

## Legal Provisions in IPC and CrPC for Women

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Constitutional provisions :- Before going into the legal provisions specifically meant for women and to punish the offenders for crimes committed on women, it is necessary to look into the constitutional provisions for women, reason being constitution is the supreme law of land and all other laws are the derivatives form the constitution. It is worthy to mention here that the constitution and law of the land gives adequate protection and safe guard the interest of women but it is due to utter callousness, apathy and indolence of the society that a woman is figured as a weaker sex which is an artificial creation, not an edict of God. It is gratifying to note that Article, 14, (equality before law and equal protection to the laws), Articles- 15(3), 16, 19, 23 and 39 (Directive principles of state policy for equal pay for equal work both for men and women) and Article 39 (A) legal aid for women at state cost provided in the constitution has made elaborate arrangements to uplift the life and condition of women. This was also the pious intention of the founding fathers of the constitution. In spite of such constitutional guarantee and special laws enacted to give protection and ameliorate the status of women, not much has been done so far to bring them at par with men folk. It is distressing to note that there has been growing incidence of domestic violence by the in-laws and husband of married women and dowry demand, torture and sexual harassment of women. Protection of women from

the Domestic Violence Act, 2005 has not been able to respond to growing menace of crimes committed on women because the punishment is not exemplary so as to create its impact in the society.

In this context it is necessary to highlight the various amendments made in the criminal law like IPC, CrPC, Evidence Act and other legislations to combat crime against women in the wake of Nirvaya case at Delhi. The Supreme Court took up the issue and gave direction to the government to establish number of fast track courts in the country to try sexual offences committed on women and deliver speedy justice. After Nirvaya case, a committee was constituted under the former CJI Justice J. S. Varma on whose recommendations amendments in the various provisions of penal laws were made including punishment for crime against women by way of amending provisions in IPC and the punishment was made stringent. In gang rape cases and rape committed by person in authority and rape committed subsequent to conviction on rape charge, the penal law was amended which may end in life sentence and award of death sentence to the offender. That apart, the punishment for trafficking on women and girls which offends Article 23 of the Constitution is also made punishable under Immoral Traffic (Prevention) Act.

**Provisions in IPC with deterrent punishment for sexual offences against women****Provisions of IPC**

Section 313 - Causing miscarriage without women's consent

Section 314 - Death caused by act done with intent to cause miscarriage.

Section 304B - Causing Dowry death

Section 306 - Abetment to commit suicide by women.

Section 354 - Assault or criminal force to women with intent to outrage her modesty.

Section 354 A - Sexual harassment and punishment for sexual harassment/

Section 354 B - Assault or use of criminal force to women with intent to disrobe her.

Section 354 C - Capturing the image of a women engaged in a private act and watching her.

Section 354 D - Following a women and coming in contact with her and touching her and other amorous advances against her disinterest.

Section 366 - Kidnapping, abducting or inducing women to compel her marriage, etc.

Section 372 - Selling minor for purposes of prostitution, etc.

Section 373 - Buying minor for purposes of prostitution, etc.

Section 376A - Punishment for causing death of rape victim or resulting in persistent vegetative state of victim may end in death sentence.

Section 376 C - Sexual intercourse by a person in authority and punishment may end in life sentence.

Section 376D - Gang rape and punishment may end in life sentence.

Section 376E - Punishment for repeated offenders which may end in death sentence.

Section 498A - Husband or relative of husband of women subjecting her to cruelty.

Section 509 - Word, gesture or act intended to insult the modesty of a woman.

Section 326A - Voluntarily causing grievous hurt by use of acid, etc.

**Amendments in Evidence Act**

It is striking to note that even in the Indian Evidence Act, a provision has been made under section 114 (B) to draw presumption by the court (the Court shall presume) regarding dowry death and mental and physical cruelty shown to women by her In-laws. Similarly section 113 (A) was added in Evidence Act that the court shall presume

about the abetment of suicide by married woman if she was subjected to cruelty and harassment prior to her death, within 7 years of marriage. Therefore, strict implementation of the laws are not only necessary by the law enforcing machinery but social consciousness against such offences is absolutely necessary which would go a long way to arrest this trend to a great extent. In rape cases

the character, past sex life of the victim lady is not relevant during trial after amendment of the law.

### **Amendments made in Code of Criminal Procedure(CrPC)**

In relation to commission of sexual crimes on women as amended in IPC provisions, the information under section 154 of Cr p.c. (FIR) regarding the offence shall be recorded by a women police officer. Similarly the statement of women regarding commission of the offences like outraging her modesty and making her naked etc are to be recorded under section 161 of CrPC by a women police officer. According to section 309 of CrPC now in relation to rape cases, the enquiry or trial should be completed within two months from the date of charge sheet. Section 357 of CrPC mandates that the victims of sexual offences are to be treated at all public and private hospitals who shall immediately inform the police about such incident.

Rape, molestation and eve-teasing :- Needless to say that rape, molestation and eve-teasing of women is alarmingly growing in different parts of the country. In Delhi women don't feel safe to move in the city and there is public indignation for this growing incidence of crime against women. The recent development of number of sexual violence committed against women in the National Capital, would give a glaring picture as to how in 20th century, in the new millennium, women are subjected to cruelty, torture, molestation and sexual harassment in public places in broad-day-light although we boast of that India is world's largest democracy where rule of law reigns supreme. It is unfortunate that there were large scale incidence of molestation and eve-teasing particularly of working women and girl students in Delhi in public places for which Delhi, has been described as "crime capital of India" by MPs across the party line on the floor of parliament sometimes back which was "fast becoming a living hell" for women.

Recently the Supreme Court also has expressed its concern regarding brutal and degrading "eve-teasing" and molestation of women with frequency in crowded places and public transport. Often the victim is blamed for the incident and expected to keep it to herself. In many cases, concerned authorities do not assist the women in reporting such crimes. The Supreme Court has asked to tackle women's molestation on three different levels. Specially, it has directed that states and Union territories to post women police officers in plainclothes across public spaces, from train stations to malls, and set up CCTV cameras in such locations too. Secondly, emphasizing communication, the Supreme Court wants special help-lines to be instituted enabling women to report such crimes and finally, it has broadened the ambit of responsibility from the victim alone, demanding that drivers or other employees in public transport help a molested woman report the crime - or face their permit being cancelled. All these measures are crucial in underlining the fact that molestation is an extremely serious crime towards which there must be no public apathy or tolerance.

A bench of Supreme Court lamented that Tamil Nadu was the only state to have enacted a law against eve-teasing but found it to be "toothless". "We notice there is no uniform law in this country to curb eve-teasing effectively in or within educational institutions, places of worship, bus stands, metro stations, railway stations, cinema, theatres, parks, sea-beaches, places of festival, public service vehicles or any other similar places", the bench said.

### **Honour Killing is a blatant violation of Human Rights of Women**

Regarding honour killings, both the girl and boy who are married against the wishes of their parents, community and cast members are killed brutally and particularly the girls are the greatest

casualty by the decision of Khap Panchayat of the concerned area in Rajasthan, Haryana. This persist in spite of the Supreme Court's anxiety and because police and state agencies fail to take them seriously. On 25.11.2012, UN Secretary-General addressed to member countries to implement the law effectively for elimination of violence and discrimination against women and girls across the globe which is a step forward for protection of human rights and gender justice and to observe the day. In this context, it is gratifying to note that in Afghanistan, after Taliban regime came to power in nineties, women's right and gender justice was unheard of but now slowly the voice for feminism and women's right is gaining momentum. Therefore, besides India, in the global context, women empowerment, and gender justice and their legal rights to be heard, to participate and their right of development, has been recognized which has opened a new vista for a new world order based on the principles of equality, both man and women alike.

**Sexual harassment of women at workplace :-** Regarding sexual harassment of women at work places, the Supreme Court in the case of *Vishaka vs. State of Rajasthan* (AIR, 1997, 3011), issued guidelines and directives till legislation is made on the subject by Parliament to curb such offences, but these have not been implemented so far in letter and spirit by Govt. and non-Governmental Organisations. It is necessary to mention that to check sexual harassment of women; at work place a full-scale legislation on the subject has been made viz. The Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013. Therefore it is desirable that all authorities, Govt. or Private Organisations are duty-bound to enquire into such allegations according to the direction of the Supreme Court and Legislation in this regard, when complaint is made by a women employee or women's organisation or any social

action group. It would be appropriate to mention that Article-142 of our constitution says in clear terms that "the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India". The causative factors for crimes committed on women are due to illiteracy, poverty, ignorance and lack of legal awareness amongst women which are the primary cause for growing incidence of sexual offences against them. Therefore, social consciousness, mass mobilization for gender justice is necessary so that women will be sensitized to protect their own rights and can fight against exploitation and injustice.

#### **Social welfare legislations against dowry, domestic violence and female foeticide.**

It is significant to mention that bride burning and torture of newly married women by their husbands and in-laws is a growing social menace which needs to be dealt with firmly which are serious criminal offences besides gross violation of human rights. In spite of the fact that there is social welfare legislations like Dowry Prohibition Act, 1961 and there are stringent penal provisions like section 304 (B) for causing dowry death and section 498 (A) of IPC for showing cruelty by husband or relatives of husband of a married women, so as to punish the offenders on the charge of dowry death and subjecting a married women to cruelty and torture, both mental and physical, it is felt that in absence of proper prosecution during trial and some times for want of deterrent punishment by the court, crime against women continues. Particularly even if there is a special legislation like protection of women from Domestic violence Act, 2005 which has since come into force, to curb the violence against women within the precinct of family it is unfortunate that such offences continue unabated in the society. This is

certainly due to lack of vigilant public opinion, social consciousness, lack of pressure of the civil society and finally want of exemplary punishment on the offenders by the court.

Women are governed under the constitution & therefore entitled to "equality, freedom and justice". Laws do exist but social practices attacking the dignity of women also persist down the ages. There are serious problems of domestic violence when woman day after day is beaten, traumatized, harassed & attacked by her own men. The problem of battered women remains a hidden crime in the society because most of such cases go unreported, as the crime is committed within the four walls of home. The victims often for fear of social stigma & in many cases having any option keep quiet. Domestic violence doesn't limit to wife battering only, it includes torture for dowry, sexual perversion, marital rape etc. It is also in other forms which may range from minor burning to fractures, throwing acid on women to disfigure them and even kill them out of anger and frustration.

### **Female Foeticide**

It is unfortunate that female foeticide is perhaps one of the worst forms of violence against women where a woman is denied her most basic and fundamental right i.e. "the right to life". The phenomenon of female foeticide in India is not new, where female embryos or foetuses were selectively eliminated after pre-natal sex determination, thus eliminating girl children even before they are born. As a result of selective abortion between 35 and 40 million girls and women are missing from the Indian population. In some parts of the country, the sex ratio of girls to boys has dropped to less than 800:1000. The United Nations has expressed serious concern about the situation. With the advancement of medical technology, sophisticated techniques are now rather misused to get rid of girl child before birth. To deprive women arbitrarily of these rights

and privileges or to deprive them to even being born or killing them in infancy is not only immoral but it is a sin, a violation of God's edict or command. Another disquieting feature is that, in spite of legislation like The Pre Conception and Pre Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 ( in short PCPNDT Act) against sex determination test and female feticide/ infanticide, it continues unabated for which society should be concerned for those unfortunate missing girl child and show its anxiety for protecting particularly the rights of the Girl Child which is based on United Nations Convention on the rights of the child.

### **Various legal safeguards to protect the rights of women**

The various case laws of the Apex court in the field of Women Empowerment, their definite lawful share in the property of father / husband under Hindu Succession (Amendment Act), 2005, regarding return of 'Streedhan' in the case of divorce and judicial separation under Hindu Law and Hindu marriage Act, 1956 and provision of Equal Remuneration Act for financial security of women, all taken together, would go a long way for the protection of the legal rights and status of the women. That apart, grant of maintenance under section 125 of CrPC and alimony during pendency of the matrimonial case in favour of wife for her sustenance both under Hindu Marriage Act 1995 and family court Act and cases of lawful guardianship in favour of wife decided in the case of Elizabeth Dinshaw vs. Arvind Dinshaw (AIR, 1987, 3) as custody of child is of paramount consideration as held by Supreme Court under Hindu Minority and Guardianship Act, 1956. Similarly settlement of matrimonial disputes under Family court Act, 1984 through ADR method viz by way of compromise, mediation, conciliation, rapprochement and the recent directive of the Supreme Court for compulsory registration of marriages, are all path- breaking steps in this

direction for insuring the rights and protection of women.

It is significant to make a mention that in recent years, in the areas of criminal justice delivery system, Priyadarshini Mattoo, Jessica Lal, Naina Sahani murder cases which were gruesome crimes against women which took place in Delhi area had engaged public attention. In those cases, it is heartening to note that due to the intervention of Delhi High Court and Apex Court of the country, the offenders, were brought to justice and were ultimately adequately punished. These are living examples of judicial activism and the proactive role of Judiciary in the areas of protection of legal rights of women.

In spite of so many beneficial legislations to safe guard legal rights women against abuse at home and harassment at work place, in absence of proper enforcement / implementation of laws, created specifically to protect women, the offences like dowry demands or domestic violence has not been minimised. Therefore, the Domestic violence Act, 2005, Equal remuneration Act, Immoral Traffic (Prevention) Act, 1956, Sati Prevention Act, and Dowry Prohibition Act, 1961, Prohibition of Indecent Representation of Women Act, 1986 and new provisions made in the I.P.C. and Evidence Act which are wholesome laws, have to be applied both in letter and spirit, by the law enforcing authorities of the state so that the legal and constitution rights of women would be protected effectively.

Lastly United Nations Charter and other international instruments also protect and vindicate

human rights of women :-It will not be out of place to make a mention that the rights of women along with men have been recognised in major human rights instruments since the establishment of the United Nations Organisation. In fact, the UN Charter itself reaffirms its faith in fundamental human rights... in equal rights of men and women. Human rights of women have been defined as "collective rights for a woman to be seen and accepted as a person with the capacity to decide or act on her own behalf and to have equal access to resources and equitable social, economic and political support to develop her full potential, exercise her right as a full human being and to support the development of others. If we analyse this definition, we can understand that every right that helps a woman to become full-fledged human being is her human right".

The object of uplifting the status of the women in the society can be achieved only by enhancing public consciousness and by building a national consensus on the rights and development of girl child at the threshold. Therefore Political will and social support is absolutely necessary for the empowerment of women on all fronts so as to claim her rightful place in society in the New Millennium.

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