INTRODUCTION

I. Statement of the Problem

The problem of crime against women is not new. Women in Indian society have been victims of ill-treatment, humiliation, torture and exploitation for as long as written records of social organization and family life are available. These records are replete with incidents of abduction, rape, murder and torture of women. But, regretfully, female victims of violence have not been given much attention in the literature on social problems or in the literature on criminal violence. Nor has any attempt been made to explain why both the public and the academicians alike have ignored for so long the hard fact that women have continuously been ruthlessly exploited in our society.\(^1\)

The attitude of indifference and negligence can be attributed to factors like lack of awareness of seriousness of the problem, general acceptance of man's superiority over woman because of which violent acts against women were not viewed as violent or deviant. Women themselves tolerated all this in the name of their religious values and socio-cultural attitudes. As the cases of wife-battering, rapes, kidnappings and abductions, intra-familial murders, dowry-deaths, eve-teasing and molestation, etc., have been more frequently reported since the late 1960s and early 1970s, the issue of violence against women has been transformed from a private issue into a public problem.\(^2\)

Violence against women is a problem around the World. It affects women of all races, ethnic groups, classes and nationalities. It is a life-threatening problem for individual woman, and it is a serious problem for societies. In many countries, women fall victim to traditional practices that violate their human rights. Violence affects the lives of millions of women worldwide in all socio-economic and educational classes. It cuts across cultural and religious barriers, impeding the right of women to participate fully in society. Violence against women takes a dismaying variety of forms, from domestic abuse to rape, child marriages and female circumcision. All are violations of the most fundamental human rights.\(^3\)
Agencies of the United Nations have declared in many documents and forums that violence against women is an obstacle to the achievement of the objectives of equality, development and peace. As such, women’s vulnerability to violence violates and impairs enjoyment of their human rights and fundamental freedoms. It has been described by the Secretary-General of the UN as the most shameful human rights violation and perhaps the most pervasive.\(^4\)

In a statement to the Fourth World Conference on Women in Beijing in September 1995, the United Nations Secretary General, Boutros Boutros-Ghali, said that violence against women is a universal problem that must be universally condemned. However, he said that the problem continues to grow. The Secretary General noted that domestic violence alone is on the increase. Studies in 10 countries, he said, have found that between 17 percent to 38 percent of women have suffered physical assaults by a partner. In the Platform for Action, the core document of the Beijing Conference, Governments declared that “violence against women constitutes a violation of basic human rights and is an obstacle to the achievement of the objectives of equality, development and peace”.\(^5\)

Some women fall prey to violence before they are born, when expected parents abort their unborn daughters, hoping for sons instead. In other societies, girls are subjected to such traditional practices as circumcision, which leave them maimed and traumatized. In others, they are compelled to marry at an early age before they are physically, mentally or emotionally mature. Women are victims of incest, rape and domestic violence that often lead to trauma, physical handicap or death. Moreover, rape is still being used as a weapon of war, a strategy used to subjugate and terrify entire communities. Soldiers deliberately impregnate women of different ethnic groups and abandon them when it is too late to get an abortion. The Platform for Action adopted at the Fourth World Conference on Women declared that rape in armed conflict is a war crime and could under certain circumstances, be considered genocide.\(^6\)

Sociologists in the west have started taking interest in social problems like gender equality and female exploitation ever since they shifted their
perspective in order to consolidate their appreciation of social dynamics. Likewise, criminologists, particularly radical crime scientists, have started taking interest in problems such as criminal violence against women ever since they initiated reappraisal of the old assumptions underlying certain crucially socially-problematic behaviour. This shift has had profound consequences in research and theory building. It has become increasingly difficult, to sustain the notion that criminality, specifically male criminality is a behavioural quality monopolized by a narrow section of the lower class.  

However, in India, both sociologist and criminologist have yet to develop sustainable in this crucial problem of deviant behaviour against women. They have yet to realize their academic as well as social responsibility; in fact, they have conveniently avoided the evaluation of social and legal norms and the underline morality of society that criminalizes activities, born out of the contradiction in social values and sub-systems. Though it is true that the incidence of violence by men towards women is not identical in all groups and communities, and that moral and social beliefs and family arrangements differ from group to group, yet instead of examining these group differences and analyzing the sub cultural and socio ethical beliefs of these groups, we should concentrate on violence against women as perceived in general terms.  

There is no woman who has not suffered at one time or another, the harassment, humiliation, exploitation and violence that shadows her sex. A woman's life lies between pleasure at one and danger at the other end. In daily life, women are routinely defined by sex, and even if not all men are potential kidnappers, rapist, batterers, molesters and torturers of women, all women are potential victims.  

In India, women are way ahead of their counterparts elsewhere in the matter of social legislation but the implementation of laws granting rights to women has been so slow, lopsided and haphazard that socially, economically and politically women are kept far behind men. They are discriminated against at work and are denied their due in every field. At home, they are often worse off,
reduced to slavish drudges and maltreated in a hundred different ways. Constantly derided and mocked at, frequently bullied sometime assaulted and occasionally burnt to death, they remain victims in every role. Indian women, thus, have been described as the underdogs of society where, in theory the law of equality exists, and women are considered to be at par with their male counterparts, but in reality, men remain all powerful and thrive at the expense of women. In western countries, women’s problem is one of identity, job equality and sexual roles. In India, the question is simply one of stark survival.¹⁰

The constitution of India guarantees equality; freedom, opportunity and protection to women and various social legislations give them several exclusive rights. Yet, they possess an unequal status. Some thinkers relate it with social conditions in our society like illiteracy, poverty, social customs, ignorance and lack of awareness of rights. While others relate it with their proposed integrated model and further clarify and elaborate it by focusing on adjustment and attachment. This model also accounts for variations in male behaviour.¹¹

Research in the field of violence/ atrocities/ crimes against women has to be focused on inter-personal relations. The social context in which violence is committed or atrocities are inflicted on women and in which the victim recovers and adjusts has to be examined and assessed with a sociological perspective. The present empirical research presents not only the conceptual perspectives with which to understand the problem but also analyses the socio-cultural and interpersonal determinants of violence, shock, and recovery. Besides my long standing interest in criminology and gender issues motivated me to organize this work and to clarify my perspective on violence against women so that their basic human rights may be preserved.

II. Review of Literature

It would be appropriate at this juncture to make a review of the existing literature and available study material relating to the problem of crime against women especially rape.
Our social structure, customs, practices, traditions, values and superstitions treat women as inferior to men to establish male's superiority over female. Moreover, the adverse propaganda results in socio-economic inequalities and double standards of sex morality. Women are considered merely as a burden, a commodity, a sex object and at the best a child producing machine. Women are slaves to society and traditions. They are slaves to male domination. They are slaves to ignorance. They do not enjoy equality with men in the field of social, economic, political and cultural sectors of life. They are slaves to their husbands and their families.

The Constitution of India confers a catena of rights upon women. Our revered constitution-makers were well aware of the subordinate and backward position of women in our society. They, therefore, made conscious efforts for improving the entire situation in favour of women. The Indian Constitution which is the fundamental law of the land contains numbers of provisions for the benefit and protection of the women. The concept of equality and non-discrimination finds its due place in Indian constitution. Besides, it also enables the state to adopt measures of affirmative discrimination in favour of women. Apart from fundamental rights, some specific provisions to ensure the rights of women have also been incorporated in Directive Principles of State Policy. However, in spite of constitutional protection and a number of legislations, gender discrimination and injustices continue to occur. This is mainly because those who enforce the laws or interpret them do not always fully share the philosophy of gender justice concept.

With regard to the women, the Constitution contains many provisions which go a long way in securing gender justice. While incorporating these provisions, the framers of the Constitution were well conscious of the unequal treatment meted out to the fairer sex, from the time immemorial. The history of suppression of women in India is very long and the same has been responsible for including certain general as well as specific provisions for upliftment of the status of women. The rights guaranteed to the women are at par with the rights
of men and in some cases the women have been allowed to enjoy the benefit of certain special provisions.16

The preamble to the Constitution of India promises “to secure to all its citizens Justice-social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of ‘status and of opportunity’; and to promote among them all; Fraternity - assuring the dignity of the individual and the unity of the nation”. To realize these goals, the Constitution guarantees certain fundamental rights and freedoms, e.g. freedom of speech, protection of life and personal liberty, etc. which may be termed positive rights. Along with these certain negative rights, prohibiting discrimination or denial of equal protection of law, are also guaranteed. As equal citizens of India, women benefit from these rights equally with men. However, since the Constitution recognized the unequal social position of women, a special clause17 empowers the State to make special provisions for women and children even in violation of the obligation not to discriminate among citizens. This power has been used to enact special laws for the protection of women, women workers in factories, mines and plantations, and to provide maternity relief to women workers in the organized sector.

The Directive Principles of State Policy, embodying the major goals of a welfare State, also contain certain specific items affecting women. While the provision of Article 38 directs the State to bring about a transformation of socio-economic conditions for the common good, another Article directs movement towards the achievement of an egalitarian and just social order which would affect men and women equally. Article 39 holds out the promise of an equal right to “adequate means of livelihood”, “equal pay for equal work”, “protection of health and strength of workers – men, women and children – from abuse and entry into avocations unsuited to their age and strength”. Just and humane conditions of work and the provision of maternity relief are directed by Article 42.

The special attention given to the needs and problems of women as one of the “weaker sections” of Indian society, and the recognition of political equality
was undoubtedly a radical departure from the norms prevailing in traditional India. It has led many scholars to describe the Indian Constitution as a manifesto of a social revolution.

Despite so much of legal protection and imposition of liabilities on the part of government, gender Justice appears to be a myth in India. Women are still the sufferer of gender discrimination both in private as well as in public life. They suffer discrimination, deprivation and exploitation for being women. Because of gender discrimination they are the poorest, illiterate, and most miserable section of all castes as well as communities suffering a number of atrocities like sex selective abortions, female foeticide, child marriage, domestic violence, widow abuse, sati, dowry deaths, criminalities like rape, sexual harassment, physical and mental torture, etc. which are on an increase, despite the high place given to ‘Gender Justice’ in Indian Constitution. There is no dearth of laws in this regard, even then Indian women are discriminated socially, economically, politically, culturally and religiously.

There are several areas of concern for women in law and judicial administration. However, it is in criminal law and criminal justice administration that the problems are more acute and unbearable. These problems are partly embedded in substantive law and partly in procedural aspects, i.e., Cr.P.C, 1973 and the Indian Evidence Act, 1872 and the way they are administered. In cases of offences against women like sexual abuse, harassment, dowry deaths and the like, the victims in most cases do not get justice at all. With regard to women, basic right (to get justice) is not easily available because of a variety of factors on which they have little control.

Indian women are, by and large, handicapped in respect to all the pre-requisites essential for access to justice. The widespread illiteracy, the cultural barriers and subordination they suffer from, and unfriendly process of law have kept most women, who have problems, away from the law and courts.

Victimized women have various experiences with the national criminal justice systems. They can not always depend on the criminal justice system for
protection. In terms of combating violence against women, there often exist gaps and ambiguities in the laws criminalizing violence. Laws tend to be piecemeal, focusing on specific forms of violence rather than dealing comprehensively with all forms of violence to women. When the law is in place, there is often weak law enforcement. This leads to victim apathy and distrust and avoidance of the system. In certain situations such as the cruelty and dowry deaths, corruption among police and other enforcement officials works as a major obstacle.  

The questions are generally raised whether the increase in crime against women in general and rape incidents in particular is due to the failure on part of law or due to the fallacy of judiciary or police authorities? Time and again, various eminent jurists, psychiatrists, law enforcement officers and social activists have expressed their valuable connotations on the nightmarish subject, but the green eyed monster is still surviving.

It is heartening to note that the Indian Judiciary has been sensitive to the status and dignity of women, which may be observed by various rulings of Supreme Court and High Courts. As observed by Krishna Iyer, J. in Rafiq’s case 23 "The escalation of such crimes has reached proportions to a degree that exposes the pretensions of the nation’s spiritual leadership and celluloid censorship, puts to shame our ancient cultural heritage and humane claims and betrays vulgar masculine outrage on human rights of which woman’s personal dignity is a sacred component".

Off late, crime against women in general and rape in particular is on the increase, it is an irony that while we are celebrating women’s rights in all spheres, we show little or no concern for their honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim’s privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault- it is often destructive of the whole personality of the victim. A
murderer destroy the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts therefore, shoulder a great responsibility while trying an accused on charge of rape. They must deal with such cases with utmost sensitivity. The court should examine the broader possibilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of a prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars.24

The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. The court further went on to say that the court should not sit as a silent spectator while the victim of crime is being cross examined by the defense. It must effectively control the recording of evidence in the court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross examination, the court must also ensure that cross examination is not made a means of harassment or causing humiliation to the victim of crime.25

The legislature also, with intent to curb such offences, has through various amendments in criminal law and by incorporating different provisions from time to time tried to curb such menace. In the present scenario, a related concern was once raised by Mr. L.K. Advani, whether rape should be punished with death, which was put to rest by various observations of judges as well as the Malimath Committee which was set up for the reform of criminal justice system. According to Malimath Committee it is the certainty of conviction and not the quantum of punishment which would act as a deterrent. Malimath committee rejected death as punishment for rape.26

As held in Bachan Singh's case,27 death penalty must be imposed only in 'rarest of rare case'. In order to impose death penalty judges would demand
higher standard or degree of proof, which would only result in lower conviction rate, as it is found in most rape cases that the only evidence or witness available before the court is that of prosecutrix herself. Various police officials have expressed that it is the conviction rate which shall go high in rape cases. Death penalty, as often suggested by various politicians for the offence of rape, has been severely criticized by the police officials. Culprits no longer fear punishment since most rape case trials take years and years before they are finally decided and most often than not they end up in acquittal. Never ending trials have also led to a scenario where the complainant is forced to compromise with the accused outside the court secretly due to the social pressure, thereby frustrating the whole purpose of law. What is the use of increasing the punishment when the chance of conviction itself is a rarity? Therefore it is the surety of conviction in case where accused is guilty which would make a difference and not the increase in punishment. Rape accused should not go scot free.\textsuperscript{28}

Arijit Pasayat J. in \textit{Santosh Kumar} case\textsuperscript{29} observed that the sentencing system should be used as an instrument to curb the crime and death penalty being irreversible by nature, should only be imposed in rarest of rare case. In operating the sentencing system, law should adopt the corrective machinery or the deterrence on factual matrix. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct.

As expressed by various police officials, main reason for increase in rape cases is the problem caused in investigation due to the delay in filing of F.I.R. Delay in filing of F.I.R. may be due to various reasons. Since it is a sexual offence there might be an initial hesitation in the mind of the victim, to report the matter to the police as she might fear that the same might affect her and her family's reputation. The hesitation may also be that by disclosing it, it may cast a stigma on her for rest of her life. The problem faced by investigation authorities in cases of delay is that it becomes difficult for them to procure evidence against
the accused. Since it is an offence against body, medical evidence plays an important role. With the passing time, physical injuries get healed up, destroying evidence and resulting in acquittal.\textsuperscript{30}

Various social organisations have suggested time and again that a woman should avoid going out after eight O’clock in the night and should also not go alone at secluded or dark places. This suggestion sounds hypocritical. Why can’t woman move free from all tensions and fear of her being deprived of her dignity? Avoiding problem is not a solution to a problem. Since we have been trying to avoid the problem for many years now, the problem of rape incidents have blown out of proportion. Now even public places have become unsafe for women. Many cases have been reported where a woman has been picked up and raped in the public place, such as parking lots, market areas, University Complex, etc.

Around the world, women suffer intimate partner violence, marital rape, rape by other men known to them and by strangers, incest, foeticide, sexual harassment, trafficking for the purposes of forced labour or prostitution, dowry-related violence, honour killings, other forms of foeticide, acid attacks, and female genital mutilation. These acts are considered to be “gender-based” violence because they are committed almost exclusively by men against women, and are supported by gender inequalities at the societal level. Individual acts of violence are supported overtly or tacitly by cultural, social or religious norms and economic inequalities, which can serve to undermine legal prohibitions against such acts. The term “gender-based violence” underscores the links between women’s social and economic status and their vulnerability to male violence.\textsuperscript{31}

The United Nations, from the very day of its inception from 1945 till date, worked to secure women’s legal equality. The United Nations have chalked out a comprehensive programme by means of various conventions to uplift and develop the status of women in the field of education, politics including the position in social life with the formation of the Commission on Human Rights
and the Commission on the Status of Women in 1946 and the adoption of the Universal Declaration of Human Rights in 1948. The United Nations had also undertaken a massive research study to assess the position and status of women across the world. It was found that in many parts of the world the women have constantly been denied equality in law and also in practice. They are compelled to live under male dominated world and are subjected to variety of discriminations. As a result the United Nations has incorporated a series of treaties and Conventions to achieve the equal legal and political rights for women worldwide.³²

On 7th December, 1967, the General Assembly of the United Nations adopted the Declaration on Elimination of Discrimination Against Women, 1967. The Preamble of this Declaration states that despite the existence of various conventions protecting the right of women the discrimination against women continues. This Declaration is pledged to eradicate the discrimination against women in any form. It re-affirms the principle of equality of right of women in the worldwide scenario.³³

Article 10 of the Declaration on Elimination of Discrimination Against Women, 1967 states that all adequate measures shall be undertaken to ensure equality of married or unmarried women with men in the social and economic fields and specifically –

(i) the right without discrimination on grounds of marital status or any other grounds to receive vocational training to work, to free choice of profession and employment;
(ii) the right to equal pay/salary with men;
(iii) the right to equal treatment relating to work of similar nature;
(iv) the right to receive family allowance on equal terms with men.

With a view to prevent discrimination the status of women is to be regarded with equality in respect of married or unmarried in public employment and consequential family benefits. However, physical incapacity of a woman
shall not be treated as discrimination.\textsuperscript{34}

To achieve the provisions incorporated in Articles 1, 2 and 55 of the Charter of the United Nations, the Declaration on the Elimination of Discrimination Against Women, 1967 was adopted by the General Assembly of the United Nations which consequently paved the way to the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979. By means of the said convention it was reiterated that the State Parties to the International Covenants on Human Rights are under obligation to provide equal rights to men and women in civil, political, social, economic and also cultural field. The specialized agencies have to be established in order to achieve the fundamental objectives of the Convention and the efforts should be made to eliminate all the forms of discrimination between men and women, as discrimination of any kind is a sure obstacle to the target of equal participation.

In this context India, which is one of the signatories to this Protocol, has shown the Parliamentary endeavour in the field. As a result, in the year 2005, the Parliament has passed the enactment to be called the Protection of Women from the Domestic Violence Act. However, we are yet to experience its effect in reducing crime graph of domestic violence against women. Unfortunately, as the crime statistics to be relied, India is one of the leading country in such type of crime.

We are yet to achieve desired result in spite of various Conventions. The position of women is really deplorable in the developing countries and India is one of them. Unless we improve the fundamental educational system and bring public awareness in the field of women’s rights we cannot attain success in the relevant field. Thus, India is still the male dominated society, although some noticeable changes have taken place but we are yet to come at the level of women's position in the developed countries.

International conventions and norms have been used in India in cases where there is a lacuna in domestic legislation. In the case of \textit{Vellore Citiens Welfare Forum v. Union of India}\textsuperscript{35} it was held that any rule of customary international
law which is not contrary to municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by courts of law.

This move of incorporating international law as part of domestic law is useful especially with regard to women because it expands the amplitude of their rights and can ensure that concepts such as gender equality and protection and prevention of harassment are read into the fundamental rights in the Constitution.

In the Vishaka case,\textsuperscript{36} heavy reliance has been placed on various conventions and declarations that have been signed by the executive body of India with regard to the duty of the government to safeguard women's rights to protection from violence and discrimination. These include the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and the Beijing Platform For Action of the Fourth World Conference on Women in Beijing. Article 11\textsuperscript{37} and Article 24\textsuperscript{38} of CEDAW were referred to in the judgment. The guidelines, especially with reference to the definition of sexual harassment, have been borrowed from CEDAW. At the Fourth World Conference on Women in Beijing the Government of India made an official commitment to protect women's rights by undertaking various steps, and stated that it would formulate and implement a national policy on women.\textsuperscript{39} Government commitments under CEDAW must be fulfilled in terms of its own obligations under international law. The integration of international law can therefore be an important catalyst for strengthening the administration of justice in the area of crime against women.

Even though 62 years have elapsed since independence, yet the statistics reveal that crimes against women in India are amongst the highest in the world. Unfortunately, the conviction rate remains amongst the lowest. Ironically, even though punishments have become more stringent, the rate of conviction remains the lowest. As per the National Crime Records Bureau, a woman is raped in India every 26 minutes. These figures are true of only reported cases.
Low level of literacy, skills and income-earning capabilities led to the subjugation of women in society since the centuries. The biological function of child-bearing and rearing and performance of other domestic chores are considered as the less intelligent and repetitive tasks meant for women. These important tasks are regarded as thankless. Their contribution as ‘home makers’ was wholly overlooked. This resulted in various malpractices against women. Incidences of female infanticide, foeticide, demands for dowry, subjecting women to physical violence both within the home and in society, are just to cite a few instances. This has resulted in a continuously declining female ratio in the population during the last few decades.\(^{40}\)

Growth and balanced development of any society will be wholly illusory if equal opportunities are not made available to both men and women for their physical, moral, intellectual and cultural growth and well-being. Development will be a distant dream without equal participation of both men and women. No process of development can be considered complete, where women continue to remain subjugated and are deprived of equal opportunities for their growth.\(^{41}\)

Women’s rights and empowerment as a phenomenon is not something absolutely new. It has been there throughout history in almost all societies for a variety of reasons. What could be considered as new is its increasingly coming out in public, its having been shifted and reshaped from women’s welfare to their development and now women’s empowerment. What is rather recent is the identification of the girl children and women as a special group and the acknowledgement internationally of the importance of specific focus on the critical and key issues related with the empowerment of women. What is still more recent is the increasing realization and recognition that empowering women is absolutely essential, rather imperative, for familial, societal, national and international development and progress. It has also been realized and accepted in U.N. World Conference on Women and agreed upon the Plan For Action that genuine commitment and efforts have to be made by each country at
the government, non-government and individual levels to work towards establishing women’s empowerment nationally and internationally. 42

The National Human Rights Commission (NHRC) was set up in 1993 as a statutory body to which individuals and interested parties can make complaints on human rights violations in the country. The NHRC has explicitly stated that women’s rights will be a part of its concerns. As yet the NHRC has taken up no specific issue of violation, though it has attempted to address instances of state violence on women. It is yet to take a significant interest in women’s rights. 43

National Commission for women (NCW), a statutory body set up in 1992, safeguards the rights and interests of women. It continues to pursue its mandated role and activities, viz. safeguarding women’s rights through investigations into the individual complaints of atrocities, sexual harassment of women at workplace, conducting Parivarik/Mahila Lok Adalats, legal awareness programmes/camps, review of both women specific and women-related legislations, investigating into individual complaints of harassment, denial of rights etc. and taking suo moto remedial action to restore their legitimate rights. NCW, since its inception, investigated several complaints, wherein dowry deaths and dowry harassments accounted for the maximum number. Open Adalats (public hearing) is the most innovative and informal style adopted by the Commission to hear the individual grievances. Out of 41 legislations having direct bearing on women, the Commission reviewed and suggested remedial legislative measures in 32 Acts and forwarded the same to the government for necessary action, besides drafting a Bill on Sexual Harassment at the Work Places and a Bill on SAARC Regional Convention of Prevention and Combating Trafficking in Women and Children. 44

Amongst its success stories, the Commission requested the State Governments to reserve a certain percentage of resources for women even at the village level for programmes such as water supply, health services, nutrition, sanitation, etc. and reviewed the functioning of women’s cells in governmental organizations and issued fresh guidelines to reactivate the cells. It has also
organized many seminars/workshops on important emerging problems of women, viz. impact of globalization on women, prevention of atrocities against women, economic empowerment of tribal women, girl child abuse, child marriages, empowerment of Dalit women, women in prostitution, images of women in the electronic media, rehabilitation of devadasis, besides conducting legal awareness camps in states like Haryana, Punjab, Rajasthan, Bihar, Uttar Pradesh, etc. where the status of women is comparatively lower. The commission has also been very successfully documenting information on many important social problems like that of rape, devadasis, sexual harassment, etc. besides sponsoring studies on various subjects related to women.45

Empowerment has become a fashionable and buzz word. It essentially means decentralization of authority and power. It aims at getting participation of deprived sections of people in decision-making process. In other words, giving voice to voiceless. Activists want government to empower poor people including women by legislative measures and welfare programmes. Unless capacity is built in these sections in reality, the power is used by other rather than the section for which they are meant.

Women continue to remain invisible and marginalized in decision-making bodies, leading to lack of a feminist perspective in political decision-making. It was only with the setting up of the Committee on the Status of Women in India (CSWI) September, 1971 that the demand for greater representation of women in political institutions in India was taken up in a systematic way. Earlier the focus of the growing women’s movement had been on improving women’s socio-economic position. The CSWI Report “Towards Equality” (1974) reveals that political parties have “tended to see the women voters and citizens as appendages of the males...” It also refers to the ‘tokenism’ involved in having a few women in the legislature and executive, who are unable to act as spokespersons for women’s rights on account of their dependent and minority status. Recognizing the ‘tokenism’ inherent in associating women representatives through election, co-option or nomination in local bodies, the
Society is in a continuous process of evolution. It will take several decades for these imbalances to be rectified. Education of both men and women will lead to change in attitudes and perceptions. It is not easy to eradicate deep-rooted cultural values or alter traditions that perpetuate discrimination.

Changing people's attitude and mentality towards women will take a long time, at least a generation, many believe, and perhaps longer. Nevertheless, raising awareness of the issue of violence against women, and educating boys and men to view women as valuable partners in life, in the development of a society and in the attainment of peace are just as important as taking legal steps to protect women's human rights. It is also important in order to prevent violence that non-violent means be used to resolve conflict between all members of society. Breaking the cycle of abuse will require concerted collaboration and action between governmental and non-governmental actors, including educators, health-care authorities, legislators, the judiciary and the mass media.

In a large and complex country like India the dimensions and problems of violence against women do not yield easy solutions. Setting standards is a first step, and while it is an important and necessary one, it is not enough. There must be effective implementation at the national, regional and international levels. The rule of law and recourse to legal remedies for violation of rights and entitlements must be observed.

III. Scope of Study

The basic aim of this work is to describe the various aspects and causes of this menace and to throw light on the extent of the fast spreading phenomenon of crime against women. The malady is deep rooted and has its origins in several social, legal, economic and psychological factors. It is intended to identify the factors which are responsible for increasing the cases of crime against women in
general and rape in particular, in spite of a number of preventive measures undertaken by the government.

Keeping in view the prevailing situation, a comprehensive study of the subject is a need of the day, so that some suitable measures may be suggested for both social and legal spheres, which may be incorporated in the statutes for combating and eradicating the fast growing phenomenon of crime against women.

IV. Objectives of the Present Study

The objective of the present study is to find out socio-legal means and measures for the prevention and control of crime against women in general and rape incidents in particular. There is a need to supplement the punitive measures by appropriate preventive measures. The present study has been undertaken keeping in view the following broad objectives:

(i) To develop a theoretical perspective on the status/position of women in India, a factor responsible for their oppression.

(ii) To analyse the emerging patterns of aggression against women in India.

(iii) To enquire into the causes and factors leading to crime against women with special reference to rape.

(iv) To evaluate the existing legal measures and to assess the impact of different laws in India.

(v) To review the role of enforcement agencies dealing with the problem of crime against women.

(vi) To study the changes in the rate and incidences of crime against women in India especially rape cases in Delhi during 1998 to 2008, by way of an empirical comparative study between national and capital level.

(vii) To draw inferences and conclusions and to put forward suggestions in order to eradicate the menace of crime against women and more particularly rape.
V. Research Methodology

The problem of crime against women which has both theoretical and empirical significance in modern times has not been extensively studied by many sociologists and criminologists. Research in the field of violence/atrocities/crimes against women has to be focused on socio-psycho-legal aspects. The social context in which violence is committed or atrocities are inflicted on women and the psychological context in which the victim recovers and adjusts have to be examined and assessed within a socio-legal perspective. The present research presents not only the conceptual perspectives with which to understand the problem but also analyses the socio-cultural and interpersonal determinants of violence, shock, and recovery.

The present study attempts, at the very outset, to understand within the socio-legal perspective the factors or forces that give rise to crime against women and the socio-legal measures to prevent it. It seeks to examine the basis of differential practices of violence against women among various social groups of contemporary urban as well as rural setting. An attempt has also been made to see the changes in the rate of crime against women in India and especially rape cases in Delhi during 1998 to 2008 by way of an empirical comparative study between national and capital level.

VI. Material Used

In collection of textual material, reliance has been placed on Indian, English and American textbooks, journals and seminar papers pertaining to the incidents of crime against women and rape cases. Besides this, various articles from magazines, newspapers and newspaper’s reports have also been used. These reports contain valuable information for the present study.

The statutes and case-laws are two primary sources of legal material. In the analysis of legal material, statutory provisions relating to crime against women and rape have been examined extensively. Commentaries, Law Reports and Digests have also been scanned thoroughly.
The Reports of Law Commission of India have also been touched upon regarding the various aspects of the crime against women especially rape. The analysis of the case laws enunciated by the Supreme Court and High Courts is the backbone of any legal research. A close scrutiny of the above mentioned legal material has provided an opportunity to develop various hypotheses which have been verified from the data collected. The existing data from the newspaper’s reports have been used for the theoretical and conceptual understanding of the phenomenon of crime against women from the socio-legal perspective.

VII. Area of Study

The screaming headlines of newspapers and other media reports point to the alarming increase of rape and incidence of crime against women all over the country. The gigantic nature of the problem makes it impossible to conduct research on all India basis. Instead of macro study, a micro study of the problem has been planned. It is hoped that similar studies in other parts of India will bring out many ramifications of the problem. It was, therefore, thought necessary to limit the study to National Capital Region of Delhi (NCR) as the State of Delhi has emerged as a leading state in the menace of rape.

VIII. Data Collection

Data were obtained and collected from the published reports of the Government Agencies such as National Crime Records Bureau (NCRB), National Commission for Women (NCW), Delhi Commission for Women (DCW) and Bureau of Police Development and Research (BPRD). This provided insight into number of cases on all India basis. Published reports were all scanned to obtain figures from Delhi. The District Administration and the Police Department of Delhi were also approached to collect latest figures regarding reported cases of crime against women in general and rape in particular. This gave an opportunity to make necessary incorporations in the tabulation of data relating to Delhi.
IX. Statistical Analysis

No specific statistical method has been used in quantitative analysis of the data. However, in order to demonstrate the central tendency of the phenomenon of crime against women and rape an analysis has been made by working out distribution of figures, constructing diagrams and calculating simple measures by using percentage method. It is on the basis of simple percentages that the data has been analyzed, interpreted, inferences drawn and findings recorded.

X. Chapterisation

Introduction of this study is devoted to statement of problem and its extent in Indian society. In recent years not a day passes without a newspaper carrying report of crime against women and rape. Violence against women is not a myth, but a reality. It exists everywhere and India is no exception. Today, various forms of violence against women are prevalent in our society, though many cases go unreported due to cultural norms, apathy or ignorance. They may manifest themselves directly in sexual violence, murder, suicide, dowry death or bride burning, foeticide, wife-battering or verbal abuses etc. However, dowry related violence and bride-burning are unique violence against women in Indian society. It provides an insight into various aspects of the problem of crime against women and other sex related violence in socio-legal perspectives.

Chapter 1 provides an incite into theoretical basis of the problem of crime against women and other sex related violence in socio psychological perspectives by way of discussing the status of women in India. In this chapter position of women in the society since Vedic period to the modern period has been discussed thoroughly.

Chapter 2 of this study gives a detailed account of the various crimes committed against women in India as well as all over the world. This chapter presents a picture of all the patterns of aggressions used against women such as murder, eve-teasing sexual harassment, rape etc.
Chapter 3 provides an insight into various theories explaining the root cause of the problem of the crime against women and other sex related violence in the socio-psychological perspectives.

Chapter 4 is intended to make examination and evaluation of Indian legal system in context of the problem of crime against women. It deals with the recent amendments made in the Criminal Law (Indian Penal Code, Indian Evidence Act and the Code of Criminal Procedure) relating to the women. Various other enactments have also been discussed at length, so as to examine the role of Parliament to combat crime against women. An attempt has also been made to examine the efficacy of these laws to deal with such problems. Therefore, in present chapter, an attempt has been made to highlight legislative provisions which have direct bearing on the women in the field of administration of justice.

Chapter 5 focuses attention on the role of enforcement agencies. It examines the role of police in the process of investigation and prosecution. These areas are: recording of FIR, Initiation of investigation, recording of statements, recording of dying declaration, submission of final report/ charge sheet and inquiry into unnatural death etc. This chapter further deals with the role of the lower judiciary in the matter of granting bail and remand. Finally, the judicial norms set by the higher courts in respect of the problem of crime against women have also been examined including penal sanctions and sentencing in rape crimes.

Chapter 6 of the study is devoted to women’s own role in the prevention of crime against them. Women’s movements to combat crimes through campaign culture and various methods of campaign culture globally as well as in India have been discussed thoroughly in this chapter. Anti-rape movement and debates on reforms in rape law in India have got special reference.

Chapter 7 provides a detailed account of rights of women under international law as well as efforts made by UNO and its various agencies to
combat violence against women such as Convention on the Political Rights of Women, 1953; Declaration on Elimination of Discrimination Against Women, 1967; Convention on the Elimination of All Forms of Discrimination Against Women, 1979 etc. Recent endeavors to combat crime against women such as Millennium Development Goals have also been discussed.

**Chapter 8** discusses different issues concerning the journey from women’s rights to women’s empowerment in India. Further, this chapter deals with the role of National Commission for Women (NCW) and steps taken by the government in the advancement and empowerment of women that provides a hope for the emergence of a new era.

**Chapter 9** is devoted to the empirical study of the problem of rapidly increasing incidents of crime against women, particularly rape incidents, reported in India and in Delhi on the basis of data provided by National Crime Record Bureau (NCRB). Comparative analysis of the data at national and capital level through tables, charts, graphs, figures and diagrams etc. has been presented. The study covers the period from the year 1998 to 2008 i.e. last eleven years so as to scrutinize the official data relating to crime against women in India and Delhi. Especially the data relating to crime of rape has been analyzed and compared between India and Delhi to reach to an obvious conclusion that worst conditions prevail in the Capital of India so far as women’s safety is concerned. In addition to that we will also go through the last ten years judgments of the Supreme Court in rape cases reported in All India Reporter (AIR), Supreme Court Cases and other sources through tables and graphs comparing average acquittals and convictions by Supreme Court, High Courts and Trial Courts.

On the basis of the discussions and findings in the preceding chapters, various inferences and conclusions have been drawn which find place in the **conclusion and suggestions** of the present study. The study reveals several shortcomings of the system which have resulted in the increase of crimes against women. Lastly, suggestions have been offered for improvement and measures to be adopted at social and legal levels to control the problem so that women can get their due.
REFERENCES


2. *Ibid*

3. Human Rights Report, Published by the United Nations Department of Public Information DPI/1772/HR--February 1996

4. Available at www.un.org/womenwatch

5. *ibid*

6. *ibid*

7. *supra* note 1

8. *Ibid*

9. *Ibid*

10. *Ibid*

11. *Ibid*


14. Article 38 directs the state to secure a social order for the promotion of welfare of the people. In clause (1), there is mention of social justice which obviously includes gender justice and in clause (2), there is a direction to endeavour to eliminate inequalities in status, facilities and opportunities.


17. Constitution of India, Article 15(3).


19. *Ibid*

21. *Ibid*


25. *Ibid*

26. Shashank Goyal, "Rape: An Outrage By All Canons", *Lawyers Update*, 36-7 (June, 2007)


28. *Supra* note 26


30. *Supra* note 26


32. *Ibid*

33. *Supra* note 4

34. *Ibid*

35. AIR 1996 SC 2715.


37. Article 11 of CEDAW states: ‘1. State parties shall take appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) the right to work as an inalienable right
of all human beings...; (f) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction’.

38. CEDAW, Article 24 states: ‘States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present convention’.

39. These obligations of the government include setting up a Commission for Women’s Rights to act as public defender of women’s human rights and to monitor the implementation of the Platform for Action which shall provide a common forum to discuss and implement women’s rights at a national level.


41. Ibid


43. Promila Kapur, Empowering the Indian Women 9 (2001)

44. Ibid
