

SYNOPSIS OF THE THESIS TO BE SUBMITTED TO THE FACULTY OF LAW COSMOPOLITAN UNIVERSITY, U.S.A. FOR THE DEGREE OF <i>DOCTOR OF PHILOSOPHY IN HUMAN RIGHTS LAW & LAW OF CRIMES.</i>	
NAME OF STUDENT	<i>PROF. SURENDRA SUKHRAM TATKARE</i>
TITLE OF THESIS	<i>CRIME AGAINST WOMEN: AN INDIAN SCENARIO</i>
DEGREE	Ph.D
SUBJECT	<i>HUMAN RIGHTS LAW & LAW OF CRIMES.</i>
NAME OF THE GUIDING LECTURER	<i>Dr. C. J. STEYN (CORNELIUS)</i>
NO. AND DATE OF REGISTRATION	SS/TATKARE - 10/10/2006
PLACE OF RESERCH WORK	GOVERNMENT LAW COLLEGE, CHUCHGATE, MUMBAI AND LIBRARY OF MUMBAI UNIVERSITY.

PROF. SURENDRA SAKHARAM TATKARE,
B.A. (ECO), LLB., LLM.
“JUST & FAIR JURIX”
GOLD MOHUR, 4TH FLOOR,
ROOM NO. 415,
PRINCESS STREET, MUMBAI – 400 002 INDIA

SYNOPSIS

CRIME AGAINST WOMEN:

AN INDIAN SCENARIO

In this research project I propose to study the CRIME AGAINST WOMEN: AN INDIAN SCENARIO.

CHAPTER- 1

In the FIRST INTRODUCTORY CHAPTER I propose to analyze the status of women in society.

STATUS OF WOMEN IN SOCIETY

As Swami Vivekanand had said “That country and that nation that do not respect women have never become great, nor ever be in future”. Women are considered as a weaker sex not only from physical point of view but also from sociological aspect also. When we refer to Smritis, we notice that woman has

always been dependent on man. During child hood, on her father, after marriage on her husband, and during her old age on her son. However in olden times we find say “Where women are respected there gods reside” Mahatma Gandhi once observed. To call women a weaker sex it’s liable is mans injustice to women if by strength means brute strength, then indeed women are less brute than men. If by strength means moral power then women is work of Gabon the sprit of man in every position like priest, husband and guardian perpetuated the female sex as to obey the man but no one questioned as to why she must be treated as obeying person. Over the years many enactments have been passed to take care of fair sex. Provisions pertaining to domestic life of women, proprietary rights and women, social life of women and their personal rights are some of the examples of such progressive legislation. Hindu Marriage Act 1955, Child Marriage Restraint Act 1901, Dowry Prohibition Act 1961 are some of the glorious examples to improve the situation. However in present male dominated society much for welfare of the women has to be done because of manifold offence against women.

Gandhji had sensitivity to the problems of women, the weakest among the weak. He sent a team of workers to study and report on the problems of Champaran District, but the report they gave him did not refer to any problems of the women there. “How can any respect be complete without an account of the women’s problems?” he asked. The workers said that the women of Champaran were very shy and would not meet them. Gandhji then depute Kasturba Gandhi and Avantikabai Gokhale to visit Champaran and to report on the women’s’ agony. At first, the women of Champaran would not meet them or even open their doors. At sunset, Kasturba Gandhi knocked on one door and told the women inside: “We have been moving round your town from sunrise to sunset, we are now thirsty. Will you not offer us a glass of water?”. A door was then slightly opened, a woman’s hand appeared with a glass of water on her palm Kasturba drank the water and then said “Sister, we have seen your hand but we want to see the women behind this hand”. The women inside broke down she said “three women of our household share only one untorn sari and one woman has gone out with that sari, how could the other open the doors for

you and expose out half-naked bodies with torn clothes?”

Kasturba told the weeping woman “closes, the door. The doors of your heart are open”.

Changes came in our society, not for better, but for the worst. Demand and dowry and receiving of dowry were prohibited by Dowry Prohibition Act 1961, and yet the practice continues even today. To curb this evil, a new chapter 20A WAS INTRODUCED COVERING Sec. 498 A in Indian Penal Code. This section punishes the husband of a woman who subjects her to cruelty. Cruelty is not confined only to physical torture, but also mental one. This section instead of using for genuine cause, sometimes has been misused by women for their ulterior motive to harass their husbands and in laws. Therefore some associations have demanded change in Section 498A of I.P.C. Assuming that this is not without any basis, the remedy is not to scrap Section 498A. Living of a woman independently is something which our society does not approve of. She has to stay either with her husband or parents. Offence under Section 498A is both cognizable and non-bailable. When husband and in laws

are taken into custody, rapprochement between spouses becomes a remote possibility. The purpose of the Act is to curb domestic violence but the remedy should not be worse than disease. For the welfare of society, institution of family has to be strengthened. Even at a late stage of proceedings, if a family disruption could be saved, it will be beneficial to family and if there are children, it will be a boon to them seeing their parents living together.

Gender justice is a new concern of law. The prosecution of Mr. Kanwar Pal Singh Gill, a top police executive, on whom the government relied for putting terrorism in Punjab to an end, for misbehaving with Mrs. Rupan Deol Bajaj, a woman officer of IAS Cadre.(Rupan Deol Bajaj v/s Kanwar Pal Singh Gill (1995) 6 SCC 194) here the charge of sexual harassment speaks for itself. From Mathura's case in 1978 (the victim of the rape was a girl called Mathura and hence this case to be known as Mathura case) to Vishaka's case in 1997, Supreme Court interpreted provision liberally. Passing of the Convention on Elimination of all forms of Discrimination Against Women in 1981 (called CEDAW) is a step in right direction. The legal

languages uses the term “he” which also includes “she” reflects the marginalisation of woman in real life.

Today, due to social changes, women specially in urban areas, have to work in different fields. There is every likelihood of making sexual advances by their male colleagues resulting into sexual harassment. In *Visakha v. State of Rajasthan, (1997) 6 SCC 241*) public interest litigation was filed by a women’s organization. While deciding the case. Supreme Court observed that threat of sexual harassment prevented a woman pursuing her career amounted to violation of her right to carry on any profession guaranteed by Art. 19(1)(g) of the Constitution. Since the convention on the elimination of all forms of discrimination against women of 1981 has been ratified by India, it has become the law of India. It is pertinent to note that Apex Court has recognized that a woman has a right to the sanctity of her body and such a right is part of human rights.

Another area where women have to suffer is the adultery. Section 497 of I.P.C provides punishment for the offence of adultery. Adultery means when a man commits sexual

intercourse with a wife of another. However, if he does so with a spinster or a widow or a divorcee, it does not attract the provision of this section. The section was clearly based on the premise that married women is the personal property of her husband and when adultery is committed, this was an encroachment on husband's right. The constitutional validity of this section was challenged in *Sowmithi Vishnu V. Union of India* 1985Supp SCC 137. It was contended that while section punishes man for adultery who had illicit relations with another person's wife but did not punish a woman, who was a party to the act. This section further enabled husband to prosecute the paramour of his wife but did not allow a wife to prosecute a woman who had illegal relationship with her husband. This violated Article 15 (2) of the Constitution which prohibits discrimination on grounds of sex. While deciding the issue, Chief Justice Y.V. Chandrachud observed that it is commonly accepted that it is the man who is the seducer and not the woman. According to him, women were not punishable because they were less likely to indulge in it. This view cannot be accepted because no adultery can be committed unless a woman is a party

to it. The Section made an offence punishable for protecting the proprietary right of a husband over his wife and not with a view to punishing conjugal infidelity. The view that wife is a personal property of husband is not in consonance with woman's fundamental right to gender equality and right to life and liberty under Article 21 of the Constitution.

While deciding on rape issue, judiciary has given a new revolutionary approach as decided in *Bodisattwa Gautam v. Subhra Chakraorty* (1996) I SCC 490 by stating that rape was not merely an offence under IPC. It was a violation of woman right to live with dignity and personal freedom. Justice Saghir Ahmed delivering the judgment on behalf of the Court said "Rape is not only crime against the person of a woman viz victim, it is a crime against entire society. it destroys the entire psychology of a woman and oushes her into deep emotional crisis It is crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights viz. Right to life contained in Article 21. Too many feminists and psychiatrists say, rape is less a sexual offence that

an act of aggression aimed at degrading and humiliating women”.

The Status of women in different human societies of the world is not different. In almost all the present and contemporary societies it is discriminatory and prejudicial. Nearly all human societies in different parts of the world are male dominated. Males are the active part and the females only passive part of the different society, only a thing of enjoyment of males and in some societies they are only chattels contractible, saleable and endowed with the duty to serve males and females having no material and worthwhile rights. In theory they are respectable, but in practice, they are the subjects of cruelty, ill-treatment and all sorts of misbehavior by males.

The Constitution of India has discarded all sex discrimination and sex equality and liberty has been made a fundamental right and Directive principles are directed to remove all sex all sex inequalities and impediments to their personal liberty. Despite of passing Dowry Prohibition Act in the year 1961 and subsequent amendments in the year 1984 and

1986, brides are still harassed, tortured and even burnt to extract more Dowry. Social compulsion and legal complexities compel a woman to suffer indignities and torture till she has no other option but to put an end to her life. In most of the cases accused get acquitted because of lack of proper proof. Thus, in spite of a plethora of progressive and protective legislation's favouring women, we have failed in our aims to uplifts the social status of Indian woman. Proper implementation of these Laws will go a long way in curbing crimes against women and improving socio-economic status of women.

It is most alarming and distressing to note that in Indian society women who were once worshipped and highly respected today find themselves tortured, harassed, abandoned, divorced, murdered and are forced to commit suicide on account of the evil of Dowry System. Despite the passing of the Dowry Prohibition Act in the year 1961 and subsequent amendments brides are still harassed, tortured and even burnt to extract more dowry.

CHAPTER- 2

In the SECOND CHAPTER, I have discussed the legal classification of women crimes in India.

Legal classification of women crimes

Women are victims of crimes such as rape, murder, robbery, cheating etc. which are not specifically directed at them, there are designated as Crimes Against Women, which are directed specifically against them under the Indian Penal Code (IPC) and Special Laws (SLL).

I.) The Crimes Identified under the Indian Penal Code (IPC):

- a) Rape (Sec. 376 IPC)**
- b) Kidnapping and Abduction for different purpose (Sec. 363 to 373 IPC)**
- c) Homicide for Dowry, Dowry deaths or their attempts (Sec. 302/304-B IPC)**
- d) Torture, both mental physical (Sec. 498-A IPC)**
- e) Molestation (Sec. 354 IPC)**
- f) Sexual Harassment (Eve-Teasing) (Sec. 509 IPC)**
- g) Importation of girls (upto 21 years of age) (Sec. 366 B IPC).**

II) The Crimes Identified under the Special Laws (SLL) :

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

- a) **The Employees State Insurance Act, 1948**
- b) **The Plantation Labour Act, 1951**
- c) **The Family Courts Act, 1954**
- d) **The Special Marriage Act, 1954**
- e) **The Hindu Marriage At, 1955**
- f) **The Hindu Succession Act, 1956**
- g) **Immoral Traffic (Prevention) Act, 1956**
- h) **The Maternity Benefit Act, 1961 (Amended in 1995)**
- i) **Dowry Prohibition Act, 1961**
- j) **The Medial Termination of Pregnancy Act, 1971**
- k) **The Contract Labour (Regulation and Abolition) Act, 1976**
- l) **The Equal Remuneration Act, 1976**
- m) **The Child Marriage Restraint (Amendment) Act, 1979**

- n) The Criminal Law (Amendment) Act, 1983**
- o) The Factories (Amendment) Act, 1986**
- p) Indecent Representation of Women (Prohibition) Act,
1986**
- q) Commission of Sati (Prevention) Act, 1987.**

CHAPTER- 3

In the THIRD CHAPTER, I have analyzed the categories of crimes against women in India.

There are a variety of psychological, economical, sociological forms of victimization of women. In our society we have seen that women are economically discriminated at working places. At the same time women are also exploited physically, emotionally and sexually by their husbands. It is shocking to hear that women had no right to decide whether they could continue their pregnancy or terminate it. The following are categories of crimes against women in India:

- 1) Sexual offences**
- 2) Offences for gain**
- 3) Molestation and Rape.**
- 4) Harassment at home leading to suicide and murder of young brides.**
- 5) Immoral trafficking, exploitation of women.**
- 6) Physical torture.**
- 7) Mental cruelties.**

CHAPTER- 4

In the FOURTH CHAPTER, I have scrutinized the causes of crimes against women in India.

Crimes against women is not considered from only physical point of view but also sociological aspect also. There are records of women raped, beaten, abducted and given humiliating treatment. Women have been subjected to socioeconomic and cultural deprivations for such a long time that there is a general indifference and lack of awareness of crimes against them.

A lack of awareness of the seriousness of the problem, the general acceptance of men's superiority over women and denial of violence by the women themselves due to social and cultural attitudes.

Following are the causes of crime against women

1). Social causes

a. Broken homes

b. Psychological environment

c. Orthodox thoughts

- 2). Personal causes**
- 3). Unemployment**
- 4). Poverty**
- 5). Addiction**
- 6). Lack of proper moral education**
- 7). Marital demands and expectations**
- 8). Inefficiency of legal machinery.**

CHAPTER- 5

In the FIFTH CHAPTER, I have analyzed A section 304-B of INDIAN PENAL CODE Dowry death, Bride burning in India.

The root cause of dowry death is the spread of evil of dowry system in the Indian society. It can be observed that during the period of MANUSMURITI certain types of gifts and presents were necessary to complete different types of marriages. In the modern dowry system the groom would refuse to proceed with the marriage rituals unless his demands of money car, household electronic equipments or gold ornaments etc. is met.

Dowry is given generally by the brides parents to ensure her a happy married life by fulfilling the basic necessities to live comfortable living.

Causes of dowry death

1. If demand is not fulfilled

- 2. Women as perpetrators**
- 3. Death by burns otherwise on normal circumstances**
- 4. Abatement to suicide.**

CHAPTER-6

In the SIXTH CHAPTER, I have analyzed about serious menace in the society that is “Eve-teasing and Sexual harassment”.

Eve-teasing, which involves the verbal and physical harassment in urban and rural society. In busy crowded areas the women get pressed, jostled, rubbed and squeezed. It is often experienced at places of work in organizations. It can be easily found in film industry and government offices as well as private organizations. This menace keeps women in stress where ever they go.

1. There are three Sections of Indian Penal Code that are Sections 294, 354 and 509

Section 294 of I.P.C state that whoever, to the annoyance of others –

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place.

Shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both”.

Section 354 of I.P.C state that whoever, “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 may extend to two years, or with fine, or with both”.

Section 509 of I.P.C “Whoever, intending to outrage the modesty of a woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple

imprisonment for a term which may extend to one year, or with fine, or with both”.

2. In society we find that

- **Indulging in cat-calls**
- **Winking and uttering indecent remarks about female anatomy**
- **Singing obscene songs**
- **Trying to pinch the bottoms or the breasts and disappearing in the crowd is very common**
- **Eve-teasers prefer to stand on board crowded buses and trains**
- **Mailing anonymous love letters with filthy languages.**

3. In view of prosecution of sexual harassment it must be proved that

- **Intention of the accused**
- **The act must be gesturing or obscene**
- **It must be done at a public place.**

- **It causes annoyance to the people.**

4. In cases of eve teasing or sexual harassment the cases are entirely based on the appreciation of evidence therefore the evidence needs to be corroborative.

5. Sexual harassment in colleges is increasing day by day the main cause for this is Bollywood and Hollywood films and albums.

The Supreme Court and High Court have given norms in several cases.

6. The lack of awareness and the inefficiency of the investigating agency.

CHAPTER- 7

In the SEVENTH CHAPTER, I have analyzed about SECTIONS 366 TO 373 OF I.P.C related to abduction and kidnapping. Kidnapping and abduction are heinous crimes. It leaves a bad impact on the female gender. It has been seen that the abductors and the abducted are acquainted with each other. Which goes on to say that the bond of love and affection among human beings is on a vanishing path from society.

Section 366 of I.P.C - Kidnapping, Abducting or Inducing Woman or compelling her to marry etc.

“Whoever kidnaps or abducts any woman with intent that she may be compelled, knowing it to be likely that she will be compelled to marry a person against her will, or that she may be forced to or seduced to illicit intercourse, knowing it to be likely that she may be forced to 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 for fine”.

Section 367 of I.P.C – Kidnapping or abducting in order to subject person to grievous hurt.

“Whoever kidnaps or abducts any person in order that such person may be subjected, or may be disposed of as to be put in danger of being subjected to grievous hurt, or slavery or to unnatural lust of any person, or knowing to be likely that such person will be subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable for fine”.

Section 368 of I.P.C – Wrongfully concealing or keeping in confinement, kidnapped or abducted person.

“Whoever knowing that a person has been kidnapped or abducted, wrongfully confines or conceals such a person, shall be punished in the same manner as if he had kidnapped or abducted such a person with the same intention or knowledge or for the same purpose as that with or for which he conceals or detains such a person in confinement”

Section 369 of I.P.C – Kidnapping or abducting child under ten years with intent to steal from its person.

“Whoever kidnaps or abducts any child under the age of ten years with intention of taking dishonestly any movable property from the person of such child shall be punished with imprisonment of either description for a term that may extend to seven years, and shall also be liable for fine”.

Section 370 of I.P.C – Buying or disposing of any person as a slave.

“Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term that may extend to seven years, and shall also be liable for fine”.

Section 371 of I.P.C – Habitual dealing in slaves.

“Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with imprisonment for life, or with imprisonment of either

description for a term not exceeding ten years, and shall also be liable for fine”.

Section 372 of I.P.C – Selling minor for purpose of prostitution, etc.

“Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purposes, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

Section 373 of I.P.C – Buying minor for purpose of prostitution, etc.

“Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for

any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

CHAPTER- 8

In the EIGHTH CHAPTER, I have summarized my conclusions and suggestions based on my studies described in earlier chapters.

“in which I am going to explain my views on the various crimes modes and the role of society at large and also the ways of preventing such crimes and precaution to be taken by all in general also the ways to rehabilitate the victims.”