Women all over the world have not only been denied full justice, social, economic and political, but as 'a weaker sex' she has been used, abused, exploited and, discarded to lead immoral, street, vagrant and destitute life till her death. Although they constitute about half the total population and have contributed and sacrificed no less than men in the national freedom struggle and social development but they have been deprived of their due share in various areas of activities and have been subjected to inhuman and humiliating wrongs from birth to death for no sin. The general, though unfortunate impression has, ever since, been that women are sub-human specie, an object of contempt and ridicule, a commodity for barter, an expendable asset and a play thing for mere sexual enjoyment. The ancient Judo-Christian society regarded women as "a scorpion ever ready to sting" and pagan Arab saw in her the devil's whip. The Indian regarded women a social evil to be burnt at pyre of her husband.

However, nowadays, women have broken their ill-social shackles and are ready to face the contemporary challenges without any help and hesitation and, consequently, March 8 is formally observed as International women’s day which is celebrated in several countries, including India, as a mark of integrated

---

achievements towards the equality of rights, status and dignity of women, and their struggle for emancipation and full justice.\textsuperscript{5} It is not out of place to mention that in the recent past, there has been so persistent and frequent commission of crimes in different shape and size violating their basic rights and outraging their dignity and modesty, almost all over the world. India is no exception.

The fact that women are discriminated against is now widely acknowledged even though explanations and justifications vary depending on one's conceptions of equality and notion of an ideal society. At the same time starting with the Universal Declaration of Human Rights a series of international legal instruments have articulated a new charter of rights in which women's rights have been given special focus and importance. The Constitution of India not only guaranteed equality before law and equal protection of the laws as a fundamental right but also provided for affirmative action on the part of the State in favour of women. More importantly discrimination by the state on the basis of sex is prohibited while enabling the State to make special provisions in favour of women to overcome existing discrimination. A fundamental duty is cast on every citizen to renounce practices derogatory to the dignity of women.

The Constitution has authorized the legislatures to pass special protective laws in favour of women to undo the injustices done to them for ages. A large number of such laws have actually been passed under this head. These laws can misguide anyone. They create an illusion that women enjoy a privileged position in our society and have special rights at the cost of men, but illusion is

\textsuperscript{5} Mohammed Wasim Ali, supra note 1, at p. 26.
short-lived and vanished the moment one starts delving with facts. It is then that the real picture emerges and we realise that the whole bulk of this protective legislation is a very modest attempt to combat the deep rooted and all pervasive evil of horrendous crimes that are committed against women every day. These were committed in the past; they are being committed in the present also. There seems to be no let up in man’s brutality towards woman in spite of protective laws to defend women. Despite such international obligations, Constitutional mandates, and protective laws the fact remains that women still suffer a variety of disabilities related to their gender and they are forced to seek redress under law through Courts.

Naturally, the judges have a special role and responsibility in correcting the distortions in law enforcement and upholding the rights of women who approach the courts. Women generally approach the courts seeking relief in matrimonial disputes, in matter of maintenance and custody of children, in domestic violence and dowry harassment cases, in rape and sexual harassment as well as in discrimination in respect of employment. Parliament has enacted laws giving preferential rights to women in many of these situations. However, the enforcement of these laws depends first on the government departments entrusted with the task and when they fail to do so, with courts of law. The question for consideration is the treatment women receive in judicial proceedings.

---

even where the laws are favourable to them. There is enough evidence to suggest that there are many barriers in accessing justice.\(^8\)

The judiciary is not always sympathetic to the woman's cause. The undue concern expressed for the offenders is not fair.\(^9\) Nearly 83% of the women complained of the impersonal attitude of the judges 'the judge, whether a man or a woman, does not seem to be sympathetic to our plight', told most of the victims of rape, cruelty, prostitution, etc.\(^10\) It is also asserted that the judiciary has not changed the basic notions regarding women's worth.\(^11\)

Studies on women and law focuses on the enforcement (and lack thereof) of laws that were intended to benefit women and argues that law enforcers discriminate between women and men and unconsciously tend to reflect traditional and rigid attitudes towards women.\(^12\) Further, it is highlighted that the police, public prosecutors and the judges being part of patriarchal society, by and large biased against women and help to perpetuate and preserve the oppression of women.\(^13\) An attempt has been made in this study to analyse the plight of women, crime against women and judicial response to crime against women.

1.1 The Problem

Women in India have been denied full justice. The most significant barrier to women's right in India is a hostile state that is not actually interested in giving


\(^9\) Shobha Sxena, *supra* note 6, at p.42.

\(^10\) *Ibid*, p. 337.


\(^13\) *Ibid*. 
them any rights. It is often said that the lack of implementation of laws by the state law and order machinery and the gender bias pervasive in judiciary at all levels appears to be the factors responsible for denial of full justice.¹⁴

Several studies have been attempted to highlight the extent to which the police, public prosecutors and the judges who are products of patriarchal society are by and large biased against women and help to perpetuate and preserve the oppression of women.¹⁵ Radical feminists focus on women as a class that is dominated by another class namely men, look to the difference between women and men that contributed to inequality and assert for an anti-subordination approach leading to abolition of maleness of law.¹⁶

Several studies relating to crime against women brought in to focus the pathetic condition of judiciary and the ineffectiveness of the protective laws to curb the growing incidents of crime against women. The study of the general crime scene reveals the negligible rate of conviction which jolted the academicians, law makers and women’s organizations out of their escapist reveries. It has forced those concerned with the plight of women, to re examine the laws on crime against women and to find out the reasons for the failure of protective laws and judiciary. This necessarily involves us, to think more seriously about this socio-legal problem and to devise better ways of combating this evil.¹⁷

¹⁵ Rathan Kapoor, supra note 12, at p. 28.
¹⁷ Sobha Saxena, supra note 6, at p. 314.
The study concentrates on the primary problem of eliminating patriarchal biases and maleness in law. Any attempt to find out suitable solution to the problem necessarily involves, the study of socio-economic and political status of women and cultural factors affecting their life. Therefore, the study proceeds with the formulation of the following objectives.

1.2 Objectives of the Study

Any attempt to find out suitable solutions to the problem of denial of justice to women has to look into the status of women. Any study relating to the problem must proceed with the well defined objectives.

Firstly, the primary objective of the study is to find out the ways and means by which the existence of male bias in the normative and institutional structures of Indian legal system lead to denial of justice to women.

Secondly, to assert how the socio-cultural, economic and political status of women in India has contributed to the malady.

Thirdly, the study concentrates on the brief survey of socio-economic, political and biological factors that are responsible for ever increasing crime against women.

Fourthly, an attempt has been made to analyze various forms of crime against women and their evolution and the current manifestations.

Fifthly, to analyze socio-political attempts at combating crime against women, which is normally done through legal system.
Sixthly the study analyses the law relating to women meant for securing them the full justice. Accordingly, an analysis has been made into the various protective laws enacted from time to time.

Seventhly, the study also makes an attempt to evaluate constitutional basis of laws and Institutions that serves to protect the interest of women.

Eighthly, the study concentrates on evaluation of the role the legislators and institutions of the Government in eliminating the inadequacies in the laws that are responsible for denial of justice.

Ninthly, in our constitutional scheme the judiciary occupies the prime place, in dispensation of justice and there is need to examine the effectiveness of the judiciary in the direction of finding durable solutions to the problems of women.

Lastly, the studies try to analyse the extent to which the judiciary is successful in reducing the maleness in law, which appears to be at the root of the problem.

1.3 Methodology

The study has been primarily doctrinal and not empirical. But empirical data have been used to critically evaluate the concepts. It employs descriptive method of research with critical analysis and evaluation of judicial decisions, legislations and government policies. In the course of analysis original sources such as judicial decisions of the Supreme Court of India and other courts in India and aboard, statutes, reports of both national and State Commissions for women and other high powered commissions, are consulted, for the purpose evaluating
the role of judiciary. Pertinent secondary sources such as juristic writings, studies conducted by eminent authors, and research in the field of economics sociology and political science are referred and the research conducted by women's activists were consulted. The study is partly inter-disciplinary

1.4 Importance of the Study

It is believed that the study is going to be useful not only to academicians but also Administrators, Policy Makers, Police, Legislators, Lawyers, Social activists, Women's Organizations and others. This study is expected to be useful for judge also as it involves critical evaluation of major judicial decisions of the courts in India and aboard. The importance the studies lies in its purpose, namely to make an original contribution to the discipline of law.

1.5 Scheme of the Study and Its presentation

The study is planned in Ten Chapters including First Chapter on introduction. In this Chapter an attempt has been made to define the problem, to state the objective of the study with elucidation of importance of the study and methodology adopted.

1.5.1 Status of Women in India

An attempt to solve the problem of women must take in to consideration the position of women in India. Therefore, in the second chapter, 'Status of Women in India', the social perception about women since the down of civilization has been analysed briefly, and an attempt has been made to evaluate the attempts made by the political system and social order to ameliorate their
position, the success and failure of women in establishing their independent identity and their struggle to achieve full justice.

1.5.2 Violence and Crime against Women – Causes and compulsions

Women in Indian society have been the victims of ill treatment; humiliation, torture and exploitation since the time of written records of social organization and family are available. These records are replete with incidents of abduction, rape, murder, wife battering and the like. Though women had been ruthlessly exploited and this fact failed to attract the interests of academicians, jurists, social scientists and others. There existed an attitude of indifference or negligence. Probably this was due to lack of awareness of seriousness of the problem, general acceptance of man’s superiority over women and to their cultural conditioning and social attitude.18

The chapter ‘violence and crime against women causes and compulsions’, primarily focuses on an analysis of ever increasing crime against women. It also analyse the complex mixture of social, economic, cultural, biological and legal factors that account for the rising crimes against women.19 The chapter also analyse the various theories of violence against women which may assist in reducing such crimes in the society.

1.5.3. Law Relating Dowry Death and Dowry Related offences

Time and again the state and society recognising the need for special protection to women against crime and violence made special provisions

---

18 Sobha Saxena, supra note 6, at p.23.
19 Ibid.
providing for protective laws. Even before the commencement of the Constitution certain legal provisions were found in various statutes to deal with crime against women. The protective laws increased after commencement of the Constitution and the very Constitution itself provided for special provisions in favour of women. On the basis of those Constitutional provisions several legislative changes were introduced and also special laws were enacted to deal with crime against women.

Any attempt at mitigating the crime against women and rendering full justice to them must begin with an analysis of the law relating to crime against women. The fourth, fifth and sixth chapters are related to legal regulation of most important crimes that are committed against women. The fourth chapter, ‘Law Relating to Dowry Death and Dowry related offences’ makes an attempt to trace the law and policies dealing with the most heinous crime against women committed in India namely ‘bride burning’, dowry death and related offences. It primarily focuses on several provisions of law contained in the India Penal Code, the Indian Evidence Act and the Dowry Prohibition Act relating to punishment and prevention of offence of dowry death and other relating offences.

1.5.4 Law Governing Rape, Violence and Harassment of Women

The social movement triggered off by the judgment of the Supreme Court in Mathura case,⁰ led to a substantial change in the then existing rape law. This was the manifestation of legislative response to combat the increasing sexual offences against women. The legal provisions, both substantive and procedural,

were modified to avert denial of justice to any victim on the grounds of mere
technicalities. One of the major thrusts of these amendments was to render the
law more effective and help the Courts take sensitive approach in rape trials.
Therefore, an attempt is made in fifth chapter to analyse laws relating to rape,
kidnapping and abduction, sexual harassment and outraging the modesty of
women including domestic violence. The chapter focuses on the limitations of the
law to render full justice to victims of crime.

1.5.5 Law Regulating to Obscenity and Indecent Representation of Women

A plethora of case laws in India has differentiated between obscenity and
indecency. Consequently, all cases of indecency do not fall within the purview of
the substantive law of obscenity as laid down in the Indian Penal Code 1860. The
ever rising, indecent representation of women in mass media and the inadequacy
of the obscenity laws led to the enactment of the Indecent Representation of
Women (Prohibition) Act, 1986. Thus in chapter VI an attempt is made to analyse
the laws relating to obscenity and indecent representation of women. The
obscenity and indecency have affected the dignity of women but these offences
cannot be treated at par with others such as rape, abduction and the like.

1.5.6 Gender and Law

The legal response to crime and violence against women must
concentrate on the factors responsible for the persistence of discrimination
against women. The concept ‘gender and law’ is extremely unified in minimising
discrimination. Accordingly, the concept of gender justice covering the rights of
women against exploitation and victimization helped us in mitigating violence and
crime against women. The seventh chapter 'Gender and Law' which distinguishing sex and gender analyse the intellectual contributions of feminist scholars to modern jurisprudence. It is believed that these concepts will help in identifying the factors that are responsible for ever increasing crime agent woman in modern societies.

1.5.7 An Assessment of Judicial Attitude

It is often asserted by many victims of rape, cruelty, prostitution and other violence that judges men or women do not seen to be sympathetic them. The criminal justice system, which in many ways, is deeply patriarchal in its attitude. Insensitivity and gender bias prevalent among the judiciary result in injustice to the complainants of victims of violence. The chapter eight focuses on various judgments of the Supreme Court and High Courts in India, relating to crime against women. For the purpose of brevity, landmark cases subject to scrutiny by various women's activist have been highlighted. The chapter concentrate on issues of gender bias and judicial insensitivity towards women's case.

1.5.8 Evaluation of Judicial Role

The judiciary plays predominant role in mitigating the rigors the problem of crime against women by upholding their rights and through unbiased administration of justice. In recent years, the courts, particularly, the Supreme Court of India, by assuming activist role, is asking serious attempt to ameliorate the conditions of women in India.
The women's activists have asserted that the courts are not impartial nor judgements are given on merit. The Institutions of law do not inspire confidence of women for variety of reasons. Men, many of who look at the women's problem in the stereotyped manner in which society traditionally was conditioned to do, manage them predominantly. The judges have an obligation to avoid gender bias in their decision making process and in interpretation in the laws. They have to prevent biased behaviour from advocates, witnesses, Courts staff and others under their jurisdiction. In this chapter, 'Evaluation of the role of judiciary', an attempt has been made to evaluate the role of Judges in eliminating the male bias in judicial process.

1.5.10 Conclusions and Suggestions

The conflict of interests of men and women often contribute to the failure of any system including criminal justice system and in the last chapter 'Conclusion and Suggestions', an attempt has been made to draw certain inferences which may help in reforming laws and institutions to promote equal justice. Further certain suggestions have been made to eliminate male bias existing in judicial process with the belief that the study will go a long way in reforming criminal justice system in India.

21 Sobha Sxena, supra note 6, at p. 359.
22 Madhav Menon, supra note 8, at p 13.
23 Ibid., p. 14.