Introduction
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Women: Right to Life with Dignity

The world has reached the Millennium and the weaker sex "women" remain to be weaker. Women constituting the bulk of the mankind are being the focus of various International Bodies and Organisations. The very fact that they are the centres of discussion means that they are deprived of certain privileges, which men have achieved but women have not yet achieved. In almost all societies they have been facing deprivation of rights and discriminated.

The emphasis on women’s issues highlights the deprivation and discrimination to which they are subjected to in all societies. The matter does not end with this discrimination and deprivation. Many a female children are killed even before they acquire the age of mobility in the mother’s womb.

Right to dignity is recognised as one of the most recognised Human Right. But we, claiming to live in a civilised society have to bend down our head when we hear instances like the case of Usha Dhivan in Saharanpur.


who was made to walk naked in broad day light with no one coming to rescue and prevent such sort of atrocities or Rupan Deol Bajaj being molested by no less a person than Inspector General of Police, who is to protect the helpless women.

The gender injustice taking shape of crimes against women with an easy escape to the criminal is escalating the world over and India is in no way lagging behind the dispensers of justice like the judiciary occasionally waking up to render justice to women who are the victims of exploitation of rape, dowry death, cruelty in marriage and sexual harassment.

The Standards Set at International and National Level

The United Nations charter while providing for equal rights to both men and women emphasizes on maintaining the dignity and worth of human being as well as social progress and higher\(^3\) standards of living with greater freedom. The Universal declaration of Human Rights also along with liberal and political rights emphasizes the right to life with dignity.\(^4\) The First two articles of the Universal Declaration emphasize that all human beings, without distinction are born free and equal in dignity and

\(^{3}\)The Preamble of U.N.Charter reads...‘Whereas the People of the United Nations in the charter reaffirm their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men & women have determined to promote social progress & better standards of life in larger freedom’. Human Question and Answer (New York 1987), p.47.

right and set out the basic principles of equality and non-discrimination in the enjoyment of human rights and fundamental freedom. Article 1 reads ‘All human beings are born free and equal in dignity and rights....’ Article 2 states that every one is entitled to all the rights and freedoms set forth in the Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion national or social origin property, birth or other status...’. The Indian Constitution has specifically used the word dignity in the Preamble in ‘assuring the dignity of the individual and the unity and integrity of the Nation’ and provides for elaborate provisions in the Fundamental Rights as follows:

(a) Right to equality,
(b) Right to freedom,
(c) Right against Exploitation,
(d) Right to freedom of religion,
(e) Cultural and Educational Rights,
(f) Right to Constitutional Remedies and the Directive Principles of the State Policy which States ‘The State shall strive to promote the Welfare of the people by securing a social order permeated by social, economic and political justice, to minimise inequality in income, status, facilities and opportunities amongst individuals and groups’.

6Art.38(1) and (2) of Part IV of the Constitution of India.
The Constitution has authorized the legislatures to pass special laws in favour of women to set right the injustices done to them for ages. A large number of such laws have actually been passed under this head. From these laws it may be felt that women enjoy a privileged position in our society and have special right at the cost of men. But these are only short-lived illusions and vanish the moment one starts delving with facts. The statistics reveal that in India on an average a rape occurs every 54 minutes, molestation every 25 minutes, a kidnapping every 23 minutes, and every 10 minutes there is a dowry death.\footnote{The Times of India, April, 4th, 1995.}

**Missing Initiatives**

When it comes to implementing the laws they crumble like a pack of cards in the face of social realities. One such illustration is the Mathura Case. After sustained campaign against the antiquated rape laws following the Supreme Court verdicts it was amended. But the amendments made have been found to be futile.\footnote{A.Agnes Flavia, The Anti Rape Campaign: The Struggle and Setback C.Datar (Ed) Struggle Against Violence, Stree, Calcutta 1983.} Police records show that reported crimes have been rising every year. However these data have so far not attracted the
attention of scholars even for exploratory research, perhaps because of their seeming unreliability.\(^9\)

Where does the lapse occur? Who is responsible for the continuous poverty, unequal status and in-human treatment? Are the problems facing women is of such magnitude that the laws have failed to stand up to the mark? Or are there so many loopholes in these laws that the culprits can manage to remain unidentified?

This study attempts to have a holistic view of the problem facing the women, which are multifarious and also aims to assess the impact of the various laws. In the present scenario of the Criminal Justice System in the country there is no co-ordination between the various organs of the system. As the Police are the most visible symbol of State authority and are clothed with wide ranging powers to use even force to invoke in relation to the life and liberty of citizens; police functioning naturally becomes central to a discussion of human rights and Criminal Justice System.\(^10\) The investigation work that is entrusted to police is equipped with wide ranging powers. Their functioning becomes central to a discussion of the Criminal Justice System. It is unfortunate that the custodians of laws are indulging in violence and sexual offenses with impunity. The story of Mathura is often

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repeated in spite of the comprehensive Criminal Law Amendment Act in 1983 to put down the custodial rape with more force and with a firm hand.\textsuperscript{11} But the story continues. Banwarari Devi\textsuperscript{12} was another victim of the such atrocities and there are others who suffer silently and go unnoticed. When this researcher visited a legal aid camp a victim of rape had the difficulty of lodging the FIR because the culprit had to be the son of a seasoned politician. In spite of these amendments rape is still a daily occurrence. The judiciary occasionally pronounces a judgement, which shows that there is still a silver line in dark cloud. In a majority of cases the plea of the female victim is struck down on the basis of some flimsy, obscure reason treated with utmost seriousness.\textsuperscript{13} The Parliamentarians are thinking in the line of imposing death penalty to rape accused. Is this the remedy to bring down the crime, which is on the increase day by day?

A serious challenge to Indian society is the dowry problem. Social compulsions and absence of support structures outside the institution of marriage force many women to bear crimes relating to marriage with stoicism.\textsuperscript{14} In 1983 amendments in criminal law introduced Section 493-A

\textsuperscript{11}See, Chapter 4, note 40, infra.


IPC and added Section 113-A to the Evidence Act to arrest the increasing number of cases of brides burning and harassment of wives for bringing insufficient dowry. Along with this the Dowry Prohibition Act 1961 was also amended. As a result of these changes the concept of dowry has become wider and cruelty by the husband or the relatives of the husband has become a crime. Both mental and physical cruelty can be actionable by Criminal Law. The law with regard to prohibition of dowry is often subverted by taking dowry in the form of customary gift. Out of thirteen cases of dowry death surveyed by Ram Auja, Professor of Sociology in the University of Rajasthan, Jaipur, the parents of the victims were not satisfied with the police investigation at least in nine cases.15

The courts response is reflected in following words16 ‘The Indian women is brought up and trained in a traditional atmosphere and told that it is better to die in the husbands home than return to her parents’ home and bring disgrace to them. She finds it very difficult to violate this cardinal principle and prefers to die at her husbands place”. Though this may be the social reality the legal agents in power should be cautious in giving proper direction. The message conveyed by them is bound to percolate to the grass root level of the judiciary.

15Ahuja Ram, Crime Against Women, Rawat, New Delhi, p.49.
Eve teasing is not confined to just passing remarks. With more and more women taking to job and employment a greater number of them are exposed to sexual harassment. The sensational case of the IAS Officer Rupan Bajaj\textsuperscript{17} knocked the door of the Supreme Court. By an epoch making judgement the Supreme Court\textsuperscript{18} has laid down the guidelines and norms for effective enforcement of the basic human right to gender equality and guarantee against sexual harassment at work places. To what extent the guidelines are adhered to be is of great concern. This can be best illustrated in the case of Anjana Mishra who was gang raped by the former Orrisa advocate General and is yet to get justice because the conspiracy angle was not pursued to its logical end and the conspirators got away. She has landed up as activist and thinks that with her study in law she can be able to get justice to the other Anjana's who can also prove their point against all odds.\textsuperscript{19}

Women who are repeatedly exposed to these crimes sometimes land up as criminals. The most lucrative and easy crime is prostitution. The Immoral Traffic (Prevention) Act 1956 is an old vine in a new bottle. Prostitution itself is not recognised as an offence under any law in India. However to prevent sexual exploitation for commercial purpose, the act of procuring, inducing or taking away any woman with the intention to exploit

\textsuperscript{17}Rupal Deol Bajaj v. Kanwar Pal Singh Gill 1996, Cr.LJ 381 (SC).
\textsuperscript{18}The Hindu, March 14, 1997, p.17.
for the purpose of prostitution is recognised as offense under the Immoral Traffic (Prevention) Act 1956. The problem of sexual exploitation of the women for commercial purpose cannot be solved only by intervention of the Criminal Justice System. So some other alternative has to be worked out.

The Union Territory of Pondicherry is unique in the sense that the influence of the French Culture existed during the French rule. The Continental System of Criminal Justice of the French has got some positive aspects, which can be adopted to solve the ever-increasing problem of crimes relating to women.

The Objective and Scope of the Study

An appraisal of the existing law is considered inappropriate to access its performance in fulfilment of the objectives of securing protection to women. The objective of the present study is primarily to find out the loopholes in the existing law and in the social factors and to suggest and consider necessary changes in the existing law. Besides awareness in law is necessary to fight out the social evil. The role of religion in the accomplishment of the objectives is also to be considered. The increasing
use of communal, caste and ethnic identities in the pursuit of political gains is another factor behind the spreading of violence.\textsuperscript{20}

The Laws do not take note of the social realities. As an illustration the Dowry Prohibition Act declares giving and taking dowry as a crime. There may be a few marriages in India, which are performed without taking dowry. Since joint family is still in existence, the daughter-in-law does not relish domination of the mother-in-law. Is there any alternative for parents who want to refuse dowry to get their daughters married? Can a woman remain single if she chooses so?

The Society has not accepted the social values of the Indian woman in the proper perspective. If a woman is raped she is looked upon as a woman of lascivious character. The strength she takes to recover from the trauma and seek remedy in the court is lost by the time the case is dealt with. Either more shame is added to her name or the accused when acquitted feels that he is virtuous man with a clean slate.

Added to these if she takes up a job, in the place of employment there may be continuous threat. If she has to get relieved of all this she must go back to live like the woman of early days, which is anachronistic. The crimes against woman are bound to occur and will continue to occur. What best the Criminal Justice System can give is the main objective of this

study. There is no co-ordination in the various organs of the Criminal Justice System.

**Hypothesis**

Based on data collected and the study made by several scholars, the researcher wants to make an humble attempt to go deep into the subject and make a study with the existing frame work with a view to analyse the topic the researcher has framed the main hypothesis that the perpetration of crime on women must necessarily be reduced, if it is not possible to be irradiated. Several sub hypotheses are framed wherever necessary to study various causes for commission of crimes, various kinds of crimes, criminal instincts both in men and women, attitudinal changes and social changes.

As already stated in the object, attempts are made to find out procedural lacunas in the existing legislation in the implementation etc. and necessary sub hypotheses also are framed to study the above hypotheses.

The main hypothesis is to examine the working of the criminal Justice System with reference to the crimes relating to women. A humble attempt is made to study the status of women in the country. Due to the improper functioning of the Criminal Justice System no contribution is made from its side to improve the status of women. Only when the crime rate against women is decreased crime committed by men will also decrease. Women cannot confine themselves within the four walls of the
house as yester years. They are also being the breadwinners of the household these days. Criminal law is an effective mechanism to solve many of the problems either social or legal. A basic attempt is made to study the loopholes in the substantive law, while defining the offenses like rape and dowry. In the procedural law lack of co-ordination between the various organs like the police, the prosecutor, the defense counsel and the judge has made the system not to function in a smooth way. In the present study an attempt is made to point out the defects in the various organs of the Criminal Justice System. This system has to continue to exist as long as some other alternative is found out. Hence overhauling of the Criminal Justice System is required to suit the present need of the society.

Pondicherry is a small Union Territory where experiment can be tried at the grass root level. Having the impact of the Continental System of jurisprudence a sub hypotheses has been formulated to show that the finer aspects of the French System can be incorporated in the Indian Criminal Justice System. The nexus between the crimes committed by women and crimes committed against them exists. Another sub hypothesis is to see whether the crimes committed by women especially Prostitution can be decriminalised.
Methodology

The data for the study is collected both from the primary sources as well as secondary sources. Primary sources form the judicial pronouncements of the Honourable Supreme Court and various High Courts. The various law journals and books of the eminent jurists form secondary source. The reports of the Law Commission of India and the Wolfendem Committee report have been consulted for the study as the secondary source. A detailed bibliography is attached.

As the work aims to examine in depth the areas where there is scope of bringing about changes in existing legislation for curbing the crimes relating to women and to highlight the attitudes of various personnel involved in the working of the Criminal Justice System. The Union Territory of Pondicherry has been chosen as the locale for this study. A questionnaire was prepared and circulated among social workers, police officers, Public Prosecutors, Sociologists, Law teachers, sitting Judges and retired judges who had rendered services during the French rule in Pondicherry.

Plan of the Thesis

The present study comprises of 8 chapters. The first chapter deals with the status of Women in India. It scans through the position that existed in early days and the way it has degraded today. It brings out the paradox of
the life of an Indian woman. She lives in two types of reality one social and other legal.

Chapter two deals with Constitution protection relating to women. Legally speaking they can claim perfect equality with her counterpart but socially they are still the neglected and the oppressed. They can survive only by playing a second fiddle to men. As per the mandate of the Universal Declaration of Human Rights incorporated in the Constitution protective discrimination is given to them. The Directive Principles of State policy has imposed a duty on the state to stop any practice, which are derogatory to the status of women. The reality is that these Constitutional Guarantees have become mere eyewash. Violence against women is in the daily agenda 'where, when and from', whom is the factor that has to be decided.

Chapter three deals with crimes committed by women. The rising trend in the criminality, the causes for it is analysed. Special study is made with reference to prostitution. The loopholes present in the PITA are analysed and what alternative can be thought of is studied.

The fourth chapter deals with crimes against women. The chapter refers to the increasing rate of the major crimes like rape, dowry death, and sexual harassment in work place. Starting with the legal definition of rape the chapter tries to bring out the dilemma that women face in trying to get justice in a society whose stigmas prevent its most vulnerable members from speaking out, though of all the issues concerning women, rape has
provoked the most intense anger, frustration and an equal amount of disillusionment and despair. The amendments made in 1983 have attempted to make the definition of rape more clear. But still the crime rate has not come down.

Bride burning, dowry-death and cruelty in marriage are also focused in this chapter. These crimes went unnoticed for years but when it took a dismal proportion it was felt that special legislation to curb it was needed. The ineffective working of the Dowry Prohibition Act is studied in this chapter.

This chapter also unveils the crime of sexual harassment in a kaleidoscopic image. It deals with the way woman are harassed in the workplace and how it is difficult to face the day to day problems. Male fraternity trivializes the whole incident and no one comes forward to vouch for the victim.

Chapter five deals with the procedure followed in the Criminal court in dealing with crimes stated in the earlier chapters. The performance of enforcement agencies has been dismal. For one reason or another such cases are dropped at the trial stage itself. Most of the accused is acquitted because of the callous attitude of the police force and the faulty investigations. The judicial systems have not been able to devise a method to bring the culprit to the forefront because of the week investigation and improper legislation.
It is very difficult to get some of these cases registered with the police and the apathy of the enforcement agencies leaves the victim without any remedy. The procedural complexities and the requirement of proof beyond reasonable doubts are highly frustrating for the sufferer. The courts are also not favourable or inclined to believe the allegation made by the women.

Chapter six elaborates the evidence law and the evidentiary value of the deposition made by the accused, the witnesses and the victims to the crimes. The witnesses are not willing to co-operate with the police and the prosecution for several compelling reasons. They turn hostile in the Trial Courts and retract their earlier statements. This chapter shows the ambivalent use of the dying declaration made, by the courts and how an empathetic judge can make use of the circumstantial evidences to punish the guilty.

Analysis of the empirical data collected from Pondicherry is in chapter seven. The observations depict how the law has not been able to fulfil the hope and aspirations of the victim. Opinions and suggestions are gathered from the experienced persons working in the field.

The last chapter deals with the findings, suggestions and conclusions.