



## **Robust Support for Gender Sensitisation-An extra-ordinary tool to prevent Crime against women.**

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### *List of abbreviations used-*

1. AIR- All India Reporter
2. All – Allahabad
3. A.- Article
4. Art.-Article
5. BOM H.C – Bombay High Court
6. Cr.P.C-Criminal Procedure Code.
7. H.C – High Court
8. ICCPR-International Convention on Civil and Political Rights
9. ICESCR-International Convention on Economic, Social and Political Rights
10. IES-Indian Evidence Act, 1872
11. IPC-Indian Penal Code-1980
12. S.C- Supreme Court
13. Sec-Section
14. UDHR-Universal Declaration On Human Rights
15. U/S-Under Section

**Abstract:** Gender justice and gender sensitization both these concepts are taking a vital place when it comes to equality and empowerment of women. The existence of social disadvantages, historical discriminations against women is undeniable. The indicative factors such as poverty, malnutrition, child marriage, unemployment, low level of income, the educational rate among women equality and equal opportunity etc give us a precise picture of empowerment. However, crimes which are continuously happening against women are another indication that we need to take more concretize determinations and focus on finding out ways for gender sensitization exploring the law relating to women, the effectiveness and shortcomings, different challenges and measures to tackle those challenges, policies and other important aspects which can play a vital role in uplifting gender justice and ameliorating crime rates against women.

**Keywords:** Gender sensitization, empowerment, equality, discriminations, crime against women, policies, effectiveness and challenges.

## 1. INTRODUCTION

**“Just as a bird cannot fly with one wing only, a nation cannot march forward if the women are left behind.”**

**Stated by Swami Vivekanand**

It is an undeniable truth that a country can't develop when its women remained backwards. A nation or a country needs growth and must flourish to achieve progress and accomplishment in all the important areas, whether it is the educational sector, technological, agricultural, industrial sector and whether it is the development of our social arena. And to meet such progress is almost outside the realm of possibility if there's no contribution from one side as because their status remained primitive or either underdeveloped or undeveloped at all. This is why we need a nation without gender bias. Equality of treatment based on gender is the most important aspect of this perspective. Currently when we are watching lots of debates, discussions on women empowerment and on gender equality, which are going on across the nation or globally, the question which immediately comes to our mind is whether we have achieved a nation with no or less gender bias? Whether the conditions of women have changed or improving or are they empowered? Whether the laws, social legislations, the criminal

justice system are effective in protecting women's from crimes? Indeed, a satisfactory answer to the question is unthinkable keeping in mind the current scenario when the nature and extent of violations against women are at an increasing rate.

Some old practices like Sati system where women were burnt alive with her husband if her husband died, it was prevalent in India from very earlier times when no government was there or formed to till the 19th century. It was prevalent among Hindus. Later on, the government of India promulgated the Sati (Prevention) Act, 1987 and criminalised the act of glorifying sati. Likewise, during the British period Hindu Widows Remarriage Act 1856, Female Infanticide Prevention Act 1870, Age of Consent Act 1891, were implemented. Sati system was unquestionably one of the most ghastly crimes committed ever by human society. Slowly during the British regime, some changes were made and the act of glorifying female infanticide was also criminalised. Child marriage was prohibited. Widow marriage was permitted by law as society hardly gave permission or support to a widow to get married to another man after the demise of her husband.<sup>1</sup> They had to suffer and lived in miserable conditions after becoming a widow. Restrictions were imposed on them to change food habits to wear colourful clothes. Devadasi pratha was also abolished. These Acts were implemented to give a better environment to the women when their existence and contribution was almost forgotten and ignored in the male-dominated society. Since then to now we may see some progressive thoughts and changes. Most importantly law alone cannot change anything without having support from society at large.

We may see that today women are affirming their status from space to agriculture, be it different sports, small scale industries, small entrepreneurship business, horticulture, cottage industries, corporate sectors, public administration, health and engineering sectors, art and craft, they're performing commendably well. The only thing needed by a person is the opportunity and desire where gender sensitization has an important part to perform. So what is **gender sensitization?**

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<sup>1</sup> Sati (Practices) Wikipedia, <https://en.m.wikipedia.org> visited on 2018.07.18 at 2 P.M. IST

**Gender sensitization:** Gender sensitization means the awareness about a gender where it includes gender equality, inequalities, gender bias and consequences of such biases and inequalities. It is a process to change the view of society regarding each gender. When people become aware of these aspects it becomes easier for them to protect their rights and to understand their responsibilities. Gender is inferred by social, behavioural aspects and sex is determined biologically. The division of duties and responsibilities based on male and female is still prevailing where a person might believe that a girl's duty is confined to household works like cooking, cleaning, beauty etc. and a boy's duty is associated with cars, engines, earning etc. Male and female are indeed different biologically. But they are not unequal. Nature doesn't create any variation or order. Never said one gender is superior or inferior to others. What can be done by a man can also be done by a woman and vice versa. The respect for each gender should be equal, which is the essence of gender sensitization, only through which we can change the glimpse of the society.

So equality of opportunity must be given to everyone irrespective of gender differences or any other differences so that he or she can develop in a certain way and become a better citizen of tomorrow. Though with the change of time we may see many things are changing but a change in the societal mindset is essentially needed to reduce gender bias from its grass root level. Further, sharing household works can help the man in understanding and appreciating the works and efforts done by the women of his family. Today we can see women are financially supporting their families, attention is being given on their education also. Still, these are indicative of a general trend only, as the rate of illiteracy, poverty among women is very high. However, when we say about gender equality we must not forget about the rights of the third gender. They must be given the right to choose their gender as the way they like to represent them as man, woman or third gender.

However, we may say that since the transition of human society man has aimed at creating a more compassionate society and it is an age-old desire embedded in its very nature. The concept of human rights continued to develop with the development of society. The evolution of state gradually resulted in the formation of the government and later on the Constitution for the state. Independent India adopted the Constitution on 26<sup>th</sup> January 1950. A primary purpose of govt is to enforce law and order, secure the welfare of different sectors, to look after the defence mechanisms etc. Constitution grants power to the centre and states so that

they can perform different functions appropriately. The constitution is embedded with the principles of rule of law, constitutionalism, fundamental rights and duties at the same time. And India is endowed with the responsibility of protecting the rights of her more than five hundred million people amounting one-seventeenth of the world's population carries a greater responsibility in the field than any other country. It is, therefore, important to analyze the provisions concerning rights guaranteed to women, measures to protect such rights, the nature and extent of violations prevailing in the country and identify the root cause behind such infringements and finding a way to lessen them.

- The prime object of this study is to establish the fact that access to justice is for all be it an arrested person or a victim.
- The role of the judiciary in protecting the fundamental rights of women and combating crimes, thereby trying to find out the gap, if any, between laws and actual legal practices.
- To pay more holistic looking when there are more problems. How and what kind of steps are required to reduce crime against women.

### 1.1 Statement of the problem:

- We may see that people are also shouting for women empowerment. **Now, what is women empowerment?** For me being independent is women empowerment. Women must be at least properly educated, earning money or have an income source which can help them in becoming self-reliant and which is very helpful in changing the position of women in a family. A woman must be empowered to face the challenges of life. Sadly no matter how much education a woman gained, no matter how much she is earning somewhere she is still vulnerable, still fragile. The challenges faced by a woman are not unknown to anybody, as
- Violations against them are still common. Women are considered as vulnerable since their rights have been prone to violations from very early times. We cannot deny that they lived historically in a disadvantageous position. Or it can be said that they were always kept behind the shadow of males. No attention was given on their progress, on their education.

- In many societies, it was believed or still, some people that woman's job is confined to household works, getting married and childbearing. Gender bias was always reflected in the so-called **gender roles** and it is still being constructed in such way in many families and societies, where they believed that a man should do these things only and a woman has to look after the household sores, getting married and childbearing. It is true that biologically a woman is capable of bearing a child and a man is not capable to do so, similarly, women can't have a beard on their faces but when we say about being masculine and feminine we can't attach a stereotype definition of it for each individual.
- If sometimes the mass-media is making women a commodity, sometimes they're becoming victims of different crimes which we are watching in newspapers and television in a regular basis, new cases are coming before the court every day. Thousands of women die each year due to homicide, malnutrition, dowry deaths, rape, cruelty etc. Some of these are identified as a crime under the Indian Penal Code and under different Acts.
- Women mostly feel helpless and handicapped due to the unfriendly and expensive process of court, illiteracy, lack of financial assistance, cultural and religious barriers imposed on them by society and by family. This is why most of the crimes happening against them are not even reported and never come to limelight or ended without media galore. Families and they fear of stigmatisation in society and pressurised most often to forget the crime committed against them for the sake of reputation. The victims of rape, acid attack, domestic violence, cyber crime often face degrading treatments in society or courts.
- The victimisation of victims, marginalisation of marginalized under the national criminal justice system is becoming a major obstacle in getting justice in time and for coping with the challenges facing faced victim. Frequent adjournments by some corruptible counsels for one excuse or the other till the witness tires and give up resulted in secondary victimisation of the victim. The entire focus is on the accused that his rights may not be violated, he must be presumed to be innocent, the victims having no active participation in the adjudicatory process is by and large becoming a forgotten entity and even when call as a witness are subjected to long delays and adjournments. They feel avoided and now moaning for attention. Take the example of Nirbhaya's case where the deceased family had to wait for nine years to get justice, the politicisation of

the matter, societal attitude towards them all these things that victims are being victimised further.

- So, the three most important aspects of victims – suffering, reparation and restoration are somewhere not receiving enough attention from the criminal justice system and by our society.
- Police being an investigating agency plays an important role in the criminal justice system. But when a woman try to reach police with their grievances, the problem of the victim often treated differently. Police try to add something on their own choice and often make a cognizable case a non-cognizable one and vice versa either because of lack of legal knowledge or for their advantages.
- These are the reasons why people are losing confidence in the criminal justice system.
- Moreover, the lack of gender sensitization in society is a root cause of failure in withstanding crimes against women. Thus gender sensitization must be facilitated by media, police and courts so that the right of a woman to live with human dignity can be protected.

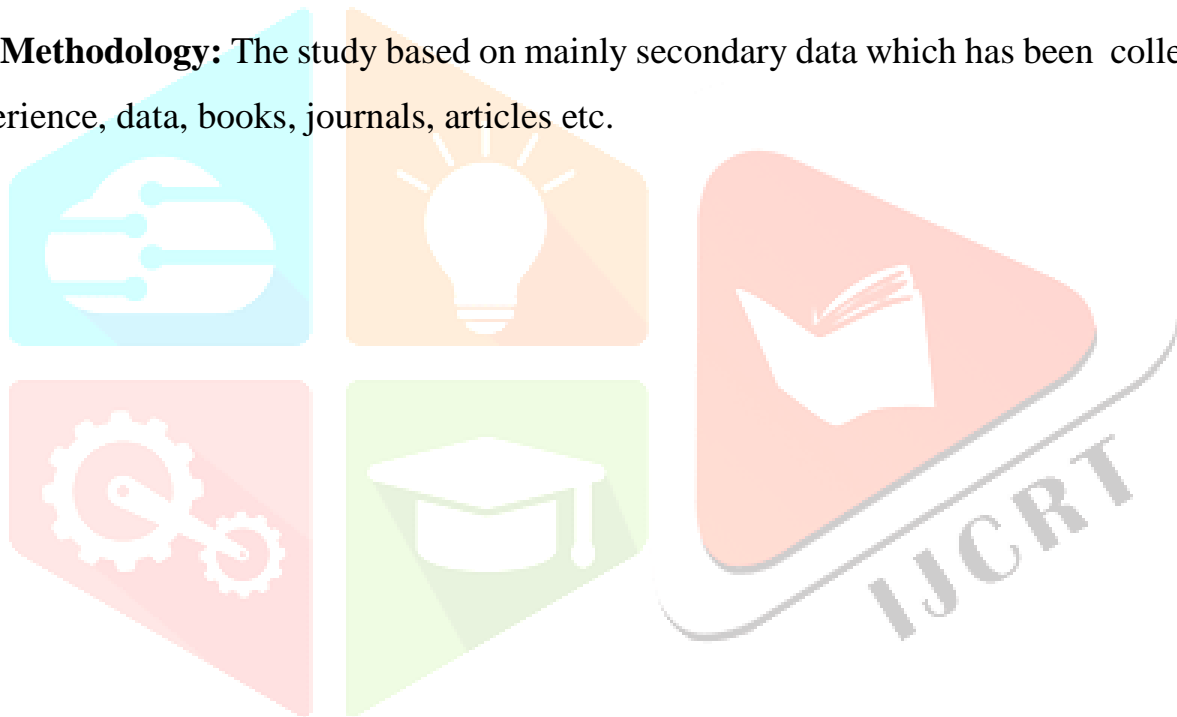
## 1.2 Review of the literature:

- ❖ The crimes transpiring against women are analysed in details by Indian Penal Code to deal with the offence, such as, sexual harassment, rape, molestation, acid attacks, dowry deaths, commercial exploitation, female infanticide and female foeticide, domestic violence, criminal intimidation, assault and criminal force against a woman, bigamy, fraudulent marriage, enticement of married women, eve-teasing, voyeurism, stalking, eve-teasing, kidnapping, abduction, immoral trafficking, cruelty related offences happening against women.
- ❖ Many social legislations like Dowry Prohibition Act 1961, The Protection of Women from Domestic Violence Act 2005, Indecent Representation of Women (Prohibition) Act 1986, Child Marriage Restraint Act 1929, The Preconception and Pre Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1995, The Immoral Traffic (Prevention) Act 1956, The Child Labour (Prohibition and Regulation) Act 1986 and Factories Act, 1948, Equal Remuneration Act, 1976,

Maternity Benefit Act, 1948, Employees Provident Fund Pension Linked Insurance Fund Act, 1952 etc

- ❖ The Constitution of India under Article 14, 15, 15(3), 16, 19, 21, 23, 24, 39-A, 42, 46, 47, 243-D(3), 243-D(4), 243-T (3), 243-T(4), as the mother of all the laws and which is considered as the ground norm, encompassing so many fundamental rights and duties in detail form, we all are aware of the prevalence of violence occurring against women across the world. The question that tends to appear in our minds is whether we have failed all these laws or these laws are failing in protecting us?
- ❖ Constitutional amendments that specifically deals with protection of women's rights.

**1.3 Methodology:** The study based on mainly secondary data which has been collected from experience, data, books, journals, articles etc.





## Chapter 2

### Analysis of certain important terms

We know that law is a dynamic subject. It isn't static. Over the time world changes, interpretation of the law or a text also changes. Such dynamism can be seen all the time. So, in the coming days, the court may identify some other acts as crime or unjust and legislature will implement a law to codify it or may be included it in the IPC, Constitution of India. So what is legal today may become illegal tomorrow or vice versa. We can say that such dynamism is always healthy. We need it to deal with future challenges and to meet the present developing era. Because with the change of time, development of science and technology, when we are observing growing and expanding horizons of globalizations certain norms and traditions tends to change or it must change if we need peace along with progress. A detail analysis of all the offences will be given later on. But before that, we need to understand some of the important aspects which can be said as important facets of law before moving on to our main issue that is crime and women. These are discussed below;

**2.1 Meaning of Human Rights:** Human rights are rooted in our values, ethos, traditions and culture. The philosophy of human rights is entire humanity be happy. We may find a humanistic approach in both classical and contemporary human thoughts. When we say about religion, human rights can be found in the very existence of a religion. Every major of the world have a humanist perspective that always supports human rights despite the distinctions in contents. It always says to us what should we do and what we should not, what is morally wrong and what is right, what's sinful and what is blissful. I think it's our fault that we often overlooked this moral conscience and commitments and jump into dividing people and create amongst them based on religion. So, human rights are our basic inalienable or absolute rights which we acquire under being born to human society. We can't give up or transfer them to others. We all possess or acquire the right to development, the fulfilment of our desires, to use our potentialities, our talents we've got by born or by learning. Simply, these are our inviolable, inherited rights as because we're humans. It can be rightly said that a child acquires these rights when he's in his mother's womb. The roots for protecting human rights can be traced back from the Babylonian king Hammurabi's period when he used to promote

the protection of property, a fair wage to everyone. The Dharma of Vedic period, Manuscripts also suggested for uplifting ethical values, moral obligations etc. Also with the development of natural law and natural right which was a western concept that says that whole cosmos is arranged in a particular way where they tried to interpret cosmic dualities, love and hate, night and day, where they said about universal inalienable rights which doesn't require sanction by the government as being existent and valid. Plato was one of the earliest political thinker and philosopher who advocated a universal standard of ethical values. According to Thomas Aquinas (1225-1274), the law of nature is the foundation of all human law. On the classical literature of ancient Greece from 5<sup>th</sup> century B.C. we may come across a striking expression of the belief in the power exercised by God on human society based on law. Ancient Greek thinkers believed that God has set some standards for the universe, higher than manmade laws. However, these higher moral values are also embodied in the Dharma (righteousness), Artha (wealth), Kama (desires), Moksha (salvation) which were expounded by ancient Indian philosophers. The historical steps to protect rights of mankind were based on promoting rule of law and disagreeing to be governed by arbitrary whim of the law, which resulted in the formulation of Great Charter of Human Rights or Magna Carta of 1215, Petition of Rights Act 1628, Habeas Corpus Act 1679, Bill of Rights Act 1689. These Acts have emerged for the realization and implementation of human rights. After the end of two world wars which ended up with the great loss of life, immeasurable loss to property, world community realized the importance of peace and rights of humans to meet the goal of a progressive country, which in the 19<sup>th</sup> century was resulted in many international conventions, charters, treaties and conferences where great importance was attached to the human rights. Among them Universal Declaration of Human Rights 1948, ICCPR 1966, ICESCR 1966, U.N Charter of 1945, International Conference Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on Elimination of All Forms of Discrimination Against Women, Vienna Conference, Fourth World Conference of Women 1995. Very vast and wide definition of human rights were given under them and stated about different civil, economic, social, political rights of human. They're still being recognised as a milestone in historically recognising the wide variety of human rights in the entire world and India was one among those countries. India was a signatory part of the Universal Declaration of Human Rights, 1948. At last, it can be said that women's rights are nothing but a part of all these

human rights and these rights must be respected and promoted under the legal mechanism, by society.

Here, what matters most is the gross violation of human rights which is happening far and wide. But how can a person teach another person what is humanity? May be somewhere we are lacking in teaching the students, children about it. It is important because a child will be a citizen tomorrow. They're the future of our nation. This is why the education system must be human-oriented but sadly today we have an education system which is basically job oriented. Moreover giving them knowledge on law, rights and duty at the earliest stage of life is also very important.

**2.2 What is crime:** Crime is a social wrong as it affects the society at large, for which penalty is imposed by the court of justice on the wrongdoer. The state always acts as a party in all criminal trials, where accused is presumed to be innocent until proof of his guilt beyond any reasonable doubt. For which onus of proof or burden to prove the whole case lies on the prosecution. Court pronounces the judgment after evaluation of all the facts or after examining all the shreds of evidence and witnesses thoroughly. Evidence of such facts-in-issue and relevant facts may be given either orally or in written form. If the accused makes any confession voluntarily before a judicial officer or before the court during the trial, the conviction can be based upon such confession, if the same appears to be true. In the case of extra-judicial confessions corroboration or supporting, shreds of evidence are required. Section 24-29 of the Indian Evidence Act 1872 deals with a confession. In the case of dowry deaths, bride burning dying declaration given u/s.32 plays a vital role where the victim is the only eye witness to the crime.

**2.3 Protection and promotion of women's rights under the Constitution and interpretation of such provisions by the judiciary:**

The Constitution of India says about equality of opportunity without any discrimination. While Article 14 states that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 15 prohibits discrimination on the ground of race, caste, sex, religion, place of birth or any of them. Art. 15(2) states that no citizen shall, on grounds only on religion, race, caste, sex, place of birth or any of them, be subjected to any disability, liability, restrictions or condition concerning -

a) access to shops, public restaurants, hotels, places of public entertainments or b) the use of wells, tanks, bathing ghats, roads and public resort maintained wholly or partly out of state funds, dedicated for the public,

While in Article 15(3) it states that nothing in this Article shall prevent the states from making any special provision for women and children. Similarly, in different sub-clauses, it has made provision for SC, ST [15(4)] and weaker sections of society [(6) (a)]. Article 16 states about equality of opportunity in matters of public employment, Article 21 states for the protection of the right to life and personal liberty, wherein after 86<sup>th</sup> amendment in 2002 added Art.21-A providing a right to education from 6 to 14 years. Article 23 prohibits the trafficking of human being and bonded labour and 24 prohibits child labour. Article 39-A asserting about free legal aid and equal justice so that opportunities for securing justice are not denied to any citizen by reason of economic and other disabilities. Article 42 ensuring just and humane conditions of work and maternity relief. Article 46 imposes obligations on state to promote educational and economic interests of weaker sections. Similarly, Article 47 states about state's duty to promote level of nutrition and standard of living.

But a striking feature of our constitution is that Article 14 doesn't prohibit reasonable classification based on intelligible differentia. It only forbids class legislation. Such reasonable classification must not be vague or evasive, arbitrary and must incorporate the principles of natural justice, such as a fair trial, hear both sides etc. The differentia based on a rational ground and has a reasonable nexus with the object sought to be achieved by such statute. It means equals must be treated alike and doesn't mean unequal ought to be treated equally.<sup>2</sup> A statute carries with it a presumption of constitutionality. Such a presumption extends also with a law which has been enacted for imposing reasonable restrictions on the fundamental rights. The presumption is also drawn that the statutory authority would not exercise the power arbitrarily.<sup>3</sup> Again, it is not unreasonable if prisoners convicted of a crime against women were excluded from the scheme of remission with the object to prevent further crimes against women.<sup>4</sup> Thus, we can say it is not a violation of the constitution if it makes special provision for marginalised, for women and child, for socially and economically backward classes. Thus reservation is available to SC, ST, OBC, minority community.

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2 M. Jagdish Vyas v. UOI, AIR 1995, SC 55

3 Peoples Union for Civil Liberties v. UOI, (2004) 2 SCC 476.

4 Sanaboina Satyamarayana v. Govt of A.P., (2003) 10 SCC 78

Special provisions to women are there as they were historically marginalised, discriminated. These are given to bring a social reform in India so that weaker sections may have access to education, job and social security. Here, equality and equity both these terms are important and most importantly they're different. Equality stands for the equal or same level of support to different parts of society or giving the equal or same opportunity to all the segments but equity goes a step further and refers offering of various levels of support and varying levels of opportunity to different parts of our society according to their needs and considering their individual situations. For example, govt support to COVID19 patients, like to give the patients free medications is equal for all people- this is equality. And the policies for reservation, quotas for SC, ST, OBC, minority, girls and women-friendly policies like maternity leave, these are affirmative actions taken to help the marginalised to achieve proper development-this is equity. The following picture will, clearly reflect the difference of both-

### EQUALITY VERSUS EQUITY



In the first image, it is assumed that everyone will benefit from the same supports. They are being treated equally.



In the second image, individuals are given different supports to make it possible for them to have equal access to the game. They are being treated equitably.



In the third image, all three can see the game without any supports or accommodations because the cause of the inequity was addressed. The systemic barrier has been removed.

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### Judicial interpretation of constitutional provisions:

In a judgment of S.C of India in *Air India v Nargesh Meerza*,<sup>6</sup> case certain discriminatory rules were imposed on the air hostesses such as, the age of retirement was fixed at 35 for air hostess and the retirement age of other staffs was also different. The Managing Director was given discretionary power to terminate any air hostess if they become pregnant, they got married within the first four years of service and to increase the age of retirement up to 45 years. The court held that the rules as unconstitutional and struck down. It was held as motherhood and violation of Article 14, 21 of the constitution.

In *C.B Muthamma v. UOI*,<sup>7</sup> in this case, the petitioner was a member of the IFS and she alleged discriminatory practices in the service for which she was denied promotion. She contended of a hostile environment towards the woman and she had to furnish an undertaking that she would resign if she married. S.C held such rules were against the letter and spirit of the constitution. The court stated that if a woman has to obtain permission from the govt before the marriage then the same set of reasoning is also applicable to man. During the pendency of the case, some rules were deleted and others were on the verge of being deleted and the petitioner was also promoted. Court held that denial of seniority and promotion is a clear violation of her right to live with human dignity and personal liberty guaranteed u/A.21 of the constitution, Art.16 equality of opportunity in matters of public employment and Art.14 right to equality.

In *Sheela Barse v. State of Maharashtra*<sup>8</sup> S.C issued many guidelines regarding the rights of women prisoners. Apex court said that a female prisoner and suspect must be guarded by woman guards or constables. Interrogation of suspects, an offender must be carried out in presence of women officials. Intimation regarding the arrest of any female offender must be immediately communicated to the relatives and also to legal aid committees, whether under trial or convicts they have the right to legal assistance.

In *Madhu Krishnan v. State of Bihar*, AIR 1956, 5, SCC 148 it has been observed that women form half of the world population. They have always been discriminated and are still suffering

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6.AIR 1981 SC (1829) 4SCC 355

7 S.C 1979 AIR 1868

8 AIR 1983, SC 96

in silence. Self-sacrifice and self-denial are their nobility and yet they have been subjected to all kinds of inequality and indignities.

In another landmark judgment of S.C in *Maneka Gandhi v. UOI*<sup>9</sup> case court observed that the right to life guaranteed under Art.21 doesn't mean mere animal or physical existence, it means right to live with human dignity. Art. 21, 14, 19, 20, 22 these are not in any watertight compartments but rather supplementary and complementary to each other. Petitioner's passport was impounded under the Indian Passport Act without allowing her to be heard in violation of principles of natural justice and her right to personal liberty as the right to move or visit abroad comes under right to personal liberty. Any law which takes away the personal liberty of a person must be just, fair and reasonable and must not be vague, arbitrary and fanciful. For a procedure to be valid it must the principles of natural justice within its ambit. The leading judgment in Maneka's case was given by Justice P.N Bhagawati. This case has a profound and beneficial impact on the whole criminal justice system.

In *Yusuf Abdul Aziz v. State of Bihar*,<sup>10</sup> Sec.497 of IPC which only punishes man for adultery and exempts women from punishment even though she may be equally liable as an abettor was held to be valid. But now adultery is not an offence. S.C scraps Sec.497 of IPC in *Joseph Shine v. UOI*<sup>11</sup> case, as being violation of Art. 14, 15, 21 of the constitution because a woman was considered as a property of her husband, the same restriction, however, didn't apply to the husband. On 27.07.2018 this section was struck down by a 5 judge bench of S.C consisting of Chief Justice Deepak Mishra.

In *Surjit Singh Thind v. Kanwaljit Kaur*, the Punjab and Haryana H.C held allowing medical examination of a woman to test her virginity is against the law and her right to privacy.<sup>11</sup>

In *Delhi Domestic Working Women's Forum v. UOI*, S.C laid down certain guidelines for the trial of rape and sexual assault cases consisting of medical assistance to the victim including mind counselling, health check-up to prepare her mentally to fight the case, legal assistance in the police station and court and all rape cases anonymity of the victim must be

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9 AIR 1978, SC 597

10 AIR 1951 BOM 470

11 AIR 2003 PH 353.

maintained, as far as necessary. Again compensation shall be awarded by the court on conviction of the offender.<sup>12</sup>

In *Dattatreya v. State of Bombay*, it has been held that the reservation of seats for women in colleges is not unconstitutional. Again it stated that the establishment of colleges exclusively for women is not hit by Art.15. The affirmative actions taken by govt for the development of women's position is not hit by Art.14 also.<sup>13</sup>

In *Savitri v. K.K Bose*<sup>14</sup>, the Allahabad H.C had already made it clear that what Article 15 (3) contemplated was that the making of special provisions must be for benefitting women as a class. It was not possible to read the word provision as including a decision given in a particular case or matter but provision included within its ambit a legislative enactment, rule, regulation, order and it was in the sense used u/A.15 (3).

Thus, the Constitution has made provision for reservation of seats for women in election U/A. 243 (b) and Art. 243 (t) regarding reservation of seats in municipalities. The Constitution by its 73<sup>rd</sup> and 74<sup>th</sup> amendments has made provision for reservation of seats for woman in panchayat and municipality. The parliament introduced the 81<sup>st</sup> Constitutional Amendment to reserve one third of seats in Lok-Sabha and State Legislative Assemblies for woman.<sup>15</sup>

Thus, reservation based on sex, caste is not unconstitutional. The social reformers or constitutional makers who rationally came up with the idea of the reservation to took people to the position, which was already occupied by others, by higher caste, by men. Since, India is a caste dominated country with a patriarchal community where the least attention was paid to the women and their growth. And there was a higher rate of illiteracy, poverty, the higher rate of unfairness to the lower caste communities that they required attention and development. Thus, these affirmative actions are still sustaining in India to take away all the barriers based on sex, caste, minority etc.

#### **2.4 Provision for women under different legislations:**

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<sup>12</sup> AIR 1955 SCC (1) 14, JT 1994

<sup>13</sup> AIR 1964 S.C 321

<sup>14</sup> AIR 1972 ALL 305

<sup>15</sup>Tripathi S.C Dr. and Arora Vibha,(2010) Law Relating to Women and Children, Central Law Publications Fourth Edition. Page no. 11



1. Equal Remuneration Act, 1976: This Act provides for equal remuneration for both male and female for the act done by them which is of similar nature, so that there shall be no partiality, unfair treatment on the basis of sex. Also states that there shall be no discrimination on recruitment process by the employer based on gender.
2. Maternity Benefit Act, 1961: To make the work place more human centric and some advantages to women during pregnancy, delivery, medical termination of pregnancy the provision for leave with wages has been provided under the Act including nursing breaks. Every woman is entitled to such maternity benefit and it shall be unlawful for the employer to dismiss a woman, where she absents herself from the employment, under the provision of this Act.
3. The Factories Act, 1948: The Act stated about separate enclosed accommodation for man and woman in every factory, provision for suitable room or rooms for children in all the factories where more than 30 workers are women, intervals for women who have children, proper cleanliness and ventilation etc for the health and welfare of workers.
4. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex-Selection) Act, 1994: According to section 3 of the Act, all genetic counselling centres, genetic laboratories, genetic clinics, unless registered under the Act, shall not conduct or associated with, or help in, conducting activities like pre-conception and pre-natal diagnostic techniques. Under Section 3-A sex selection is strictly prohibited. No person can allow to be caused determination of sex before or after conception. Offences under the Act shall be cognizable, non-bailable, non-compoundable.
5. The Indecent Representation Of Women (Prohibition) Act, 1986: Under the Act indecent representation of women is prohibited, unless made for bona fide purpose, such as, for a film, art, book, painting, pamphlet, literature, in the interest of science, learning etc. Where on first conviction punishment shall be extendable up to two years and fine, in case of second and subsequent conviction with imprisonment for a term not less than six months but can be extended up to five years also with fine not less than 10,000 rupees.
6. The Protection of Women from Domestic Violence Act, 2005: The Act is a comprehensive enactment covering women who are or have been in a relationship by marriage, consanguinity, adoption, or in a relationship in the nature of marriage. It states about rights

of women in the shared household, Magistrate may pass protection order for person victim of domestic violence and State Government is empowered to appoint protection officer. The main drawbacks of the Act are it includes only habitual violence as domestic violence does not include solitary violence, doesn't give equal right to the women in their matrimonial homes, the wife is only entitled to claim a right of residence in the shared household. The Act makes counselling mandatory for the aggrieved person and accused either singly or jointly, where Act is giving a provision to both the person to save their relation which is not bad but at the same time it clearly exhibits the expectations of our society who always expect it from the women to compromise in a horrible marriage where she had to go through a traumatic phase.

7. Dowry Prohibition Act, 1961: The Act to prohibit giving and taking dowry and a supplementary provision to Indian Penal Code and Indian Evidence Act. But legislation is not the only solution to change the deep rooted social structure, but it is a necessary facet to push society to adopt some changes by attaching penalty for demand of dowry. But dowry is still common in some Indian culture.

8. The Immoral Traffic Prevention Act, 1956: The Act was enacted to prohibit and penalise trafficking of human being for the purpose of prostitution, bonded labour, trafficking of human organs etc. The Act has made provision for corrective institutions, protective homes.

9. The Child Marriage Restraint Act, 1929: The marriages solemnised in contravention of this Act is unlawful and not invalid. It has made provision for punishment for solemnising child marriage.

### Chapter 3

### 3.1 Conceptual Analysis of the crimes happening against the woman-

**1. Cruelty to married women:** Sec.498-A of IPC lays down as- Whoever being the husband or relatives of husband of a woman subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. For the purpose of this sec. Cruelty means- a) any wilful conduct of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman or

b) harassment of the woman where such harassment is to coerce her or any of her relatives for any unlawful demand of property or other valuable things from her or is on account of her failure to meet such demand.

Section 114-A of IEA, 1872 presumption as to abetment to commit suicide is relevant with Sec.498-A of IPC, where the question is as to the death of the woman that looked like suicidal death then the court may presume it to be abetted by husband and his relatives. The prosecution here is required to prove the intentional aid or active participation by husband and his relatives to form the offence u/A. 498-A, which is the gist of the offence. Such intentional act or ill-treatment with a dishonest purpose may be physical or may be mental such as repeated coercion for not bringing dowry, torture etc. so any form of act that affects, hurt the psychological, emotional sphere of an individual is also cruelty. Thus, taunting, threatening, verbal abuse, physical abuse, deprivation of necessities of life like food, shelter, cloths, keeping in captivity all these things amounts to cruelty. It has been held by the Delhi H.C in Inder Raj Malik v. Mrs. Sunita Malik, 1986, where it is alleged by the complainant that she was being continuously threatened that her son would be taken away unless she met with the demands of the accused by way of compelling her parents to sell their property. Such threatens comes under Sec.498-A. Act of cruelty lies on the gravity or seriousness of the act of husband and his relatives whether there is any possibility to drive the woman to commit suicide or compelling her to fulfil any unlawful demands. Causing mental harassment to a person where it becomes unbearable to tolerate may be termed as cruelty. The complaint under this Sec may be filed by the woman herself or any person related to her by blood, marriage, adoption. If there is no relative by any public servant authorised by S.C in this behalf. In Arun

Vyas v. Anita Vyas, (1999) 4 SCC court stated cruelty is a continuing offence. Here, husband includes any person legally married to her.

In Vijeta Gajra v. State (NCT of Delhi), (2010)11 SCC 618, court observed that relative of the husband means relative by blood, by marriage, by adoption. The offence is non-compoundable U/S.320 of Cr.P.C. But on the genuine compromise of both the parties, the complaint may be quashed u/S. 482 of Cr.P.C. The purpose of Sec.498-A is to ventilate the grievances of married women for dowry or other similar reasons.

2) **Dowry Deaths**- The death of brides or married women for dowry is not a new thing. It is like an agreement to gift property and valuables demanded by the groom side as a precondition for a marriage. Every year the rate of such incidents is only increasing and increasing due to the lust, greed for money, property some have resorted to the killing of their daughter in law/ wife shamelessly. That sometimes the value of a refrigerator, washing machine, the aqua-guard is even considered as higher than human life. Non-fulfilment of their needs, demand for four-wheeler or any other valuable item can lead to the destruction of life, a relationship. How shameful!!! Law condemns giving and taking of dowry, the legislature enacted the Dowry Prohibition Act, 1961. Sec. 304-B of IPC defined dowry and imposed a penalty on it. But somewhere they become inefficient, ineffective in combating dowry-related deaths. In 2012,<sup>16</sup> 8,233 cases were registered relating to dowry deaths, bride burning. Families are harassed to fulfil the demands, domestic violence occurs inside the matrimonial houses for dowry, ultimately kill a human life after barbaric, brutal torture on her. It is a pathetic condition that law, govt is still lacking in providing effective measures to deter the hazard of dowry. While in some communities such demands are fulfilled as a ritual of a marriage ceremony. Many people for the dowry that it helps the ugly girls in getting married to well well-educated giving them a higher status in the families, sending their husbands to abroad and they can also live there after marriage or the higher the education of the man the higher the amount of dowry.

In N.V. Satyanandam v. Public Prosecutor, AP High Court<sup>17</sup>, The Supreme Court held that—in dowry death cases and most of such offences direct evidence is hardly available and such cases are usually proved by circumstantial evidence. This section as well as section 113-

<sup>16</sup><https://en.m.wikipedia.org/wiki/Dowry-Deaths>

<sup>17</sup> AIR 2004 SC 1708

B of the Evidence Act deals with presumption of offences, if death occurs within seven years of marriage in suspicious circumstances. This may be caused by burns or any other bodily injury. Thus, it is obligatory on the part of the prosecution to show that death occurred within seven years of marriage. If the prosecution would fail to establish that death did not occur within seven years of marriage, this section will not apply.

The Apex Court in *Sharad Bindhi Chand Sarda v. State of Maharashtra*<sup>18</sup> laid down the five golden principles regarding Circumstantial evidence which are as follows: a. circumstances from which the conclusion of guilt is to be drawn should be fully established;

b. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

c. The circumstances should be conclusive and tendency;

d. They should exclude every possible hypothesis except the one to be proved,

e. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. These five golden principles constitute an important role as proof of a case based on circumstantial evidence and in the absence of direct evidence.

The Supreme Court in *Baljit Singh v. State of Haryana*,<sup>19</sup> has observed that in the perusal of section 304-B clearly shows that if a married woman dies otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with demand for dowry, such death shall be called dowry death and such husband or relative shall be deemed to have caused the death.

The High court of Allahabad in *Premwati v. State of Uttar Pradesh*<sup>20</sup> has ruled that “the offence under section 304B of the Indian Penal Code is triable by the Court of Session. It is

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<sup>18</sup> AIR 1984 SC 300

<sup>19</sup> AIR 2004 SC 1714

<sup>20</sup> AIR 2011 4 SCC 427

a cognizable and non-bailable offence. The minimum punishment for the offence is seven years imprisonment which may extend to life imprisonment. Section 304-B applies not only when death is caused by her husband or in-laws but also when death occurs unnaturally whoever might have caused it. The section will apply whenever the occurrence of differentiating is preceded by cruelty or harassment by husband or in-laws for dowry and death occurs in unnatural circumstances. It may be emphasised that the occurrence of death in such circumstances is enough though death might not have been caused by the husband or in-laws. Thus the intention is the gist of the offence of death which husband or in-laws had, though they did not the death. Thus a fiction has been created. It is because in these circumstances, the misery and agony created by them and inflicted on the deceased, which compels the unfortunate married woman to end her life.”

In *Bachi Devi v. State of Haryana*,<sup>21</sup> A demand for a motorcycle for doing business was made by husband months after marriage. The deceased was harassed by the accused and mother in law after refusing to fulfil their dowry demand. Being fed up by the harassment deceased wife committed suicide by hanging himself from a ceiling fan in the appellant’s house. It was held that demand for property or valuable security, directly or indirectly, has a nexus with marriage, in our opinion, such demand would constitute a demand for dowry or the reason for such demand being immaterial. Therefore, the demand for purchase of motorcycle was made within two months of the marriage and was a demand towards dowry and when not fulfilled, the deceased wife was maltreated and harassed continuously which led her to take the extreme step of finishing her life.

3) **Molestation-** Section 354 of IPC deals with the offence of Assault or criminal force to woman with intent to outrage her modesty—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.<sup>22</sup>The essential ingredient of Section 354, I.P.C. is stated by the Supreme Court in *Raju Pandurang Mahale v. State of Maharashtra*<sup>23</sup> has defined what constitutes an outrage to female modesty. The apex court observed that the essence of a woman’s modesty is her sex. The

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<sup>21</sup>AIR 2011 4 SCC 427

<sup>22</sup>Prof. S.N Mishra, Indian Penal Code, 1860, Central Law Publication, 19th edition. in the year 2013.

<sup>23</sup> Criminal (Appeal) 616 of 2003

culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her sari, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object.

In *Ram Kripal v. State of Madhya Pradesh*,<sup>24</sup> the Supreme Court observed that the essential ingredients of the offence under Section 354 IPC are: (a) the assault must be on a woman (b) the accused must have used criminal force on her, (c) the criminal force must have been used on the woman intending thereby to outrage her modesty.

In *State of Punjab vs. Major Singh*<sup>25</sup> a question arose whether a female child of seven and a half months could be said to be possessed of modesty, which could be outraged. In answering the above question Mudholkar J., who along with Bachawat J. spoke for the majority, held that when the act was done to or in the presence of a woman is suggestive of sex according to the common notions of mankind that must fall within the mischief of Section 354 IPC. Needless to say, the common notions of mankind referred to by the learned Judge have to be gauged by contemporary societal standards. The other learned Judge (Bachawat J.) observed that the essence of a woman's modesty is her sex and from the moment of her birth she possesses the modesty which is the attribute of her sex.

Similarly, Sec. 354-A deals with sexual harassment and provides punishment which shall be three years or fine or with both. It means any physical contact and advances involving unwelcoming and explicit sexual overtures, a demand or a request for sexual favours, showing pornography against her will. Whereas, making sexually coloured remarks is punishable with one year or with fine or both. The evolution of sexual harassment law in India started from the case of *Vishaka v. State of Rajasthan*, AIR 1997 SC 1997<sup>26</sup>, the litigation resulted in many guidelines issued by S.C and incorporation of gender equality in the workplaces for women. The victim or the perpetrator can seek transfer of their jobs, the

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<sup>24</sup> 2007 March 19

<sup>25</sup> AIR 1967 SC 63

<sup>26</sup> *Vishaka v. State of Rajasthan*, AIR 1997 SC 1997

special committee must be constituted to deal with complaints of sexual harassments, adequate punishment must be given to the perpetrator, legal assistance to the victim must be provided in police station and in court, the police should be under a duty to inform the victim of her right to representation, the anonymity of the victim must be maintained, compensation must be provided with the court on conviction of the offender and so on.

In *Soran Singh v. State (Manu/DE/0607(2010)*<sup>27</sup> Mamta was sexually harassed by Soran Singh, her father-in-law. Also, Mamta's husband continuously harassed her for the demand of dowry. Later on, she committed suicide. In this court, Appellate Soran Singh shall suffer rigorous imprisonment for a period of 10 years for the offence punishable under Sec.304-B of IPC and shall suffer imprisonment for 3 years for the offence punishable under Sec.498-A of IPC. Appellate Rakesh shall suffer rigorous imprisonment for a period of 7 years U/S.304-Band 3 years U/S. 498-A. The sentences upon both the appellants shall run concurrently.

Sec.354-B deals with assault or criminal force with intent to disrobe or compelling her to be naked or abets commission of such offence shall be punishable with imprisonment for three years, which may extend to 7 years and fine. Sec.354-C states about voyeurism which means man who watches, captures the image of a woman engaging in any private act and disseminates such images, even if the woman consents to capture such images but not to disseminate, in case of first conviction punishment shall be one year but which may extend to three years and fine. In the use of a second or subsequent offence, the punishment shall be three years but which may extend to seven years or with fine or both. Sec.354-D states about stalking, which means man who follow woman to foster personal interaction, monitors e-mail, electronic communications despite clear indication of disinterest by such woman, commit stalking. For which first conviction shall be for three years/fine, the second conviction shall be for five years/fine. Exception to this crime is- if such an act is for detection of crime and pursued under the law. Despite having these provisions we may see that cyber crimes, stalking, sexual harassments these are happening at a higher rate. And most of the time incidents are not reported to the police, the use of internet exposed the vulnerability of teenagers, women to become cyber crime victims. The long time is taken to disposes of rape, sexual harassment case by unnecessary adjournments and intervention by human rights commission as to the violation of rights of accused, the system of praying pardons from the

<sup>27</sup> *Soran Singh v. State (Manu/DE/0607(2010)*



President in case of gruesome murders by rape cause the entire procedure so lengthy that a normal people may even afraid of thinking about it. It increases the plight of a victim, deceased family who has to go through mental agony and pain for years.

**4) Rape-** Rape U/S. 375 of IPC is illegal intercourse by a man with a woman without her valid consent or if consent was given on fear of death or of hurt or whom she believed as her husband. Consent is valid when given by a person who has attained the age of majority, is of sound mind, in a fit state of mind. Exceptions to rape are medical intervention or with his wife above 15 years of age. Sec.376 lays down the punishment of 7 years which may extend to imprisonment for life and fine. And if committed by a police officer, public servant or staff of jail then imprisonment for 10 years, which may extend to life imprisonment and the remainder of that person's natural life and fine. Sec.376-A deals with causing of death or resulting in a persistent vegetative state of the victim due to rape and punishment for the same which shall not be less than 20 years added by Criminal Law Amendment Act, 1983 included Sec.376-D but which may extend to imprisonment for life or imprisonment for the remainder of that person's natural life or up to death.

Sec. 376-B deals with rape by husband on his wife, the punishment shall be imprisonment for two years which may extend to seven years and fine. In the same way IPC U/S. 376-c, 376-D, 376-E deals with rape by a person in authority, gang rape and repeat offenders respectively.

IPC is giving a broad definition of different types of rape and provides various punishments. But problem is that the rate of rape with murder by burning the body, throwing acid and causing brutal tortures on a human body is increasing tremendously. Such types of gruesome acts are causing terror among people. It is very important to reduce these offences by taking immediate action with stringent punishment. Cases must be dealt by fast-track courts, if victim survives medical and legal assistance must be given to prepare her for the case. A rape victim often suffers many psychological disorders like anxiety, depression, fear, loss of confidence, self-blaming may become her habit and different physical issues like pregnancy, HIV, AIDS, STS-VDRL or many other highly communicable diseases. Apart from these, victim has to go through the social stigma attached to her after the incident,

How to avoid, possibilities- Taking a self-defence course, if a person or place makes a woman uneasy, leaving or changing the place, recourse to public authorities, setting up emergency call list, by being cautious while revealing any confidential matter, phone etc. In short awareness and assertive behaviour is the best defence to protect from becoming an easy target.

**J. J.S.Verma Commission**, a three member commission which was set up in 2013, immediately after brutal torture and death of a woman in the heart of nation's capital Delhi in 2012, December. The Commission was set up to provide recommendations on effective legislative measures to reduce the offence of rape. Verma Commission criticised the government, police, even the public for its apathy. The incident resulted in nationwide public outcry. The commission recognised failure of governance as the root cause of rape and suggested drastic changes in certain aspects. These are discussed below:

a) Reformation in the electoral process, those who are accused of any offence against women or cognizance has been taken by a Magistrate of a criminal offence or have serious charges pending against them must be debarred from participating in the electoral process. Any candidate who fails to disclose a charge should be disqualified. And those who have already been elected to Parliament or State legislature should vacate their seats voluntarily.

Such reformation in the political system required because law makers who themselves have criminal cases pending against them or has committed offence against women cannot be a proper forum to redress women related issues.

b) It also suggested amendment of the Representation of People Act 1951. As per the Act a candidate charged with crimes connected with terrorism, secularism, untouchability, unfairness of election, sati and dowry are disqualified from election. Committee recommended to extent such provision to include sexual offences. For which filing of charge sheets and cognizance by the court is sufficient. Committee also proposed to insertion of a schedule 1 to RP Act 1951, enumerating offences under IPC befitting the category of heinous offences.

Election Commission of India has several times suggested many recommendations for decriminalisation of politics. The quality of our election often gets questioned for incurring huge monetary expense criminals are entering into the politics by using their muscle power,

money power. It is ironical to note that in spite of many brutal rape and sexual harassment incidents against women in the recent years no political party in India has come up with a comprehensive code or internal policies regarding elected representatives accused of crime against woman. Any concrete action is yet to be taken.

The apex court in *State Of Karnataka v. Puttaraja*,<sup>28</sup> pointed out that in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judgments, be it of this Court, High Court or lower Court, the name of the victim should not be indicated.

Right to refuse sexual intercourse has full play in case of every woman - The Apex Court in *Narender kumar v. State (NCT of Delhi)*<sup>29</sup> observed that even in cases where there is some material to show that the victim was habituated to sexual intercourse, no inference of the victim being a woman of easy virtues or women of loose moral character can be drawn. Such a woman has a right to protect her dignity and cannot be subjected to rape only for that reason. She has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. Merely because a woman is of easy virtue, her evidence cannot be discarded on that ground alone.

In *Pradeep Kumar V. Union Adm. Chandigarh*<sup>30</sup> it was laid down by the Supreme Court that to bring the offence of rape in the category of gang rape it is necessary to prove that more than one person had acted in concert with common intention to commit rape on victim. That more than one accused had acted in concert in commission of crime of rape with predetermined plan, prior meeting of minds and with the element of participation in action. It may also be in a plan formed suddenly at the time of commission of offence which is reflected by element of participation in action. That in furtherance of such common intention one or more person of the group actually committed offence of rape on victim or victims. In this case prosecutor stated that accused reached spot after rape had been committed. Mere presence of appellant accused at spot is insufficient to prove gang rape. The Honorable Supreme court in *Pushpanjali Sahu v. State of Orissa*<sup>31</sup> has held that sexual violence is not

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<sup>28</sup> AIR 2003 (8) sc 364

<sup>29</sup> AIR 2012 SC 2281

<sup>30</sup> AIR 2006 (10) SCC 608

<sup>31</sup> AIR 2012(9) SCC 705

only an unlawful invasion of the right of privacy and sanctity of a woman but also a serious blow to her honor. It leaves a traumatic and humiliating impression on her conscience, offending her self-esteem and dignity, rape as not only a crime against the person of a woman, but a crime against the entire society. It indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honor, reputation and not the least her chastity. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violation of the victim's most cherished of the fundamental rights, namely, the right to life contained in Article 21 of the Constitution. The courts are therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely.

The Criminal Law (Second Amendment) Act 1983<sup>32</sup> made a statutory provision in the face of Section 114 (A) of the Indian Evidence Act, which states that if the victim says that she did not consent to the sexual intercourse, the Court shall presume that she did not consent as a rebuttable presumption. New laws were also enacted following the incident. The Section 376 (punishment for rape) of the Indian Penal Code underwent a change with the enactment and addition of Section 376(A) to Section 376(D), which made custodial rape punishable. Besides defining custodial rape, the amendment shifted the burden of proof from the victim to the accused once intercourse was established; it also added provisions for in-camera trials, the

Delhi Gang Rape case<sup>33</sup>(Nirbhaya Case) - A young girl was returning home with a male friend after watching a movie. They boarded a bus and soon figured out that something was wrong. The six people on board, including the driver knocked the boy unconscious with an iron rod and then raped her one at a time. They shoved an iron rod in her vagina, severely damaging her intestines, abdomen and genitals. Finally, they threw the boy and the woman out of the bus, and drove away. The woman was rushed to the hospital and the men were arrested within 24 hours. Eventually, the woman succumbed to her injuries, and the men immediately went on trial. While on trial, one of the accused committed suicide in jail. The remaining five were subsequently charged for rape and murder. The four adults were granted a death penalty, while the minor was sent to a reform facility for three years. The Additional Sessions Judge

<sup>32</sup>[http://en.wikipedia.org/wiki/Mathura\\_rape\\_case](http://en.wikipedia.org/wiki/Mathura_rape_case), visited on Feb, 05, 2016.

<sup>33</sup><http://online.wsj.com/public/resources/documents/DelhiRape.pdf,last> visited on 2nd Feb, 2018.

Yogesh Khanna, pronouncing the death sentence has observed that these are the times when gruesome crimes against women have become rampant and courts cannot turn a blind eye to the need to send a strong deterrent message to the perpetrators of such crimes. The increasing trend of crimes against women can be arrested only once the society realize that there will be no tolerance from any form of deviance against women and more so in extreme cases of brutality such as the present one and hence the criminal justice system must solidify confidence in the minds of people, especially the women. The crime of such nature against a helpless woman requires severe punishment based on the gravity of the offence. Subjecting the victim to inhuman, ruthless, barbaric torture before her death is both shocking and unfortunate. This gruesome act of the convicts definitely fits in the category of rarest of rare cases.

**5) Kidnapping and abduction:** Under the Indian Penal Code, 1860 Sec. 360 deals with kidnapping from India and 361 kidnapping from lawful guardianship, committed against a minor girl. Sec. 363 deals with punishment of imprisonment for seven years or fine or both. While Sec.362 deals with abduction in respect of any person by force, compulsion, deceitful means. Abduction is punishable only when done with an intention to cause murder, to seduce women for illicit intercourse or to compel her to marry. Thus, abducting or inducing Woman with the intent to compel her for Marriage is an offence under Section 366 of the code. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely she will be, forced or seduced to illicit intercourse with another person shall be punished as aforesaid. However it is immaterial whether the woman in question is married or not. This section makes kidnapping and abduction of a woman with the intention of forcibly marrying or having sexual intercourse with her a cognizable offence. The question whether a woman was kidnapped or not depends upon her age and the presence of other circumstances. If a girl is eighteen or over, she can only be

abducted and not kidnapped but if she is under eighteen, she can be kidnapped as well as abducted if the taking is by force or the taking or enticing is by deceitful means. Where a girl over 18 years of age (able to make contracts and act in her own) desired to live with her husband and went to him, no charge of abduction could be maintained against the husband.<sup>34</sup>

Mere finding that the accused abducted the woman is not sufficient for sustaining conviction under section 366 IPC. Further finding that the accused abducted the woman for any of the purposes mentioned in section 366 IPC is necessary that it must be committed against her will. In *Khadil-Ur-rehman case*<sup>35</sup> it was held that “the expression against her will connotes that the act was done not only without consent of the woman but in spite of her opposition to the doing of it. In *Kuldeep K. Mahto v. State of Bihar*<sup>36</sup> the apex court observed that as per the prosecution, the accused forced the prosecutor in a tempo to the point of dagger and took her away and committed rape on her against her will. There is no evidence to show that the accused kidnapped her with the intention to marry against her wishes. The evidence of the doctor proved that the prosecutor was not below 18 years. The doctor found no injuries on her person or any portion of the private part of the prosecution party about sexual intercourse and therefore, the conviction of the accused was not sustainable.

In *Shyam & another v. State of Maharashtra*<sup>37</sup>, the prosecutor was a grown-up girl, though she had not touched 18 years of age. She claimed during trial that she was kidnapped under threat. The evidence produced during trial showed that she was seen going on the bicycle of the accused. The Honourable Supreme Court noted that it was not unknown to her with whom she was going and therefore, it was expected of her then to jump down from the bicycle or put up the struggle and in any case raise an alarm to protect herself. As no such steps were taken by her, the Honourable Supreme Court felt that she was a willing party to go with the appellants of her own and, therefore, there was no taking out of the guardianship. The appellants were acquitted of the charge under Section 366 of IPC. The requirement of Section 366 of IPC is that taking or enticing away a minor out of the keeping of the lawful guardianship was an essential ingredient of the offence of kidnapping. It was held that in such

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<sup>34</sup>Lalita Prasad v. State of M.P

<sup>35</sup>1993 (11) rang 213

<sup>36</sup> AIR 1998 SC 694

<sup>37</sup>AIR 1995 Criminal Law General 3974

a case, it is difficult to that the accused had taken her away from the keeping of her lawful guardian and something more has to be shown in a case of this nature, like inducement.

**6) Domestic Violence:** Through different forms of media everyday we're receiving reports of violence, be it violence against animal, violence against human happening all over the country. While domestic violence which takes place against a woman inside a family for various reasons like hatred, jealousy or for no reason at all includes many types of cruel behaviours, like not giving food to eat, deprivation of monetary needs, threats to kill, beating the woman, sexual assaults, taunting and ill behaviour towards the person, social isolation, not allowing to visit and talk to her parents, which must be in a continuing process. The materialistic society where greater values has been paid to materials, property and valuable things then relationship, a woman become victim of domestic violence easily. The values which we are teaching in our families matters the most. There's constant rise of domestic violence cases even during lockdown due to COVID19. These types of emotional and physical abuse can have a long lasting psychological effects and many illness. Violence against young widows has also been on a rise in India. Most often they are cursed for their husband's death and are deprived of food and shelter. Cases of rape, molestation by family members or attempts were also found.

Apart from all these, **fraudulent marriages, bigamy** is also common. Female infanticide, foeticide these acts subjecting a life to immeasurable pain and violence from the very beginning of their existence in earth. Cyber crimes are happening far and wide. In *Bodhisattva Gautam v. Subhra Chakraborty*<sup>38</sup> the Supreme Court observed that the accused not only induced the complainant and cohabited with her, giving her a false assurance of marriage but also fraudulently gave through certain marriage ceremony with knowledge that was not a valid marriage and thereby dishonestly made the complaint to believe that she was a lawfully married wife of the accused. The way the accused exploited the complainant and abandoned her is nothing but an act of grave cruelty as the same has caused serious injury and danger to the complainant's health both mentally and physically.

In *S. Radhika Sameena v. SHO, Habeebnagar Police Station*<sup>39</sup>, The Andhra Pradesh High Court held that having married under the Special Marriage Act, if a person again contracts a

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<sup>38</sup> AIR 1996 SC 922

<sup>39</sup> AIR 1997 Cr.LJ 938

second marriage; he shall be deemed to have committed an offence under Section 494 or 495 (Bigamy) of Indian Penal Code. Therefore, a person married under the Special Marriage Act commits bigamy if he marries again during the lifetime of his spouse, and it matters not what religion he professes at the time of the second marriage. The Special Marriage Act clearly only contemplates monogamy and a person married under the Act cannot escape from its provisions by merely changing his religion

**Immoral trafficking of girls, women** to different parts of India or to foreign country for prostitution, for human organs is increasing tremendously. **Section 370**<sup>40</sup> deals with the offence of trafficking of a person from one place to another place without the consent of the person or by using threat, force, by deception or by abducting or practising fraud on the person or by inducement etc. for the purpose of exploitation of the human being. Under this section both the parties to the crime; trafficker as well as who receives the person for their exploitation is guilty of the crime under section 370 of IPC. In *Bandhua Mukti Morcha vs Union Of India & Others*,<sup>41</sup> Justice Bhagawati, has very aptly Described the pathetic condition of bonded labourers in the following words:- They are non-beings, exiles of civilization, living a life worst than that of animals, for the animals are at least free to roam about as they like and they can plunder or grab food whenever they are hungry but these out castes of society are held in bondage, robbed of their freedom and they are consigned to an existence where they have to live either in hovels or under the open sky and be satisfied with whatever little unwholesome food they can manage to get inadequate though it be to fill their hungry stomachs. Not having any choice, they are driven by poverty and hunger into a life of bondage a dark bottomless pit from which, in a cruel exploitative society, they cannot hope to be rescued. 370-A<sup>42</sup> deals with the exploitation of a trafficked person (1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous

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<sup>40</sup> Inserted by Sec.8 of Criminal Law Amendment Act 2013

<sup>41</sup> AIR 1984 SCR (2)67

<sup>42</sup> Supra note 53



imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine. Thus the distinction between Sub-section (1) and Sub-section (2) of section 370-A is that Sub-section (1) punishes the offence of exploitation of a trafficked minor while Sub-section (2) deals with exploitation of a trafficked person whether a minor or major. The concept of human trafficking refers to the criminal practice of exploiting human beings by treating them like commodities for profit. Even after being trafficked victims are subjected to long term exploitation. Section 372, 373 deals with selling minor for purposes of prostitution and provides punishment.

**Acid Attacks (326 A-B IPC)** 326-A<sup>43</sup> -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, 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 section shall be paid to the victim. 326-B<sup>44</sup> -Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine. In Sachin Jana Vs. State of West Bengal<sup>45</sup> case Supreme Court Observed that a case involving acid attack which had caused disfigurement of the victim, the Supreme Court applied Section 307 IPC (Attempt to murder) read with Section 34 on the basis that to justify a conviction under Section 307 it was not essential that bodily injury capable of causing death was inflicted. This Section made a distinction between the act of the accused and its result. Therefore it was not necessary that the injury actually caused to the victim should be sufficient under ordinary circumstances to result in death. The court is only required to see whether the act, irrespective of its result, was

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<sup>43</sup> Added by Criminal Law Amendment Act, 2013

<sup>44</sup> Ibid

<sup>45</sup> AIR (2008) 3 SCC 390

done with the intention or knowledge mentioned in Section 307. It was sufficient if there was intent coupled with an overt act in execution thereof. Recent Incidence of acid attack a woman from Kerala's Kannur is battling for life at a hospital in Mangaluru after a man dressed as Santa Claus threw acid on her on Christmas Eve. The attack left the woman blinded. The 47-year-old, mother of two, was on her way to the church to attend the midnight mass in Kannur on December 24 when she was attacked. She was accompanied by her parents and two sons. Her younger son, 7, who was in her arms at the time also received burn injuries and is in the Intensive Care Unit of the hospital. The police arrested one person who is believed to be the attacker. The man was reportedly known to the woman and allegedly attacked her after she spurned his advances.<sup>46</sup> A doctor and his friend were arrested while two juveniles were detained in connection with the acid attack on a 30-year old woman doctor. Arvind Yadav, a batch mate of the victim, along with his friend Vaibhav hatched the plan to throw acid on Amrita Kaur. Police said Amrita had turned down Yadav's marriage proposal and got engaged to another man eight months ago. Amrita Kaur, the doctor employed with an Employees State Insurance (ESI) hospital in the national capital, suffered burn injuries after two motorcycle-borne assailants hurled acid at her Tuesday morning at a crowded market in west Delhi's Rajouri Garden area. Both the accused were arrested. They had hired two minors to throw acid on the woman doctor. Both the juveniles have been detained.<sup>47</sup>

**Honour Killing:** An honour killing or shame killing is the homicide of a member of a family by other members, due to the perpetrators belief that the victim has brought shame or dishonour upon the family, has violated the principles of a community or a religion, caste usually for reasons such as refusing to enter an arranged marriage, being in a relationship that is disapproved by their family, having sex outside marriage, becoming the victim of rape, dressing in ways which are deemed inappropriate, engaging in non-heterosexual relations or renouncing a faith.<sup>48</sup> Honor killings have been described as chillingly common in villages of Haryana dominated by the lawless khap panchayats (caste councils of village elders). In *Arumugam Servai v. State of Tamilnadu*<sup>49</sup> the Supreme Court observed and directed as follows: We have in recent years heard of Khap Panchayats which often pass decree or

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<sup>46</sup><http://www.ndtv.com/kerala-news/woman-critically-injured-after-acid-attack-in-kerala-onchristmas-eve-1259949> (Visited on 10th February, 2016)

<sup>47</sup><http://www.firstpost.com/fwire/two-arrested-for-acid-attack-on-woman-doctor2015871.html> (Visited on 10th February, 2016)

<sup>48</sup>[https://en.wikipedia.org/wiki/Honor\\_killing#India](https://en.wikipedia.org/wiki/Honor_killing#India) (Visited on 10 February 2016)

<sup>49</sup>(2011)6 SCC 405

encourage honour killings or other atrocities in an institutionalised way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out. There is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal-minded persons deserve harsh punishment. Only in this way can we stamp out such acts of barbarism and feudal mentality. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal. Hence, we direct the administrative and police officials to take strong measures to prevent such atrocious acts. If any such incidents happen, apart from instituting criminal proceedings against those responsible for such atrocities, the State Government is directed to immediately suspend the District Magistrate/Collector and SSP/SPs of the district as well as other officials concerned and charge-sheet them and proceed against them departmentally if they do not (1) prevent the incident if it has not already occurred but they have knowledge of it in advance, or (2) if it has occurred, they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them, as in our opinion they will be deemed to be directly or indirectly accountable in this connection. Court ordered the police across the country to take stern action against those resorting to violence against young men and women of marriageable age who opted for inter-caste and inter-religions marriages.

In the case of *Lata Singh Vs State of Uttar Pradesh and others*<sup>50</sup> the apex court observed: In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, must initiate criminal proceedings by the police against such persons and further stern action is taken against such persons as provided under law.

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<sup>50</sup>AIR 2007 (1) GLH 41

Thus, honour killings, for whatever reason, falls within the category of rarest of rare cases deserving capital punishment. It is time to destroy the roots of these barbaric, feudal practices.

## Chapter-4

### Concluding Observation and my suggestions:

No doubt, exploitation of human being to such an extent is difficult to imagine. We need to identify the reasons due to which crime rates against women are increasing everywhere and must try to address measures, which requires proper implementation nationwide. Constitution along with judiciary is trying best to improve the quality of life, enhance growth within different segments of society, judiciary gradually moving from the literal interpretation of the constitution to liberal and dynamic interpretation of our right to personal liberty and human dignity by imbibing different Articles together, like Art.14, 15, 16, 19, 21, 22 etc.

But somewhere lack of gender sensitization is becoming an impediment in achieving the assurance of gender justice. As already stated gender sensitization is the process of changing the view of society and growing respect for self and others. If one wishes to know how justice is being served in a country, we do not look at the law, administrators. We look at the victims, we look at those who are side-lined, victimised, marginalised to understand the gap between law and actual legal and social practices. Some important aspects are:

- a. For gender justice different outlook must be respected. Economic dependence and low level of education, conservative attitude of society, inadequate and insignificant involvement of women in solving socio-economic problems must be reduced. There is a wide gap between legal position and real attitudes and practices regarding women.
- b. Denial of education, denial of opportunities makes things impossible and hard, so equality in these matters must be given to all. Despite many effective legislations technology has helped in selective abortion and eliminating female fetuses, which is the cause of sex ratio declining to an alarming rate in many parts of India. Despite the Dowry Prohibition Act, Prevention of Women from Domestic Violence Act, such offences are increasing at an alarming rate. We must remember that we all are born to a woman, we all have mother, sister, we all have to respect towards women, an enlightened father, brother, husband are more likely to respect daughters, wife, sisters.

- c. Moreover, for the empowerment of women, a change in self-perception or a strong sense of confidence on the part of the women is required. The things required from a woman are attitude, behaviour, belief, competence and courage to become equal, to be treated alike where equality is needed.
- d. Exploitation of any kind must be strictly punished and death penalty must be given in gruesome homicide, rape, acid attack resulting in death, dowry deaths etc. In case of any heinous offences imprisonment of life should be the minimum punishment to deter the others from committing the same offence. Quick and effective measures must be introduced in trial of cases to dispose of the case without causing unnecessary delays and adequate justice must be served. So cases of violence must be iron handedly dealt and violators must be punished vigorously. Govt should take effective policies, stringent remedies and effective implementation of Acts must be given utmost importance.
- e. A change in the societal attitude must be needed.
- f. It is very important to have a sustainable development goal to achieve no poverty, zero hunger, good health and well being, quality education to ultimately receive gender equality. Because unless and until, there will be progress in the living standard, health and well being of the people, there will be no gender justice, as such, we desires to achieve.
- g. Women empowerment should be treated as a multi-dimensional process through which not only the society gains but whole nation gains. When women become financially independent it changes their status in the family, they earn respect and don't have to think about the future of their children as financial security is everything that matters most for a better future.
- h. To make criminal justice system more victim friendly it is important to assist the victim by the advocate, police in different phase of their case, giving legal aid, counselling, medical examination of health and giving them adequate support in all other important aspects including speedy disposal of cases relating to crime against women so that there will be no unnecessary harassment of the victim for a long period.
- i. To make legislative measures more effective it is important to provide strict and enhanced punishment to the offenders instead of giving more importance to reformatory measures. Because crime controlling measures are required to prevent

crime rates. Low conviction rates in rape, sexual assault and dowry death cases and lengthy period of trial making it difficult for the victim to get justice in time and increasing their psychological trauma.

- j. Special courts are needed to deal with different crimes committed against women with specially trained public prosecutors.
- k. Police officers must be given special training to deal with rape, sexual violence cases. Where offering them adequate knowledge of criminal law, constitutional law including the aspects of gender sensitization can become extremely helpful and effective.
- l. State government should make a victim compensation scheme in each district for the victims of rape, sexual violence.
- m. Lack of awareness among the marginalised section of our society needs special attention to accomplish gender justice in a factual sense.
- n. To deter the peril of sexual harassment in work places it should be made mandatory to include and exhibit the law, mode of penalty for commission of sexual harassment in all the workplaces. A special committee must be set up in all the offices, as per the guidelines mentioned in Vishakha's case.

Lastly, we can say that gender sensitization is a very positive and powerful weapon, which can enable us to attain a significant change in our society regarding the status of each gender be it male, female or third gender. It says about respect for self and for others. It says about raising awareness and giving up stereotypes based on gender. For which we need to make education gender sensitive, human centric. Making youths and man a part of this process will be beneficial for generating support and enhancing the cognition, as such. We should never forget that employment, health, nutrition, education these are crucial or fundamental for each gender as it brings social security, makes us efficient and assist the society, country and world at large to become financially definitive and socially a better place to live. Thus, gender sensitization programmes is the need of the hour to tackle many social evils against women. Let us become more tolerant human being and promising towards making a generation having the values of empathy, respect, equality and justice for all human.

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