CHAPTER-III
VIOLENCE AND CRIME AGAINST WOMEN – CAUSES 
AND COMPULSIONS

Violence against women has the persistence attracted much attention in recent years due to a greater sensitivity to human suffering, and a keener sense of the demands of justice. But such violence is often seen as a backlash as the women's movement gains strength, and also indicates that matters are much more complicated. The proper understanding of judicial response to crime against women naturally involves an analysis of the concept of violence and the consequent crime against woman such as domestic violence, rape, prostitution, femicide, sexual abuse of the girl child, and the like perhaps it's most vicious and perverted manifestation.

A major break through in the study of violence against women, in the recent years, appears to lie in feminist movement which has been able to conceptualize violence in terms of an inevitable manifestation of the patriarchal system, a system resting on and vesting in the subordination and exploitation of women, a system that is an age-old, world-wide and is only beginning to be challenged.\(^1\) The violence links with coercion that is neither socially acceptable nor legitimate, it is making the link between coercive and destructive behaviour and its exercise as an assertion of power, often with the intention of punishment or assertion of power, often with the intention of punishment or revenge. Yet one

reason why violence against women is so difficult to eradicate is precisely because it is socially sanctioned to some degree. The changing of values resulting in the emancipation of some sections of women; what was once acceptable is no longer so. On the other hand, demonstrates how, since violence is rooted in patriarchy, new forms of violence have succeeded the old with changing technologies (amniocentesis followed by female foeticide) and greater opportunities for women (sexual harassment at the work-place). Even today the wife and mother roles are seen as women's primary roles. Thus patriarchy legitimizes women's oppression.2

3.1 The concept of violence

Violence against women ranges from simple suppression to abuse, aggression, exploitation and to severe oppression. We know it as female infanticide, the abortion of the female foetus, the neglect and undernourishment of the girl child, denial of education to girls, rape, pre-puberty marriage, wife beating, the harassment of a bride leading to her suicide or murder. Each of these is more awesome than comparable of even greater pain or fear experienced in other contexts. For instance childbirth can be extremely painful, but one never refers to the pain of childbirth as violence, no matter how severe it is. The fear of death, in a situation of terminal illness, can be extremely terrifying, but one does not refer to it as violence.

In an effort to try and identify the element that make violence different, it is better to look for definitions of violence. A recent UNESCO report on “Women

2 Shrin Kudchekar, supra note 1, at p.2.
and Violence" asserts "violence, in general, is a coercive mechanism to assert one's will over another, in order to prove or feel a sense of power. It can be perpetuated by those in power against the powerless, or by the powerless in retaliation against coercion by others, to deny their powerlessness. Any hierarchical system of social organization, where there are categories of dominant groups and subordinate groups, is inevitably accompanied by the victimization of the latter through various means – subtle pressure, through the power of ideology, through mechanisms of socialization that reward compliance and punish noncompliance and also through open force. Usually, the last form is resorted to when other methods fail. In fact, it is often not even necessary to actually use physical force to inflict severe injury, for the mere threat to do so is enough to subdue the subordinate person or group. Any individual or group facing the threat of coercion or being disciplined to act in a manner required by another individual or group, is subject to violence. This is not necessarily confined to physical violence creation of an atmosphere of terror, a situation of threat and reprisal.... A hierarchical social structure of violence has built into it".3

Impressive as it is, this statement on violence left us feeling more inadequate about our understanding of the concept and with more questions than we had had before we had looked at it. To start with, the very first line describing "violence as a coercive mechanism to assert one's will over another to prove a sense of power" left us wondering about where one would place punitive action

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considered socially legitimate. For instance, the State legitimately uses coercive
mechanisms to assert its power over deviants. Whether it does so to "prove" its
power or to "assert" the power legitimately given to it is a matter of semantics.
What matters is that this coercion and exercise of power are socially accepted as
a legitimate means of resolving a problematic situation. One of the core
elements of violence seems to be that the coercion involved is neither legitimate
nor socially acceptable. The statement does not make this point. On the
contrary, by saying that "any individual or group facing the threat of coercion or
being disciplined to act in a manner required by another individual or group is
subject to violence", it reduces all coercion, legitimate or otherwise, to violence.4

Violence is a concept that suffers from a surfeit of meanings. The
dictionary meaning of violence is the exercise of physical force so as to inflict
injury or damage to persons or property. Encyclopedia of social sciences defines
violence as the illegal employment of methods of physical coercion for personal
or group ends. Besides these definitions many social scientists have defined the
concept of violence.

According to Gelles violence may be defined as "An act of striking a
person with the intent of causing harm or injury but not actually causing it".5

A violent act, according to Strauss, "Is an act where there is the high
potential of causing injury".6

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4 Suma Chitinis in Shrin Kudchedkar, (eds): Violence Against Women and Women Against
6 Ibid.
Another interesting aspect of the concept of violence, as violation, transgression or socially unacceptable infliction of pain is that behaviour viewed as violence in one society may not be so viewed in another. This happens because what is unacceptable in one society may be acceptable in another. A related corollary is that practices that are not perceived as violence in a society at one point of time may be considered to be so in the same society as the values of that society change. Of this too, we have several examples. The fact that practices such as child marriage or the denial of the right of remarriage to widows, which were acceptable within our society only three or four generations ago, are now considered to be violent by all of us is by far the best example. As for the change in values that occurred with respect to traditional practices governing the lives of women in our society, such change is generally highly uneven. This unevenness can generate serious turmoil and unrest. As our own experience indicates, this turmoil has often been channelized into constructive movements for social reform and change. But there are instances in which it only results in severe social tensions. Finally, practices and behaviour that may not be considered violent by the same person as his/her values or awareness change. This can lead to deep personal conflict, anomie and even complete breakdown if the person experiencing the change is unable to contain or manage it efficiently.

3.2 A brief history of violence and crime against women

In the ancient days there was no organized criminal justice system. In the society then concept of crime was not as it is today, it was more or less...
equivalent to Sin and disobedience of religious injunctions contained in *Vedas, Upanishads, Smritis* and were other religious texts were considered as crimes and punishable. But, prevalence of the system of Wergeld (*Vaira-Deya*) suggests that the injured parties were used to take the law into their own hands. In later stage when monarchy was established, the king considered crime as disturbance of public peace and imposed penalty on the defaulters.

In entering into a discussion regarding evolution of different crimes against women, our oldest texts, *Vedas, Upanishads, Smritis* and *Puranas* provide a detailed account of crimes in the primitive society, such as *Niyoga Polygamy* and *Polyandry*, *Sati, Devadasi*, Dowry, Female Infanticide, Child Marriage, Rape etc., and these crimes were mostly committed on women due to the influence of religion, custom and traditions.

### 3.2.1 Levitate (*Niyoga*) system

In the Vedic period the system of Levitate (*Niyoga*) was in existence. Women were forced upon by the social and religious customs for *Niyoga* in order to obtain progeny. Though the system was a complete deviation from the physical chastity of women, in cases of impotency of husband, or long imprisonment or in cases of death, it was argued to be necessary and for continuance of inheritance of family. In the "Mahabharata" the Origin of the epic *Kuru* family was evidently, traced to such a custom and it was prevalent during the Vedic period. Even the old *Dharma Sutras* recognized the custom of *Niyoga* as permissible under certain circumstances, but later *Dharma Sutras* condemned the system.⁷

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3.2.2 Systems of polygamy and polyandry

With the passage of times, in ancient society polygamy was allowed in Anuloma system and husband was given liberty to marry more than one wife. But this system disturbed the joys of these families in domestic life and affected the position and prestige of wife in a family.

Polyandry, the counter part of polygamy was also in existence in Vedic society. In Kumaon it was customary among the Brahmans as well as among the Shudra and Rajputs that all the brothers marry only one woman. In the Mahabharat cases of polyandry was cited during the Vedic Age. The noble lady Drupadi was presented in the epic as submitting herself to the worst humiliation in the existing crime of polyandry and married to Panchapandavas in obedience to the orders of her mother-in-law.

3.2.3 Crime during Smriti and Puranic period

The old and authoritative "Manu Smriti" and later "Smritis" picturised women in a subordinate position to man. In this era, it was preached that even a vicious husband must be worshipped, but a bad wife may at any time be superseded (by another wife). It was clarified that a barren wife may be superseded in the eight year, she whose children (all) die, in the tenth, she who bears only daughters, in the eleventh year but she who is quarrelsome without delay. A wife who being superseded, in anger departs from (her husband's)

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9 Prabha Chandra Tipathy, supra note 7.
10 Manu Smriti (9.80)
11 Id, (9.81)
house, must either be instantly confined or cast off in the presence of the family. Further for committing faults, *Smriti* prescribed that she maybe beaten with a rope or split bamboo. A wife was having no right to free herself from the clutches of a vicious and even from a dangerous type of husband because neither by sale nor by repudiation is a wife released from the husband.

In this age religious injunction was strictly cast on widows to remain faithful to their husband's memory but there was no corresponding duty cast on the part of the husband's family. After having burnt a wife who dies before him, the husband was allowed to marry again and again by kindling the (sacrificial) fire. Later *Vishnu Smriti* (C. 100 A.D.) was even unkind towards widows and recommended that "widow can go the way of departed soul by dying after him" and Angiras also supported this proposal. The text of Harita maintained that the wife can purify her husband from the deadliest of sins if she burns herself with his remains. It is perhaps from this age the evil custom of Sati became more and more frequent and developed into pernicious popular custom and continued in society.

Manu in his religious prohibitions discouraged widow remarriage and the Levitite (*Niyoga*) system in society. He advocated marriage of girl even in the age of eight years. The more modern *Grihya Sutras* and the *Dharma Sutras*

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12 *Id.* (9.83)
13 *Id.* (8.299)
14 Prabha Chandra Tripathy, *supra* note 7, p. 44.
15 *Manu Smriti* (5.167-8).
16 *Manu Smriti* (6.65).
17 *Ibid,* (9.94)
also lay down the rule that the bride should be *Nagnika* (Naked), *i.e.*, one who has not yet had her monthly period or one whose breasts are not yet developed\(^\text{18}\) though it contradicted the old text which describes the consummation of marriage as the Chaturthi Karman or the ceremony of the fourth night immediately after the marriage.

### 3.2.4 Evil custom of Sati

In Hindu *Dharma Sastras* existence of widow remarriage, system of divorce in Narada *Smriti* and later on in *Artha Sastra* of Kautilya,\(^\text{19}\) widow's right on husband's property in *Brihaswati* and *Prajapati Smritis* and later on by Jurist Jimutabahana well proves that Sati system had got no support in *Hindu Dharma Sastras*. A system mentioned in *Rigveda* read along with one in *Atharva Veda* speaks that immediately after the death of husband, the wife, was lying by his side on the funeral ground as *Sahadharmini* but was again raised by the brother of the dead husband, who used to take her home to keep as wife.

The western commentator on *Veda*, Prof. Wilson clearly opined that there was no Sati custom in *Vedic Age*. He mentions in place of Agari the word Agani is misinterpreted in *Mandal Sukta* 18-7 of *Rigveda* and this view also got support of Max Muller in his writing selected Eassy (Vol. XI).

In Hindu epics *Mahabharata* and *Ramayana*, there are descriptions of sacrifice of Madri after the death of her husband Pandu and the chastity test of Sati. But in true interpretation of these meanings, Madri sacrificed herself as she

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\(^{18}\) Ibid.

\(^{19}\) Prabha Chandra Tripathy, *supra* note 7, p. 50.
thought herself responsible for her husband's death and the fire test of Sita was exhibited to prove her chastity.

Further, from the sacred Pancha Kanyakas of Hindu Religion namely Ahalya, Draupadi, Tara, Kunti and Mandodari, Tara after the death of Bali, Kunti after the death of Pandu and Mandodari after the death of Ravana have never followed the custom of Sati. Likewise after the death of Dasaratha also none of the queens followed the custom.

In the later part the custom seems to prevail in Samhita Age and the practice of burning widows along with the dead bodies of their husband were seen in existence among the Indo-Germanic races in Asia and Europe.20

In Dodorus's account there is reference that the wife of an Indian soldier burned herself with her husband, killed in a battle of Iran in 316 B.C. This system was also prevalent in Greece civilization and till recent times found in existence at Sogan, Pejan and among more tribes of Africa.21

The system of compulsory infidelity of a wife as a prisoner was openly recognized in Greece. The noblest and fairest women, whether married or not, of a captured town were normally forced to be the concubine of a Victor. The same reason, which might have operated in ancient India, necessitated to evolve the evil custom of Sati. Women of Rajput family to upkeep their self-respect, might have resorted to the system of Johar or Sati since ancient period.

On the other hand, the impact of the later Smritis like that of Vishnu (C-100 AD) and Angiras who recommended that widow can go the way of the departed soul by dying after him, gave a good religious platform to this bad custom. The text Harita also by maintaining that the wife can purify her husband from the sins, if she burns herself with his remains, further strengthened the faith on this evil custom.

The other reason of continuance of this custom was the impact of Moghul rule during which chastity of Hindu women was at stake. Moghul soldiers used to take away Hindu women forcibly. "Salabega" the devotee of Lord Jagannath was one of the glaring examples. He was born from a Brahmin and his father "Lalabega was a Muslim soldier, So it is also believed that to save chastity of women after death of their husbands, they preferred to became Sati to save their chastity.\(^2\) In reality, this custom of Sati and Johar was widespread in India during Moghual period.

In the historical analysis, it is seen that Greek writers have referred to the custom of Sati or immolation at the funeral pyre of dead husbands which was also referred to be in existence in ancient India. The Arab warrior Sulaiman mentioned how in India wives of Kings sometimes burnt themselves on the funeral pyre of their husbands.\(^3\)

\(^2\) Prabha Chandra Tripathy, supra note 7, p. 52.
3.2.5 Custom of Devadasi system

The noble religious custom of Devadasi is believed to have taken its birth from the religious faith of complete surrender to the almighty for salvation or Nirvana. Hindu Puran Srimad Bhagavat gita speaks regarding this complete surrender before the creator, like a Dasa or servant to be free from all Sins of world and in Ramayana also there is reference of Dasyabhakti of devotee Hanuman to Lord "Rama". The recent example of Dasi Mirabai's devotion to Lord Krishna is another glaring example of Dasyabhakti. Devadasi institution seems to have originated from the thought of Hindu Bhakti Marga and in the beginning started with some self-sacrificing dedicated female devotees who voluntarily entered into this Devadasi system. But in later stages ladies of Devadasi family due to their family traditions were allowed to enter into this institution and since then the custom evolved and continued in later years in our country.²⁴

Few scholars opined that previously kings were the patrons of music, dance, art and scholarship in their states. In ancient India music and dance was in a very rich state. To upkeep the arts of dancing and singing, Devadasi system was initiated by kings and they introduced it in temples with a view to keep the culture alive through this custom. The system of Devadasi Jagirs given by Kings to Devadasi families is one of the visible evidence that Kings were the appointers of Devadasis. From the famous puran Dadhiata Bhakti the recorded evidence is very clear that to sing GITA GOVINDA of devotee poet Jayadev, Devadasis were

²⁴ Prabha Chandra Tripathy, supra note 7, p. 53.
engaged in Sri. Jagannath Temple of Puri. There is a clear reference that during 500 to 1000 A.D, girls of cultured families were taught music and dance, but in course of time these arts also became practically monopolies of the hetaera class. Temple dancing girls who became common in this age were also recruited from the same class. A number of women could secure employment in the extensive royal harems of this period as betel-bearing, chowry-bearing, and flower bearers, etc., they usually belonged to lower classes and it was not always easy for them to lead a life of purity.

3.2.6 Evil custom of Dowry

Dowry was considered as a part of Kanyadaan which has existed in Hindu society since time immemorial. Hindu Puranas also confirm the existence of dowry, but it was in the form of gift to girl and as Vara Dakhsina to bride groom. The ancient literature “Veda” speaks about different types of marriages which were later on with some additions prescribed in Manu Smriti in eight forms. Among those marriages, the Varadakhsina system in Brahma and Prajapathy type of marriage and bride price system in Asura form of marriages were in existence since ancient age.25

There are some references in Vedas that in some cases bride-price was paid by a not very desirable son – in- law and similarly when girls had some physical defect, dowry seems to be given to the bridge- grooms.26 The custom of dowry in a changed form of crime and evil custom is of recent origin. In the

changed form, dowry is demanded and expected as a matter of right. In case of non-payment, pressure is applied on bride and his family members for payment or else the bride is tortured to extract the agreed dowry amount. In our society after payment of dowry also miseries of parents of bride do not end but begin, because the newly evolved customs continued to demand a perennial flow of gifts from the parents of the girls to those of the boy on all festival occasions. This evil custom in the mean time also has spread amongst the Muslim and Christian.

The advancement of science, education, arts, etc., in our country, made people more and more educated and cultured in society, but it further aggravated the miseries of Indian girls, because dowry rate also proportionately increased, with the advancement of the country, according to the status, qualification, employment etc. of the bride-groom. The dowry became the price of bride-groom in marriage market and the rate fluctuated according to the position of bride-groom and sometimes rose steeply according to the rising demands in society as per the rule of elasticity of demand. With a desire to get rich overnight by dowry money the greedy husbands and in – laws of bride-grooms family demanded more dowry to earn easy money the system was also preferred by others in the society.27

3.2.7 Female infanticide

The unfavourable atmosphere that developed against women from Smriti Age was further polluted by the new customs that cropped up during the Mughal period. The newly originated evil, dowry custom entirely changed the climate. The Birth of a female child got a very poor and hostile reception in families and even people of society, and to escape from future problems people started the practice of killing female child just after the birth.

During this period the birth of a female child in Rajput families was also considered as a curse and the brother of girls used to become their first enemy. Considering the position of Brother-in-law as below prestige, they used to instigate the killing of the still-born female child of the family. Though the cruel system was neither supported by Veda and Puranas nor by Koran or Bible still it prevailed in society and became widespread during the Mughal and then in British period. For these barbarous child killings pill of Tobacco, poison or bhang, etc., were used and in some cases, mother's breast was smeared with opium or juice of the poisonous Dhatura to kill the new born child.

3.2.8 Child marriage

In the middle age among the Brahmanical classes child marriage first prevailed in India, but this system was not in existence among the Nambudiri Brahmins of Kerala and among the Kashiris. Among the Kashtriya families Swayambar system do not allow child marriage, so also it was not common in case of common people. Only a small section of people followed this custom which came for some reason to be considered a special characteristic of Hindu
The system of child marriage evolved either due to religious injunctions of Smriti and Puranas or to save chastity of Hindu women from Muslim invaders. The historical analysis from records of European travelers confirms that the Hindus, as a protection against Muslim raiders who had their eye on virgins and would not usually carry off married women resorted to early marriage of their daughters before puberty. Emperor Akbar's orders prohibiting marriage of girls before 12 years and boys before 16 years did not stop the practice. The reason of continuance of this evil system under the cover of religion might be due to male dominated society and their desire for continuance of the system to get a young and chaste wife. In child marriage as the partners were not even of the matured mind they were unable to understand the meaning, and like toy marriage it was being celebrated according to whims and pleasure of the guardians. It is obvious that there was no love and affection among the husband and wife in those marriages and after attaining not with they were forced to live as such in the family. Without love and affection women used to come to new families, worked like slaves to satisfy their husbands and family members.

The most authoritative of the Manusmriti stipulated that a woman had to be under the protection and control of her father in childhood, her husband in youth and her sons in her widowhood old age, and furthermore that a woman does not deserve independence. This dictate was translated into practice with ease given the practices of universal and early marriage for women (always

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before puberty in the upper castes and usually so in other castes and also among other religions), immediate post-pubertal consummation of marriage, early and frequent pregnancies, and physical and verbal violence in the marital home.\textsuperscript{30}

The most extreme form of patriarchy as prevalent in India a hundred years ago was premised upon male predominance and female subordination and subservience, the woman's wife-mother role as her \textit{raison d'etre}, and her status as the legal, economic and sexual property of her husband.\textsuperscript{31} The male monopoly of domestic authority and decision making powers increased women's dependence on their husbands and grown-up sons through whom alone they could access power. At the same time, a son would remain within the family, carry on the family name, care for his parents in their old age, and perform the necessary rituals after their death. A daughter would marry and leave the parental home and was thus in effect "a stranger's wealth" to be nurtured and trained only to be given away at the great expense of a suitable dowry. The strong son-preference and undesirability on daughters stemmed from this situation, as did the mother's possessive love for her son/s as her future protector/s and provider/s.\textsuperscript{32} Thus, on the whole a low value was placed on a woman generally and a low premium was placed on her life.

\textsuperscript{30} Shrin Kudechekar, supra note 1, at p.20.
\textsuperscript{32} ibid.
The traditional institutionalization of violence in different ways is a combined result of this normative structure. In this traditional set-up, violence against women started almost at birth, its most extreme form being the culturally legitimized femicide through female infanticide. Although it was limited to parts of Rajasthan and Gujarat (and was forbidden by British legislation introduced in 1877 specifically in these areas), a girl was usually made to feel unwelcome and undesirable, as well as inferior to her brothers and to all men in general. Physical chastisement, sometimes in quite severe forms, was meted out to her by her mother who was solely entrusted with the task of socializing and disciplining her for her future wifely role – thus sometimes obstructing a warm mother-daughter relationship from developing. Given her burden some share in the household duties, a girl experienced only daughterhood and was deprived of a carefree childhood which was reserved for boys. Another deprivation was the denial of education to girls even among the traditionally literate upper castes which provided mandatory education for boys.

Although married well before the age of puberty, the girl was sent to her husband's house as soon as she came of age, and the marriage was consummated immediately, usually with appropriate ceremonies. The early start of married life, followed by early motherhood – sometimes in the early teens and always by the midteens – was physically traumatic, debilitating, and injurious.

upto the point of death. Failure to produce a son- could jeopardize her position in the marital family and could lead to her being deserted by her husband.

Another traumatic event was widowhood which could, in some parts of India (notably Bengal and Rajasthan), lead to the widow's immolation on the funeral pyre of her husband, until stopped by British legislation in 1829. In other regions of India and in the castes which did not practice widow immolation, a widow still suffered a civil death. Having outlived her main sexual and reproductive function in life, she was made to live on sufferance, to renounce all forms of enjoyment and wear drab clothes, was sometimes physically disfigured (for example, by shaving off her head, as in Maharashtra), considered inauspicious, and treated as a household drudge. Upper caste widows were forbidden by religion to remarry, even though they were widowed in childhood and even after the Widow Remarriage Act of 1856 made it legally valid, while widowers were encouraged to remarry at once.

Violence in the contemporary Indian society displays a wide spectrum of gender-related value system and practices, and of the related types of violence.

At one extreme is the large bulk of the population, mainly in rural areas where most Indians live and in some pockets of urban area, which has not changed much during the last hundred years and which still follows some of the customs outlined above. There are occasional female infanticides in small rural pockets in Tamil Nadu34 and Rajasthan, frequent early marriages (sometimes

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34 Pandey, Divya, "Female Infanticide: Salem" in Women is Oppression in the Public Gaze (ed.) Meera Kosambi.
below the minimum legal limit), early motherhood, inadequate information about and access to family planning method. Dowry demands and related harassment, as well as wife-battering are rampant. A few incidents of widow immolation have been reported recently from rural Rajasthan.

There are other forms of violence which are passive — most frequently inadequate nutrition and health care for girls and women. Many demographers claim that the unbalanced sex ratio in India, showing a female deficit which is in contradistinction with the universal demographic pattern of a female surplus, is due to higher mortality among women caused by health neglect.

At the other extreme is a very small progressive segment in urban upper class Westernized areas where the situation has changed radically and where women enjoy the benefits of education, careers, economic independence and occasionally of political power, although true gender equality still remain an elusive dream.

Somewhere in the middle is the urban, educated, relatively well-off and partly conventional section of society where the value system is less harshly patriarchal than before, but where gender discrimination and oppression still continue. The undesirability of daughters still remains deeply entrenched in the Indian psyche, and a new form of eliminating girl babies through female foeticide is becoming prevalent. This is a telling example of the ways in which “modern” scientific knowledge is employed for anti-woman ends. Female foeticide is accomplished through the diagnostic technique of amniocentesis — basically designed for detecting foetal abnormalities — to determine the sex of the foetus,
followed by the selective abortion of female fetuses. The practice continues
despite the recent legislation to prevent sex-determination and sex selection36.

Girls of this social segment enjoy a childhood relatively free from cares or
household duties, but are psychologically always being made aware that
marriage is their primary career and educational achievement or job-oriented
careers are of secondary importance. Marriage takes place after (usually soon
after) the age of 18, the minimum legal age at marriage for women, and still
tends to be universal.

Demands for dowry before and after marriage still continue; they have
either increased or are reported more widely. Harassment and torture of the
bride for extorting more money and consumer goods, resulting sometimes in
death (either through suicide or outright murder by burning camouflaged as an
accident while cooking), continue on a large scale in spite of relatively stringent
legal provisions.36 The culprits are rarely arrested and even more rarely
convicted.

Cross - cutting all these form of violence is the ever-present threat of
sexual violence, by far the most common type of violence against women, which
is quite similar in all complex societies and covers a wide range. The least
serious is "sexual harassment" which is know euphemistically as "Eve-teasing" in
India (and the offenders labeled indulgently as "roadside Romeos" and
glamorized in Hindi movies) though it remains a very threatening experience for

35 Agnes, Flavia, State Gender and the Rhetoric of Law Reform, (Bombay: Research Centre
for Women Studies, SNDT Women's University, 1995), p. 2.
36 Shrin Kudechekar, supra note 1, at p.24.
women. It is encountered in public places and on the streets, in the form of wolf whistles, touching, pushing, or pawing. In the workplace it may lead to sexual demands from superiors; in rural areas it is village headmen or other powerful men who exert such pressure. More serious is sexual assault which does not technically amount to rape and does not carry a severe penalty. Rape is legally defined in India as involving penetration of the vagina by the penis, thereby revealing the underlying patriarchal assumption that the offence consists in the violation not of the woman's body and personhood but of another man's sexual property. The incidence of gang rape is seemingly on the increase.

An increasingly common phenomenon in India today is the mass rape of women as a political weapon. If a woman is viewed primarily as her husband's property, an effective way of penalizing him is to snatch away or violate his property, that is, his wife. This kind of large-scale violation of women, with rape used as an instrument of revenge upon men, has been widely experienced in situations of ethnic violence.  

As mentioned at the outset, Indian society today shows a strange mixture of traditional and modern values. On the one hand we have the belief that women must get education, employment, better health care and more freedom of choice; we also accept their entry into the professions and position of power (including the prime minister ship, the highest office in the country). On the other hand, the basic view of women as inferior and subordinate remains unchanged. Again, the improvement in their status is usually, though not always, more

37 Shrin Kudechekar, supra note 1, at p.25.
apparent than real and modern technological knowledge and health facilities are sometimes used to the detriment of women.

Thus the problem of violence cannot be resolved without changing the basic view of women as inferior, servile, self-sacrificing and as essentially instruments of sexual gratification and reproduction. Such a pernicious image is unfortunately perpetuated through the mass media of entertainment. One powerful influence on public opinion is exerted through movies. In a country which is largely poor and illiterate, movies are inevitably an important source of entertainment; and they provide a skilful combination of the woman's traditional role model as the submissive, self-sacrificing, all-forgiving, nurturing wife-mother and the liberated girl who flaunts her bodily attractions to satisfy the common male fantasies. An additional obnoxious feature of popular movies is the depiction of rape as entertainment.

As the underlying socio-cultural values are intricately woven into all forms of violence perpetrated against women, in the absence of a fundamental change in the existing patriarchal values, such violence will continue both in its familiar forms and in newer guises.

3.3 Causes of violence and crime

Women have been subjected to socio-economic and cultural deprivations for such a long time that there is a general indifference and lack of awareness for crimes against them. Crimes like murder, dacoity, robbery etc., are universally accepted as crimes and are condemned, but crimes against women are justified and condoned even by the women themselves. Women are reared in an
atmosphere which slowly but positively helps in the development of a feeling of inferiority, they become used to the institutional legitimation of their low status and find nothing wrong in some of the crimes that are committed against them.\textsuperscript{38}

This attitude can be attributed to three factors: a lack of awareness of the seriousness of the problem, the general acceptance of men's superiority over women and the denial of violence by the women themselves due to their cultural conditioning and social attitudes. In the causation of these crimes a combination of factors work, mutually stimulating and supplementing each other, \textit{e.g.} hypersexuality of a person by itself may not lead him to crime, unless there is something more, viz., the presence of a submissive and lonely lady, who seems to be seducing him; then it would be like a match applied to gun powder.\textsuperscript{39}

Likewise an environment of an undesirable type would not, in itself be responsible for the causation of crime but the crime may be caused if there is a person, who, by some weakness of mind or lack of organization of personality traits is susceptible to such environment. It is a complex mixture of social, economic, cultural, biological and legal factors that accounts for the rising crimes against women. These crimes can be studied under three clusters: social, personal and psychological and legal.

\subsection*{3.3.1 Social causes}

The social causes of crimes against women include causes like inferior status of women due to social conditioning, patriarchal structure of society,


\textsuperscript{39} Ibid., at p.23.
unwholesome family atmosphere, lack of proper training, broken homes, overcrowding in one room, too much interference by the parents, too slack discipline, lack of love of parents imprisonment, drunkenness, immorality, cruelty, addiction to drugs, sickness and modern permissive atmosphere etc. At time excessive punishment may also embitter a child and lead him to anti-social activity.

a) Patriarchal structure of society and social conditioning

Indian Society is male dominated. Man occupies a superior status and the woman is merely his appendage. A woman is never an entity in her own right, she is "First the daughter, next the wife, and last the mother of a man". Men are consciously taught to be aggressive and tough while women are conditioned to be submissive and docile.⁴⁰

 Discrimination against girls starts the moment a child is born and continues to be maintained and reinforced through the process of differential socialization throughout her life. Sex role distinctions are evident in terms of occupation and education. It makes every woman convinced about her subordinate status. Similar is the conditioning in other spheres also. Dowry is demanded in marriage because it is considered to be the traditional right of the boy's family. It is sanctioned by custom so it should not be resisted. If the boy goes to prostitutes then the wife must be at fault in not being able to satisfy him. If he drinks too much then the wife must be troubling him. If he had become alcoholic even before marriage then also it was the duty of the wife to have

⁴⁰ Ibid.
weaned him away from drinks with her love and care. Thus women can always be proved to be at fault by a convoluted logic and crimes can be committed against them with impunity.

It is difficult to combat these crimes because they are not committed by criminals, but by the so-called law abiding persons. Moreover, they are mostly one-sided, i.e., without any provocation from the victims. They do not depend on any quality of the victim or lack of it, but other factors which are beyond her control, e.g. avarice is the reason for dowry deaths, it is immaterial how much dowry was given or how rich is the husband’s family. Suspicion is the main reason of cruelty against the wife though it may be totally baseless.

These crimes against women may have been declared deviant acts by the law of the land but society considers otherwise. Whenever a crime against a woman is committed the judgment is predetermined ‘the woman must be at fault’. The society will always have an excuse to blame the woman and absolve the man. The arguments put forward show social tolerance of crimes against women. Our senses have become so used to seeing one committing these crimes that we are not alarmed. Crimes like eve-teasing and sexual harassment of females are mostly pass off as trivial incidents, too insignificant even to be noticed.

A number of studies highlight that wife beating is more common in the lower classes. The use and approval of physical violence in the lower class can be explained in terms of “Culture of Poverty”. It has been argued that for lower class people physical violence is normal and socially transmitted behaviour
pattern. Lower class husbands use physical force against their wives in order to give vent to their frustrations. According to frustration aggression theory developed by Dollard and his associates, aggression should be directed against the source of frustration. However, members of the lower class cannot show their aggression against those who are highly placed, hence their aggression is displaced.\(^41\) On the other hand, several studies show that wife battering cuts across the class boundaries.\(^42\) Further, dowry related violence against women in the Indian society is a phenomenon of the middle class families. The low incidence of violence in the upper and middle class can be attributed to their resources with the help of which they are able to keep their violence as 'private' but it does not mean that women in the middle and upper classes are free from such abuse.

b) Employment status

Wife abuse has been found to be associated with employment status of the husband. Wife battering is more in families where the husband is unemployed. This may be due to number of factors, loss of income may increase the batterer's stress, lack of employment may be seen as a failure to live up to his status expectation that man should be the family provider or lack employment may be seen as a failure to live up to his status expectation that man should be the family provider or lack of a job may increase the time spent at home, increasing the opportunity for violence. It is further argued that men who


\(^{42}\) Ibid.
are employed part-time have even higher rates probably because they do not have full time jobs and ineligible for unemployment or other benefits.

Steinmetz on the other hand argues that occupational environment (rather than employment status *per se*) was an important stimulus to violence and survey data points that clerical, service workers of managers and professionals are at a highest risk however, indicates that husbands working in unskilled occupations are more likely to be abusive than those working in skilled occupations and men in professional occupations were the least abusive.\(^{43}\)

Wife abuse has also been associated with employment status of wives. It is argued that women who stay at home and do not work outside the home as paid worker are at greater risk of being abused. When women have few personal resources severity of violence against them also increases on the other hand reported that housewives had a lower risk of violence than employed women.\(^{44}\)

Unemployment and poverty is a major cause of crimes against women. Some men just cannot see women doing well while they themselves are unemployed or under-employed. They find such women to be the cause of their failures, they nature a grudge against them and commit crimes against them to take out their frustration. There are cases where husbands have not even left their wives to vent out their frustration, ignoring the fact that she is supporting the whole family by her earnings. Sitting at home without a job, they imagine the

\(^{43}\) *Ibid.* at p.34.

\(^{44}\) *Ibid.* at p. 35.
wife insulting them or looking down upon them because they are dependent upon her. They imagine her enjoying with other men at place of work. Unemployed men have been found beating their wives on very trivial domestic issues. When the husband tries all sources to earn more but fails and his wife keeps on making demands for money or the children insist on buying things the man becomes irritable.

The lifestyles of the haves are daily broadcast to the have-nots by the electronic media. It is apparent that diligence and hard work do not raise the living standards fast enough to meet the new aspirations. Many men resort to dowry demands to become rich overnight to fulfill these desires.

c) Power imbalance

Power imbalanced relationships are associated with spousal abuse, especially when the imbalance threatens the male's power. Wife beating occurs far more often in families where all the decisions are made either by the wife or the husband. It is believed that wife beating tends to decrease in frequency when decision making becomes more egalitarian however, it is asserted that equal power is seen as a lower position for the husband and as a higher position for the wife, as a consequence, husbands refuse to accept egalitarian way of living and violence continues.\textsuperscript{45}

d) Values

It is argued that violent wives as well as violent husbands express values in favour of violence, than do non-violent husbands and wives. Saunders

\textsuperscript{45} Ibid. at p.35.
suggests that if a man believes that use of violence is acceptable he may be less likely to internalize controls that would inhibit violence.

e) Traditional sex-role orientation

The male batterer is characterized as holding traditional sex stereotyped values. Researchers argue that violence tends to erupt when there is a clash of ideologies between traditional, conservative, patriarchal husbands and non-traditional liberated wives. Traditional male sex-role solicization places strong emphasis on men being in control in all aspect of their lives and batterers tend to over identify with these days functional and stereotypic masculine values and expectations. They hold high expectations of their own abilities to regulate their feelings and behaviours and are often described as rigid. Their patriarchal belief system grants them privilege and power to enforce their exceptions on their partners using violence, if necessary.46

f) Social learning

A large number of studies show that violence is a learned behaviour. Batterers have been abused as children or they have witnessed their fathers beating their mothers and as adults they also use violence against their wives as means to an end

g) Status inconsistency

Status inconsistency between the spouses is also considered to be risk factor in wife abuse. Wives having higher occupational status than husbands have high risks of being abused particularly life threatening violence because

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46 Id, at p. 36.
such a situation disturbs the traditional position of the husbands. Male dominance and female subordination is viewed as normal conditions but when some inconsistency develops in the status of either husband or wife, wife abuse results.\textsuperscript{47}

**h) Dependency**

Dependency is considered to be positively related with crime against women. Those women who do not have independent source of income and are psychologically more committed to their marital partners are at greater risk of being abused. Lack of any alternative support forces them to continue in the abusive relationship.

Wife assaulters have also been characterized as being extremely dependent on their partners. It is asserted that dependency creates emotional conflicts for the batterers as they are likely to be afraid of loosing real intimacy. They fear that they will be abandoned, as a consequence when such a situation comes they become violent, homicidal or even suicidal in an attempt to prevent their abandonment.\textsuperscript{48}

The above noted studies on the precipitating factors leading to violence against women highlight one or the other factor. There is hardly any study which takes into account holistic approach and account for different precipitating factors. Further, taking into account the social definitions, one set of precipitating


factors is likely to play pivotal role in one culture and another set of precipitating factors may be important in another culture. In short, the precipitating factors have to be seen in a cultural context.

i) Moral and psychological environment

Rapid changes during the last few decades due to social pressures of urbanization, compelling ethics of success, demonstration of money power and geographical mobility have put the traditional Indian values in the melting pot and resulted in a moral and psychological atmosphere which is highly crimogenic.

Sacramental marriages and close family ties are weakening. There has been a virtual disintegration of joint family which provided an emotional safety net and gave physical support to all its members. It had exercised informal control over its members and played an important role in teaching children basic values like truth, honesty, tolerance and concern for others, etc. The joint family absorbed the weak in its massive embrace. It was a world in itself where everyone had a place. Each member found an appreciative audience within the family though he may have been out of place in the world without. It offered warmth and intimacy to its members and provided them with an identity. There was no sense of alienation. Kinfolk and neighbors gave the individual continuous moral support throughout his life.

Nuclear families are characterized by working parents who are treading a tight rope between home and work. The domestic household is isolated. There is no mother-in-law or sister-in-law to manage the children when the wife goes out to work. The family looks inward upon itself, there is an intensification of
emotional stress between the husband and the wife and parents and children. The strain is more than most of us can bear. Thrown back almost entirely on its own resources the nuclear family becomes like an overloaded electrical circuit. The demands made upon it are too great and the fuses blow. The result is tension, indiscipline, conflict and frustration which show itself in the behavioral pattern of the members and results in increasing rate of crimes, specially against women.49

The rapid urbanization has put tremendous pressure on the child. Today's world is competitive and all parents emphasise academic performance. Very little attention is paid to the youngster's emotional and psychological needs. Parents are usually busy with their work, the children become lonely and bored, they turn aggressive. Instead of going into an empty home after the school a large number of children spend their time with their colleagues or watch the TV and the Video. The lack of proper extra-curricular activities, easy availability of films, full of aggression and romance, explosive programmes on the TV coupled with their peer group pressure, have steadily eroded the traditional values right from habits, life styles to aspirations. The kids are forced to prove themselves in these groups, many of them turn to mischief because they find 'going straight' is not challenging enough. A large number of kids are given all that they want and hence have lost all sense of values. Most of the parents are unable to comprehend the changed behaviour of their children and as the generation gap widens the children revolt they don't listen to parents.

Mirroring India’s cultural degeneration, Hindi feature film world has not lagged behind. Heroines who were skittish about even dropping their pallus are now willing to bare breasts and body for sex-hungry viewers. The new trend among Hindi Film makers in sexual violence, depiction of crime and brutality, fighting scenes, foul language and romance. Films become hit because of no-holds-barred rape and gang rape scenes in all the details. In such films a number of visuals and dialogues depict women in ignoble servility to men and such servility is shown as a praiseworthy quality. The other woman concept that Hindi films specialized in, has become real life. It is not only the visual media that reflect the new permissiveness, smut magazines rub covers with new magazines in bookstalls and even conservative feature magazines have begun carrying regular columns on sex and crime. There is no dearth of such cheap literature.

After books, films and video, permissiveness has entered into the high tech world of computers with the availability of specialist software, designed to stimulate one’s carnal instincts with the added attraction of user’s participation. One can draw his own images on the monitor and change the shapes; some have an audio track where one can tailor one’s own sounds also.

This new permissiveness has resulted in a large segment of males taking to crimes, specially crimes related to violence and sex against women, just as a past-time. Here is a rising trend of rape, eve-teasing and molestation against minors. These minors are children of poor and socially deprived parents who live in jhuggis or share small houses with each other. The prospective offenders know their unguarded victims too well. They are aware that the parents have
gone out to earn their livelihood and the child is incapable of offering much resistance. The confidence that the chances of getting caught are remote and getting convicted even remoter, makes the perpetrators indulge in crimes with impunity.

Often men folk go to foreign countries to earn money leaving the women alone to manage for themselves. Such women, most of who are not used to live independently find it very difficult to manage the family and look after the children. They want emotional and physical security. They often fall prey to unscrupulous friends are relatives and become sitting duck for crimes like rape molestation and other offences.

Most of the women are inexperienced and are deprived of those natural things which men learn in their development process, e.g. the vast experience which men gather by contact with other people, the wheeling and dealing, the knowledge of what to do and how to do. Women have to learn all these things the hard way, later in life. The standards of upbringing male and female offsprings are still discriminatory. Women are not allowed to go out unescorted or mix freely with men, so dealing with hem on equal footing is a far cry. Men deceive women by their disarming smiles and friendly behaviour, they misuse the confidence reposed in them.

j) Cultural lag and conflict of ideas

The social realities of life have changed drastically but the old thinking about the submissive and dependent role of women has not changed. Women's traditional role as housewife and mother is institutionalized. Indian girls are still
trained and socialized for these roles from childhood, the new role of a working woman creates confusion and ambivalence. The woman is in a dilemma, whether to adhere to her traditional sex norms or to the emergent norms of the occupational roles. The husband expects her to play the role of a traditional wife at home 'and merge her identity in her man as a river flowing in the ocean' but outside he expects her to act like a modern woman. Problems arise due to the conflicting demands put on her as a good housewife and an efficient employee.

Influence of audio-visual media, dissemination of knowledge and education have also contributed to bring about drastic changes. Women have started having an improved self-image. They are not satisfied with being confined to the house and playing only the traditional role of a dutiful wife, an ideal mother and a submissive daughter or daughter-in-law. They have come to realize their potentials and want self-expression. They want to prove themselves and show that they are equally capable and can compete with men on an equal footing. When men fail to prove their superiority at the work-place home is the place where their writ still runs unchallenged. Men do not hesitate to use brute force to keep the women pinned down to prove their superiority.

While most of the men want a working wife to supplement the family income they are not prepared to provide her with the concessions which are essential for her to work successfully or to prove herself at the work place. As more and more women join the work force there is more opportunity available to men to take out their frustration. They tease, harass and molest women. Men first befriend women, later on, the same men are seen deceiving them with
promises of marriage though they are already married. They usually hide this fact from her. Many a time husbands beat, till treat and torture their wives only on baseless suspicions of the wives having boy friends.

k) Urban anomie

A sense of urban anomie, i.e., an erosion of values consequent on fast paced changes and an influx of rural with very different value system, has a lot to do with crimes against women. The influence on non-urban minds of TV, specially the satellite TV, advertisements and cinema, along with the liberalization of the mid 80s and the middle class explosion has influenced the value system like never before. Most of the people have suppressed adolescence because of family controls. Outwardly teen-agers may wear western clothes and listen to pop music but they are not allowed to change at the core. This is what surfaces when people leave their native place and go out to earn money. Anonymity and desire to climb the social ladder in the new surroundings makes the males ignore the basic inhibitions and the cultural constraints. They no longer worry what the parents or the relatives will think, probably they are convinced that they will not even know about their misadventures. Morality and fidelity has different connotation in the changed context.

The city of Delhi is inhabited by people who have come from all parts of the country with different backgrounds. The heterogeneous character of the population has created a kind of environment in which the men feel encouraged to harass the women. In Delhi, although people have been living together as
neighbors for years, not many of them have been able to form an organic community having some shared cultural and social values.⁵⁰

There is log of anonymity specially in buses and public places. This, coupled with the heterogeneous character of the population has given rise to rising incidents of crimes. Fear of recognition and identification, which may otherwise act as a deterrent in familiar surroundings, is not there and many people indulge in activities which do not conform to acceptable norms of behaviour in the community.

In places like Bombay and Calcutta, a composite culture had developed almost a hundred years ago, no such thing has happened in Delhi. Yameen Hazarika, Deputy Commissioner Police of Crimes (Women) Cell says “The absence of the fear of being recognized by the community has encouraged crimes against women. A lot of people arrested for such crimes were found to be educated and hailed from good families”.⁵¹

1) Broken homes and other natural tragedies

Crimes beget crime. This is very true in case of crimes against women once a crime has been committed against a woman the vicious circle starts. If it is a crime by the husband or the in-laws the matrimonial home is broken. The children are the worst sufferers. Investigations by the researcher have revealed that most of the delinquent children (a minimum of 60%) come from broken homes. They are not normal. They either perpetrate the crimes that they have

⁵⁰ Shobha Saxena, supra note 38, at p. 32.
⁵¹ Ibid.
seen their father committing when they grow up, or become delinquents even earlier. "Squabbling parents are poor role models. Invariably teen-age criminals reflect the sorry situation at home".52 Most of the girls, who are lured on false promises of jobs or marriage, come from broken homes. These women lack self confidence, love and emotional security. Pimps are able to exploit it and lure them to brothels on the false hopes of a decent job and good living. There are instances of step-fathers committing rape on their daughters or parents and relations selling girls to brothels.53

Tragedies like war, earthquakes, floods, accidents, etc., which result in the disintegration of families gives an opportunity to the anti-social elements to cash on these miseries and indulge in the most dastardly crimes such as rapes, indecent assault, molestation, etc. They are very common during such troubled times and women suffer. Rapes during war by the security forces are also very common.54

3.3.2 Personal and psychological

In traditional families the husband was like a demigod. The wife's role was to look after him and his comforts. The whole world revolved round him. What would he like to wear? What would be like to have for dinner etc.,? If he was happy the whole household was happy, if he was sad there was gloom all around. "The woman was brought up to be submissive and never to question his authority. Manu, the supreme law-giver had ordained "whether a drunkard,

53 Ibid, p. 117.
54 Shobha Saxena, *supra* note 38, at p. 33.
vicious or devoid of virtues, a husband ought to be worshipped and obeyed\textsuperscript{55}. But now, with a working questioning woman the man finds his position sabotaged. The psychological satisfaction derived by the realization that he is the sole projector of his wife and children is gone. Exigencies of services often force the husband and the wife to live separately, this has decreased the emotional and physical dependence of the wife on her husband. She can live alone and fend for herself. The psychological repercussions of this realization are traumatic; man's basic instinct revolts. He does not like his wife to be too independent, there are feelings of jealousy and suspicion. He uses physical force to keep his wife subdued or creates hurdles in her work to prove his superiority. This is the major cause of tension at home and contributes in a big way towards the rising graph of cruelty and wife beating.

a) Personal traits of the victim and victimizer

The personal causes of crimes are those which lie dormant in the individual and which take effect only under the stimulus of the environment. Most of the sexual crimes like rape, indecent assault, abduction, outraging the modesty of women and bigamy are the result of marred mental or sexual outlook, lack of character or a strong personality, depravity and defective mental state. Genes play an important part in this development. Just as individuals have biological genes they have "social" or "acquired" genes also which are passed from one generation to another. These social genes include all the factors that go to make for education, technical knowledge, habits, customs, mannerisms,

\textsuperscript{55} Ibid, p. 33.
attitudes, beliefs, etc. and also for the physical effects of our social environment. The social genes are not an inherent part of the germ-plasm or one’s make up. They are all acquired yet heredity plays a very important role.\textsuperscript{56}

b) Personality disorders

Many researchers assume that identifiable psychopathology exists among the violent husband and they may often suffer from various personality disorders. They have been described as passive aggressive, obsessive compulsive, paranoid, sadistic and addiction prone or suffering from neurological or biochemical disorders.\textsuperscript{57} These researchers are of the opinion that these personality disorders directly involve abusive behaviour, that these personality disorders are severe and carry a negative prognosis. They imply a lack of emotional empathy for the feelings of others.

Similarly, abused women are described as aggressive, masculine, frigid and masochistic. Others find battered women as unassertive, shy and reserved. On the other hand, that it is a myth that violence is used only by mentally disturbed people. it is argued that fewer than 10 per cent of all instances of family violence are caused by mental illness or psychiatric disorders.\textsuperscript{58}

c) Low self esteem

Many researchers suggest that offender have low self esteem and they use violence to compensate the feelings of inadequacy and to prove masculinity. Man uses violence to compensate for his feelings of inadequacy because

\textsuperscript{56} Shobha Saxena, \textit{supra} note, at p. 34.
\textsuperscript{57} Madhurima, \textit{supra} note 32, at p.28.
\textsuperscript{58} \textit{Ibid}, at p. 28.
violence can be a vehicle for achieving a more positive attitude toward the self if the individual has experienced its being subtly condoned.\textsuperscript{59}

Some women have also been described as having low esteem and feeling of inadequacy and helplessness.

d) Lack of assertiveness

Wife batterers have been described as having difficulty in expressing verbally what they think, feel and want and as being non-assertive both in their families and in the outside world note that assaultive man appears to be poor listeners, and are unable to communicate directly and confuse assertiveness with aggression. Although many batterers may have good verbal skills in some areas, such as manipulation they tend not use these skills in expressing their feelings assertively.

e) Stress

The presence of stress, both internal and external has been found to be strongly related to the risk of wife abuse. These men have learned to respond to stress with attempts to control others with violence. Straus concludes that it is not stress per se that is the cause of marital violence, violence is but one of many responses to stress.\textsuperscript{60} He further argues that stress is a mediating variable that may occur in combination with other variables to make violence more likely.

\textsuperscript{59} Ibid, at p. 29.
\textsuperscript{60} Ibid, at p. 30.
f) Self blame

A number of studies have established that aggressors do not own the responsibility of their violent behaviour towards women. Abusive men rarely define their violence as deviant behaviour and attempt to rationalize their behaviour through minimization, confusion, and denial of attention, intoxication, loss of control and projection of blame on to women.

The males may induce guilt in their victims by blaming them for the abuse until they come to blame themselves. Blaming the victim is frequently used to justify the use of coercive power.

The victims also endorse the contention of their aggressors. They assume the responsibility and suffer from the guilt that they provoked their husbands to be violent. It is argued that self-blame is common in the battered women who invest more and more efforts in the relationship to make it work and blame themselves for the failure.

g) Pregnancy

Several researchers have suggested that women experience violence at unusually high rates during pregnancy. Two types of explanations are given for it: 1) Children are considered intruders by father and 2) pregnant wives are perceived as unwilling or unable to retaliate to violence.\(^{61}\)

h) Jealousy

Different studies have enumerated a number of additional factors responsible for wife beating. Sexual jealousy, a form of insecurity is a common

theme in the literature on violent marriages. The women have also endorsed that jealousy in one form or another was the main source of their husband’s violent behaviour.

i) Alcohol

Many researches have held use of alcohol on the part of husband to be an importance factor for wife abuse. Some research studies, however, find that although there is a strong relationship between alcohol and violence, physical violence in families actually declined when drunkenness occurred “almost always”. Alcohol as such is not an immediate antecedent of violence in a majority of families in which violence occurs. Cross-cultural studies of alcohol use and studies of marital violence suggest that alcohol itself does not lead to violence rather, men drink to have a socially acceptable excuse for violent behaviour.

Many crimes are committed under the influence of alcohol or drugs. The use of alcohol in course of time causes a great and irresistible craving for it. To retain the so-called satisfaction level the drug-addict has to go on increasing the quantities from time to time. The evil effects of alcohol result in heavy damage of the mind and the body and results in susceptibility to crimes. Excessive drinking results in starvation for the family members, assaults and quarrels between husband and wife, between father and child, desertion, beating, cruelty, etc. Habitual drunkards have even molested their own daughters in the state of inebriation and emotional excitement; when the normal restraints of a person disappear under the influence of drugs or drinks and their hostile and aggressive

62 Madhurima, supra note 32, at p.32.
fantasies, intimately intermingled with sexual lust, are converted into irresponsible action. Alcohol-related crimes illustrate a reckless disregard of time, space and circumstances.

j) Sex difference

There are many studies which suggest that females are less aggressive than males. Hence females are always victims of male aggression. Physiologists have attributed violence to genetics and hormones. If we examine the phenomenon of criminality by examining the castes and the tribes we will realize that criminality has in fact been transmitted from generation to generation as a heritage. There are certain tribes in which prostitution and sale and purchase of girls is taken as a very natural vocation which children learn from their parents. People belonging to castes like Gujjars, Kanjars, Sassi, Kanchi, etc., are recognized as communities, which subsist on the spoils of crime and find shelter and support in some prominent socio-cultural circles. Lombroso was the first social scientist to draw the attention to physical characteristics of a criminal in the causation of crimes. His thinking has been revived by Professor Hootan and Professor Lange.63 Physical ailments and organic and functional ailments also have their role in contributing to crimes against women. A sick wife may sometimes evoke sympathy but most of the times it is resented by the husband, who invariably becomes irritable and aggressive if the sickness continues for long. Hyper-sexualism may be a factor in the causation of sexual delinquency like rape, indecent assaults, cohabitation by deceit, bigamy, adultery, etc.

k) Religion

Lack of religion and substitution of religious beliefs and spirituality by "enlightened rationalism" can also be regarded as a factor responsible for the causation of crimes against women. Where nudling intellect has become the supreme arbiter of man's fate, where man has lost faith in the supreme being, where man believes only in material existence, where man is lured by the desire for power and money at any cost, where man has forgotten the inner being. There is no wonder that there will be social disorganization and maladjustment, leading to conflict of interests and crimes. Though religion has been one of the strongest force to uphold the institution of patriarchal family yet religion has offered its believers a code of ethics, a sense of being answerable to others and to the fate of others. Behind this seeming contradiction there is an exhortation to cull the humanist elements from all religions to carve out a more just and humanist society.

m) Lack of proper moral education

Lack of proper education is a potent cause of moral depravity. It is through the mounding of the propensities and potentialities that, the formation of good habits and a sound character can be developed. Both the school and the home should train the child for being a worthy citizen. Properly trained mind in the correct values of life can combat the situational urge which so often results in heinous crimes like rape and outraging the modesty of women.

64 Shobha Saxena, supra note, at. p. 37.
n) Marital maladjustment

Marital maladjustment is the cause of a large number of crimes against women in matrimonial homes as well as outside. This maladjustment may arise both because of the personality characteristics of the husband as well as that of the wife and the environment in which he marriage functions. The adjustment of the daughter-in-law, particularly the working and the enlightened one is very difficult. Mother-in-law who are non-working and are under complete dominance of their husbands are jealous and frustrated at the independence of heir daughter-in-law. Indian husbands give more importance to their mother briefing than to the wife’s protests. Temperamental maladjustment and incompatibility in ways of thinking, working, dressing up and behaving go a long way in making the husband and wife maladjusted. The husband reacts by neglecting the wife or picks up quarrels or trivial issues. Sometimes he even deserts the wife or starts going to prostitutes for satisfying his desires.

o) Demands and expectations

There are instances when the husband has resorted to wife beating when the wife refused to submit to the unreasonable desires of the boss or to act as a call girl in order to tide over the financial problems of the family. There are examples where brides who resisted rape by the perverted father-in-law, uncle-in-law, or brother-in-law were beaten and later deserted on some other ground.

3.3.3 Legal causes

The legal system is a reflection of the societal attitude towards women and it appears that it is non-responsive to her plight. The laws enacted for the
protection of women suffer from various shortcomings. The attitude of the courts in interpreting these laws is conservative, rigid and traditional. The enforcement of these laws is so poor that the offenders seem to have lost all fear of authority. They grow bolder because they are not caught so they think that they can indulge in crime with impunity.\textsuperscript{65}

There is no dearth of crimes, even very brutal ones against women which made to the front pages of the newspapers and stirred the conscience of the nation, but all the public outcry that followed did not help the long arm of law to dispense justice to the victims.

3.3.3.1 Inefficiency of the legal machinery

The police is the first agency for the administration of criminal justice and is considered to be the first line of defence against crimes. They are the entry point of the criminal justice system for the first offenders and re-entry for the failures of other sub-systems. They occupy a strategic position in respect to social defense, probably next only to the family and other groups in importance.\textsuperscript{66}

No society can exist or function without the support of an organised police force yet in every part of the world the police has failed to check completely the onward march of crime and delinquency.

In India police inefficiency, corruption, connivance with the guilty and the police-politician nexus has been the major cause of crimes against women. The job of the police is to uncover law violations and to bring to book those people

\textsuperscript{65} Ibid, at p. 38.
\textsuperscript{66} Ibid.
who threaten the social order. It is the police who in their capacity as 'the first-line enforce or take the important decision whether the specific situation required official action or not. If they choose not to identify an act as a crime or if they choose not to label a person as suspect or if they choose not to take official action even when a man has committed a crime. The members of the society lose faith, both in law and its enforcement agencies. This encourages the prospective offenders to indulge in crimes.

The police either evade their responsibility through indifference and callousness or they indulge in unlawful and corrupt practices. The record of the police in preventing crimes has been very poor. They indulge in crimes making police terrorism part of the system. The judicial-system is slow, it has given them ample time to wipe out all evidence of the crime. Cases are often withdrawn from the courts without even framing the charge against culprits.

The privileged position which is accorded to the offender in our criminal jurisprudence is a major compulsion forcing the woman to suffer in silence. The culprits grow bolder and indulge in crimes with impunity. Maxims like 'the guilt of the accused should be proved beyond all reasonable doubt' and 'innocent unless proved guilty' play havoc with the face of woman and leaves them virtually without legal remedy. As far as the law of evidence is concerned the same rules of evidence apply to both civil as well as criminal cases. This maxim is not available in codified form but our Courts have followed the English Common Law principle consistently.
In case of custodial rape and dowry death, there is a statutory presumption regarding the guilt of the accused but even in those cases the initial burden of proof is on the prosecution to prove the existence of facts which have to be proved before the presumption can be drawn. Here also the rule regarding benefit of doubt creates hurdles for the victim giving a definite advantage to the accused.  

In the contemporary context of the escalating crimes the judicial system has a public accountability, "the golden thread of proof beyond doubt should not be allowed to run through every hunch hesitancy and doubt. If undeserved acquittals become general they will tend to lead to a cynical disregard of law and the general public will lose faith in the judicial system'. Too frequent acquittals eventually erode the judicial protection of the victims.

A miscarriage of justice will arise from the acquittal of the guilty no less than from the conviction of the innocent. The jurisprudential enthusiasm for presumed innocence must be moderated by the need to make the criminal justice more potent and realistic.  

The protective laws are generally weak and full of loopholes, they cannot protect a woman in distress, e.g., the Immoral Traffic (Prevention) Act starts with the presumption that prostitution is inevitable and cannot be eliminated. It considers prostitutes to be the offenders but has nothing to say against the

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67 Ibid, at p. 41.
68 Ibid, at p. 42.
The legal process is long, tardy and expensive. A woman without resources cannot even dream of setting it in motion, getting justice is a far off cry.

The lawyers are the Shylocks of the legal profession. They are no profession-oriented, their attitude is highly commercial. They have no milk of human kindness for the victims of atrocities. They invariably exploit women in distress. The professional knowledge of most of the lawyers is not sound; they spoil the cases of their clients. It is not an easy task to combat these negative factors. Most women feel compelled to suffer in silence at their husband's home rather than move out of the house and be the laughing stock even of the outsiders and suffer indignities and insults.

The judiciary is not sympathetic to the woman's cause. The undue concern expressed for the offenders is not fair. Hearing is postponed and adjournments are given in matrimonial cases when the husband fails to appear at the court on frivolous excuses. The maintenance laws are so ineffective that rarely does man part with some money when he throws out his wife. The family property is almost never jointly held nor is any significant portion of it in the wife's name. She can claim nothing when she is thrown out.

A woman is forced to undergo sex determination test to know the gender of the child and compelled to get it aborted if it is girl. She is teased on the streets, harassed in buses and molested in public places but she keeps quiet because the offender can retaliate or blackmail her into silence. No one offers any help, they are either scared or they do not want to interfere in private affairs.
Thus compulsions which make women buckle down and suffer are too overbearing. The patriarchal system of the society and the inferior position accorded to her in the society creates its own constraints. There are no other supports structures outside the family to take care of the woman even if she is educated and economically independent.

In case where the offender is her own husband and she decides to leave him or to complain about his cruelty, atrocities or demands for dowry, the family members, friends and relations all discourage her. They all try to tell her, to try and patch up. They convince her that after marriage the husband’s house is the most respectable abode for her. A man's ego is too sensitive her he cannot bear humiliation and will never pardon her if she lodges a complaint with the police. He will turn her out of the house or harass her even more for taking the family matters out of the holy precincts of the home.

The stigma of being separated from the husband or the husband having deserted her is enough to make a woman’s life miserable and deprive her of whatever little sympathy that she may otherwise expect, Single parenting is not an easy task, it opens the flood gates of taunts and insinuations which makes the woman doubt her own capabilities. If the crime is like rape or eve-teasing then her moral character is the instant casualty. She is invariably accused of being a woman of easy virtues or is condemned as an arrogant lady and in every way responsible for her miserable plight.

It is a Herculean task to fight legal battles. The vast paraphernalia of legal aid is eyewash. The advocates who are on the panel of the Legal Aid Cell are
generally those who have failed in their job. There is no sincerity in their efforts. There are examples when the harassed woman has gone from one advocate to another only to be disappointed with his way of working. The time required to fight legal battles is too long. Frequent adjournments and change of dates on frivolous pretexts is highly demoralizing.

The attitude of the husbands is typical. They are mostly not at all repentant and would convincingly throw the whole blame on the woman. Whenever a husband agrees to take back the wife it is on his own terms and he ensures that the girl’s parents realize that he is agreeing to keep the wife as a favour. The woman is compelled to return to her husband’s home and endure the humiliation. There is no other place available to her. She has no leverage to compel her husband or the in-laws to behave reasonably. She has no power to enforce her wishes the way the husband has. If she is too great a nuisance she can be thrown out again or beaten so brutally that she herself decides to quit, still the woman is told to try harder and adjust, which is nothing but and euphemism for “tolerate”. Everyone urges the women to make the marriage work.

Most of such cases never cross the holy precincts of the home because basically women are more sentimental and traditional. They are socially, emotionally and physically so much attached to their husbands that it is very difficult for them to break those ties. It is a very hard decision to quit such a divine union and leave the husband who is the symbol of this relationship. The woman may not be at fault but the society and the judicial system make her feel that she is guilty. The hurdles to prove her innocence are too onerous, it is wiser
to suffer in silence because one is not any better off even after being declared innocent.

In fact, within any exploitative structure, people who have the power will not change to give up that power without a struggle and within the family, it is the men who enjoy this power, unless it is challenged not only by the victims but by other social institutions, the family structure cannot change to one where women enjoy greater power and can make it impossible for the man to oppress her.

Institutions like Crime (Women) Cell, Family Courts, Legal Aid Cell etc. have not been able to convince the males that it is most obnoxious and in human to ill-treat a woman. They have not been or a divorced woman. She is still looked down upon by the society. Society has failed to protect, rehabilitate, or to reassure these helpless women.

The compulsions are overbearing and awe inspiring. Ultimately, it is the inability of the woman to bargain for herself in the present social and legal set up. A man can get away after maltreating, beating and throwing out his wife because he knows that she is easily replaceable. There are enough desperate parents willing to marry their daughters to just about any man available but such is not the case with a woman. No one is there to help her; all are there to exploit her helplessness. She is treated as a bitch on heat; all the dogs of the street are there to lay their claim on her. The woman controls nothing in her marital family.... not even her own thinking. She is forced to accept that it is better to suffer in silence like so many other women than to revolt. Sometime or the other the cup of woe will be full and the justice will come on its own.
3.4 Theories as to violence against women

There are number of divergent theories advanced by various social scientists for explaining the phenomenon of crime. The researchers from various disciplines such as social work, sociology, biology, psychology, geography, criminology and law have explained crime in their own way.

What causes men to be violent, abusive and cruel towards women? Is one of the basic questions that are asked quite often by many. Some of the theoretical propositions on criminal violence generally encountered are – (i) whether violence is a normal response of provocation (ii) whether it involved the acting out of some psychopathology (iii) whether it acts as an instrument useful in obtaining some end or reward (iv) whether it is a response consistent with norms supporting its use and so forth. In explaining criminal violence, scientists have developed a number of theories. There are basically three classes of theories namely Psychiatric or psychopathological, Socio-psychological and Sociological or socio-cultural.

3.4.1 Psycho-pathological theory

The psycho-pathological theory focuses on the personality characteristics of offenders and victims as chief determinants of criminal violence. This model includes analysis that links mental illness, alcohol and other intra-individual phenomena to acts of violence. According to Silver, Kemp, Steele and others, the causes of violence against women arise from the offenders psychological
problems like uncontrolled emotions, depressive impulsiveness etc.\textsuperscript{69} Contrary to it, violence against women arises, according to Snell, Rosenwald, Robey and others, out of psychological problems of victims.\textsuperscript{70} However, there are no adequate data to support either of these points of view. If women who are battered, raped, kidnapped behave strangely, it is possibly the consequence and not the cause of being battered, raped or kidnapped.

3.4.2 Socio-psychological theories

The socio-psychological model assumes that criminal violence can best be understood by careful examination of external environmental factors that exercise impact on an individual offender. This model also examines the types of everyday interactions which are precursors of violence. There are four theories in this category that approach criminal violence from a socio-psychological level of analysis.

a) Frustration – aggression theory

The chief exponent of this theory is Dollard. The theory first stated in 1939 derived many of its postulates from Freudian theory. The theory explains the process by which aggression is directed to the source of frustration. According to Dollard,\textsuperscript{71} the individual feels frustrated if something interferes with his attempt to reach some goal and this frustration in turn leads to some of

\textsuperscript{69} Kempe, Silverman, Steele, Droegemueller and Silver, “The Battered Child Syndrome”, (1962) \textit{Journal of American Medical Association}.

\textsuperscript{70} Ram Ahuja, supra note 5, p. 167.

\textsuperscript{71} Ibid.
aggressions. Aggression, according to him is always directed towards the source of frustration.

Though aggressive drive is an innate drive, today it is recognized that actual display of aggression may be inhibited by internalizing norms. It is also recognized that frustrations can be cumulative and that they can remain active over a long period of time. More so, people perceive frustration in different ways. It is also recognized that responses to frustrations can be learned. In brief, aggressive actions are not automatic consequences of frustration and their occurrence depends upon numerous factors. Further, it is also said that the theory fails to explain some of the criminal violence. For instance, in case of dowry death, the girl is not the source of frustration. It is her parents who fail to fulfill the dowry demand are the source of frustration and yet the girl becomes the victim. Similarly in case of abduction and rape, the source of frustration is not the girl but her parents who refuse to marry their daughter to assailant.

b) Perversion Theory

The psychoanalysts explain violence on the bases of infantile instincts, inborn pathological drives, distorted feelings, childhood sadism or split ego. The main supporters of this theory are Gillespie\textsuperscript{72}, Klein\textsuperscript{73}, Menachem\textsuperscript{74}, Fenichel\textsuperscript{75},

\textsuperscript{72} W.H. Gillespie, "Notes in the analysis of Sexual Perversions" (1952) \textit{International Journal of Psychoanalysis}.
\textsuperscript{73} M. Klein, "International Journal of Psychoanalysis," (1946).
\textsuperscript{75} O. Fenichel, \textit{The Psychoanalytical Theory of Neuroses}, (New York: W.W. Norton, 1945).
Johnson and others the supporters of this theory maintain that perversion develops from instincts and hence the perverts are not constitutionally inferior. Killen, while analyzing split ego, as the cause of violence, suggests that a 'good' object is idealized by the pervert while he uses aggression towards a 'bad' object.

The theory suffers from certain drawbacks. It is said that theory is biased and lacks sociological orientation. While analyzing infantile instincts, inborn pathological drives, split ego, etc as causes of violence against women, the theory has ignored an important dimension of environment in the causation. Though aggression is a basic element in personality structure, its origin and direction in social relations, especially between the sexes, cannot be explained only as a result of personality pathology.

c) Self-attitude theory

This theory maintains that in a society, a culture or a group that values violence, persons of low self-esteem may seek to bolster their image in the eyes of others and also in their own by carrying out violent acts. It explains the propensity to violence of those for whom society makes it difficult to achieve an adequate level of self-esteem. Gelles and Strauss have advocated this theory. Accepting this theory would mean that all individuals who use violence against women suffer from low-esteem. Scientific data rejects this contention.

d) Motive attribution theory

This theory specifies the process used by actors to impute the motivations of others. It explains how the structure of relations is such that there is a high probability of malevolent intent being attributed to the actions of other individuals, thereby setting in motion an escalating cycle of resentment and aggression. This theory also stands rejected for not all crimes against women are victim precipitated. Violence is not always stimulated, aided and abetted by others. Many of the cases of violence are result of individual's own attitudes and social structures.

3.4.3 Socio-cultural theories

The sociological or socio-cultural model provides a macro level analysis of criminal violence. This model examines criminal violence in terms of socially structured inequality, social and cultural attitudes, norms regarding anti-socio behaviour and inter-personal relation. Theories under this model focus on interpersonal or inter-actional processes as the source of violence. A number of theories - structural theory, system tension theory, anomie theory, resource theory, patriarchy theory etc have come up which explain male violence.

Like any social behaviour, offensive behaviour too is the result of a number of factors. The history of criminology shows that social scientists in general, and sociologists in particular, adopted different approaches to the study of deviant behaviour.

Thus Crimes against women have existed invariably with time and place. Even periods of transformation have never been comfortable for them. Types
and trends of crimes, however, kept changing with change in mind-set and techniques. Unfortunately, women were not only accorded a lower status in the society but they also came to be used as objects of enjoyment and pleasure. Its culmination has been their regular exploitation and victimization. On the continuation of this practice, exploiters became culturally violent, having opted violence as a way of life. Besides, there also developed situational and institutional violence against women along with the new demands of the time where they have to step out of the confines of their homes to earn a living. Thus, crime against women is outcome of their long history of deprivation of socio-economic has remained a distant goal to be achieved. All too often, universal human rights are wrongly perceived as confined to civil and political rights and not extending to economic and social rights, which may be of more importance to women. We must realize that civil and political rights and economic and social rights are integral and complementary parts of one coherent system of global human rights. Violation against women is a manifestation of historical unequal power relations between women and men which have led to domination over and discrimination against women and is a social mechanism by which the 'subordinate' position of women is sought to be perpetuated. Women suffer even today, though they constitute more than half of the word population.