- so as to deter the rest, then no doubt that the graph of rape cases will come down considerably- but it may also happen that those who commit such offences- simply to leave no witnesses or evidence, may even kill their victims and dispose of their bodies (whereas it is observed that in most cases- it is the victim who is the only source of evidence in most cases), thereby frustrating the main object of the Indian Penal Code and the legislature.

Studying the laws, the process, the application of those laws, one thing is certain- the entire structure of justice needs an over haul, otherwise the victim shall no longer the woman, but humanity.

\textbf{3.3 Girl and Women Trafficking in India: Status, Forms and Causes}

Trafficking is defined as a trade in something that should not be traded in for various

\textsuperscript{66} Ibid
social, economic or political reasons. Thus we have terms like drug trafficking, arms trafficking and human trafficking. The concept of human trafficking refers to the criminal practice of exploiting human beings by treating them like commodities for profit. Even after being trafficked victims are subjected to long term exploitation.\textsuperscript{67}

Trafficking both for commercial sexual exploitation and for non-sex based exploitation is a transnational and complex challenge as it is an organized criminal activity, an extreme form of human rights violation and an issue of economic empowerment and social justice. The trafficking of women and children causes untold miseries as it violates the rights and dignity of the individual in several ways. It violates the individual’s rights to life, dignity, security, privacy, health, education and redressal of grievances\textsuperscript{68}.

\textbf{3.3.1 Status and Challenges pertaining to Human Trafficking}

The phenomenon of human trafficking has increased significantly over the past few decades both globally and in South Asian countries. India is a source, destination, and transit country for men, women, and children trafficked for the purposes of forced labor and commercial sexual exploitation. Those from India’s most disadvantaged social economic strata are particularly vulnerable to forced or bonded labor and sex trafficking. Women and girls are trafficked within the country for the purposes of commercial sexual exploitation and forced marriage. Skewed sex ratio is one of the factors responsible for this. Children are also subjected to forced labor as factory workers, domestic servants, beggars, and agricultural workers. Trafficking in human beings is a multi-dimensional issue. Due to persistent inequalities worldwide, women are more vulnerable to this practice which is a consequence of structured gender inequality in the form of violence.\textsuperscript{69} Trading in human beings and exploitation in varied forms by traffickers in human beings is one of the most serious forms of violation of human rights. It is a crime that deprives people of their human rights and freedom, increases global health risks, fuels growing networks of organized crime, and can sustain levels of poverty and impede development in certain areas. Trafficking clearly violates the fundamental rights to life

\textsuperscript{67} http://www.azadindia.org/social-issues/WomenTrafficking-in-India.html (Visited on June 12, 2011)
\textsuperscript{68} Ibid
\textsuperscript{69} Infra no.79 p.34
with dignity. Victims may suffer physical and emotional abuse, rape, threats against self and family and even death. The common denominator of trafficking scenarios is the use of force, fraud, or coercion to exploit a person for profit. Traffickers can subject victims to labor exploitation, sexual exploitation, or both. Trafficking for labor exploitation, the form of trafficking claiming the greatest number of victims includes traditional chattel slavery, forced labor, and debt bondage. Trafficking for sexual exploitation typically includes abuse within the commercial sex industry. Illegal and clandestine nature of trafficking makes it exceedingly difficult to establish accurate figures of the numbers of people trafficked. The International Labor Organization (ILO)–the United Nations agency charged with addressing labor standards, employment and social protection issues-estimates that there are at least 12.3 million adults and children in forced labor, bonded labor, and commercial sexual servitude at any given time. Of these victims, the ILO estimates that at least 1.39 million are victims of commercial sexual servitude, both transnational and within countries. According to the ILO, 56 percent of all forced labor victims are women and girls. Trafficking in India occurs both across the borders as well with in borders among the states and districts. Men and women from Bangladesh and Nepal are trafficked through India for forced labor and commercial sexual exploitation in the Middle East. In India 72 percent trafficking for commercial Sexual exploitation in Intra-state and 28.26% interstate (Situational Analysis of HIV/AIDS , Trafficking, Shaktivahini). India is a destination for women and girls from Nepal and Bangladesh trafficked for the purpose of commercial sexual exploitation. There are also victims of labor trafficking among the thousands of Indians who migrate willingly every year to the Middle East, Europe, and the United States for work as domestic servants and low-skilled laborers. In some cases, such workers are the victims of fraudulent recruitment practices committed in India that lead them directly into situations of forced labor, including debt bondage; in other cases, high debts incurred to pay recruitment fees leave them vulnerable to exploitation by unscrupulous employers in the destination countries, where

some are subjected to conditions of involuntary servitude, including non-payment of wages, restrictions on movement, unlawful withholding of passports, and physical or sexual abuse\textsuperscript{72}.

3.3.2 \textit{Major forms of Human Trafficking}

- Labor: bonded labor, domestic work agricultural labor construction work, in industries, work in the formal and informal economy Sexual exploitation: brothels and non-brothel commercial sexual exploitation sex tourism, socially and religiously sanctioned forms of sexual exploitation pornography, call girls racket, through escort services, through massage parlors, through friendship clubs etc. Illegal activities: begging, organ trade, drug padding and smuggling

- Entertainment and sports: circus dance troupes, camel jockey, fill and video industries, dance bars modeling etc. Marriages: for and through marriages Adoption: for and through adoptions Recruitment in armed outfits Trafficking in Persons Report (2009) categorized trafficking as: Forced labor, Bonded labor, Debt bondage among migrant laborers, Involuntary Domestic servitude, Forced child labor, Child soldiers, Sex trafficking, Child sex trafficking and related abusers, Commercial sexual exploitation of children (CSEC) Child sex tourism (CST) Process and Pattern of Human Trafficking\textsuperscript{73}

3.3.2.1 \textit{Sex and Prostitution}

Human trafficking is increasingly recognized as complex process and there are multifaceted factors that make an individual prone to being trafficked. It involves a series of turmoil for the trafficked person which might start with the desire or need to leave their home/ community or migrate, followed by an encounter with a trafficker leading to coercion or deception and to highly harmful and exploitative working situations. For others it might start with family members handling over responsibility for their safety and well-being to others known to them and then end up trafficked by a third set of actors. Desperate circumstances often lead migrants to take difficult decisions and lead them into situations of great risk and vulnerability. Traffickers throughout South


\textsuperscript{73} \textit{Id} at p.34
Asia lure their victims by means of attractive promises such as high paying jobs, glamorous employment options, prosperity and fraudulent marriages. It is estimated that 35% of the total number of girls and women trafficked to India have been abducted under the pretext of false marriage or good jobs\(^{74}\). Poor households in debt or struggling with insecure livelihoods may be compelled to hand over a person or may agree to migrate legally or illegally or take a job willingly. But once that work or service is no longer voluntary, that person becomes a victim of forced labor or forced prostitution and should accordingly receive the protections contemplated by the 2000 UN TIP Protocol. Once a person’s work is recruited or compelled by the use or threat of physical violence or the abuse or threatened abuse of the legal process, the person’s previous consent or effort to obtain employment with the trafficker becomes irrelevant. Parents and family members are also deceived by false promises and deception. However studies confirm where victim’s family members and relative collude with traffickers in order to receive payments\(^{75}\).

3.3.3 Causes

The universally identified push factor driving the trafficking process is poverty, lack of human and social capital, gender discrimination, social exclusion, lack of governance, deprivation marginalization and vulnerability may also cause trafficking. Macro factors such as impact of globalization, employment trade, migration policies conflicts, and environmental disasters can set into circumstances that increase vulnerabilities. Global financial crisis has raised the specter of increased human trafficking around the world. As a result of the crisis, two concurrent trends—a shrinking global demand for labor and a growing supply of workers willing to take ever greater risks for economic opportunities—seem a recipe for increased forced labor cases of migrant workers and women in prostitution. Numerous international organizations have warned of the trafficking consequences of the ongoing global financial crisis\(^{76}\). In its 2013, global employment report, the ILO said that in the fifth year after the outbreak of the global financial crisis, global growth has decelerated and unemployment has started to increase.

\(^{75}\) Ibid
\(^{76}\) Supra note no. 79 p.34
again, leaving an accumulated total of some 197 million people without a job in 2012. Moreover, some 39 million people have dropped out of the labor market as job prospects proved unattainable, opening a 67 million global jobs gap since 2007. Despite a moderate pick-up in output growth expected for 2013–14, the unemployment rate is set to increase again and the number of unemployed worldwide is projected to rise by 5.1 million in 2013, to more than 202 million in 2013 and by another 3 million in 2014. A quarter of the increase of 4 million in global unemployment in 2012 has been in the advanced economies, while three quarters has been in other regions, with marked effects in East Asia, South Asia and Sub-Saharan Africa. It has been noted that “vulnerable workers – particularly migrants, including young women and even children – are more exposed to forced labor, because under conditions of hardship they will be taking more risks than before.” Gender Dimensions of the Problem: “Women still comprise the majority of the world’s poor, unfed, and unschooled. They are still subjected to rape as a tactic of war and exploited by traffickers globally in a billion dollar criminal business.” Trafficking is a many sided problem. Here is a roundup of the causes:

- Abject poverty, especially among women
- A lack of political, social and economic stability
- A lack of reasonable and realistic prospects
- Situations of armed conflict and oppression
- Domestic violence and disintegration of the family structure
- Gender discrimination
- Lack of access to education and information
- The expense of social charges that employers need to pay for the social protection of regularly employed workers
- Increasing demand for cheap and exploitable laborers in the construction,

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79 Secretary Hillary Rodham Clinton, March 7, 2009 (Trafficking in Persons Report, 2009)
agricultural and industrial sectors

- Increasing demand for cheap and exploitable domestic laborers
- A rise in the demand for sex workers in a highly lucrative and globalize sex industry
- Ever more limits and obstacles to legal migration channels to countries with stronger economies and/or regions with better prospects
- A lack of public awareness of the dangers of trafficking
- The high profit potential for those engaged in the criminal activity
- The sophisticated organisation, resources and networking capacity of criminal networks
- A lack of effective anti-trafficking legislation, and if such legislation exists, a lack of effective enforcement
- Global economic policies that foster exclusion of marginalised people
- Disintegration of social protection networks
- Widespread corruption in countries of origin, of transit and of destination among the persons capable or responsible to combat trafficking

3.3.3.1 Some factors responsible for Prostitution

Increased trafficking in women and girls are taking place in a context of rapid economic transition, globalisation, modernisation, employment trade etc. Changes such as widening social and economic inequality, rural unemployment and increased poverty, new forms of mobility, breakup of communities, and erosion of traditional values are increasing the vulnerability of large segment of population to trafficking particularly women and girls to sexual exploitation and trafficking. Vulnerability of women to trafficking is rooted in the limitations imposed by socio-economic and cultural conditions on the control which women have in their life circumstances and choices, including sexual circumstances. These underlying factors increases the vulnerability of women and girls to be caught in

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the growing web of trafficking in the region, taking them into situations which remove the last vestiges of choice, violate their human dignity and security, and further increase the risk of exposure to HIV/AIDS.

Women constitute the poorest of the poor as a result of gender insensitivity, discrimination, lack of social status and basic rights, together with arduous domestic responsibilities, which reduce their access to resources, education training and labor markets. Within families women and particularly girl children, generally have less access to food and health care as well as to educational opportunities. Anti female biases are reflected in the fact that South Asia is one of the few regions in the world where men outnumber women.

3.3.3.2 Domestic Violence and Human Trafficking

Trafficking occurs in South Asia in a climate of denial and silence at all levels. There is prevailing silence about violence against women and girls, particularly domestic violence, and silence about their circumstances, including the abuse and exploitation they often face in their living and working environments in the process of earning a living. This silence manifests itself in a denial in families and communities and in society at large that trafficking of girls is taking place.

There is a continuum of violence against women which ranges from deprivation of resources and lack of access to property, education and health care, to institutional discrimination imposed by religious and cultural sanctions, dowry harassment and domestic violence, sexual harassment and rape. In India, for example, it is estimated that every 26 minutes a woman is molested, every 34 minutes there is a rape, every 43 minutes a woman is kidnapped and every 93 minutes a woman is killed (UN India: 2001). Research links the disproportionate demand for female trafficking victims to the growth of certain “feminized” economic sectors (commercial sex, the “bride trade,” domestic service) and other sectors characterized by low wages, hazardous conditions, and an absence of collective bargaining mechanisms. Exploitative employers prefer to use trafficked women—traditionally seen as submissive, cheap, and pliable—for simple and repetitive tasks in agriculture, food processing, labor-intensive manufacturing, and

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81 Id at p.36
domestic servitude. In countries where women’s economic status has improved, significantly fewer local women participate in commercial sex. Traffickers bring in more female victims to address the demand and also take advantage of women who migrate voluntarily to work in any industry. As commercial sex is illegal in most countries, traffickers use the resulting illegal status of migrant women that have been trafficked into commercial sex to threaten or coerce them against leaving. Gendered vulnerabilities fostered by social and institutional weaknesses in some societies—discriminatory laws and practices that tie a woman’s legal recognition, property rights, and economic opportunities to someone else—make women more likely than men to become trafficking victims. A woman who exists only through a male guardian who controls her income, identification, citizenship, and physical well-being is more susceptible to becoming a trafficking victim (Trafficking in Persons Report, 2009).

3.3.3.3 Interlink Between Migration and Trafficking

“The root causes of migration and trafficking greatly overlap. The lack of rights afforded to women serves as the primary causative factor at the root of both women’s migrations and trafficking in women...By failure to protect and promote women’s civil, political, economic and social rights, governments create situations in which trafficking flourishes.” – Radhika Coomaraswamy, former UN Special Reporter on Violence Against Women Trafficking in women results both form social inequality and susceptibility to exploitation. The feminisation of poverty leads women to look for any work and ways to improve their material well being without regard for possible negative consequences According to the ILO, the majority of people trafficked for sexual exploitation or subjected to forced labor are female. According to researchers, both the supply and demand sides of the trade in human beings are fed by “gendered” vulnerabilities to trafficking. These vulnerabilities are the result of political, economic, and development processes that may leave some women socially and economically dependent on men. If that support from men becomes limited or withdrawn, women become dangerously susceptible to abuse. They often have no individual protection or recognition under the law, inadequate access to healthcare and education, poor employment prospects, little opportunity to own property, or high levels of social isolation. All this makes some women easy targets for harassment, violence, and human
trafficking. Girls are lured with promises of jobs in the city, or by pledges of marriage, while many are sent by their families to earn extra income for the household, other are escaping from domestic abuse and violence and still others are tempted to look for a better life and wider opportunities away form the rural drudgery and the narrow limitations imposed on women and girls in the villages. Lack of education, knowledge of the world and the life skills can make these girls vulnerable. They trust people who dupe them and subsequently sell them, generally into sex work. In many cases the trafficker is a person they know or a person known to others in the source areas. Many of the immediate causes for leaving home identified by women and girls in the STOP study are related to underlying discrimination against women. These include polygamy, abuse of girl children and child marriage, and dowry. Forty per cent of the trafficked girls in the study had experienced family breakdown, mostly due to the prevalence of polygamy and sometimes because women were abandoned when they failed to bear children or to bear sons in particular. At the same time the socio-cultural climate of the region fosters a high sense of duty in women towards their children, younger siblings and older parents. It is not unusual to find women who resort to lower end jobs and sexual labor in order to support their families and to pay for the education of male family members. If they are trafficked and end up in the worst forms of commercial sexual exploitation, the majority continue to bear it and do not protest or break way. They feel that it is there ‘sacrifice’ and duty to provide better opportunities for others within their family.

3.3.3.4 Commodity of Women

Violations of Universal human rights of women resulting from their use as commodities of trafficking take place in countries from which they are exported as well as countries into which they are imported. They have little control over their circumstances, bodies and daily lives. When women and young girls have little control over their daily lives and occupy a subordinate status, it is extremely difficult for them to negotiate for safe sex, even if they know about the need for it. Women and girls who are biologically more susceptible to HIV Infection if exposed to the virus are placed at risk of exposure because of the attitudes and sexual behaviour of men within societal structures that directly and indirectly indiscriminate against women and in favor of men. As expressed by Bhaiya and Dhar, “Passivity begins to define the Women’s role in ‘sex’ and as a result, it
becomes a tool for all the ways in which women are suppressed and subordinated, restricted, intruded upon, violated and objectified” (cited in UNIFEM, 2001)

3.3.3.5 Cultural Traditions

Implications on Trafficking of Women (with special reference to MP)

Another form of social exclusion is inequity rooted in the belief and enforcement of caste differentiation and tribal systems. The systems can be seen as cultural and structural social inequities perpetuated by tradition leaving female member of the caste or tribal group particularly vulnerable to increasing poverty as well as trafficking. ST/SC Women and girls bear the triple burden of exploitation—they are poor, they are from groups which are traditionally marginalized and they are female—are among the most vulnerable to being trafficked. The devdasi practice in Karnataka, Andhra Pradesh and Maharashtra, the jogin in Andhra Pradesh and the bedias in M.P, are the communities illustrate this nexus between gender and ethnicity. These practices also encourage trafficking of women. The economic reasons among tribes and communities like Bedias, Jahats, kanjars, banchra, mahar, matang and sansi also promote sex trade. These communities have socially sanctioned system of prostitution. These practices have been illegal since 1988.

12.36 percent of trafficking at all India level is due to family tradition. Though family based and social customs based sexual exploitation is more or less present in all the TAHA states, it is more prominent in Madhya Pradesh. This mode of sexual exploitation is also prevalent in Bihar and Uttar Pradesh (Nat, Kanjars,Bedias). More than 95% women who are in commercial sex from Madhya Pradesh are due to family traditions or social customs. Maximum 51.79 percent of women are forced into flesh trade in Bihar due to family tradition or acceptance and more than 36 percent of women continue to be exploited in state due to family acceptance. 7.33 percent of women are forced into flesh trade due to family traditions and another 2.93 percent due to social customs. Further in India family acceptance accounts for around 8 percent women continuing sex work (Situational Analysis of HIV/AIDS, Trafficking Shaktivahini)

3.3.3.6 Law Enforcement and Prevention

International cooperation in the legal field has grown markedly against the trafficking in
persons, especially children. There are age old treaties on the issue of trafficking. These include the International Agreement for the suppression of White Slave Traffic (1904), the International convention for the suppression of White Slave Traffic (1910), the International convention for the suppression of traffic in women and children (1921), the International convention for the suppression of Traffic in women in full age (1933) and the convention on the suppression of trafficking and exploitation of the prostitution of others (1949). All of them, to a lesser or greater extent, were aimed at crime prevention and suppression. However, early treaties were not gender sensitive enough and were not broad enough to cover the range of the trafficking situations.

The persistence and apparent recent increase in human trafficking can perhaps be understood in part as an inextricable aspect of the ‘modernisation’ or development process. Poverty or the failure to meet the basic needs, social exclusion, insecurity or stigmatization is often identified as the initial motivating factor and these issues are needed to be addressed. In many cases, court withdraw cases related to trafficking on the basis of parental consent. There is need on the part of police authorities to recognize the problem. To combat these types of child trafficking, law enforcement must send a strong message that these practices will not be tolerated. The hardships of daily life, combined with prevalent gender stereotypes the view women as sexual objects and young girls and widows as a household burden, also contribute to placing women and girls at the risk of trafficking. Gender discrimination, violence against women and patriarchal mindset are important constituents and catalysts of the vulnerability of women and girl children. Accordingly the prevention of trafficking needs to be addressed not only in relation to the source areas but also in the demand areas the transit points and the trafficking routes. 

Further study reveal that India has the dubious distinction of having the world's largest number of sexually abused children with a child below 16 years raped every 155th minute, a child below 10 every 13th hour, and one in every 10 children sexually abused at any point in time. These figures resoundingly break the silence that surrounds sexual abuse of children and perpetuates the evil.

According to the World Health Organisation (WHO), one in every four girls and one in

every seven boys in the world are sexually abused. But Lois J. Engelbrecht, a researcher working on the problems of child sexual abuse, quotes studies showing that over 50 per cent of children in India are sexually abused, a rate that is higher than in any other country. Huma Khan of the Kanpur-based Centre for the Study of Human Rights terms child sexual abuse as one of the least documented violations. But studies made across India, documented in Grace Poore's resource book *The Children We Sacrifice* (which accompany the documentary on sexually abused girls) show the wide prevalence of the problem. Under the law, "child sexual abuse" is an umbrella term describing criminal and civil offenses in which an adult engages in sexual activity with a minor or exploits a minor for the purpose of sexual gratification. The American Psychiatric Association states that "children cannot consent to sexual activity with adults", and condemns any such action by an adult: "An adult who engages in sexual activity with a child is performing a criminal and immoral act which never can be considered normal or socially acceptable behavior. 

3.4 Crime against Life, Liberty and Health of Women

3.4.1 Dowry Death and its Attempt

Official statistics show a steady rise in dowry crimes. More than 95,000 women are killed every year in India over dowry. Bihar and Uttar Pradesh still record the maximum number of dowry crimes, four women reportedly die every day because of dowry harassment and domestic violence. The cases of dowry torture are the highest accounting for 32.4% of crimes against women in the country.

The dangerous outcome of this tradition is sex-ratio. The girls are killed prior to birth and sex-ratio is decreased very much in India (914/1000 as per 2011 census). Despite protest by women’s organizations, serious activism, legal amendments, special police cells for women, media support and heightened awareness of dowry being a crime, the practice

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continues unabated on a massive scale. Despite every stigma, dowry continues to be the
signature of marriage. Women need real social, political, financial and moral support in
their fight against the system. They have to be empowered so that they can take their
decisions about their own life by refusing the dowry system. "Everyday at least 50 cases
of dowry-related violence are reported in India."  
According to National Crime Records Bureau (NCRB) data: "Over 7,600 women are
killed each year because their in-laws consider the dowry inadequate and a very small
percentage of their murderers are brought to justice." Everyday at least 50 cases of
dowry-related violence are reported in India.  

3.4.1.1 Causes
There are several reasons for the prevalence of the dowry system, but the main one is that
it is a necessary precondition for marriage. “No dowry, no marriage,” is a widespread
fear.. The price tag for the groom is now bigger and bolder. Families arrange most
marriages, and a man who does not marry for love learns he can marry for possessions.
For this man, and his family, a woman becomes the ticket to shortcut riches through the
system of dowry. There are a number of things people desire to have in their own houses
but cannot afford; they use the opportunity of a son’s marriage to get them. The girl’s
parents do not protest against this, as they regard it as a stepping-stone towards higher
social status and better matches for the remaining children. Now the guy who is to be
married is sold in the market. It seems that the people put their bets on the guys and
whoever’s stake is higher can marry their daughter to him.

3.4.1.1.1 Law and Social Evils: An Appraisal
This is a well known fact that law always fails in removing social evils as there are 3
important things viz. law-making, effective implementation of law and co-operation of
people necessary for removing any evil. In Indian scenario law is there, but its
implementation is not so effective, that’s why we can see that people misuses law by filing
false dowry cases. Some of the preventive measures are: emphasis on education of girls.

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86 Available at: to www.decanherald.com/contents/95614/crime-against-women-rising-india-html
(Visited on Sept.1, 2013)
87 Ibid
Men should be brought up with moral and ethical values, since infancy. Men should be trained up in honoring women.

Young people, both men and women, should refuse to get married if dowry is being given or taken. Particularly, the girls should stand up against this system with all their might because the dowry system is responsible for the degradation of women in India. To protest against the women themselves should raise their own status, so that the men run to them, begging the women to marry. With modernization and the increasing role of women in a productive economy, creating other ways for wives to contribute to their families’ economic well being, one would expect support for the dowry system to diminish.  

Even after the Dowry Prohibition Act has passed, dowry seems to be battering on the consumer society. Cases have come up where women are beaten, kept without food for days, tortured physically and mentally, strangled and even burnt alive. They even commit suicide out of frustration. Everyday cases of bride burning are published in the newspaper. One dowry death case is reported every hour for dowry. There are series of cases in which young married women have been beaten, tortured and burnt to death.

In the end it may be said that the problems of dowry death persists in the society which calls for multi prolonged and integrated approach on an urgent basis. In a scenario where protectors become killers, the very basic family unit is threatened.

3.5 Female Infanticide and Feticide

3.5.1 Female Infanticide in India: Present scenario

India's sex ratio, among children aged 0-6 years, is alarming. The ratio has declined from 976 females (for every 1000 males) in 1961 to 914 in 2011. Every national census has documented a decline in the ratio, signaling a ubiquitous trend. Preliminary data from the 2011 census have recorded many districts with sex ratios of less than 850. The ratio in urban areas is significantly lower than those in rural parts of the country. Reports suggest evidence of violence and trafficking of poor women and forced polyandry in some

regions with markedly skewed sex ratios. The overall steep and consistent decline in the ratio mandates serious review.\textsuperscript{89}

The recent past has witnessed the gross misuse of ultrasound machines, which has been found even in remote tribal areas of Rajasthan, Bundelkhand and emerged even in parts of India where women were better treated such as Assam, Kerala and the Kashmir valley. China as of 2000 census was eliminating one million girls annually but present trends suggest that India is likely to overtake China in less than a decade. Son preference has become daughter hatred in India in the recent decades due to the widespread legitimization of this form of violence against women.

In 1994 Parliament responded to the misuse of prenatal diagnostic techniques by enacting PNDT Act. However it was not implemented. The Supreme Court directed the government to implement the PNDT Act in May 2001. Later it was amended to make it more stringent. The health ministry has to be more proactive to stop female feticide. The ministry surrendered one billion rupees of the meager funds allocated to the PNDT cell in this budget year. In 2005 the health ministry released full-page advertisements calling female feticide a sin.\textsuperscript{90}

Converting crimes into sins is dangerous as it will only fuel further decline in sex-ratios. There are attempts by some politicians to limit abortion as a means to stop female feticide. Such anti-women actions would endanger women's health though it may be acceptable to religious fundamentalists.

Efforts of the media have certainly contributed to the increased public discourse on this issue over the years. Today reports of female fetuses found in drains or dug from dry wells or floating in lakes or eaten by dogs are headline news. There have been stories on the consequences like trafficking of women for marriage and emergence of polyandry.

The government of India should set a target date by which the country will have balanced sex-ratios at birth. The coming plan needs to give a fair deal to women by abandoning fertility targets and replacing it with solid commitments to restore sex-ratio at birth. There

\textsuperscript{89} Available at: www.azadindia.org/social-issues/femaleinfanticideinindia.htm (Visited on April 2, 2011)
\textsuperscript{90} “Sabu George”, Hidden Genocide available at: www.azadindia.org/social-issues/femaleinfanticide-inindia.html (Visited on April 12, 2014)
has to be official recognition that small families are increasingly achieved by eliminating girls.\textsuperscript{91}

3.5.2 Reasons for Sex-selective Abortion

3.5.2.1 Cultural preference

The selective abortion of female fetuses is most common in areas where cultural norms value male children over female children especially in parts of India. A son is often preferred as an 'asset' since he can earn and support the family; a daughter is a 'liability' since she will be married off to another family, and so will not contribute financially to her parents. The patriarchal structure of a society is the single most important factor skewing the sex ratio in favor of males, accentuated in some cultures by the burden of raising a dowry for a daughter's marriage.\textsuperscript{92}

3.5.2.2 Genetic

Gender-linked genetic abnormalities, such as several forms of colorblindness, are linked to recessive genes on the X chromosome. Pre-implantation genetic diagnosis can identify some life-threatening genetic abnormalities in embryo. The easiest way to select against embryos which may have a gender-linked genetic abnormality is to choose only female embryos. Embryos which are not implanted are usually discarded.

3.5.2.3 Societal effects

Gender bias can broadly impact a society, and it is estimated that by 2020 there could be more than 35 million young "surplus males" in China and 25 million in India. It is possible that sex-selective abortions have caused an increase in the imbalances between sex ratios of various Asian countries. Studies have estimated that prenatal sex selection has increased the ratio of males to females from the natural average of 105-106 males per 100 females to 113 males per 100 females in both South Korea and China, 110 males per 100 females in Taiwan and 107 males per 100 females among Chinese populations living in Singapore and parts of Malaysia.

Sex-selective abortion has been seen as worsening the sex ratio in India, affecting gender

\textsuperscript{91} Ibid
\textsuperscript{92} Professor K.S. Jacob, “India's unwanted girls - female infanticide and reversed sex ratio” The Hindu (Delhi), April 29,2011
issues related to sex compositions of Indian households. According to the 2011 census, the sex-ratio in India is 107.8 males per 100 females, up from 105.8 males per 100 females in 1991. The ratio is significantly higher in certain states such as Punjab (126.1) and Haryana (122.0).

It has been argued that by having a one-child policy, China has increased the rate of abortion of female fetuses, thereby accelerating a demographic decline. As most Chinese families are given incentives to have only one child, and would often prefer at least one son. Researchers have expressed concern that prenatal sex selection may reduce the number of families in the next generation.⁹³

3.5.2.4 Sex selection and technology

Medical technology (like amniocentesis and ultrasonography), employed in the prenatal period to diagnose genetic abnormalities, are being misused in India for detecting the sex of the unborn child and subsequently for sex-selection. Female fetuses, thus identified, are aborted.

A large, nationally representative investigation of married women living in 1.1 million households documented markedly reduced sex ratios of 759 and 719 for second and third births when the preceding children were girls. By contrast, sex ratios for second or third births, if one or both of the previous children were boys, were 1102 and 1176 respectively. A systematic study in Haryana documented the inverse relationship between the number of ultrasound machines in an area and the decline in sex ratios. Studies have also documented correlations of low sex ratios at birth with higher education, social class and economic status. Many studies have concluded that prenatal sex determination, followed by abortion of female fetuses, is the most plausible explanation for the low sex ratio at birth in India.

3.5.2.5 Sex selection and statutes: Poor applicability of laws

A prolonged campaign by women's groups and civil society organisations all over the country, in the wake of the skewed child sex ratio in the 1991 census, led to the

enactment of the Pre-Natal Diagnostic Techniques Act in 1994. However, this statute was not effectively implemented, leading to further skewing of the sex ratios as recorded in the 2001 census. Social and financial pressures for smaller families intensified the misuse of such technologies to ensure the birth of sons. Such misuse cut across barriers of caste, class, religion and geography. The Act was amended in 2003, to include the more recent pre-conception sex selection techniques within its ambit, with the aim of tightening regulation to provide more teeth to the law to prevent the practice. It mandated the regulation of sale of technology, the registration of diagnostic centers, the monitoring of medical personnel, procedures and protocols. It has procedures for complaints and appeals and regulation by local authorities. Yet the problem of implementation seems to be ubiquitous. Violations go unpunished with very few cases being booked and a zero conviction rate. The collusion between people, the medical fraternity and the administration has resulted in the worsening of the sex ratio and failure of the Act to make a difference.

3.5.2.6 Patriarchy and prejudice

The social system of patriarchy, with males as the primary authority figures, is central to the organisation of much of Indian society. The system upholds the institutions of male rule and privilege and mandates female subordination. Patriarchy manifests itself in social, religious, legal, political and economic organisation of society. It continues to strongly influence Indian society, despite the Constitution's attempt to bring about an egalitarian social order.

Patriarchal societies in most parts of India have translated their prejudice and bigotry into a compulsive preference for boys and discrimination against the girl child. They have also spawned practices such as female infanticide, dowry, bride-burning and sati. They have led to the neglect of nutrition, health care, education, and employment for girls. Women's work is also socially devalued with limited autonomy in decision-making. The intersections of caste, class and gender worsen the situation. Despite its social construction, patriarchal culture, reinforced by the major religions in the country, maintains its stranglehold on gender inequality. The prevalent patriarchal framework places an ideological bar on the discussion of alternative approaches to achieve gender justice.
3.5.2.7 Ethical blindness

The declining sex ratio cannot be simply viewed as a medical or legal issue. It is embedded within the social construction of patriarchy and is reinforced by tradition, culture and religion. Female feticide and infanticide are just the tip of the iceberg; there is a whole set of subtle and blatant discriminatory practices against girls and women under various pretexts. It is this large base of discrimination against women that supports the declining sex ratio.

Many approach the problem superficially and focus on the declining sex ratio and its medical and legal solutions. But those who seriously engage with the issues have found that much unethical conduct that goes on, whether in one's social or work life, happens because people are fooling themselves. Men, the dominant figures, and older women, who have lost the battle and have joined hands to form the ruling coalition, overlook many transgressions because it is in their interest to maintain the patriarchal culture. With such focus on patriarchal goals, the ethical implications of important decisions fade away. Such ethical fading results in engaging in or condoning behavior that one would condemn if one were consciously aware of it. It results in ethical lapses in our social world, which are pervasive and intractable.

While viewing the girl child from only the narrow and bigoted, or financial perspectives, one fails to notice that many decisions have an ethical component. Consequently, one is able to behave unethically in relation to girls and women, while maintaining a positive self-image. Ethical fading also causes one to condone the unethical behavior of others. Such “motivated blindness” tends to disregard issues that work against patriarchy. With the acceptance of patriarchal standards, based on religion or culture, even the most honest people have difficulty being objective. Those who overtly or covertly accept and defend patriarchy have a conflict of interest which biases their decisions against girls and women, in contexts both big and small. It is the everyday casual and hurtful misogyny — gendered language, sexist innuendo, stereotyping and jokes, small institutional inequities, sexualisation of society encouraged by advertising, media and capitalism that actually undergird violence of all types against women.
3.5.3 Need for gender justice

Viewing the sex ratio as an individual or medical issue and suggesting medical or legal interventions to end the practice reflect poor understanding. While strict implementation of the law will help reduce female feticide and infanticide, it will not eliminate the problems. Simply exhorting the general population and the medical profession to desist from such practice without attempting to change patriarchy will prove futile. While women are guaranteed equality under the Constitution, legal protection has little effect in the face of the prevailing patriarchal culture. India needs to confront its gender bias openly. It would appear that nothing short of a social revolution would bring about an improvement in the health and status of women in the country. Irony and hypocrisy are the two words that come to mind when patriarchal societies talk about justice for their women. Surely, the disappearance of millions of girls in India is reason enough to question the acceptance of patriarchy and search for an egalitarian social order.94

3.6 Child Marriage: A Serious Concerns

The researcher while study had gone through the reading in form of a real instance as cited by Mohapatra in his wording that – "I want to go to bed," she cried. "Please, mum, dad. Let me sleep!" Geeta (all names have been changed to protect the victims) was married at the age of 10 and widowed at the age of 14. Her husband, whom she barely knew, had died while working as a migrant worker having to repay a loan to his father. This loan, incidentally, was for the child’s marriage expenses. Now, due to her status as a widow, Geeta has been shunned by all members of her family and is considered unlucky and useless by all of society. Rita was married off by her family at age 12, became a mother at age 14, and was divorced at age 16. Although hardly cognizant of her first marriage, Rita is considered undesirable and will most likely remain alone and unmarried, having to raise her child completely on her own.

Meanwhile, there are other instances like Chetram, a 56-year-old man residing in a rural village of the Surguja district of Chhattisgarh, who gleefully boasted of marrying six girls to date, all between the ages of eight and 16 years when he was 10, 14, 17, 23, 25, and finally 47 years old.

Chetram was not the only villager in the district of Surguja to have married young girls multiple times. The author interviewed 10 other men whose ages ranged between 40 and 50 years old, all of whom had been married at least four times. These stories illustrate the crime of child marriage. Although illegal, the practice of child marriage is widespread and accepted by the majority of Indian society, especially in the many rural areas of the country. A study reveals that today 6.4 million Indians under the age of 18 are married and 130,000 girls under 18 have become widows.

In India, children are forced everyday into a relationship, of which they have only the faintest knowledge and for which they are not at all prepared. To push two physiologically and emotionally ill-prepared individuals into marriage is a compassionless way of looking at relationships. India's Parliament adopted the Child Marriage Restraint Act in 1978 (a revision of the British Child Marriage Prevention Act of 1929 and the following amendment of 1949) setting 18 as the minimum age for women to get married and 21 for men. Nevertheless, like in many other Indian social spheres, the law seems inconsequential when it comes to protecting the rights of the poorest and most vulnerable people in society.

Women and girls are the main victims of child marriages. Religion plays a key role in such harmful traditions and practices. Akhai Teej is an annual festival and an auspicious day for marriage in India. It is not uncommon for political leaders and government officials to attend these ceremonies to bless newly-married children and impart legitimacy to the practice. The society in turn, instead of playing a watchdog role, is an enthusiastic participant in a deliberate perpetuation of entrenched interests, including property and social considerations, all which make child marriages so common. The origin of child marriages may be found in the Muslim invasions that began more than 1,000 years ago. Legend says that the invaders raped unmarried Hindu girls or carried them off as booty, prompting Hindu communities to marry off their daughters almost from birth to protect them. Today, these invaders have been replaced by superstition: the local view that any girl reaching puberty without getting married will fall prey to sexual

96 Ibid
depredations, some from men imbued with the common belief that having sex with a "fresh" girl can cure syphilis, gonorrhea and other sexually transmitted diseases, including AIDS.

According to "National Plan of Action for Children 2005", (published by the Department of Women and Child Development of India) a goal has been set to eliminate child marriage completely by 2010. This plan is proving to be successful, though it is still difficult to monitor every child due to the sheer population of India.\(^97\)

According to UNICEF's "State of the World's Children-2009" report, 47% of India's women aged 20–24 were married before the legal age of 18, with 56% in rural areas. The report also showed that 40% of the world's child marriages occur in India.\(^98\)

Child marriage usually refers to two separate social phenomena which are practiced in some societies. The first and more widespread practice is that of marrying a young child (generally defined as below the age of fifteen) to an adult. Due to women's shorter reproductive life period (relative to men's), perhaps, the practice of child marriage tends to be of young girls to fully-grown men.

The second practice is a form of arranged marriage in which the parents of two children from different families arrange a future marriage. In this practice, the individuals who become betrothed often do not meet one another until the wedding ceremony, which occurs when they are both considered to be of a marriageable age.

An increase in the advocation of human rights, whether as women’s rights or as children’s rights, has caused the traditions of child marriage to decrease greatly as it was considered unfair and dangerous for the children.\(^99\)

3.6.1 Reasons for Child Marriage

3.6.1.1 Family Bonding

Child marriages may have many purposes. The aristocracy of some cultures tend to use child marriage among different factions or states as a method to secure political ties

\(^97\) National Plan of Action for Children 2005", (published by the Department of Women and Child Development of India)
\(^98\) Report of UNICEF on "State of the World's Children-2009"
between them. For example, the son or daughter of the royal family of a weaker power would sometimes be arranged to marry into the royal family of a stronger neighboring power, thus preventing itself from being assimilated. In the lower classes, if they were fortunate, families could use child marriages as means to gain financial ties with wealthier people, ensuring their successions.

3.6.1.2 Parent’s Choice

In child betrothals, a child's parents arrange a match with the parents of a child from another family (social standing, wealth and expected education all play a part), thus unilaterally determining the child’s future at a young age. It is thought by adherents that physical attraction is not a suitable foundation upon which to build a marriage and a family. A separate consideration is the age at which the wedding, as opposed to the engagement, takes place.

Families are able to cement political and/or financial ties by having their children intermarry. The betrothal is considered a binding contract upon the families and the children. The breaking of a betrothal can have serious consequences both for the families and for the betrothed individuals themselves.

3.6.1.3 Cheaper for Poor Families

Tradition and superstition are further reinforced by necessity. The benefit of child marriages for poor people is that it is cheaper for the family than adult marriages, since a child marriage does not need to be as prestigious and costly as an adult marriage. It is said in Hindi that "chhota chhora dahej kam mangta" ("the younger the groom, the smaller the dowry"). Rural poverty similarly puts pressure on families to transfer the economic cost of a daughter to another family as early as possible.

The practice is particularly rampant in the populous northern belt where child marriages are most deeply rooted: Rajasthan, Madhya Pradesh, Uttar Pradesh, Bihar and West Bengal, with a combined population of 420 million, about 40 percent of all India. In Rajasthan alone, 56% of the women have been married before they were 15.  

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100 Supra n.130, p. 63
3.6.2 Detrimental Effects on Children

3.6.2.1 No education for Young Brides

Married girls are generally separated from their immediate families, taken out of school to be "transferred" to her new-husband home, where they are expected to be used as free labor, sex objects and procreative machines. The teenagers health is put at risk. They are much more vulnerable than mature women when it comes to sexually transmitted diseases.

3.6.2.2 Health Risks

Since their bodies are often not prepared to bear children, early pregnancy leads to more extreme peril, including death, during delivery and jeopardizing the health of these young mothers as well as their babies. As first-time mothers, girls face high risk in their pregnancies including obstetric fistula. This is a disease usually caused by several days of obstructed labor, without timely medical intervention. The consequences of fistula are life shattering: The baby usually dies and the woman is left with chronic incontinence. Because of her inability to control her flow of urine she is often abandoned or neglected by her husband and family and ostracized by her community.

3.6.2.3 High Maternal Mortality Rate

Statistically, it is translated into soaring birth rates, grinding poverty and malnutrition, high illiteracy, a high infant mortality rate, and a low life expectancy, especially among rural women. According to the United Nations, maternal mortality in India (which indicates the number of women dying in childbirth or from pregnant-related causes) is 25 times higher for girls under 15, and two times higher for 15-19-year-olds.

In view of this data, we can consider these marriages crimes not only against the children to be married but also against all of humanity.

Ending child marriage is challenging because even parents who are aware of its negative impact may find it too difficult to resist the economic and social pressures as well as the heavy weight of the tradition.

3.6.3 Curbing the Evil Practice: An Imperative

In view of this data, we can consider these marriages crimes not only against the children
to be married but also against all of humanity. Ending child marriage is challenging because even parents who are aware of its negative impact may find it too difficult to resist the economic and social pressures as well as the heavy weight of the tradition. To stop such child marriages, the Indian government is aiming to create stricter and more easily-enforced laws, since the current legal atmosphere is not having a widespread enough effect. Currently, the police cannot arrest the organizers of mass child marriages without applying for a magistrate's order, which may take days. The punishment (maximum three months in prison) and fine are also not severe enough to stop the practice. Proposed changes include stronger punishment, a compulsory registration of all marriages rather than merely religious rites, the appointment of anti-child marriage officers in every state, and making a law requiring anyone who attends a child marriage to report the marriage. A further recent proposal is to administer campaigns to encourage poor families to participate in mass marriages of sons and daughters who are over the legal age to get married, in order to save costs of dowries and wedding arrangements. However, the law alone cannot curb this harmful social practice. A change in psyche of the backward and illiterate people is required. Education and the empowerment of women are, beyond a doubt, two of the best remedies in a largely male-dominated country.

The Supreme Court, after hearing a petition filed by Forum for Fact-finding, Documentation and Advocacy, recently ordered the compulsory registration of marriages. This comes as a beacon of hope to hundreds and thousands of women and girl who are illiterate, widowed or abandoned and are unable to fight for their rights.\textsuperscript{101}

The development of an easily-accessible grass-level network of social workers and centers is necessary for this fight. The centers could provide emergency support for girls who have run away from marriage or from parents who are attempting to force them into unwanted marriages.

3.7 Pervasiveness of Sati System in India

Sati, the feminine of sat "true"; also called suttee was a religious funeral practice among some Indian communities in which a recently widowed woman either voluntarily or by use of force and coercion would have immolated herself on her husband’s funeral pyre.

\textsuperscript{101} Id. at p.65
The practice is rare and has been outlawed in India since 1829. The term is derived from the original name of the goddess Sati, also known as Dakshayani, who self-immolated because she was unable to bear her father Daksha's humiliation of her (living) husband Shiva. The term may also be used to refer to the widow herself. The term sati is now sometimes interpreted as "chaste woman."\textsuperscript{102}

Few reliable records exist of the practice before the time of the Gupta empire, approximately 400 AD. After about this time, instances of sati began to be marked by inscribed memorial stones. The earliest of these are found in Sagar, Madhya Pradesh, though the largest collections date from several centuries later, and are found in Rajasthan. These stones, called devli, or sati-stones, became shrines to the dead woman, who was treated as an object of reverence and worship. They are most common in western India.

By about the 10th century sati, as understood today, was known across much of the subcontinent. It continued to occur, usually at a low frequency and with regional variations, until the early 19th century. Widows did this because it was supposed to cast away any sins the husband had committed, making him able to have a happy afterlife. This was voluntary for the widow, but they were put under much pressure to do it and were looked upon as a bad person if they didn’t go through with it.

### 3.7.1 Instances of Sati in Recent Past

Following outcries after each instance, there have been various fresh measures passed against the practice, which now effectively make it illegal to be a bystander at an event of sati. The law now makes no distinction between passive observers to the act, and active promoters of the event; all are supposed to be held equally culpable. Other measures include efforts to stop the 'glorification' of the dead women. Glorification includes the erection of shrines to the dead, the encouragement of pilgrimages to the site of the pyre, and the derivation of any income from such sites and pilgrims.

Another instance of systematic Sati happened in 1973, when Savitri Soni sacrificed her life with her husband in Kotadi village of Sikar District in Rajasthan. Thousands of people saw this incident.

\textsuperscript{102} http://en.wikipedia.org/wiki/Sati_(practice)#Argument_that_the_Rig_Veda_sanctions_sati (Visited on May 23, 2011)
Following the outcry after the *Sati* of Roop Kanwar, the Indian Government enacted the Rajasthan Sati Prevention Ordinance, 1987 on October 1, 1987 and later passed the Commission of Sati (Prevention) Act, 1987.

The *Prevention of Sati Act* makes it illegal to abet, glorify or attempt to commit Sati. Abetment of Sati, including coercing or forcing someone to commit Sati can be punished by death sentence or life imprisonment, while glorifying Sati is punishable with 1–7 years in prison.

However, enforcement of these measures is not always consistent. The National Council for Women (NCW) suggested amendments to the law to remove some of these flaws. Prohibitions of certain practices, such as worship at ancient shrines, is a matter of controversy.

Although many have tried to prevent the act of sati by banning it and reinforcing laws against it, we can still see it being practiced (on rare occasions) in India under coercion or by voluntary burning. As in the case of Charan Shah, a 55 year-old widow of Manshah burnt herself on the pyre of her husband in the village of Satpura in Uttar Pradesh. Her death on the funeral pyre is surrounded by much controversy since questions of whether she willingly performed the Sati or not was being asked. Charan Shah did not profess strong feelings to becoming a Sati to any of her family members and no one saw her close to the burning body of her husband before she jumped into the fire. The villagers, including her sons, state that she became a Sati of her own accord and that she was not forced into it. They continue to pay their respects to the house of Charan Shah since it has become a shrine for them since they strongly believe that one who has become a sati is a deity and she is worshipped and endowed with gifts.

*Sati* was supposed to be voluntary, but it is known that it has often been forced. Setting aside the issue of social pressures, many accounts exist of women being physically forced to their deaths. Pictorial and narrative accounts often describe the widow being seated on the unlit pyre, and then tied or otherwise restrained to keep her from fleeing after the fire was lit. Some accounts state that the woman was drugged. One account describes men using long poles to prevent a woman from fleeing the flames.104

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103 *Rajasthan Sati Prevention Ordinance, 1987*
104 *Supra n. 138, p.68*
Sati still occurs, albeit rarely, in the rural areas. A well documented case from 1987 was that of 18-year old Roop Kanwar. In response to this incident, some more recent legislation against the practice was passed, first by the state government of Rajasthan, then by the central government of India.105

In 2002, a 65-year-old woman by the name of Kuttu died after sitting on her husband's funeral pyre in the Indian Panna district. On 18 May 2006, Vidyawati, a 35-year-old woman allegedly committed sati by jumping into the blazing funeral pyre of her husband in Rari-Bujurg Village, Fatehpur district in the State of Uttar Pradesh. On 21 August 2006, Janakrani, a 40-year-old woman, burnt to death on the funeral pyre of her husband Prem Narayan in Sagar district. On October 11, 2008, a 75-year-old woman committed sati by jumping into her 80-year-old husband's funeral pyre at Checher in the Kasdol block of Chhattisgarh's Raipur district.

3.8 Women as Victims of Witch Hunt

It's hard to believe, but "witch hunts" seem to be alive and well in the twenty-first century, despite the fact that they belong, in most people's minds, in history textbooks. These witch hunts are not happening in Salem, Massachusetts, though; they're in rural India, where a shaman was recently arrested for forcing women to drink poison in a "witchcraft test." All of the women in the village of Shivni in the central Chhattisgarh state were forced to drink a toxic concoction after a young woman fell ill. Of the 30 women who were initially hospitalized, five remain, and one 70-year old woman is in a serious condition.106

Stories of women beaten, poisoned, paraded naked or forced to eat human excrement are disturbingly common in parts of India. Sometimes these witch hunts deliberately target widows or women with property in an attempt to take advantage of them, but other times they're rooted in religious beliefs. Witch hunting refers to stigmatization of people belonging to specific groups, mostly women, by labeling them as ‘witches’ or evil spirits who bring bad omen to the society. Prevalent largely in rural and tribal areas, where blind faith guides the way of life, people after proclaiming the victims as ‘witches’ or ‘daayan’, subject them to inhuman atrocities ranging from mob lynching, gang rape, naked parades,

105 Ibid
blackening of face, shaving of head, beheading and coercing to consume human excreta, to burning alive. This blood-curdling violation of human rights is neither a dead nor a redundant practice of the past. Instead, it is very much persistent, accepted and tolerated in society and what is more bizarre is that the number of instances of witch-hunting in India is on the rise.

"Witch hunts are most common among poor rural communities with little access to education and health services, and longstanding beliefs in witchcraft," explained Rebecca Vernon, an editor at the Cornell International Law Journal. "When an individual gets sick or harm befalls the community, the blame falls not upon a virus or crop disease, but upon an alleged witch." 107

It is generally women in rural and tribal areas who are persecuted by this cold-blooded practice. Recently 4 women were killed in Assam’s Kokrajhar District within three days by miscreants who suspect them of practicing witchcraft. 108 Studies have shown that it is single or widowed women, or old couples who are commonly targeted, since they are the most vulnerable (both, economically and socially) groups. Sadly, witch-hunting is also a caste-based practice wherein upper caste members take pride in stigmatizing women of lower or Dalit classes to maintain their ‘superiority’. Another set of women who are alleged to be ‘daayans’ are the ones who dare to protest and speak up against the social hegemonic structures. When they turn rebellious, they are silenced by this gender-based violence, indicating that ‘women’ must stay within their ‘lakshmanrekha’ (limits).

In all the parts of India! However, it is generally reported to be on a higher risk in the Eastern and Central States like Assam, Bihar, Jharkhand, Madhya Pradesh, Orissa and Chhattisgarh. This practice is mostly rampant in the rural and tribal areas of the country, wherein there is utter need of economic development, infrastructure and resources like education, sanitation and healthcare.

3.8.1 Main Reasons behind Witch-Hunting Practice

The most common (and easiest to give) reason is that of ignorance and underdevelopment of scientific temper in these regions which easily fuel superstitions, wherein rural folk throw the burden of their miseries- be it bad crop, ill health, natural disasters, unnatural

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107 Ibid
108 “Witch hunting claims fourth life in Assam” “The Hindu (Delhi), April 19 ,2011
deaths and the like, upon the ‘evil spirits’. Moreover, witch-hunting has become a customary practice, glorified by the upper castes ‘witch doctors’. Other reasons include backwardness and herd mentality. However, the root of this practice goes way deeper than this.

The real driving force behind this practice is the lust for property. The dominant and powerful in such areas eye on the property (if any) owned by the weakest and most vulnerable persons in their community. Upon categorizing them as ‘daayan’, and causing their ostracism from the village or compelling them to leave their residence, it becomes easier for them to forcibly acquire and hawk on the relinquished property.\textsuperscript{109}

Secondly, the victimization is reinforcement of power-play in the society. The rich, resourceful and upper caste men ‘culturally imperialize’ the ones they consider not ‘equal’ to them. This tagging generates culture of subservience amongst the latter and enables the former to continue their supremacy in the community.

Sometimes, this practice is also adopted to show the woman her supposed ‘place’. It could be any woman- the one who dares to speak against the patriarchy, or who is outdoing others (read ‘men’) in the community, or is self-sustaining, or someone who refuses to return sexual favors to the socially dominant.

It is said that as women gain power in these communities, witchcraft is invoked as a way of keeping women in subservient roles. Women are also the victims of witchcraft accusations after refusing sexual advances from village men.

But other times, these women are simply scapegoats. "Poor, low-caste women are easy targets for naming/branding (as a witch)," said Kanchan Mathur, a professor at The Institute of Development Studies in India. "Women who are widowed, infertile, possess 'ugly' features or are old, unprotected, poor or socially ostracized are easy targets."\textsuperscript{110}

Despite multiple instances of this brutal practice witnessed over the years, hardly any concrete steps have been taken to bring the perpetrators behind bars. In absence of a special legislation, the only alternative for the victim is the Indian Penal Code, 1860 (IPC). The various sections invoked generally in such cases are 302 (murder), 307 (attempt to murder), 323 (hurt), 376 (rape) and 354 (outraging a woman’s modesty)\textsuperscript{109}

\textsuperscript{109} IboyaimaLaithangbam, “Growing concern over “witch - hunting”in North-East” The Hindu (Delhi), April 22, 2011

\textsuperscript{110} Supra n.142, p. 72
among others. The lacunae, however, witnessed upon invoking these provisions are: firstly, the victims in such cases have little or no access to law or police, mainly because of their social, geographical and educational background, which makes it difficult for them to attain justice. Secondly, since this crime is socially manifested, out of either fear or acceptance of the practice, people prefer to remain silent, which makes collection of evidence for investigation difficult. Thirdly, the punishment granted mostly is for ‘hurt’, which merely extends upto 1 year, with a fine of Rs. 1000. Now, how is that supposed to set a deterrent?

Though Bihar, Chhattisgarh and Jharkhand have their respective special legislations to address this problem, they come across as toothless pieces of law in practice for various reasons like prescribing lesser punishment for offences in comparison to the IPC (thereby creating conflict between the two), or putting the burden of proof upon the victim than upon the accused.\footnote{International Law Memorandum: Jharkhand’s Obligation to Prevent Witch Hunting, available at: http://www.lawschool.cornell.edu/academics/clinicalprogram/int-human-rights/upload/international-law-brief-witch-hunt.pdf (Visited on May 15, 2011).}

What the law fails in doing is to take a proactive stance. One thing which is clear is that witch-hunting is an out and out violation of human rights enshrined in several international conventions and the Indian Constitution, like Right to Equality, Right to Life, Right to Protection against All Forms of Gender Discrimination, Right to Security, Right to Subsistence, Right to Adequate Housing, Right to Access Law and National Tribunals and the like. Law has grossly failed in sensitizing people against this practice. Neither the mechanisms for adequate identification of the problem, nor for the rehabilitation of the victims is in place. To add to this, are the evidentiary and procedural glitches in the criminal justice system as well as lack of adequate legal awareness of one’s rights in the areas where such practice has laid its clutches on.\footnote{Id. at p. 147}

The period from 2004-2009, it's estimated that 137 women were killed as a result of witchcraft-related violence, although these numbers may of course be much higher. The main issue is that there are few legal protections for women who have been accused of witchcraft.

According to Cornell Law School's report, "Those who are accused of committing the
violent act itself against a "witch" are usually sentenced to no more than one year. Those accused of murder often get reduced judgments or overturned sentences, as India's current court system cannot adequately handle fair jurisprudence in cases involving superstition and witchcraft. The answer clearly seems to be for the Indian government to strengthen their laws against witchcraft-related violence and to begin enforcing them. But for now, we can only hope that the women who were recently hospitalized will survive, and that they can escape the stigma that witchcraft accusations seem inevitably to carry.

As mentioned earlier, legal system has to take positive steps. Rather than waiting for the victim to crave justice, it should ensure that the problem is addressed with the seriousness it deserves, than just being relegated as any other offence in the IPC. There is an urgent need for a special legislation with expansive definition of the term ‘witch’, with stricter punishments, and which lays the burden of proof upon the accused. It must also provide for a minimum mandatory punishment, so that the judiciary gets lesser scope to reduce the sentence owing out of mitigating factors. There should be provisions for rehabilitation of the victims, which could lessen down their vulnerability and trauma, post the incident. And, since it is an offence against the State (being a criminal offence), the State should initiate investigation on its own, rather than reacting after the king and pawns have gone back into the same box!

Moreover, no law can be effective until the masses, upon whom it shall be binding, are aware of it. Hence upon enactment, the State must ensure that people must be aware that such a law is in place, that the victims can fearlessly seek protection under it, and that it can effortlessly bring the culprits behind bars. The areas where witch-hunting is most prevalent must be extensively sensitized in respect of the plight of the victims. Similarly, the vulnerable groups must be educated about their legal rights and the protections that they are entitled to, under the law. Naturally, things are not going to change overnight, but who said change would not be evident at all?113

Witch-hunting, as a practice, is a serious threat to a nation which aspires to become one of the biggest super-powers in the world. All our tall claims of development and growth shamelessly go for a toss, when such incidents are heard of, in the scientifically

113 Supra n.145 p.72
progressive 21st century. Clearly, it is a remediable threat, which needs an effectual solution from the legal system, complemented by a strong social backing. It is time we make sure that stories about witchcraft and wizardry merely remain childhood fictions, and not realities of life.

3.9 Crime against Modesty of Women

3.9.1 Obscenity: An Overview

Obscenity is a term which is used to describe expressions (words, images, actions) that offend the prevalent sexual morality of the time. The term “obscenity” is, however, not capable of a precise definition and it keeps on changing as per the norms and ideologies of the contemporary society. Many cultures have produced laws to define what is considered to be obscene, and censorship is often used to try to suppress or control materials that are obscene under these definitions: usually including, but not limited to pornographic material. As such censorship restricts freedom of expression, crafting a legal definition of obscenity presents a civil liberties issue.

Thus, obscenity may be described as the “culpable aspect of a perverse work”, which is devoid of any artistic value or public interest. The contemporary morals, ideologies, notions and standards will determine the “merit” or the “culpability” of the work. Even the most “liberal” and “open minded” societies cannot allow the obscenity to operate under a blanket protection and some form of protection is provided by all the countries of the world.\footnote{http://cbi.nic.in/emag/vol16/law_obscenity.php (Visited on April 23, 2011)}

The definition of obscenity differs from culture to culture, between communities within a single culture, and also between individuals within those communities. This takes us to the “tests” of obscenity. The tendency of the matter charged as obscene must be to deprave and corrupt those, whose minds are open to such immoral influences and into whose hands a publication of the sort may fall is the right test. Though the work as a whole must be considered, the obscene matter must be considered by itself and separately to find out whether it is so gross and its obscenity so decided that it is likely to deprave and corrupt those whose minds are open to influences of this sort.

In India the statutory definition of obscenity is contained in section 292 of the Indian penal Code (IPC). A writing or representation is considered obscene if it is lascivious or
appeals to the prurient interest or if its effect is such that it tends to deprave or corrupt the persons who are likely to read or see it. The predominant characteristic of the definition is its vagueness. For no one has yet been able to define what it is that has a ‘tendency to deprave and corrupt’. In the legal free-for-all, it means what one or two judges hearing a trial decide what is meant by it. No scientific or sociologically accepted definition of what is depraved or corrupting yet exists.

3.9.2 Hicklin Test or Obscenity Test

The Hicklin test is a legal concept stemming from an English case in English Common Law. It states that a legislature can outlaw anything that "depraves and corrupts those whose minds are open to such immoral influences and into whose hands a publication of this sort might fall." (i.e. children)

The test asks "whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences." If yes, then such was declared to be obscene. Also, the Hicklin Rule looked at the content in question not as a whole, but only in part. In other words, it did not considered the questionable material in relation to whole content.

3.9.2.1 Hicklin Test in India

In the 1965 case of Ranjit Udeshi, the Supreme Court upheld the constitutional validity of the obscenity law on the grounds that it constitutes a reasonable restriction on the right to freedom of expression, which is incorporated in Article 19 (2)(d) of the Constitution. The case involved an appeal by a bookseller against the Bombay High Court's decision to convict him together with his partners for being in possession of an ‘obscene book for the purpose of sale', the book in question being Lady Chatterley's Lover by D. H. Lawrence. The Supreme Court, after upholding the constitutionality of the provision, went on to consider whether the book was obscene. For this, for the first time it adopted and expanded on the scope of the test for obscenity laid out in the 1868 English case R v. Hicklin, or the Hicklin test, which defined obscenity as matter which had the tendency “to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort might fall”. The Hicklin test allowed a publication

115 1965 AIR 881, 1965 SCR (1) 65
to be judged for obscenity based on isolated passages of a work considered out of context and judged by their apparent influence on "most susceptible" readers such as children or weak-minded adults.

In its later decisions, the Supreme Court modified the focus of the Hicklin test to include concerns of decency and modesty, and having the effect of depraving and corrupting. A material would thus be offensive if it involved treating sex in a way that appealed to 'the carnal sides of human nature' or had such a tendency. The court has held that such material was offensive to modesty and decency, 'as judged by national standards, and considered likely to pander to lascivious, prurient, or sexually precocious minds'.

India has a rapidly changing media situation today. Satellite broadcasting and an increasing number of TV channels disseminating an unprecedented amount of programming. The state controlled TV's exclusive monopoly over viewers have firmly been displayed. The liberalization of the skies has provided viewers with access to a large amount of both Indian and International programming. Concurrent with larger socio-political and economic shifts, the new developments in the media scenario have also created newer anxieties.

The anxieties and uncertainties around the larger cultural transition have found articulation around media-centered debates. Due to its visibility, geographical and psychological presence, television seems to loom large on the urban mind as a dark, ominous, unmanageable presence.

To cope up with these kinds of problems government has made some laws and regulations and has been attempting to keep pace with the changes that are taking place out there in the world and the media industry.

In Indian perspective and its system of Parliamentary Democracy, it is true that, the Press is free but subject to certain reasonable restrictions imposed by the Constitution of India, 1950, as amended ("Constitution"). Before the impact of globalisation was felt, media was under complete monopoly of the Government of India. Private organizations were involved only in commercial advertising and sponsorships of programmes. That time the mass media was wholly controlled by the government, which let the media project only what the government wanted the public to see and in a way in which it wanted the public to see it. However, with the onset of globalisation and privatisation, the situation has

In 1995 the Supreme Court clearly differed from the aforementioned monopolistic approach and emphasized that, every citizen has a right to telecast and broadcast to the viewers/listeners any important event through electronic media, television or radio and also provided that the Government had no monopoly over such electronic media as such monopolistic power of the Government was not mentioned anywhere in the Constitution or in any other law prevailing in the country. This judgment, thus, brought about a great change in the position prevailing in the broadcast media, and such sector became open to the citizens.

Before the invention of communication satellites, communication was mainly in the form of national media, both public and private, in India and abroad. Then came 'transnational media' with the progress of communication technologies like Satellite delivery and ISDN (Integrated Services Digital Network), the outcome: local TV, global films and global information systems.\footnote{Ibid}

In such an era of media upsurge, it becomes an absolute necessity to impose certain legal checks and bounds on transmission and communication so that cultural transitions don’t happen. The major anxiety which television regulators are facing today is the proliferation of obscenity in program content. The regulatory mechanism is coping up and updating time to time to respond to the changing trend in the industry content.

The Supreme Court for the first time adopted and expanded the scope of the test for obscenity during the trial of 1965 case of \textit{Ranjit Udeshi} and used Hicklin test of England, which defined obscenity as matter which had the tendency “to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort might fall”. The Hicklin test allows a publication to be judged for obscenity based on isolated passages of a work considered out of context and judged by their apparent influence on “most susceptible” readers such as children or weak-minded adults.

It is very unfortunate that the definition of obscenity provided in the Indian constitution is very vague i.e. it doesn’t give a proper definition to obscenity. The history of obscenity trials indicate that anything which is sexually explicit has been considered obscene. But
now the scenario is changing, recent trails shows that the decisions taken by the judges on different cases are more liberalized towards distinction of sex and sex related matters. Form the study of two different cases, Pratibha Naithani v. Union of India\textsuperscript{118} and Director General, Directorate General of Doordarshan and Others v. Anand Patwardhan and Another, it has been found that:

It is freedom of every adult to watch any kind of video, film, etc. as a person above the age of 18 doesn’t fall under such a section of society “whose minds are open to such immoral influences and who is watching the content of this sort.” But this freedom is only restricted to adults and such content is not free for “unrestricted public exhibition”, so it is needed to get the film sectioned by Central Bureau of Film Certificate, the authorized organization, under the Cinematograph Act and Rules, so that only suitable content will go on air for suitable public viewing on cable TV. It is also found that how definition of obscenity is determined by the way the maker has treated the subject. One cannot simply certify anything as obscene even if it is carrying certain remarks about sex and sexuality; it has to be judged from an average, healthy and common sense point of view, because it is the treatment given by the maker which determines what is obscene and what is not.

\subsection*{3.9.2 Molestation}

In cases where the accused molests or insults the modesty of a woman by way of obscene acts or by means of words, gesture, or acts that are intended to insult the modesty and dignity of a woman, he shall be punished under the following sections.

Under Section 294 the obscene act must cause annoyance. The annoyance should be done in a public place and cause mental harassment.\textsuperscript{119} Section 509 of IPC, comes into effect when there is an intention to insult the modesty of any woman by the offender by uttering any word, making any sound or gesture or by exhibiting any object, with the intention that such word or such sound be heard, or that such gesture or object be seen by such a woman, or by intruding upon the privacy of such a woman.\textsuperscript{120}

\begin{itemize}
  \item \textsuperscript{118} AIR 2006 Bom 259, 2006 (2) BomCR 41
  \item \textsuperscript{119} \textit{Indian penal code},1860 (45 of1860 )
  \item \textsuperscript{120} Section 354 of the IPC considers the assault or criminal force to woman with the intention to outrage her modesty. This offense is considered less serious than Rape. Punishment: Up to two years imprisonment or a fine or both. Section 323 punishes anyone causing voluntarily hurt(non cognizable)
\end{itemize}
3.9.2.1 Defiance of Constitutional provisions

The offence under Section 354 of IPC is committed only when a person assaults or uses a criminal force to a woman, intending to outrage or knowing it to be likely that he will outrage her modesty. The section mentions the pronoun ‘he’ which implies that offences are committed only by a man. A woman can also assault or use criminal force to any other woman as equally and effectively as any man; and the intention or knowledge that the modesty of the woman assaulted or against whom criminal force had been used will be outraged, is not of a kind which a woman on account of inherent differences from man is incapable of having. Now the Article 14 of our constitution provides that the state shall not deny to any person equality before the law in Section 354. The use of pronoun “he” in the expression “that he will thereby outrage her modesty” makes the offences limited only to man, thus going against the constitution.121

Also the Article 15(1) of Indian Constitution says that the state shall not discriminate against any citizen on the grounds only of religion, race, sex, and place of birth or any of them.122 As the legislature has discriminated in favour of women only on the ground of sex, Section 354 therefore offends Article 15(1).

The Court has however given judgment saying that Section 354 doesn’t violate Article 14 and 15(1) of Indian Constitution. In the case Girdhar Gopal v. State of Madhya Pradesh123 said that the pronoun “he” used in the Section 354 must therefore be taken under Section 8 of Indian Penal Code as importing a male or female. Court made it clear that that a man as well as woman can be held for offences committed under Section 354. The Court also adjudicated that Section 354 does not violate the provisions of Article 15(1) of the Constitution. The use of word “only” in Article 15 is important and it

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Punishment: Up to one year or Rs. 1000 or both.

*The Criminal Law Amendment Act* has substantially changed Sections 375 and 376 of the IPC. Several new sections have been introduced therein—viz.

- Section 376(A) punishes sexual intercourse with wife without her consent by a judicially separated husband.
- Section 376(B) punishes for sexual intercourse by a public servant with a woman in custody.
- Section 376(C) punishes sexual intercourse by superintendent of jail, remand house, etc. whereas Section 376(D) punishes sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital.

121 http://www.lawyersclubindia.com/articles/print_this_page.asp?article_id=1709 (Visited on may 20, 2011)
123 A.I.R. 1953 Madh.B.147
emphasizes the fact that discrimination that is prohibited under this article is a discrimination based on the ground of sex, or race, etc. alone. If the discrimination is based not merely on any of the grounds stated in Article 15(1) but also on public morals, ethics, decency, decorum and rectitude, the legislation containing such discrimination would not be hit by the provisions of Article 15(1).

3.9.2.2 Molestation in India and England: An Overview

English laws are very clear. The definition of minor terms such as a penetration, assault, touching etc is provided distinctly. For example a clear definition of touching is provided which says touching includes touching with any part of the body, with anything else, or through anything and in particular includes touching amounting to penetration.\textsuperscript{124} Outraging the modesty of woman has been included in Sexual Offences. Separate laws are enacted for Sexual Offences against children below the age of 13, Causing or inciting a child to avenge in Sexual Activity, Sexual Activity with a mentally disordered person, Sexual Activity at work place etc. are present.

English law clearly states harsh punishments for offences by police officers, teachers, doctors, elite officials etc. while on duty. There have been cases where Court has awarded damages of $100,000 to $300,000\textsuperscript{125}. Very few such provisions have been provided under our laws. Sexual offences against women at workplace are reported in our country too but there is absence of apparent and precise laws except Supreme Court’s Vishakha Guidelines\textsuperscript{126}.

The much awaited need of amending sections 354, 355 seems to be realized in the form of latest amendment of Criminal Law. A clear and specific explanation of term ‘woman’ (specifying age, physical and mental condition of woman) should be provided. The term ‘outraging the modesty of woman’ should be specifically explained. Also a single clear and distinct definition of the term ‘modesty’ should be followed by the Courts. Offences under both the Sections should be made non-bailable and non-compoundable.

As done by State of Orissa, by an Act\textsuperscript{127} the word ‘bailable’ is substituted by ‘non-

\textsuperscript{124} See Section 79(1),(8) Sexual Offences Act, 2003
\textsuperscript{125} See Ikram v. Waterbury Bd. of Educ., No. 3:95CV2478, 1997 WL 597111, at 1; See also Tiffany and Co. v. Smith, 224 AD 2d 332, 638 NYS 2d 454.
\textsuperscript{126} A.I.R. 1997 S.C. 3011
\textsuperscript{127} See Section 3, Orissa Act 6 of 1995, (w.e.f. March 10, 1995)
bailable’ under Section 354. The specification of terms of imprisonment for offences committed under these sections is unfair and it should be made flexible looking into the gravity of the case. Precise laws with clarity as in England should be enacted. The judicial decision making is done in the "laboratories" of the lower courts which have two options: fall back on traditional rules of practice, or make a rather uneducated guess as to how to proceed in a new direction. The first course halts the evolution of practice and legal doctrine; the second inevitably leads to inconsistency in decisions. The dilemma in both the situations becomes more awkward, in the absence of a liberal and expansive definition of ‘modesty’ and ‘intention of outraging’, under Section 354. The law needs to be precise and crystal clear in its definition, as the modern society relies heavily on law. The law should not fail to achieve the goals enshrined in the constitution for the emancipation of women in India and should fully protect her from sexual predators or else woman justice will be a fragile myth.

3.9.3 Sexual Harassment: Meaning and Types

Sexual Harassment is intimidation, bullying or coercion of a sexual nature, or the unwelcome or inappropriate promise of rewards in exchange for sexual favors. In some contexts or circumstances, sexual harassment may be illegal. It includes a range of behavior from seemingly mild transgressions and annoyances to actual sexual abuse or sexual assault. Sexual harassment is a form of illegal employment discrimination in many countries, and is a form of abuse (sexual and psychological) and bullying. For many businesses, preventing sexual harassment, and defending employees from sexual harassment charges, have become key goals of legal decision-making. In contrast, many scholars complain that sexual harassment in education remains a "forgotten secret," with educators and administrators refusing to admit the problem exists in their schools, or accept their legal and ethical responsibilities to deal with it.

3.9.3.1 Types of Harassment

There is often more than one type of harassing behavior present, so a single harasser may

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129 Dziech et al. 1990, Boland 2002
fit more than one category. These are brief summations of each type.

- **Power-player** - Legally termed "quid pro quo" harassment, these harassers insist on sexual favors in exchange for benefits they can dispense because of their positions in hierarchies: getting or keeping a job, favorable grades, recommendations, credentials, projects, promotion, orders, and other types of opportunities.

- **Mother/Father Figure** (a.k.a. The Counselor-Helper) - These harassers will try to create mentor-like relationships with their targets, all the while masking their sexual intentions with pretenses towards personal, professional, or academic attention.

- **One-of-the-Gang** - Harassment occurs when groups of men or women embarrass others with lewd comments, physical evaluations, or other unwanted sexual attention. Harassers may act individually in order to belong or impress the others, or groups may gang up on a particular target.

- **Serial Harasser** - Harassers of this type carefully build up an image so that people would find it hard to believe they would do anyone any harm. They plan their approaches carefully, and strike in private so that it is their word against that of their victims.

- **Groper** - Whenever the opportunity presents itself, these harassers' eyes and hands begin to wander, engaging in unwanted physical contact that may start innocuous but lead to worse.

- **Opportunist** - Opportunist use physical settings and circumstances, or infrequently occurring opportunities, to mask premeditated or intentional sexual behavior towards targets. This will often involve changing the environment in order to minimize inhibitory effects of the workplace or school or taking advantage of physical tasks to 'accidentally' grope a target.

- **Bully** - In this case, a harasser uses physical threats to frighten and separate two would be lovers who willfully are engaging with each other. The intent of the harasser can be due to a range of reasons such as jealousy, racism, or their own hidden sexual agendas. Normally the harasser attempts to physically separate the two using their size or threats of physical violence and remains until they are satisfied by the separation or can pursue their own sexual agenda against one of
the victims.\textsuperscript{130}

- **Confidante** - Harassers of this type approach subordinates, or students, as equals or friends, sharing about their own life experiences and difficulties, sharing stories to win admiration and sympathy, and inviting subordinates to share theirs so as to make them feel valued and trusted. Soon these relationships move into an intimate domain.

- **Situational Harasser** - Harassing behavior begins when the perpetrator endures a traumatic event (psychological), or begins to experience very stressful life situations, such as psychological or medical problems, marital problems, or divorce. The harassment will usually stop if the situation changes or the pressures are removed.

- **Pest** - This is the stereotypical "won't take 'no' for an answer" harasser who persists in hounding a target for attention and dates even after persistent rejections. This behavior is usually misguided, with no malicious intent.

- **Great Gallant** - This mostly verbal harassment involves excessive compliments and personal comments that focus on appearance and gender, and are out of place or embarrassing to the recipient. Such comments are sometimes accompanied by leering looks.

- **Intellectual Seducer** - Most often found in educational settings, these harassers will try to use their knowledge and skills as an avenue to gain access to students, or information about students, for sexual purposes. They may require students participate in exercises or "studies" that reveal information about their sexual experiences, preferences, and habits.

- **Incompetent** - These are socially inept individuals who desire the attentions of their targets, who do not reciprocate these feelings. They may display a sense of entitlement, believing their targets should feel flattered by their attentions. When rejected, this type of harasser may use bullying methods as a form of revenge.

- **Stalking** - Persistent watching, following, contacting or observing of an individual, sometimes motivated by what the stalker believes to be love, or by sexual obsession, or by anger and hostility.

\textsuperscript{130} \url{http://en.wikipedia.org/wiki/Sexual_harassment#Ind} (Visited on May22, 2011)
• **Unintentional** - Acts or comments of a sexual nature, not intended to harass, can constitute sexual harassment if another person feels uncomfortable with such subjects.

• Sexualized environments (aka environmental harassment)

• Sexualized environments are environments where obscenities, sexual joking, sexually explicit graffiti, viewing pornography, sexually degrading posters and objects, etc., are common. None of these behaviors or objects may necessarily be directed at anyone in particular or intended as harassment. However, they can create an offensive environment, and one that is consistent with "hostile environment sexual harassment."

Sexual harassment in India is termed "Eve teasing" and is described as: unwelcome sexual gesture or behavior whether directly or indirectly as sexually colored remarks; physical contact and advances; showing pornography; a demand or request for sexual favors; any other unwelcome physical, verbal/non-verbal conduct being sexual in nature. The critical factor is the unwelcome behavior, thereby making the impact of such actions on the recipient more relevant rather than intent of the perpetrator. According to India's constitution, sexual harassment infringes the fundamental right of a woman to gender equality under Article 14 of the Constitution of India and her right to life and live with dignity under Article 21 of the Constitution. Although there is no specific law against sexual harassment at workplace in India but many provisions in other legislations protect against sexual harassment at workplace, such as Section 354, IPC deals with "assault or criminal force to a woman with the intent to outrage her modesty, and Section 509, IPC deals with “word, gesture or act intended to insult the modesty of a woman.

### 3.10 Pornography: Meaning and Types

Pornography or porn is the portrayal of explicit sexual subject matter for the purposes of sexual excitement and erotic satisfaction. Pornography may use any of a variety of media, ranging from books, magazines, postcards, photos, sculpture, drawing, painting, animation, sound recording, film, video, or video game. However, when sexual acts are performed for a live audience, by definition it is not pornography, as the term applies to the depiction of the act, rather than the act itself. Thus, portrayals such as sex

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shows and striptease are not classified as pornography.

Pornography has often been subject to censorship and legal restraints on publication on grounds of obscenity. Such grounds and the very definition of what is or is not pornography have differed in different historical, cultural, and national contexts.\(^\text{132}\)

The world's first law criminalizing pornography was the United Kingdom Obscene Publications Act, 1857 enacted at the urging of the Society for the Suppression of Vice. The Act, which applied to the United Kingdom and Ireland, made the sale of obscene material a statutory offence, giving the courts power to seize and destroy offending material.

Pornographic film production commenced almost immediately after the invention of the motion picture in 1895. Two of the earliest pioneers were Eugène Pirou and Albert Kirchner. Kirchner directed the earliest surviving pornographic film for Pirou under the trade name "Lear". The 1896 film, *Le Coucher de la Marie* showed Louise Willy performing a striptease.

### 3.10.1 Types of Pornography

In general, soft core refers to pornography that does not depict penetration (usually genitals are not shown on camera), and hardcore refers to pornography that explicitly depicts penetration.

Pornography is classified according to the physical characteristics of the participants, fetish, sexual orientation, etc., as well as the types of sexual activity featured. Reality and voyeur pornography, animated videos, and legally prohibited acts also influence the classification of pornography. The genres of pornography are based on the type of activity featured and the category of participants.

#### 3.10.1.1 Non-commercial pornography

As well as the porn industry, there is a large amount of non-commercial pornography. This should be distinguished from commercial pornography falsely marketed as featuring "amateurs." The Alt Sex Stories Text Repository focuses on prose stories collected from Usenet. Various Usenet groups are focused on non-commercial pornographic photograph. Mass-distributed pornography is as old as the modern printing press. Almost as soon as photography was invented, it was being used to produce pornographic images.

Some claim that pornography has been a driving force in the development of technologies from the printing press, through photography (still and motion), to satellite TV, other forms of video, and the Internet. With the invention of tiny cameras and wireless equipments voyeur pornography is gaining ground. Mobile cameras are used to capture pornographic photos or videos, and forwarded as MMS.

3.10.1.2 Computer-generated images and manipulations

Digital manipulation requires the use of source photographs, but some pornography is produced without human actors at all. The idea of completely computer-generated pornography was conceived very early as one of the most obvious areas of application for computer graphics and 3D rendering. Until the late 1990s, digitally manipulated pornography could not be produced cost-effectively. In the early 2000s, it became a growing segment, as the modeling and animation software matured and the rendering capabilities of computers improved. As of 2004, computer-generated pornography depicting situations involving children and sex with fictional characters, such as Lara Croft, is already produced on a limited scale. The October 2004 issue of Playboy featured topless pictures of the title character from the Blood Rayne video game.

3.10.1.3 3D pornography

Due to the popularity of 3D blockbusters in theaters such as Avatar and How to Train Your Dragon, companies are now looking to shoot pornography movies in 3D. The first case of this occurred in Hong Kong, when a group of filmmakers filmed 3D Sex and Zen: Extreme Ecstasy released in April 2011.

3.10.1.4 Easy Access to Pornography

The availability of pornography and obscenity has increased steadily over the centuries, reaching a peak in the year 2000. The spread of such material has been associated with the growth of democracy (extending rights of expression to more citizens over time) and the rise of such new forms of technology as the printing press, photography, mass publishing, modes of transportation to deliver material over long distances, videos, cable television, and, more recently, the Internet. In 1992, Americans rented 490 million hard core videos, compared to 75 million in 1985; and in 1997, 10 percent of the money earned on the Internet (up to $1 billion) came from pornography that could be found on
about 34,000 web sites. The easy international availability of pornography over the Internet increasingly poses and creates legal confusion, for the law differs in each country, and no authoritative international standard has been promulgated. Studies in the 1980s maintained that the production of pornography was often associated with organized and other forms of crime, such as prostitution; yet no consensus reigns on the extent of underworld complicity in the pornographic industry today, especially given the lowered barriers of entry into the market provided by videos and the Internet.133

3.10.2 Obscenity and Pornography

Although the terms obscenity and pornography are often used interchangeably, they are different. The obscene is something that is foul, filthy, or impure, especially when exposed to public view. Obscenity is a legal term of art that applies to certain depictions of sex that are not protected by the constitutional guarantee of free speech because they appeal to debased sexual desire rather than the intellect. In Miller v. California,134 the U.S. Supreme Court defined obscenity as material that is predominantly "prurient" (that is, appealing to impure sexual desire) according to contemporary community standards; is "patently offensive" in its portrayal of sexual acts; and lacks "serious literary, artistic, political, or social value" when considered as a whole. In essence, the concept of obscenity is limited to material depicting hard core pornography, which means graphic portrayals of ultimate sex acts or lewd exhibition of sexual organs.

Pornography is a non legal term with a broader meaning. It derives from the Greek words for "harlot" and "writing," and pertains to depictions of erotic and lewd behavior, including works with artistic or literary merit (by definition, obscenity lacks such merit). All obscenity is pornographic, but not all pornography is obscene.

3.10.3 Ambiguity in law

If the findings concerning violent and degrading pornography have merit, then there is a mismatch between law and reality, for the vast majority of potentially harmful material is not obscene, and therefore protected by the First Amendment. Yet the evidence concerning harmful effects is too speculative to merit a new exception to freedom of speech. In 1997 the Supreme Court struck down the national Communications Decency

134 413 U.S. 15 (1973),
Act, a measure designed to protect children from exposure to pornography on the Internet, because of a host of free speech concerns that highlight the difficulty of enforcement posed by the First Amendment (Reno v. American Civil Liberties Union, 521 U.S. 844 (1997)). In addition, even the enforcement of traditional obscenity law has proved difficult to administer for reasons related to what legal scholar Herbert Packer has called the "limits of the legal sanction." The most important reasons for the under enforcement of obscenity law include: (1) low priority given to obscenity cases by prosecutors with limited resources; (2) relative public tolerance of freedom of choice when it comes to what can be portrayed as a "victimless crime"; (3) confusion over the key terms of obscenity law make juries reluctant to find defendants guilty beyond a reasonable doubt; (4) gifted defense attorneys know how to use the law and take advantage of jury sympathies and confusion.135

Given the difficulties of enforcing laws prohibiting hard core pornography (obscenity), society should think carefully about criminalizing other forms of pornography as well, especially given dangers such efforts present to freedom of speech.

3.11 Matrimonial Crimes against Women

3.11.1 Torture (Physical and Mental) as described under Section-498A of IPC

Section 498A of IPC do explicitly provides for punishing the crime of torture by defining cruelty as— 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.136

Explanation-For the purpose of this section, "cruelty" means-

(a) Any willful 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


136 See Section 2, Chapter XX a of Cruelty by Husband or Relatives of Husband, Ins. by Act 46 of 1983.
valuable security or is on account of failure by her or any person related to her meet such demand.

3.11.2 Offence of Bigamy

Bigamy is the condition of having two wives or two husbands at the same time. A marriage in which one of the parties is already legally married is bigamous, void, and ground for annulment. The one who knowingly enters into a bigamous marriage is guilty of the crime of bigamy. Unfortunately, it is seldom prosecuted unless it is part of a fraudulent scheme to get another's property or some other felony. Having several wives at the same time is called "polygamy" and being married to several husbands is "polyandry."

Bigamy i.e. second marriage during the lifetime of a first spouse is illegal in India. Second marriage and the relationship arising out of it do not have any validity. Section 5 of the Hindu Marriage Act, 1955, clearly states that a marriage could be valid only if neither of the party has a living spouse at the time of marriage. Section 11 of the Act declares second marriage to be null and void.

A person commits bigamy when he/she:

- has a husband or wife living,
- marries in any case in which such marriage is void,
- by reason of its taking place during the life of such husband or wife.

Thus, bigamy is an offence only if the first husband or wife is alive. Even if second marriage is performed with the consent of first spouse, it is an offence. In case of a divorce dissolving a valid marriage, the parties obtaining such dissolution can remarry.

The law of bigamy is not applicable to Mohammedan males, who are allowed to keep more than one wife. The law applies to Mohammedan females, Hindus, Christians, and Parsis of either sex. Good faith and mistake of law are no defenses to a charge of bigamy. However, bigamy shall not apply if:

- the first husband or wife is dead, or
- the first marriage has been declared void by the Court of competent jurisdiction, or
- the first marriage has been dissolved by divorce, or
- the first spouse has been absent or not heard of continually for a space of seven years. The party marrying must inform the person with whom he or she marries of
this fact.\textsuperscript{137}

In certain cases, a person who is Hindu has converted to Islam, in order to have a second marriage. However, marriages through religious conversion to get around the provisions of the anti-bigamy law, has been declared illegal by the Supreme Court in a 1995 order Case: In Sarla Mudgal v. Union of India\textsuperscript{138} the Supreme Court held that a man who has adopted Islam and renounced Hindu religion, marries again without taking divorce from the first wife, then such marriage is not legal. The person shall be punished for committing bigamy under section 494 of Indian Penal Code (IPC).

Even though the law is very clear on second marriage, yet it is a common practice in India. Given the case, the laws are very dicey for the second wife and she is not much protected by law. The second wife is not entitled to any share in husband’s property. The children of the second wife, however, are entitled to get a share in their father’s self-acquired property. The second wife can claim interim maintenance from her husband. In Rajesh Bai v. ShantaBai\textsuperscript{139}, it was held that a woman whose marriage has been declared void because of the existence of first wife is entitled to get maintenance under section 25 of the Act. Also, interim maintenance under section 20 is allowed.

3.11.2.1 Complaint under the Act

The person aggrieved can file a case of bigamy either in court or at the police station. The father of an aggrieved wife can also make a complaint under section 494/495 of the Indian Penal Code. A petition for declaring the second marriage as void can be filed by the parties of second marriage and not the first spouse.

3.12 Adultery

Adultery means voluntary sexual intercourse of a married person other than with spouse. The legal definition of adultery however varies from country to country and statute to statute. While at many places adultery is when a woman has voluntary sexual intercourse with a person other than her husband, at other places adultery is when a woman has voluntary sexual intercourse with a third person without her husband’s consent.\textsuperscript{140}

Though the modern trend is to decriminalize adultery, historically, many cultures have

\textsuperscript{138} AIR1995 SC1531
\textsuperscript{139} AIR 1982 Bom 231
regarded adultery as a crime. Jewish, Islamic, Christian and Hindu traditions are all unequivocal in their condemnation of adultery. In most cultures both the man and the woman are equally punishable. However, according to ancient Hindu law, in ancient Greece and in Roman law, only the offending female spouse could be killed and men were not heavily punished.

In India the offence of adultery is punishable under Section 497 of the Indian Penal Code (IPC), 1860. As it stands, this Section makes only men having sexual intercourse with the wives of other men without the consent of their husbands punishable and women cannot be punished even as abettors. The Report of the Malimath Committee on Criminal Justice Reforms and the 42nd Report of the Law Commission of India recommended redefining Section 497 to make women also punishable for adultery. The Central Government accordingly has sought the views of all the 30 states in the country regarding the implementation of the said recommendations. This paper attempts to establish the redundancy of Section 497 in the light of Personal and Matrimonial laws and changing social conditions subsequently making a case against amending and for completely deleting Section 497 from the IPC.

3.12.1 An Analysis of Section 497, IPC

Section 497 penalizes sexual intercourse of a man with a married woman without the consent of her husband when such sexual intercourse does not amount to rape. That is, it draws a distinction between consent given by a married woman without her husband’s consent and a consent given by an unmarried woman. It does not penalize the sexual intercourse of a married man with an unmarried woman or a widow or even a married woman when her husband consents to it. In case the offence of adultery is committed, the husband cannot prosecute his unfaithful wife but can only prosecute her adulterer. However, since the offence of adultery can be committed by a man with a married woman only, the wife of the man having sexual intercourse with other unmarried women cannot prosecute either her husband or his adulteress. What is interesting here is that the section itself expressly states that the unfaithful wife cannot be punished even as an abettor to the crime. The offence of adultery therefore is an offence committed against the husband of the wife and not against the wife.

The Constitutionality of Section 497 was challenged before the Supreme Court under
Article 14 on the grounds that it makes an arbitrary discrimination based on sex in the cases of Yusuf Aziz, Sowmithri Vishnu and V. Revathi.

In the case of Yusuf Aziz the Court ruled that the immunity granted to women from being prosecuted under section 497 was not discriminatory but valid under Article 15 (3) of the Constitution.

In the cases of Sowmithri and V. Revathi it was held that it is the policy of the law to not to punish women for adultery and policies could not be questioned. Secondly, that it was not contemplated for a husband and a wife to strike each other with weapon of criminal law. And that adultery therefore was an offence against the matrimonial home and not either against the wife or the husband.

It must be mentioned here that all of the above decisions of the Supreme Court had restricted their scope to the determination of Constitutional validity of Section 497 as it stands. They should not be taken as an authority over the question whether Section 497 is required at all.

Adultery cannot be committed without a woman’s consent. Yet, the section burdens man alone for the offence. Though the reasons for this may be justifiable, the woman here is always treated as a victim of the offence. Hence, this section does not contemplate a situation where the same married woman has sexual intercourse with more than one person other than her husband without her husband’s consent. It is highly implausible that even in such a situation the woman would always be the victim and not the person who provokes the offender for the crime. No doubt that the law, as it stands, is inadequate.

3.12.2 Why Women are not Punished for Adultery

The offence of Adultery did not punish women but still existed in the code because at the time the enforced law was enacted polygamy was deep rooted in the society and women shared the attention of their husbands with several other wives and extramarital relations. Women were treated as victims of the offence of adultery as they were often starved of love and affection from their husbands and could easily give in to any person who offered it or even offered to offer it. The provision was therefore made to restrict men from having sexual relations with the wives of other men and at the same time to restrict their extra marital relations to unmarried women alone.\textsuperscript{141}

3.12.3 Why the Supreme Court has Erred

\textsuperscript{141} http://fightbigamy.typepad.com/my_weblog/2005/09/what_is_bigamy.html (Visited on May 12, 2011)
Considering the limited question of Constitutional validity before it the object of Section 497, as stated above, was never brought before the Supreme Court. The decisions of the Court therefore have erred to the limited extent of holding adultery as an offence against the matrimonial home.

If adultery had been a matrimonial offence neither the husband would have had the freedom to indulge in extra-marital sexual relations with unmarried women nor the consent of the husband of the wife when she had sexual intercourse with other men would make any difference in its constitution. Adultery therefore is not an offence against the matrimonial home but against the husband himself. The way a person is not expected to enter on the property of the other without his consent, another man is not expected to have sexual intercourse with someone’s wife without his consent. It uses the same analogy that is used for the offence of trespass. There is no doubt then that this section treats a woman like a man’s chattel.

3.12.4 Changing Social Conditions

Polygamy in all religions except Muslims, who are legally allowed to have four wives, has ceased to exist and become illegal. Men now have only one wife who has no rivals for her husband’s love and affection. Today, not only a person having two wives can be prosecuted for bigamy but his second marriage is void ab-initio. Unlike the past when it was required to prove that the husband “lived in adultery” to obtain a divorce, even a single instance of sexual intercourse with anyone other than the spouse entitles the other spouse for divorce.

Now, wives are not deprived of their husband’s love and care and spouses can hardly maintain any polygamous or extramarital relations without inviting any legal action. Even the definition of adultery in civil law is much wider in scope than in criminal law. The personal laws, which did not exist in the present form at the time this law was passed, have not only become operational but also given somewhat of a level playing field for both, the husband and the wife. Naturally, these factors have made the then object of Section 497 obsolete.\(^\text{142}\)

3.12.5 Why Women should not be Punished Even Now

\(^\text{142}\) Ibid
The object of the amendment to punish women for adultery is not clear. It may either be the fact that the reasons which warranted for the exception of women for the offence of adultery in the last century are no longer valid or to bring gender parity in the present law. In either case the amendment would defeat the purpose.

It is true that the reasons which warranted for the exception of women for the offence of adultery in the last century are no longer valid still however, the consequences of amending the definition of adultery to make women punishable would be horrific. Merely because we have been able to give women the attention they deserve from their husbands does not mean women are being treated equally in every aspect socially. We live in a society where far from prosecution, even an allegation of a woman’s unfaithfulness is sufficient to reap havoc in her life. In case women are made punishable for adultery Section 497 would become haven for all husbands and in-laws wanting to get rid of their wives and daughter in-laws at the cost the woman’s social status. Once a woman’s reputation is ruined she will become an easy prey for abuse by other men. The Legislature must understand that what is not equal cannot be equalized by changing definitions. Making a provision which makes a woman lose her reputation in Indian society is like killing the soul of the person while keeping only the body alive. In no case should such a murder be allowed.

Thus, changing the definition of adultery to make women punishable under the name of gender parity will only give society a ground to defame women and increase the disparity of status further defeating the very purpose of the proposed amendment.\textsuperscript{143}

\textbf{3.12.6 Decriminalised Adultery}

Marriage is both, a sacrament and a civil contract and the society has certain notions about the same. Yet, it is not a standard form contract. The spouses are and should be at a liberty to choose their own terms of the contract. Therefore, whether they allow each other to have or maintain sexual relations with third parties should be at the sole discretion of the parties alone. The National Commission for women recommends that adultery should be made merely a civil wrong and the Supreme Court impliedly agrees that husband and a wife should not strike each other with the weapon of criminal law. Making provisions in Penal law to regulate civil contracts and particularly the contract of

\textsuperscript{143} Supra n.165, p. 107
marriage, which is private and personal, is unwarranted. Punishment to the person committing adultery is not and cannot be a remedy for a person aggrieved of adultery. The object of prosecution for adultery is more often to reach a settlement with the offender at the mercenary level and seldom to send the offender to jail. In fact this was the very reason why the offence of adultery did not figure in the very first draft. To this extent, the conditions are not appreciably different even today. The existence of Section 497 has no apparent affect on society. Acknowledging this most western countries have decriminalised adultery. It is not a crime in most countries of the European Union, including Austria, the Netherlands, Belgium, Finland, Sweden and even Britain from whom we have borrowed most of our laws. In the United States, in those states where adultery is still on the statute books, offenders are rarely prosecuted.

The object of making adultery an offence and restricting it to men alone was to deter men from taking advantage of women starved of the love and affection of their husbands and deter men from having sexual relations with the wives of other men. Since men had the social sanction to maintain such relations and women were starved of the love and affection of their husbands women were treated as the victims and not the authors of the crime. When Section 497 was enacted there were no codified personal and matrimonial laws like today but they were unequal and inoperative.

Over the years polygamy has become illegal while monogamy has become prevalent. Today the personal laws are equal, operative, effective and efficient. The definition of adultery in matrimonial laws is much wider in scope that the definition of adultery as a crime. To practice polygamy or have extramarital relationships without attracting civil action is almost impossible. Women have begun to establish their own identity in the society and are no more treated merely as their husbands’ chattel. There are no reasons to retain adultery as an offence in the penal code. Our personal laws are sufficient to take care of adultery as a civil wrong.

3.13 Dowry Harassment

The dowry system is so deeply rooted in Indian culture, that sometimes one feels that there’s going to be no way out – at least not for another century.” ‘Bride-burning,’ a term which is very common now a days is used to describe the increasing number of young Indian housewives found murdered each year, has become commonplace in young
marriages. Hardly is there a day when one does not read of dowry deaths in the national daily newspapers. Brides bringing less than expected dowry are ill treated by their in-laws and other relatives. Many of them cannot bear it anymore and commit suicide. Those who do not have enough courage to do so, are burnt alive by their husbands and the in-laws. In spite of modernization and the increasing role of women in all walks of life, the practice of the dowry in India is becoming widespread, and the value of dowries is increasing. If a bride’s family fails to pay the amount of dowry demanded by the prospective groom’s family, the bride will be cruelly treated by the in-laws, and in many cases will be burnt to death.

3.13.1 What the dowry is?

Dowry (dahej) is one of the most ancient practices of India. Punishment Dowry system is as old as man is. The dowry system is a social evil. It is prevalent in all parts of India and almost in all the countries of the world. In India many of the traditional customs have been given up, but the custom of dowry has it is the cash, precious jewellery and other important thing given to the daughter in her marriage. This evil is found in almost every community. Now dowry is demanded by the groom’s parents and marriage takes place only if a certain amount of dowry is paid by the bride’s parents. Today dowry is given as compensation to the groom’s India is suffering from many social evils and superstitions. Dowry System is one of them.

Parents ask for the amount they have spent in educating and upbringing their son. It is also considered a status symbol, especially in the high class, and generally the items of dowry are flaunted and hyped by both parties. Many young women commit suicide because of this system. Their parents can not collect the required fund. To fulfill the demands of the girl’s in laws they borrow money or even sometimes they put their property on mortgage. It has become truly difficult to find the suitable match for the girl without giving the demanded dowry.

Nowadays, marriage has become a kind of business and misuse of girls parents. The parents those boys are highly educated and getting handsome package demand enormous

dowry for marriage of their son. The demand of dowry is according to the qualification of the boy. Even today when there are broad minded people still the system of dowry has not being abolished. Marriages are longer the combination of hearts; it is just the kind of business transaction. Even the rich parents of the boy do no feel shame in begging dowry. The system of dowry in India is a very serious matter and a black spot on the Indian society. Except India the dowry system is not found in any other country. From this it could be easily observed that the women are not treated equally and fairly as men. After marriage also they are treated badly and harassed by her in laws for dowry. And still there is no end of it.

Dowry system is against the law of equality between man and woman. Today dowry is considered as the crime, both giving and taking. Thousands of cases has being observed every year but only few of them put to court for not only continued, but flourished over the years. Even in the old age the dowry system was in vogue and dowry was used as means for striking a good match. In due course dowry became an integral part of the marriage institution and is generally accepted by the society as necessary evil.

Custom of dowry has become widespread. Even before the marriage, the amount to be given as dowry is discussed and settled with the change of time. The contents of dowry have undergone a great change. The boy’s parents openly demand money and other items which include car, scooter, fridge, colored T.V. etc. The rate of dowry changes according to the qualification of the boy. There are “rates” fixed for I.A.S., I.P.S., P.C.S., I.E.S. officers and qualified engineers and doctors. In fact, a regular marriage cannot be held and a marriage without dowry is almost unthinkable.

3.13.2 Why this social evil prevail in India

There are several reasons for the prevalence of the dowry system, but the main one is that it is a necessary precondition for marriage. “No dowry, no marriage,” is a widespread fear. The price tag for the groom is now bigger and bolder. Families arrange most marriages, and a man who does not marry for love learns he can marry for possessions. For this man, and his family, a woman becomes the ticket to shortcut riches through the system of dowry. There are a number of things people desire to have in their own houses but cannot afford; they use the opportunity of a son’s marriage to get them. The girl’s parents do not protest against this, as they regard it as a stepping-stone towards higher
social status and better matches for the remaining children. Now the guy who is to be married is sold in the market. It seems that the people put their bets on the guys and who will bet more can marry their daughter to him.

3.13.3 Facts relating to dowry death

Official statistics show a steady rise in dowry crimes. More than 9,5000 women are killed every year in India over dowry. Bihar and Uttar Pradesh still record the maximum number of dowry crimes, four women reportedly die every day because of dowry harassment and domestic violence. The cases of dowry torture are the highest accounting for 32.4% of crimes against women in the country.

The dangerous outcome of this tradition is sex-ratio. The girls are killed prior to birth and sex-ratio has decreased very much in India (941/1000 as per 2011 census). Despite protest by women’s organizations, serious activism, legal amendments, special police cells for women, media support and heightened awareness of dowry being a crime, the practice continues unabated on a massive scale. Despite every stigma, dowry continues to be the signature of marriage. Women need real social, political, financial and moral support in their fight against the system. They have to be empowered so that they can take their decisions about their own life by refusing the dowry system.

3.13.4 Is Law-making is enough for eradication of social evils?

This is a well known fact that law always fails in removing social evils as there are 3 important things 1. law-making 2. effective implementation of law and 3. co-operation of people necessary for removing any evil. In Indian scenario law is there, but its implementation is not so effective, that’s why we can see that people misuses law by filing false dowry cases. Some of the preventive measures are:

Emphasis on education of girls.

Men should be brought up with moral and ethical values, since infancy Men should be trained up in honoring women.

Young people, both men and women, should refuse to get married if dowry is being given or taken. Particularly, the girls should stand up against this system with all their might because the dowry system is responsible for the degradation of women in India.

To protest against the women themselves should raise their own status, so that the men

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145 file:///C:/Users/sahara/Desktop/Sex%20Ratio,2011.htm (Visited on June 24, 2011)
run to them, begging the women to marry. With modernization and the increasing role of women in a productive economy, creating other ways for wives to contribute to their families' economic well being, one would expect support for the dowry system to diminish.

3.14 Cruelty and Harassment: Meaning under various Statute

Criminal law in India defines cruelty as:

Any willful act, which is likely to drive a woman to commit suicide or cause serious injury to her or danger to her life, body or physical/mental health.

Harassing a woman to pressurize her to fulfill any illegal demand for any property or valuable belongings. Also, in case of failure on her part to meet such a demand.

To prove the first case, in accordance with criminal law in India, the prosecution has to establish that the act was conducted willfully, by the accused. Also, the nature of such an act was likely to compel the woman to commit suicide or cause serious injury to her or pose danger to her life, limb or physical/mental health. After, scrutinizing and validating the facts, the Court shall decide whether the woman was subjected to cruelty, by her husband or his relatives.146

3.15 Criminal Law in India: Penalty for Commission of Cruelty by Husband

Criminal law in India recognizes both mental and physical torture as cruelty. However, the concept of cruelty varies from case to case, depending on the social and economic status of individuals. Whether a woman was subjected to cruelty or not, is also decided based on various factors, such as:

- Matrimonial relationship between a woman and her husband.
- Cultural background and temperament of the couple.
- Status of life.
- Status of health.
- Level of interaction between the husband and wife.

Further, all types of harassment does not amount to cruelty. In order to be considered cruelty under the Indian laws, harassment must be commissioned with an intention to pressurize to meet an unlawful demand, such as get more dowry or money from the wife.

Section 498-A of the Indian Penal Code, introduced by the Criminal Law (Second Amendment) Act, 1983, aims to ensure that women are protected from cruelty. It provides that an offender under the Act shall be liable for an imprisonment up to 3 years and also charged with fine. However, there is no clear definition of harassment under the aforementioned section. Nonetheless, as per the ruling of the Andhra Pradesh High Court, section 498-A of IPC, applies to a man and woman who are living together like husband and wife.

3.16 Hindu Marriage Act, 1955: Irretrievable Breakdown of marriage

Irretrievable break down of marriage is not a ground recognized by law for grant of decree of divorce: *Sudhir Singhal v. Neeta Singhal.* But now after several recommendations of Law Commission of India, finally union Govt. is planning to bring an amendment in HMA,1955 to include it in section 13, as a ground of divorce. The expression “cruelty” as envisaged under S.13 clearly admits in its ambit and scope such acts which may even cause mental agony to aggrieved party. Cruelty may result where the complaining spouse establishes his being treated with cruelty whether physical, mental, social or otherwise but the acts complained of must be more serious than ordinary wear and tear of marriage falling in the category of conscious acts cruel in nature as that is the underlying requirement of the provision: *Neelu Kohli v. Naveen Kohli*.

Leveling of disgusting allegations of unchastity and indecent familiarity of wife with different persons outside wedlock and her having extra-marital relations with other persons, themselves will amount to cruelty: *Jai Dayal v. Shakunthal Devi.*

The fact that wife was pregnant from some other person at the time of marriage would amount to cruelty and mental agony to the husband: *Pawan Kumar v. Mukesh Kumari*.

A Hindu marriage solemnized under the Act can only be dissolved on any of the grounds specified under the Act: *Sarla Mudgal President, Kalyani v. Union of India*.

It is quite possible that a particular conduct may amount to “cruelty” in one case but the

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149 The Hindu Marriage Act,1955
150 A.I.R.2004 All.1
same conduct necessarily may not amount to “cruelty” due to change of various factors, in different set of circumstances. Therefore, it is essential for the petitioner, who claims relief, to prove that a particular/part of conduct or behaviour resulted in “cruelty” to him. No prior assumptions can be made in such matters: *Naval Kishore Somani v. Poonam Somani*\(^{154}\)

Even a single act of violence which is of grievous and inexcusable in nature satisfies the test of cruelty: *Mohanan v. Thankamani*\(^{155}\)

### 3.17 Domestic Violence against Women

The term ‘domestic violence’ includes violence by an intimate partner and by other family members, wherever this violence takes place and in whatever form. Domestic violence is a serious issue faced by several Indian women. Indian women are known to tolerate it in silence because they want to protect family honor and endure it for the sake of their children.

The Digest builds on the research carried out by the UNICEF Innocent Research Centre for an earlier Digest on *Children and Violence*. In recent years, there has been a greater understanding of the problem of domestic violence, its causes and consequences, and an international consensus has developed on the need to deal with the issue.\(^{156}\)

The Convention on the Elimination of All Forms of Discrimination against Women adopted by the United Nations General Assembly some 20 years ago, the decade-old Convention on the Rights of the Child, and the Platform for Action adopted at the Fourth International Conference on Women in Beijing in 1995, all reflect this consensus. But progress has been slow because attitudes are deeply entrenched and, to some extent, because effective strategies to address domestic violence are still being defined. As a result, women worldwide continue to suffer, with estimates varying from 20 to 50 per cent from country to country.\(^{157}\)

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\(^{156}\) Available at: www.unicef-icdc.org (Visited on July 2, 2011)

3.17.1 Forms of Domestic Violence

3.17.1.1 Physical Abuse

A growing body of research studies confirms the prevalence of physical violence in all parts of the globe, including the estimates of 20 to 50 per cent of women from country to country who have experienced domestic violence. Statistics are grim no matter where in the world one looks. Data from industrialized and developing countries as well as from transitional countries provide an overview of the global problem. The data in this table focus only on physical assault. There are few comparable statistics on psychological violence, sexual abuse, and murder of women at the hands of intimate partners and other family members. As already mentioned, physical violence is usually accompanied by psychological abuse, and in many cases by sexual assault.

3.17.1.2 Sexual abuse and rape in intimate relationships

Sexual abuse and rape by an intimate partner is not considered a crime in most countries, and women in many societies do not consider forced sex as rape if they are married to, or cohabiting with, the Perpetrator. The assumption is that once a woman enters into a contract of marriage, the husband has the right to unlimited sexual access to his wife. Surveys in many countries reveal that approximately 10 to 15 percent of women report being forced to have sex with their intimate partner\textsuperscript{158}. Some countries have begun to legislate against marital rape. These include Australia, Austria, Barbados, Canada, Cyprus, Denmark, the Dominican Republic, Ecuador, Finland, France, and the United States of America. Although provision of such laws represents considerable progress, it is often difficult for a woman to press charges because of the evidential rules concerning the crime.

3.17.1.3 Psychological and emotional abuse

Because psychological violence is harder to capture in quantitative studies, a full picture of the deeper and more insidious levels of violence defies quantification. Victim-survivors report that ongoing psychological violence – emotional torture and living under terror – is often more unbearable than the physical brutality, with mental stress leading to a high incidence of suicide and suicide attempts. A close correlation between domestic violence and suicide has been established based on studies in the United States, Fiji,

\textsuperscript{158} Heise (1994).
Papua New Guinea, Peru, India, Bangladesh and Sri Lanka. Suicide is 12 times as likely to have been attempted by a woman who has been abused than by one who has not. 9 In the United States, as many as 35 to 40 per cent of battered women attempt suicide. 10 In Sri Lanka, the number of suicides by girls and women, 15-24 years old is 55 times greater than the number of deaths due to pregnancy and childbirth. 159

3.17.1.4 Femicide

Femicide – murder of women by their batterers – is another phenomenon that should be regarded as a separate category when recording domestic violence. Studies carried out in various countries like Australia, Bangladesh, etc. have documented the incidence of femicide within the domestic sphere. 160

A comparative analysis of spousal homicide, based on 1991 data, concluded that Russian women are 2.5 times more likely to be murdered by their partners than American women.

3.17.1.5 Sexual abuse of children and adolescents

Considering the taboo in most countries that surrounds incest or the sexual abuse of children and adolescents within the family, this is one of the most invisible forms of violence. Because the crime is perpetrated most often by a father, stepfather, grandfather, brother, uncle, or another male relative in a position of trust, the rights of the child are usually sacrificed in order to protect the name of the family and that of the adult perpetrator. However, studies have shown that from 40 to 60 per cent of known sexual assaults within the family are committed against girls aged 15 years and younger, regardless of region or culture. 15 Of these, girls are far more likely to be victims of incest than boys. 161

3.17.1.6 Forced prostitution

Forced prostitution or other kinds of commercial exploitation by male partners or parents is another form of violence against women and children reported worldwide. Destitute families, unable to support their children, often hire out or sell their children, who may then be forced into prostitution. Very often the young girl is sent as a domestic worker, in which case she may be physically and sexually exploited by her employers. For example,

161 The Netherlands Department of Justice, 1997.
A similar practice exists in southern India where young women and girls (*devadasis*) are “donated” to serve a temple; and very often end up being prostituted.

### 3.18 Sex-selective abortions, female infanticide and differential access to food and medical care

In societies where a higher value is placed on sons, discrimination towards female children can take extreme forms such as sex-selective abortions and female infanticide. In India, a recent survey reported 10,000 cases of female infanticide annually. The figure does not take into account the number of abortions performed to prevent the birth of a child. An official survey in China revealed that, with its one-child policy, 12 per cent of all female embryos were aborted or otherwise unaccounted for. And in many countries the discrimination that leads to the neglect of girl children is the greatest cause of sickness and death among girls between the ages of two and five years. Girls in many developing countries receive less nourishment than boys, and they are more likely to suffer mental or physical disability or even die, as a result of poor nutrition. Less access to health care also exacerbates the much higher mortality rate among girls. Sex-selective abortion, female infanticide, and systematic differential access to food and medical care have led to the phenomenon known as the “missing millions” of women and girls. An estimated 4.2 to 12.1 million girls in India are simply missing from the population statistics.  

### 3.19 Causes of Domestic Violence in India

There is no one single factor to account for violence perpetrated against women. Increasingly, research has focused on the inter-relatedness of various factors that should improve our understanding of the problem within different cultural contexts. Several complex and interconnected institutionalized social and cultural factors have kept women particularly vulnerable to the violence directed at them, all of them manifestations of historically unequal power relations between men and women. Factors contributing to these unequal power relations include: socioeconomic forces, the family institution where power relations are enforced, fear of and control over female sexuality, belief in the inherent superiority of males, and legislation and cultural sanctions that have traditionally

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162 Aarti Dhar, “Birth of millions of girls prevented by selective abortion”, *The Hindu (Delhi)*, May 25, 2011
denied women and children an independent legal and social status. Lack of economic resources underpins women’s vulnerability to violence and their difficulty in extricating themselves.\textsuperscript{163}

3.19.1 Main Factors that Perpetuate Domestic Violence

- Cultural
  - Gender-specific socialization
  - Cultural definitions of appropriate sex roles
  - Expectations of roles within relationships
  - Belief in the inherent superiority of males
  - Values that give men proprietary rights over women and girls
  - Notion of the family as the private sphere and under male control
  - Customs of marriage (bride price/dowry)
  - Acceptability of violence as a means to resolve conflict

- Economic
  - Women’s economic dependence on men
  - Limited access to cash and credit
  - Discriminatory laws regarding inheritance, property rights, use of communal lands, and maintenance after divorce or widowhood.
  - Limited access to employment in formal and informal sectors
  - Limited access to education and training for women

- Political
  - Under-representation of women in power, politics, the media and in the legal and medical profession.
  - Domestic violence not taken seriously
  - Notions of family being private and beyond control of the state
  - Risk of challenge to status quo/religious laws
  - Limited organization of women as a political force
  - Limited participation of women in organized political system

\textsuperscript{163} http://www.indiatogether.org/manushi/issue137/laws.htm (Visited on March 23, 2013)