Women Security and Legal Safeguards in India

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I am Chandrika
I am Gayatri
I am Fatima, Banu, Uma,
I am Jayalakshmi, I am Saraswati
I am ones of those faceless women who die every day in your morning newspapers
And go on to become crime number in the Police Station
And then a file to be pushed around in the Courts…….”
(Poem published in “I cry for help, no one’s there”, pamphlet by Vimochna, Bangalore)

INTRODUCTION
Social change is an inevitable phenomenon of every society because social conditions never remain static. Social change whether it comes through legislation or through judicial interpretation indicates the change in accepted modes of life, or perhaps a better life. The changing pattern does have an impact on the laws and the life of a given society, law must keep pace with the changing socio-economic trends, and political movements of the society, while at the same time preserving necessary balance between individual rights and duties. Thus, law and justice provide a potential force for the attainment of a progressive social change.

The exalted status of Indian women in ancient days suffered a setback in the medieval period. Social economic and political factors played a major role in their suppression. Social inhibitions and discriminatory practices against them continued to exist during the 'enlightened' and 'civilised' imperial rule. The leadership of independent movement was, however, committed to accord an equal status to women and give them a place of honour, and dignity in the society. Accordingly, the constitution - the fundamental law- as emerged out of the constituent assembly, treated both men and women equally and also provided for protective discrimination for women in view of their peculiar position in the human society.

Important Constitutional And Legal Provisions For Women In India
The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. Within the framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at women’s advancement in different spheres. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993.

Constitutional Provisions
The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.

Constitutional Privileges
(i) Equality before law for women (Article 14)
(ii) The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Article 15 (i))
(iii) The State to make any special provision in favour of women and children (Article 15 (3))
(iv) Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (Article 16)
(v) The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a)); and equal pay for equal work for both men and women (Article 39(d))
(vi) To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way
to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (Article 39 A)
(vii) The State to make provision for securing just and humane conditions of work and for maternity relief (Article 42)
(viii) The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (Article 46)
(ix) The State to raise the level of nutrition and the standard of living of its people (Article 47)
(x) To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (Article 51(A) (e))
(xi) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (Article 243 D(3))
(xii) Not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women (Article 243 D (4))
(ix) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality (Article 243 T (3))

Legal Provisions

(1) The Crimes Identified Under The Indian Penal Code (IPC)
(i) Rape (Sec. 376 IPC)
(ii) Kidnapping & Abduction for different purposes (Sec. 363-373)
(iii) Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
(iv) Torture, both mental and physical (Sec. 498-A IPC)
(v) Molestation (Sec. 354 IPC)
(vi) Sexual Harassment (Sec. 509 IPC)
(vii) Importation of girls (up to 21 years of age)

(2) The Crimes Identified Under The Special Laws (SLL)

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some acts which have special provisions to safeguard women and their interests are:

(i) The Employees State Insurance Act, 1948
(ii) The Plantation Labour Act, 1951
(iii) The Family Courts Act, 1954
(iv) The Special Marriage Act, 1954
(v) The Hindu Marriage Act, 1955
(vi) The Hindu Succession Act, 1956 with amendment in 2005
(vii) Immoral Traffic (Prevention) Act, 1956
(ix) Dowry Prohibition Act, 1961
(x) The Medical Termination of Pregnancy Act, 1971
(xi) The Contract Labour (Regulation and Abolition) Act, 1976
(xii) The Equal Remuneration Act, 1976
(xiii) The Prohibition of Child Marriage Act, 2006
(xiv) The Criminal Law (Amendment) Act, 1983
(xv) The Factories (Amendment) Act, 1986
(xvi) Indecent Representation of Women (Prohibition) Act, 1986
(xvii) Commission of Sati (Prevention) Act, 1987
(xviii) The Protection of Women from Domestic Violence Act, 2005

State Initiatives For Women
National Commission For Women

In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review
the existing legislation to suggest amendments wherever necessary, etc.

Reservation For Women In Local Self-Government
The 73rd Constitutional Amendment Acts passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.

The plan of Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child.

National Policy For The Empowerment Of Women, 2001
The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a “National Policy for the Empowerment of Women” in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women.

Women’s Security: Indian Scenario
Policies relating to women's rights have had a positive trajectory in the past few decades with the central government articulating many progressive measures to advance gender equality in social, economic, and political arenas.

Inequality between men and women runs across the board, including in education, economic opportunities, representation in governance, and other state and private institutions. The multiple forms of violence experienced in the household, at the community level, and in some instances by the state, threaten women’s security in India. Some recent statistics on women include:

• India ranks the worst G-20 country in which to be a woman. (TrustLaw, Thomson Reuters)
• One bride was murdered every hour over dowry demands in 2010. (National Crime Records Bureau)
• Almost 45 percent of Indian girls are married before they turn 18. (International Center for Research on Women)
• One in five Indian women, many child mothers, dies during pregnancy or child birth. (the United Nations)
• Up to 50 million girls are "missing" over the past century due to female infanticide and foeticide

• 66% of women who have experienced physical violence in their lifetimes are divorced, widowed, or deserted
• 85.3% of women reporting violence claimed that their current husbands were the perpetrators
• A total of 2,28,650 incidents of crime against women (both under IPC and SLL) were reported in the country during the year 2011 as compared to 2,13,585 incidences in the year 2010 recording an increase of 7.1% during the year 2011.

Women and girls in urban India are also at high risk of gender-based violence. In Delhi, the country’s capital, a scan of daily newspapers reveals shocking numbers of cases of violence against women. Street violence in urban centres is a growing concern for young women and girls, who are increasingly moving away from rural areas for economic opportunities and higher education.

Particularly women and girls from the northeast region of India living in urban centres such as Delhi have reported experiencing social discrimination and marginalization, and many times physical violence. In 2005, according to the North East Support Centre, among the 100,000 people from the northeast living in Delhi 86% had reported racial discrimination and 41% of cases were sexual abuse cases.

Trafficking Of Women And Girls
India is both a source and destination for trafficked women and girls into prostitution and bonded labour. While exact numbers of trafficked women and girls are difficult to ascertain, there have been figures projected by various national and international organisations.

• The NHRC report on "missing children", which finds a mention, says on an average 44,000 children go missing in the country every year. Of these, 11,000 remain untraced. It is quite unacceptable that cases of 'missing children', which may or may not be the result of human trafficking, are considered on a par with a 'lost and found', adds the report.
• The Nobel Prize-winning economist Amartya Sen has estimated that more than 100m women are "missing" worldwide - women who would have been around had they received similar healthcare, medicine and nutrition as men.
• New research by economists Siwan Anderson and Debraj Ray estimates that in India, more than 2m women are missing in a given year.
• The economists found that roughly 12% of the missing women disappear at birth, 25% die in
Sexual Harassment And Rape Cases
Rape cases in India increased by 3.6 percent to 22,172 in 2010 from 21,397 cases the previous year, according to figures from the National Crime Records Bureau.

Nearly 68,000 rape cases were registered across the country during 2009-11 but only 16,000 rapists were sentenced to prison, presenting a dismal picture of conviction of sexual offenders.

According to National Crime Records Bureau, 24,206 rape cases were registered in India in 2011 but only 5,724 people were convicted for the crime. Similarly, in 2010, 22,172 rape cases were registered while the number of convicted persons for the crime was 5,632. A total of 21,397 rape cases were registered in 2009 but only 5,316 persons could be convicted.

Forty percent of all sexual abuse cases in India are incest, and 94% of the incest cases had a known member of the household as the perpetrator.

The number of such cases has decreased by 14.0% during the year over the previous year (9,961 cases). Andhra Pradesh has reported 42.7% (3,658 cases) followed by Maharashtra 12.5% (1,071 cases) of total incidences during the year 2011. Andhra Pradesh has reported the highest crime rate (4.3%) as compared to the National average of 0.7%.

An increasing trend in cases of rape has been observed during 2007 – 2008. A mixed trend in the incidence of rape has been observed during the periods 2008 - 2011. These cases have reported an increase of 3.5% in the year 2008 over the year 2007; a decline of 0.3% in the year 2009 over 2008 and an increase of 3.6% in 2010 over 2009 and further an increase of 9.2% in the year 2011 over the year 2010. Madhya Pradesh has reported highest number of Rape cases (3,406) accounting for 14.1% of total such cases reported in the country. Mizoram has reported of crime rate 7.1 as compared to National average of 2.0%.

Rape cases have been further categorised as Incest Rape and other Rape cases.

Incest Rape
Incest rape cases have decreased by 7.3% from 288 cases in 2010 to 267 cases in 2011 as compared to 9.2% increase in overall Rape cases. Maharashtra (44 cases) has accounted for the highest (15.3%) of the total such cases reported in the country.

Rape Victims
There were 24,270 victims of Rape out of 24,206 reported Rape cases in the country. 10.6% (2,582) of the total victims of Rape were girls under 14 years of age, while 19.0% (4,646 victims) were teen-aged girls (14-18 years), 54.7% (13,264 victims) were women in the age-group 18-30 years. However, 15.0% (3,637 victims) were in the age-group of 30-50 years while 0.6% (141 victims) was over 50 years of age.

Offenders were known to the victims in as many as in 22,549 (94.2%) cases. Parents / close family members were involved in 1.2% (267 out of 22,549 cases) of these cases, neighbours were involved in 34.7% cases (7,835 out of 22,549 cases) and relatives were involved in 6.9% (1,560 out of 22,549 cases) cases.

Sexual Harassment
The number of such cases has decreased (8,570 cases) by 14.0% during the year over the previous year (9,961 cases). Andhra Pradesh has reported 42.7% (3,658 cases) followed by Maharashtra 12.5% (1,071 cases) of total incidences during the year 2011. Andhra Pradesh has reported the highest crime rate (4.3) as compared to the National average of 0.7.

Molestation
Incidents of Molestation (42,968 cases) in the country have increased by 5.8% over the previous year (40,613 cases). Madhya Pradesh has reported the highest incidence (6,665) amounting to 15.5% of total such incidences. Kerala has reported the highest crime rate (11.2) as compared to the National average of 3.6.

Kidnapping & Abduction
These cases have reported an increase (35,565 cases) of 19.4% during the year as compared to previous year (29,795 cases). Uttar Pradesh with 7,525 cases has accounted for 21.2% of the total cases at the National level. Delhi UT has reported the highest crime rate at 12.4 as compared to the National average of 2.9.

Domestic Violence And Dowry Deaths
Newspaper pages in south Asia are full of tales of domestic violence. In 2002, 450 honour killings were reported in Pakistan, 15,000 young brides are burnt to death every year in India, and 10 women a week are subject to acid attacks in Bangladesh (OXFAM 2004). Violence by intimate family members is one of south Asia’s darkest legacies. Forty per cent of all sexual abuse cases in India are about incest. In a survey on violence against women in India, 94 per cent of the cases involved an offender who was a member of the family (Naved 2004).

The violence against women in south Asia often begins before birth. It is estimated the 50 million
women are missing in India either through sex selective abortions, female infanticide or female neglect. So much so that the sex ratio in certain states of India is very disturbing. There are 79.3 girls for every 100 males in the Punjab and 87.8 girls for every 100 males in Gujarat (OXFAM 2004:10).

Domestic violence rates in south Asia does vary from community to community and depends on the questions asked. A survey of 1,842 women in Uttar Pradesh and Tamil Nadu in India presented a rate of 40 per cent of women interviewed stating they were victims of wife beating. In Pakistan, a survey of 1,000 women indicated that 55 per cent in the urban areas and 35 per cent in the rural areas stated that they were victims of domestic violence. In Sri Lanka, one survey put the figure at 60 per cent, another at 32 per cent (UNIFEM 2004). They found that women died more from "injuries" in a given year than while giving birth - injuries, they say, "appear to be indicator of violence against women". Deaths from fire-related incidents is a major cause - each year more than 100,000 women are killed by fires in India. The researchers say many cases could be linked to demands over a dowry leading to women being set on fire.

In many cases, violence against women has a level of social acceptability. A government survey found 51 percent of Indian men and 54 percent of women justified wife beating.

The cases under this Act have increased (6,619) by 27.7% during the year 2011 as compared to the previous year (5,182 cases). 28.7% of cases were reported from Andhra Pradesh (1,899) followed by Karnataka (1,210 cases) accounting for 18.3% of total cases at the National level. The highest crime rate of 2.5 was reported from Odisha as compared to 0.5 at the National level.

Torture (Cruelty By Husband & Relatives)

‘Torture’ cases in the country have increased (99,135 cases) by 5.4% over the previous year (94,041 cases). 19.9% of these were reported from West Bengal (19,772 cases). The highest crime rate of 21.6 was also reported from West Bengal as compared to the National rate at 8.2.

Importation Of Girls

An increase of 122.2% has been observed in Crime Head as 80 cases were reported during the year 2011 as compared to 36 cases in the previous year (2010). Madhya Pradesh (45 cases), Bihar (10 cases) and Karnataka (12 cases) have together contributed more than two-third of total such cases at the National level.

Crime-Head Wise Analysis (Special Laws)

Immoral Traffic (Prevention) Act, 1956

Cases under this Act have registered a decrease of 2.6% (2,435) during the year as compared to the previous year (2,499). 20.4% (497) cases were reported from Andhra Pradesh followed by Tamil Nadu 17.2% (420 cases). Daman & Diu reported the highest crime rate of 2.5 as compared to the National average of 0.2%.

Sati Prevention Act, 1987

One case was registered under this Crime Head in Jammu & Kashmir during the year 2011.

Indecent Representation Of Women (Prohibition) Act

A decrease of 49.4% (453 cases) was noticed in this crime head during the year 2011 as compared to the previous year (895 cases). Andhra Pradesh with 314 cases has accounted for 69.3% of total such cases at the National level which has also reported the highest crime rate of 0.4%.

Crime Against Women In Cities

53 cities having population over 10 lakh have been identified as Mega cities as per population census 2011. A total of 33,789 cases of crimes against women were reported from these 53 cities during the year 2011 as compared to 24,335 cases (35 mega cities) in the year 2010. The rate of crime in cities at 21.0 was comparatively higher as compared to the National rate of 18.9. Among 53 cities, Delhi (4,489 cases) has accounted for 13.3% of total such crimes followed by Bengaluru (1,890 cases) (5.6%), Hyderabad (1,860 cases) (5.5%) and Vijayawada (1,797 cases) (5.3%). The crime rate was significantly higher in Vijayawada, Kota, Kollam, Jaipur and Asansol at 120.5, 57.5, 54.2, 48.6, and 48.2% respectively as compared to average of mega cities at 21.0%.

Delhi city has accounted for 17.6% of Rape cases, 31.8% of Kidnapping & Abduction cases, 14.0% of Dowry Deaths and 10.1% of Molestation cases among 53 cities. Hyderabad has reported 12.2% (1,390 cases) of incidences of Cruelty by Husband and Relatives. Vijayawada has reported 18.0% incidence of Eve-teasing. Indore and Jabalpur having 3 cases and 2 cases respectively, have altogether contributed 83.3% of total cases of ‘Importation of Girls’ at all India level. It is worthwhile to mention that Bengaluru, Hyderabad, Mumbai and Patna have booked more cases under Special & Local Laws among the mega cities. 15.5% (191 out of 1,234) of cases under Immoral Traffic (Prevention) Act and 10.1% (553 out of 5501) of cases under Molestation was reported in
The report released on 23rd January, 2013, has proposed sexual offences even as it rejected the punishment for a wide range of existing and proposed sexual offences as it rejected the demand for introducing death for rape. Justice J S Verma Committee has raised the bar of brutal gang rape in Delhi on November 16, the In keeping with the public outrage over Nirbhaya’s Justice Verma Committee Recommendations Post Delhi Gang Rape Case

Justice Verma Committee Recommendations

In keeping with the public outrage over Nirbhaya’s brutal gang rape in Delhi on November 16, the Justice J S Verma Committee has raised the bar of punishment for a wide range of existing and proposed sexual offences even as it rejected the demand for introducing death for rape.

The report released on 23rd January, 2013, has proposed codification of a stringent alternative to the life sentence, evolved through judicial activism in the last five years.

Major recommendations made by Justice Verma Committee are as follows:

- The Panel rejects death penalty for rape, retains existing punishment of 7 years to life sentence (in which convict may be released after 14 years at governnment’s discretion)
- But if rape causes death or leaves victim in vegetative state, imprisonment should be 20 years to rest of convict life.
- Punishment for gang rape to 20 years to rest of convict life. If gang rape causes death or leaves victim in vegetative state, convicts should be jailed for the rest of their lives. Same punishment for repeat offenders.
- If victim is a minor, panel recommends minimum 10 years jail, going up to life sentence. If minor dies during rape or is reduced to vegetative state, sentence should range from 20 years to rest of convict’s life.
- Panel for recognising new offences, such as disrobing a woman, trafficking and stalking.
- Introducing offence of ‘breach of command responsibility’, making a senior officer of security forces liable to jail of 7-10 years if subordinates commit rape.
- ‘Intentional touching’ to constitute offence of sexual assault with maximum punishment of 5 years.
- Custodial rape to attract minimum 10 years jail, maximum life term.
- Public disrobing of woman made specific offence and will attract jail 3 to 7 years.
- ‘Voyeurism’ or ‘peeping toms’ could get 3 years jail.
- Stalking offence referred to as ‘eve teasing’ included in specific offence.
- Rape to be made gender-neutral. Violent and forced sex on either gender to be ‘sexual assault’.
- Panel doesn’t recommended lowering juvenile age but wants juvenile justice system strengthened.
- Marital rape to be recognise as an offence for women of all ages.*
- Recommended the rape cases by Armed Forces be treated in ordinary court, not Court Marshal.*
- Acid attack to be specific offence: will attract minimum 10 year in jail as victim’s right to live with dignity is impaired.

Note: *Cabinet rejects the above recommendations by the Committee.

Rise In Rape Complaints

After Delhi, gang rape case, a rise in rape cases reported by 50% in Uttar Pradesh. Statistics reveal that 75 cases of rape were lodged with police during the second half of December 2012 as compare to 50 and 40 cases during the corresponding period in 211 and 2010. A total of 163 cases of molestation, 325 of kidnapping and 92 cases of sexual assault were reported between December 16 and 31 in UP. The Statistics shows a minimum of 13% increase in the number of cases lodged under different heads as compare to the same period in 2011 and 2010.

References


[12] Times of India