

OFFENCES AGAINST WOMEN: LEGAL AND SOCIOLOGICAL PERSPECTIVE: A THREAT TO GENDER JUSTICE

Krishna Sur*

ABSTRACT

“The nation can't wait for another rape for it to take some steps. If women are not safe in the workplace, we are denying them equality”

- DY Chandrachud

Gradually rising offences against women in different countries are a matter of growing concern. In today's era, women are physically and mentally abused in their workplaces. This matter has turned into a silent epidemic in professional settings worldwide. In The Constitution of India, both men and women are equal. Discrimination on the grounds only of sex is strictly prohibited in The Indian Constitution. Because of some orthodox notions of patriarchy, women are facing violence and are restrained from obtaining equal opportunities with men. If women still face violence devastatingly, it will not only be a threat to achieving gender justice but also our future generation will be under hazardous conditions. The Bharatiya Nyaya Sanhita, 2023 and The Bharatiya Nagarik Suraksha Sanhita, 2023 provide certain provisions relating to crimes against women. This article focuses on legal and sociological perspectives on offences against women and how these crimes can be prevented to achieve gender justice and sustain the world for future generations.

Keywords: Offences Against Women, Gender Inequality, Gender Justice, The Bharatiya Nyaya Sanhita, 2023, The Bharatiya Nagarik Suraksha Sanhita, 2023.

INTRODUCTION

“It's time for India's courts to gaze inward and throw out deeply embedded patriarchal notions that stop judgements from being fair to women.”

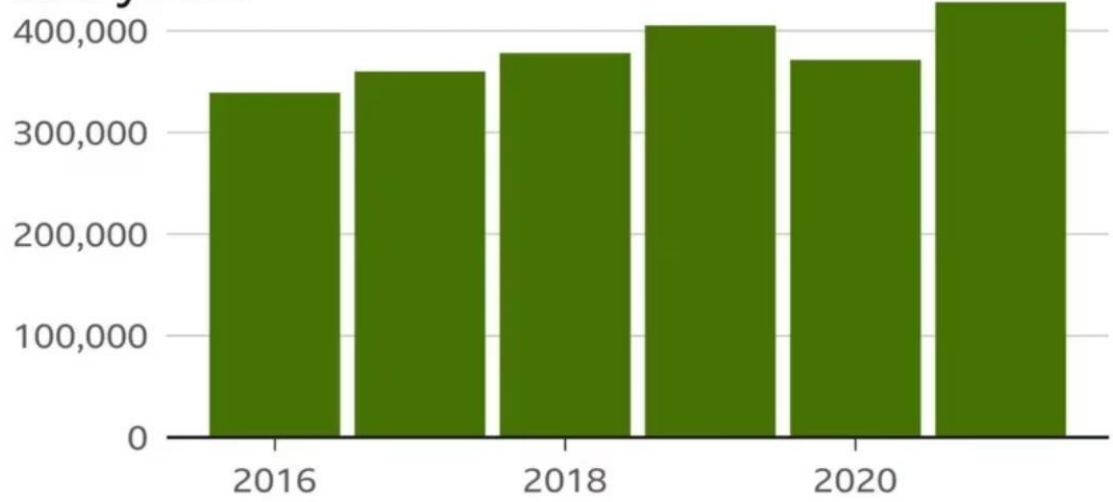
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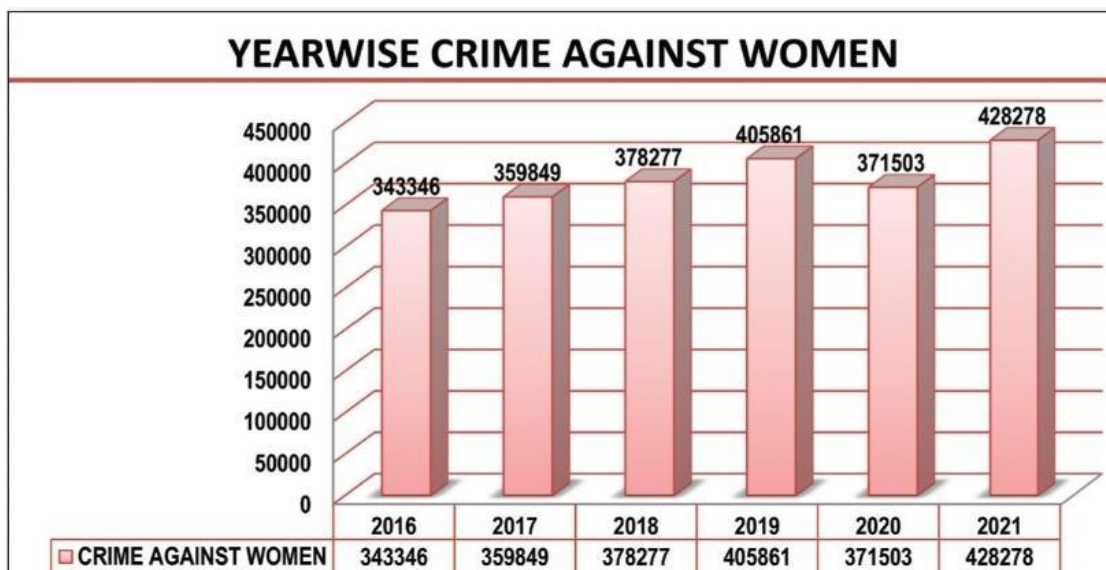
*LLB, THIRD YEAR, THE UNIVERSITY OF BURDWAN.

Offences against women can include gender-based violence to women that causes physical, mental, and psychological health problems. Even these acts endanger the whole life of women. It is an involuntary act done on women without their consent or by misusing their consent by coercion, fraud, illegal commitment, undue influence etc. Once a crime is committed, the victim can hardly cope with the consequences of the crime in society. To deal with these matters, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted. However, proper implementation of these acts must be done. Along with this, the reformation of the patriarchal notion i.e., the dominance of men over women must be effective in our society to achieve gender justice.

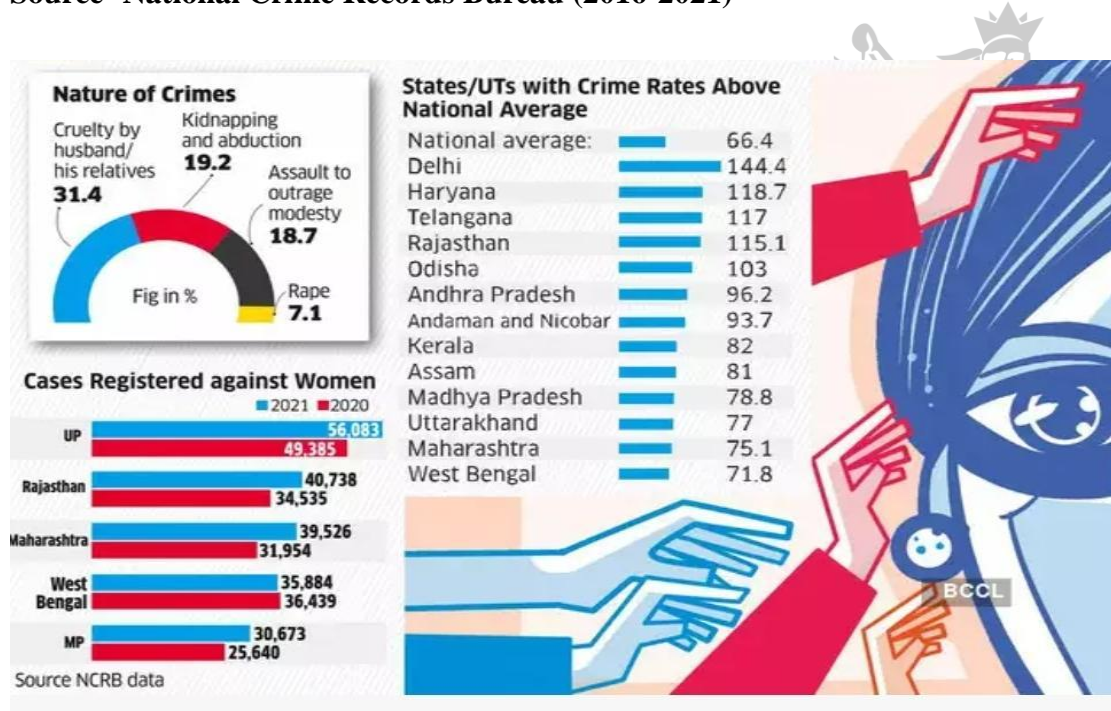
RECENT GROWING TRENDS OF OFFENCES AGAINST WOMEN

Incidents of crimes against women highest in 6 years





Source- National Crime Records Bureau (2016-2021)



Source: The Economic Times- 664 crimes against women per million: NCRB data

ANALYSIS AND DISCUSSION OF THE DATA

The above recent National Crime Record Bureau (NCRB) data shows that offences against women are ever-increasing at a higher rate. The highest rate of crimes against women has taken place in Delhi. After Delhi, the crime rate against women is also higher in Haryana and Rajasthan. Cruelty by husband and his relatives has shown the highest crime rate than

other offences against women. In Uttar Pradesh, the highest number of crimes against has been registered in 2021 compared to 2020.

OFFENCES AGAINST WOMEN: LEGAL PERSPECTIVE

There are various offences against women that are mentioned in The Bharatiya Nyaya Sanhita, 2023 (45 of 2023). These are:

1. Rape:

Section 63 of The Bharatiya Nyaya Sanhita, 2023 defines Rape. According to the Section,

A man is said to commit “rape” if he-

- (a) Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) Inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus, or any part of the body of such woman or makes her do so with him or any other person; or
- (d) Applies his mouth to the vagina, anus, or urethra of a woman or makes her do so with him or any other person;

Under the circumstances falling under any of the following seven descriptions:

- (i) Against her will;
- (ii) Without her consent;
- (iii) With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt;
- (iv) With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or

believes herself to be lawfully married;

- (v) With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent;
- (vi) With or without consent, when she is under eighteen years of age;
- (vii) When she is unable to communicate consent.¹

● **Punishment for Rape**

Section 64 of The Bharatiya Nyaya Sanhita, 2023 provides punishment for rape. According to this Section, whoever commits rape shall be punished with rigorous imprisonment of not less than ten years but it may extend to life imprisonment and a fine shall also be imposed on that person.

2. Assault or use of criminal force to a woman with intent to outrage her modesty:

Section 74 of The Bharatiya Nyaya Sanhita, 2023 provides punishment for assault or use of criminal force to a woman with intent to outrage her modesty to be imprisonment of a minimum of one year but which may extend to five years and a fine shall also be imposed on that man.

3. Assault or use of criminal force to a woman with intent to disrobe:

Section 76 of The Bharatiya Nyaya Sanhita, 2023 provides punishment for assault or use of criminal force to any woman with intent to disrobe or compel her to be naked to be imprisonment of a minimum of three years but which may extend to seven years and fine shall also be imposed on that man.

4. Sexual Harassment:

Section 75(1) of The Bharatiya Nyaya Sanhita, 2023 defines the offence of Sexual Harassment. According to Section 75(1)-

¹ The Bharatiya Nyaya Sanhita 2023, s63

A man committing any of the following acts-

- (i) Physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) A demand or request for sexual favours; or
- (iii) Showing pornography against the will of a woman;
- (iv) Making sexually coloured remarks

shall be guilty of the offence of sexual harassment.²

- **Punishment for Sexual Harassment:**

Section 75(2) and Section 75(3) of The Bharatiya Nyaya Sanhita, 2023 provide the punishment for sexual harassment of women.

- According to Section 75(2) of the Code, any man who commits either the offence specified in clause(i) clause(ii) or clause(iii) of section 75(1) shall be punished with rigorous imprisonment for a term which may extend to three years or with fine or with both.
- According to Section 75(3) of the Code, any man who commits the offence mentioned in clause(iv) of Section 75(1) shall be punished with imprisonment for one year or with a fine or both.

5. Voyeurism:

Section 77 of The Bharatiya Nyaya Sanhita,2023 provides punishment for Voyeurism. According to this Section,

“Whoever watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall

² The Bharatiya Nyaya Sanhita2023, s75(1)

also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.”³

6. Stalking:

Section 78(1) of The Bharatiya Nyaya Sanhita,2023 defines the offence of Stalking. Section 78(2) of the Code provides the punishment of stalking.

- According to Section 78(1) of the Code,

Any man who-

- (i) Follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman, or
- (ii) Monitors the use by a woman of the internet, e-mail or any other form of electronic communication,

Commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that-

- (i) It was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
- (ii) It was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
- (iii) In the particular circumstances, such conduct was reasonable and justified.⁴

- **Punishment of Stalking:**

According to Section 78(2) of The Bharatiya Nyaya Sanhita,2023; any man who commits

³ The Bharatiya Nyaya Sanhita2023, s77

⁴ The Bharatiya Nyaya Sanhita2023, s78(1)

the offence of stalking shall be punished on the first conviction with a maximum of three years imprisonment along with a fine and be punished on the second conviction with a maximum of five years imprisonment along with fine.

7. Word, gesture or act intended to insult the modesty of a woman:

Section 79 of The Bharatiya Nyaya Sanhita, 2023 defines the punishment for words, gestures or acts intended to insult the modesty of a woman. According to the Section,

Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object in any form, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.⁵

8. Voluntarily causing grievous hurt by the use of acid, etc.

Section 124 of The Bharatiya Nyaya Sanhita, 2023 defines the offence of acid attack and also provides punishment for it. According to this Section,

(1) Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt or causes a person to be in a permanent vegetative state shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

Provided further that any fine imposed under this subsection shall be paid to the victim.⁶

9. Dowry Death:

Section 80(1) of The Bharatiya Nyaya Sanhita, 2023 defines the offence of Dowry Death and

⁵ The Bharatiya Nyaya Sanhita 2023, s79

⁶ The Bharatiya Nyaya Sanhita 2023, s124

Section 80(2) of the Code provides punishment for the offence. According to Section 80 of the Code, where within under seven years of marriage, if a woman dies because of cruelty or harassment by her husband or any relative of her husband in demand for dowry and her death is caused by any burns or bodily injury, the person who commits dowry death shall be punished with minimum seven years of imprisonment and maximum punishment of life imprisonment.

10. Husband or relative of the husband of a woman subjecting her to cruelty:

Section 85 of The Bharatiya Nyaya Sanhita, 2023 provides punishment of the husband or relative of the husband of a woman to cruelty shall be punished with imprisonment for a maximum of three years along with a fine.

11. Abetment of suicide:

Section 108 of The Bharatiya Nyaya Sanhita, 2023 provides punishment for abetment of suicide to be imprisonment for a maximum of ten years along with a fine.

12. Importation of girl or boy from a foreign country:

Section 141 of The Bharatiya Nyaya Sanhita, 2023 provides punishment for importation into India of any girl under the age of twenty-one years from any foreign country with the intention to force or seduce that girl to illicit cohabitation with another person to be imprisoned for a maximum of ten years along with fine.

OFFENCES AGAINST WOMEN IN THEIR WORKPLACE

Nowadays women are facing sexual harassment even rape and murder in their workplace. The Constitution of India provides Articles 14, 15 and 21 that state that sexual harassment is a violation of the fundamental rights of women.

Article 14: Equality before law

The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India.⁷

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place

⁷ The Constitution of India 1950, art 14

of birth-

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.⁸

Article 19(1)(g): Protection of certain rights regarding freedom of speech, etc-

(1)(g) All citizens shall have the right to practise any profession, or to carry on any occupation, trade or business.⁹

Article 19(1)(g) of The Constitution of India safeguards women in their workplace with dignity and free from sexual harassment and any kind of restriction to continue their profession freely.

Article 21: Protection of life and personal liberty-

No person shall be deprived of his life or personal liberty except according to procedure established by law.¹⁰

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (POSH) Act,2013 was enacted against sexual harassment of women in their workplace. But the recent tragic Murder and Rape Case of a medical student in her workplace i.e. in a hospital in Kolkata is the inhumane and brutal incident in which The Honourable Supreme Court of India has taken Suo Motu Cognizance.

PROCEDURE OF PROCEEDINGS IN CERTAIN OFFENCES AGAINST WOMEN

The Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023) provides procedures as well as safeguards for offences against women in The Bharatiya Nyaya Sanhita,2023(45 of 2023). These procedures are as follows:

1. Recording of confessions and statements:

Section 183(6) of The Bharatiya Nagarik Suraksha Sanhita, 2023 deals with the procedure of Recording confessions and statements in certain offences against women defined in The

⁸ The Constitution of India1950, art 15

⁹ The Constitution of India1950, art 19(1)(g)

¹⁰ The Constitution of India1950, art 21

Bharatiya Nyaya Sanhita, 2023. According to Section 183(6) of the Code:

“Recording of confessions and statements- (6)(a) In cases punishable under Section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79 or section 124 of the Bharatiya Nyaya Sanhita,2023, the Magistrate shall record the statement of the person against whom such offence has been committed in the manner specified in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that such statement shall, as far as practicable, be recorded by a woman Magistrate and in her absence by a male magistrate in the presence of a woman:

Provided further that in cases relating to the offences punishable with imprisonment for ten years or more or with imprisonment for life or with death, the Magistrate shall record the statement of the witness brought before him by the police officer.”¹¹

2. Medical examination of a victim of rape:

Section 184(1) of The Bharatiya Nagarik Suraksha Sanhita, 2023 deals with the procedure of medical examination of a victim of rape. According to the Section 184(1) of the Code:

“Medical examination of a victim of rape-(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.”¹²

3. Courts by which the offence of rape is triable:

Section 21(a) of The Bharatiya Nagarik Suraksha Sanhita,2023 deals with the courts by

¹¹ The Bharatiya Nagarik Suraksha Sanhita2023, s183(6)

¹² The Bharatiya Nagarik Suraksha Sanhita2023, s184(1)

which the offence of rape is triable. According to Section 21(a) of the Code:

“Courts by which offences are triable-(a) any offence under the Bharatiya Nyaya Sanhita, 2023 may be tried by

- (i) The High Court; or
- (ii) The Court of Session; or
- (iii) Any other Court by which such offence is shown in the First Schedule to be triable:

Provided that any offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023 shall be tried as far as practicable by a Court presided over by a woman.¹³

4. Power to postpone or adjourn proceedings relating to an offence of rape:

Section 346(1) of The Bharatiya Nagarik Suraksha Sanhita, 2023 deals with the power to postpone or adjourn proceedings relating to an offence of rape. According to the Section,

“Power to postpone or adjourn proceedings- (1) In every inquiry or trial the proceedings shall be continued on a day-to-day basis until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:

Provided that when the inquiry or trial relates to an offence under Section 64, section 65, section 66, section 67, section 68, section 70 or Section 71 of the Bharatiya Nyaya Sanhita, 2023 the inquiry or trial shall be completed within a period of two months from the date of filing of the chargesheet.”¹⁴

By implementing these provisions, The Bharatiya Nagarik Suraksha Sanhita, 2023 safeguards the procedure of proceedings related to offences against women.

CAUSES OF OFFENCES AGAINST WOMEN

¹³ The Bharatiya Nagarik Suraksha Sanhita 2023, s21(a)

¹⁴ The Bharatiya Nagarik Suraksha Sanhita 2023, s346(1)

There are various causes behind offences against women. These are as follows:

Inequal Treatment On The Grounds Of Gender:

Gender biases have been a growing problem since the ancient era. There are certain laws on the determination of sex before birth so that knowing girl child sex-selected abortions can be prevented. This is not only mental of the poor people but also rich families who don't want a girl child to be born because they think that a girl child is nothing but a hurdle for a family. There can be other misconceptions behind the birth of a girl child. This can be behind the offences against women.

Lack Of Proper Education:

The Constitution of India recognizes every citizen to be equal and Article 15 of The Indian Constitution prohibits discrimination on the ground of sex. People don't have even knowledge about their legal rights and preventive measures given by the legal system. That's why various offences against women have been committed now increasingly.

Inadequate Financial Stability Of Women:

Most of the women are dependent on men financially till now. This occurs because they don't get enough opportunities for higher education, jobs etc. They can be forced to marry at a very early age when education is more mandatory for them than marriage. This can cause offences against women.

Substance Abuse:

Most of the crimes have occurred due to substance abuse. Offences against women like rape and murder are committed by men in highly intoxicated states as observed in most cases.

Lack Of Execution Of Laws:

There are several laws, and initiatives for women empowerment in our society for the welfare of women. But still, proper execution of these laws has not been observed.

Television And Media:

In television, women are depicted as a thing of entertainment and pleasure. So, most of the men inculcate this from television. They become habituated to obscene things. Such things

become cause them to commit offences against women.

Lack Of Moral Sense:

Children who are the future of a nation do have not enough moral sense to deal with people from their childhood. The lack of morality makes them criminals in certain cases in future.

EFFECTS OF OFFENCES AGAINST WOMEN

Offences against women can be responsible for various physical, and mental health problems and affect the lives of victims at large.

1. Physical health problems:

Violence against women can cause serious long-term physical health problems. These are as follows¹⁵:

- Arthritis
- Asthma
- Chronic pain
- Digestive problems such as stomach ulcers
- Heart problems
- Irritable bowel syndrome
- Nightmares and problems such as pain during sex
- Stress
- Problems with the immune system.

A serious risk of physical abuse is concussion and traumatic brain injury (TBI) from being

¹⁵ Smith, S.G., Chen, J., Basile, K.C., Gilbert, L.K., Merrick, M.T., Patel, N., et al. 'The National Intimate Partner and Sexual Violence Survey:2010-2012 State Report'(2017) Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention<<https://www.womenshealth.gov/relationships-and-safety/effects-violence-against-women>> accessed 21 August 2024

hit on the head or falling and hitting your head. TBI can cause:¹⁶

- Headache or a feeling of pressure
- Loss of consciousness
- Confusion
- Dizziness
- Nausea and vomiting
- Slurred speech
- Memory loss
- Trouble concentrating
- Sleep loss

2. Mental Health Issues:

Women can face long-term mental health issues after being physically or sexually assaulted or abused. This can include:¹⁷

Post-traumatic Stress Disorder (PTSD):

Sexual assault or physical abuse can cause post-traumatic stress disorder (PTSD) in victims in a traumatized state. They can face difficulty while sleeping, they may become very angry, and they can face memory problems and negative thoughts of others.

Depression and Anxiety:

Victims can become mentally depressed and more anxious in intense fear. They can lose self-esteem and motivation from daily life. They can become stay alone.

¹⁶ 'Defense and Veterans Brain Injury Center'(2016) Recognize TBI and Concussion<<https://www.womenshealth.gov/relationships-and-safety/effects-violence-against-women>> accessed 21 August 2024

¹⁷ Delara, M. 'Mental Health Consequences and Risk Factors of Physical Intimate Partner Violence'(2016) Mental Health in Family Medicine; 12:119-125<<https://www.womenshealth.gov/relationships-and-safety/effects-violence-against-women>> accessed 21 August 2024

Research shows that about 90% of women with substance use problems have experienced physical or sexual violence.¹⁸ They tend to adopt smoking, overeating, drinking alcohol, using drugs etc.

3. Other Effects:

- Women leave their houses because of violence. Research shows that half of all homeless women and children became homeless while trying to escape intimate partner violence.¹⁹
- Many women are forced to quit their jobs after being physically abused or sexually assaulted.

OFFENCES AGAINST WOMEN: SOCIOLOGICAL PERSPECTIVE

In our society, the notion of male dominance over females is prevailing. Based on equal opportunity in proper education, financial stability, and independent life women have been dependent on men since the ancient era. That's why our society was also against girl childbirth. Men think that women are their property of them till now despite being properly educated also. Violence against women is an increasing phenomenon. For this, most of the cases of offences against women are not filed even. We can gather very limited information on these cases. Unless women are aware of their fundamental rights and are properly educated, we can't change the set norms of our society. Moreover, whenever a case is filed of rape or sexual assault, sexual harassment, and cruelty women face troublesome as well as annoying questions from society. They are made alone also. So, considering the sociological perspective of offences against women, we are very far away from achieving gender equality and gender justice as well.

STEPS TO PREVENT OFFENCES AGAINST WOMEN

There can be various steps to prevent offences against crimes. These are as follows:

¹⁸ Beijer, U., Scheffel Briath, C., DeMartinis, V., Af Klinteberg, B., 'Facets of Male Violence Against Women With Substance Abuse Problems: Women With a Residence and Homeless Women' (2015) Journal of Interpersonal Violence; Dec4. Pii: 0886260515618211 <<https://www.womenshealth.gov/relationships-and-safety/effects-violence-against-women>> accessed 21 August 2024

¹⁹ Goodman, L.A., Fels, K., Glenn, C., Benitez, J., 'No Safe Place: Sexual Assault in the Lives of Homeless Women' (2011) National Resource Centre on Domestic Violence <<https://www.womenshealth.gov/relationships-and-safety/effects-violence-against-women>> accessed 21 August 2024

1. Proper Education:

People should be properly educated about the moral and ethical values towards women in schools. Parents and teachers must teach children about men and women are equal and about women's empowerment so that offences against women can be prevented.

2. Women Empowerment:

With proper education women empowerment schemes must be implemented which will ensure equal opportunity for both men and women in education, jobs, workplace etc.

3. Participation of Women's Welfare Organisations:

Several Non-governmental Organisations for women's welfare must actively participate in the prevention of crimes against women.

4. Initiatives Taken:

Various initiatives must be taken to ensure the rights of women and maintain the dignity of women so that offences against can be prevented.

5. Proper Training:

Women should be given proper training so that they can fight alone and raise their voices in offences against them. Our Central and State Governments must take steps to ensure this.

6. Spread Awareness:

Women should be aware of their legal as well as constitutional rights and preventive measures of a crime. By spreading more and more awareness, crimes against women may be prevented.

LANDMARK JUDGEMENTS ON OFFENCES AGAINST WOMEN

There are various cases of offences against women. Some of these are:

1. **Tukaram v. The State of Maharashtra**²⁰

Facts:

A 16 years old orphan minor tribal girl Mathura lived with her brother Gama. Mathura decided to marry Ashok but Gama did not accept this. That's why Mathura eloped with Ashok. Gama lodged a complaint that Ashok kidnapped Mathura. While investigating, Constable Ganpat looked at the private parts of Mathura thus not only sexually assaulted her but also raped her behind the police station. Head Constable Tukaram touched the private parts of Mathura. Thus, he also sexually assaulted her but couldn't be able to rape her because of his highly intoxicated state. In the medical report of Mathura, only semen was found but no bodily injury was found. Finally, an FIR was lodged against these two constables.

Judgement:

The Supreme Court of India held that it was consensual sex because no bodily injury was found. The Honourable Court pointed out that Mathura was habitual to sex. She even didn't ask for help. So, the sexual intercourse was done with her consent. So, the accused constables were acquitted.

Major changes after the Case:

Certain major amendments were enacted after the judgement.

Addition of Section 114A in The Indian Evidence Act, 1872:

Section 114A was inserted in The Indian Evidence Act of 1872. It says that the "Presumption as to absence of consent in certain prosecution for rape- In prosecution for rape under clause (a) of sub-section 2 of section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent"²¹. Here clause (a) of sub-section (2) of Section 376 of The Indian Penal Code (45 of 1860) says that "Punishment of rape-(2) whoever,- (a)being a police officer, commits rape- (i) within the

²⁰ *Tukaram and Anr. v State of Maharashtra* AIR 1979 SC 185

²¹ *The Indian Evidence Act 1872, s114A*

limits of the police station to which such police station to which such police officer is appointed; or (ii) in the premises of any station house; or (iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer- be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine."²² So, after considering section 114A of The Indian Evidence Act,1872 the constable was to be punished for rape because Mathura admitted that she did not give consent for the sexual intercourse. So, the court will presume that she did not consent. The constable raped Mathura within the limits of the police station. So, he was to be liable for murder.

Addition of Section 376A, 376B, 376C, 376 D in The Indian Penal Code,1860 (45 of 1860):

Section 376A, 376B, 376C, and 376D were inserted in The Indian Penal Code, 1860 (45 of 1860). This made Custodial Rape a penal offence.

The Indian Penal Code,1860 (45 of 1860):

Section 376A: "Punishment for causing death or resulting in a persistent vegetative state or of victim"²³

Section 376B: "Sexual intercourse by husband upon his wife during separation"²⁴

Section 376C: "Sexual intercourse by a person in authority"²⁵

Section 376D: "Gang Rape"²⁶

These sections have been added after the amendment.

- **Shifting of the burden of proof:**

While defining custodial rape, the burden of proof is shifted from the victim to the accused.

²² The Indian Penal Code1860, s376

²³ The Indian Penal Code1860, s376A

²⁴ The Indian Penal Code1860, s376B

²⁵ The Indian Penal Code1860, s376C

²⁶ The Indian Penal Code1860, s376D

- **Provision for in-camera trials:**

Provision for in-camera trials has been initiated.

- **Restriction in disclosure of the identity of the victim:**

After this amendment disclosure of the identity of the victim is made a punishable offence under The Indian Penal Code, 1860 (45 of 1860). Section 228A of The Indian Penal Code, 1860:

“Disclosure of identity of the victim of certain offences etc.- (1) Whoever points or publishes the name of any matter which may make known the identity of any person against whom an offence under section 376, 376AB, 376C, 376D, 376DA, 376DB or section 376E is alleged to have been committed (hereinafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.”²⁷

2. **Vishaka & Ors. v. State of Rajasthan**²⁸

Facts:

Bhanwari Devi worked for social development in one of the villages of Rajasthan. She tried to stop the marriage of Thakur's daughter who was an infant. But the marriage has happened and she was given social punishment. Later she was gang raped in front of her husband. She was brutally sexually harassed in the police station and she was left with only the bloodstained dhoti of her husband instead of her lehenga which was taken as the evidence of the incident. A Public Interest Litigation (PIL) was filed in the Supreme Court of India.

Judgement:

The Honourable Supreme Court held that there was a clear violation of Article 14, Article 19(1)(g) and Article 21 of The Constitution of India that every citizen shall have the right to continue any profession with dignity. This provides a safe and secure environment in every professional setting.

The Honourable Court issued several guidelines against sexual harassment of women at their

²⁷ The Indian Penal Code 1860, s 228A

²⁸ *Vishaka & Ors. v State of Rajasthan & Ors.* (1997) 6 SCC 241

workplace. State and Central Governments were directed to enforce these guidelines through enactments in Parliament.

After the case, the Honourable Court defined the term Sexual Harassment, in which physical conduct, showing of pornography, unpleasant sarcasm, sexual desire and sexual favour were included. Section 354A was inserted in The Indian Penal Code, 1860 which deals with Sexual harassment and punishment for sexual harassment by the Act 13 of 2013, section 7.

These guidelines implemented remedy and compensation for sexual harassment of women at their workplace.

3. *Laxmi v. Union of India*²⁹

Facts:

A 16-year-old girl Laxmi, was turned into a victim of an acid attack out of revenge or envy. This inhumane brutal offence was committed for not fulfilling demands of dowry, proposal of marriage, and sexual desire by deforming her causing excessive bodily and mental agony to the girl. She filed a case for attempt to murder against all the accused. A PIL was filed before the Supreme Court to prohibit easy access to acid in the market and also to include provisions to compensate victims and provide proper health facilities and also for rehabilitation and reintegration of victims into society.

Journal of Legal Research and Juridical Sciences

Judgement:

The Honourable Supreme Court of India provided guidelines for the implementation of laws in the case of acid attack to the Indian Penal Code, 1860.

Guidelines of the Supreme Court:

- **Insertion of Section 357 in The Code of Criminal Procedure, 1973:**

Section 357A was inserted in The Code of Criminal Procedure, 1973 by Act 5 of 2009, Section 28 which deals with the Victim Compensation Scheme by an amendment of the Code.

By issuing this directive The Supreme Court made compensation of 3,00,000/-

²⁹ *Laxmi v Union of India and ors* 2014 SCC 442

rupees for every acid attack victim to be given by all state and Union Territories of India.

- **Addition of Section 326A and Section 326B in The Indian Penal Code, 1860:**

Section 326A and Section 326B were added to The Indian Penal Code, of 1860. Section 326A of The Indian Penal Code, 1860 deals with “Voluntarily causing grievous hurt by use of acid etc. and Section 326B of the Code deals with “Voluntarily throwing or attempting to throw acid.” These two sections were inserted by Act 13 of 2013, section 5.

4. Ritu Kohli Case³⁰:

Facts:

Ms Ritu Kohli was the victim of cyberbullying in India. She filed a case against Manish Kathuria who stalked her online with the help of social media platforms and websites. He abused her name and humiliated her by using dirty language. She received calls from different states and foreign countries and those people talked with her salaciously. She filed a case under Section 509 of The Indian Penal Code, 1860 for insulting her modesty by word, gesture or act.

Major Changes after this case:

Section 509 of The Indian Penal Code, 1860 didn't deal with cases related to punishment for stalking through online social media and websites. That's why after this case there was an Amendment to The Information Technology Act, 2000 under Section 66E which deals with punishment for violation of Privacy in Computer Offences to be a maximum of three years or a maximum fine of rupees two lakh rupees with both.

5. Mukesh & Anr. v. State for NCT of Delhi & Ors.³¹ (Nirbhaya Rape Case):

Facts:

A 23-year-old lady with her boyfriend was returning home at night on a bus. The lady was gang-raped after being assaulted by the six drunk men including a minor in the bus. Not only

³⁰ *Manish Kathuria v Ritu Kohli* C.C. No. 14616/2014

³¹ *Mukesh & Anr. v State of NCT of Delhi & Ors.* (2017) 6 SCC 1

she was gang-raped but also was tortured brutally. Her intestine was pulled out and she was injured harshly. An iron rod was inserted into her private internal organs and private parts. After being admitted to the hospital, she died. Her death occurred due to internal bleeding, cardiac arrest, multiple organ failure etc.

Major Changes after The Nirbhaya Case:

The Criminal Law Amendment Act, 2013 was passed after The Nirbhaya Case. Section 354A, 354B, 354C and Section 354C were inserted in The Indian Penal Code, 1860 after this amendment. This Amendment Act expanded the definition of rape and included any forcible penetration into a woman's body without her consent. Justice Verma Committee submitted a report for the punishment of the rapists in the Nirbhaya Case.

Justice Verma Committee Report:

Some of the changes suggested by the committee are:

- Any sexual penetration without the consent of the woman has to be included in the definition of rape.
- The change related to the implementation of laws on marital rape should be done.
- Provision for online FIR should be implemented.
- Any word act or gesture which sexually threatens the modesty of women should be termed as Sexual Assault and this should be made a punishable offence.
- Some changes were made by the committee on The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012.

Judgement:

A three-judge bench held capital punishment to the four criminals and they were hanged to death the fifth accused was sent to a correctional home for three years because he was a 17-year-old minor at the time of the incident. Thus, the Supreme Court delivered Justice to the medical student and her family and set an example of the ultimate consequences of the infernal and brutal killing of a woman.

RECOMMENDATIONS

Offences against women are one of the most alarming issues in recent eras. It is high time to raise our voices to prevent it from its the grassroots level. There must be proper machinery for the implementation of all laws protecting the dignity of women. Once a crime against a woman is committed, this can disrupt the life of the woman as a whole. So, harder punishment should be implemented to prevent offences from their roots. If one woman is not protected, the whole society is not protected. So, more and more awareness as well as consciousness should be inculcated among all. The Ministry of Women and Child Development, National Welfare Rights Organization, and Women's Welfare Association must approach and take serious steps to prevent offences against women. Thus, we can achieve gender justice one day.

CONCLUSION

This is the era which needs change in the society. Deprivation in the enjoyment of fundamental rights of women means a violation of human rights as a whole and a threat to gender justice. This has been a continuously growing problem in our society since the ancient period. A study of spatial inequality in high-risk areas can implement sufficient measures to prevent offences against women. With proper implementation of laws, our society must adopt gender equality to achieve gender justice. There must be a reformation of sociological perspectives relating to women and their rights. To secure gender justice not only for us but also for our future generations to lead a fruitful life.

Journal of Legal Research and Juridical Sciences