



BLOCK 2
CRIMES AGAINST WOMEN

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UNIT 5 DOMESTIC VIOLENCE

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5.1 INTRODUCTION

Domestic violence is a universal phenomenon. In elementary sense, it suggests the assertion of power, control and dominance in relationships. All this can be exerted through means of violence and abuse. Domestic violence is not merely limited to physical violence and torture. It extends to psychological, financial, sexual and social abuse as well (Kaur and Garg, 2010). Social scientists have researched on the extensive prevalence of domestic violence across societies in the world. Numerous reports point towards the pervasive culture of violence and intimidation against women in their households. In order to combat this menace in every society, it is essential to understand the cultural biases, their origin and their manifestation in everyday lives of women. Patterns of patriarchal behaviour and socialization experiences contribute to this menace in ways more than one. They are intricately linked to the understanding of social as well as legal discourse on the issue of domestic violence. In this unit, we will learn about what is the meaning of domestic violence. It will also discuss the various dimensions of domestic violence.

5.2 LEARNING OUTCOMES

After studying this Unit, you are able to:

- Learn about domestic violence;

- Know the history of domestic violence law in India;
- Understand about the international context of law.

5.3 DOMESTIC VIOLENCE: A CRIME AGAINST HUMANITY

In India, domestic violence is a very deep rooted and strongly embedded cultural phenomenon. Within domestic relationships, the violence against women takes many forms. It ranges from beatings and psychological torture to regulation of autonomy and control over sexuality. Such forms of violence have found a separate place in the Indian society to the extent that physical beatings and rowdy behaviour by partners of women is considered normal and a part of matrimonial relationships. All of this has become integral to the “commonplace” experiences of women that there is hardly any reportage on such issues (ICRW, 2000). The reasons for violence against women are manifold. Caste, class, religion, social norms etc. play an incredibly significant role in the determination of power dynamics within the families in India. The intersection of identities of women only further entrenches the violence and dominance over women in domestic relationships. According to the National Crime Records Bureau’s report in 2019, more than 30 percent of the crimes against women were that of domestic violence with more than 1.25 lakh reported cases (NCRB, 2019). In 2020 itself, during the coronavirus lockdown the number of reported cases was at a 10-year high, as reported by *The Hindu* newspaper. Violence against women in relationships is arguably the most prevalent harm perpetuated across societies. Despite its universal nature and cultural roots, it is treated as an individualized phenomenon. In a very illuminating piece published by the Women’s Studies International Forum, Evelyn Rose argues that domestic violence can be understood as a crime which is perpetuated by the state through its agents of patriarchy. This is to say that the state facilitates the perpetuation of violence against and subjugation of women through the established structures in the society. Thus, the partner violence becomes institutionalized and legitimized in the societal discourses (Rose, 2015). There has also been documentation of the violence against women in asylums and the persecution that women face therein. There, hence, seems to be a growing trend in recognising gender as a transnational political identity. (Mckinnon, 2016). Such an approach is unique in shifting the localized understanding of domestic violence to a more broad and universal appeal. It needs to be emphasized that institutional support makes domestic violence more lethal and also subverts the attempts that are sought to be made through law. In India itself, this can be seen in the behaviour of police, courts and other enforcement machinery which is charged with the protection of women and prevention of domestic violence. The patronizing attitude of law towards women has led to rigid characterization of women in the Indian society which is reflective of gender stereotypes and societal biases.

The implications of domestic violence are not only limited to the immediate primary victim, rather the traumatizing effect extends to family, friends and children (UNICEF, 2006). The multitude of ways in which women suffer in

the households creates victimhood at multiple levels. Depression, post-traumatic stress disorder, seclusion, child abuse and mental trauma accompany violence that is perpetuated in households. It is a recurring phenomenon directed against women which impacts their basic right to live peacefully and happily. Notwithstanding the fact that countries across the world have sought to take concrete action against this social issue, the fact that remains is that there are always limitations to what law can and cannot achieve. This chapter is, hence, aimed to take the discourse ahead of law and analyze how we have reached to where we are and what all we need to strive for.

5.4 THE HISTORY OF DOMESTIC VIOLENCE LAW IN INDIA

In India, the legal framework dealing with issues of violence against women in matrimonial homes includes both civil and criminal/penal remedies. Section 498-A of the Indian Penal Code of 1860 (hereinafter “IPC”) provides for criminal sanction in case a woman is subjected to cruelty by her husband or the relatives of the husband. At the same time, the Protection of Women from Domestic Violence Act of 2005 (hereinafter “PAWDVA”) offers civil remedies like compensation, residential rights etc. to a woman who is a victim of domestic violence. However, before delving into the intricate aspects of these laws, it will be appropriate to, first, understand the history and trajectory of the feminist and rights movements in making the state to intervene in the families of the Indian citizenry.

5.4.1 Penal Laws

All laws aimed at prohibiting violence against women and affording protection to them are a consequence of sustained campaigns spanning over many decades by various rights and feminist groups across the country (Jaising, 2009). As early as 1970s there were widespread protest and information programs which sought to bring the discourse of dowry into the public arena. Although the Dowry Prohibition Act, 1961 was already in place, there were intense demands for a more stringent law prohibiting dowry and consequent punishment to the in-laws. Thus, the agenda was to not only impose prohibition on dowry demands but also penalize the erring in-laws of a woman (Nagpal, 2017). There was, therefore, a challenge to the established norms of marriage in the Indian society. However, at the same time the feminist icons had to face severe criticism across sections of the patriarchal Indian society. Not only this, in a liberal democracy like India, it was an uphill task for the feminist voices to make the state to engage with the institution of marriage and barge into the family affairs which were considered important and integral to the traditional culture.

The demand for strict laws against dowry related offences also found intersection with various issues of caste and class. Dowry demands were construed as a means to assert control over women financially as well as sexually. Rajni Parliwala(1989) argues that the anti-dowry protests in 1970s and onwards were not merely aimed at striking at the historical oppression of

women in the Indian society. Rather they were also aimed to challenge the economic dynamics of marriage that were inspired by commercialization of marital relationships in a feudal and capitalist Indian society. Dowry had become a way of acquiring the necessities of life. It had become a business investment for the in-laws of a woman.

The culmination of these voices finally led to the enactment of section 498A and 304B of IPC in 1983 and 1986 respectively. While 498A was broad in its scope insofar as, it made cruelty to a wife by her husband or his relatives an offence, section 304B specifically dealt with death due to dowry demands. Hence, the Indian civil society now endeavoured to fight battles in the court rooms.

5.4.2 The Limitations of Penal Law and the Subsequent realization for a more inclusive law

The enactment of penal laws did not mean an end to the issues of domestic violence. The sections of IPC were aimed to target specific problems in marriage. The aim was to deter the husband and his relatives from subjecting a woman to cruelty or dowry demands. Given the fact that criminal law requires higher burden of proof and operates in very strict domains of interpretative framework, it was not possible to include many forms of violence like financial or sexual abuse against women within the contours of the penal provisions. The patriarchal underpinnings of the enforcement machinery, the lack of sensitization programs and reluctance of women to report crime meant that there was needed a wholly different approach which catered to the everyday needs and requirements of a women in a marital household in terms of money, residence and the like. As the lawyer Indra Jaising argues, the role of the state was not merely limited to the prevention or deterrence for crimes against women in households. Rather, the state also owed responsibility towards victims of domestic violence and offer them concrete remedies and measures to make their living in a peaceful and conducive atmosphere (Jaising, 2009).

Such realizations led to a nation-wide debate on the issues of domestic violence and the loopholes and inadequacies of the existing criminal law on the same. The National Commission for Women together with various activist groups, lawyers and members of the civil society campaigned for the need for a more empowering law for women which would enable them to live a dignified life and avoid destitution. At the same time, such a law should also be helpful in curbing and preventing the menace of domestic violence. The Law Commission of India was tasked with framing a draft bill on domestic violence in 1993 which was then discussed across academic and activist circles.

Later on, the legislature sprang into action due to pressure from the feminist groups both inside and outside the country (Abeyratne and Jain, 2012). Within the country, as we have seen, there were ever increasing demands for a comprehensive legal framework which would afford protection to women from domestic violence and at the same time provide for sustenance measures. Outside, the country, India was a party to international treaties,

agreements and conventions like the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW), the Mexican Plan of Action in 1975, the Nairobi Forward Looking Strategies in 1985, the Beijing Declaration and Platform for Action in 1995, the Vienna Accord of 1994 and reports by the Special Rapporteur on Violence Against Women. International lobbying, thus, also played its part in pressurising the Indian government to enact a law for prevention of domestic violence. In 2002, a bill was introduced in the parliament for the protection of women from domestic violence. Due to certain shortcomings, it couldn't be enacted as a law. Finally, in 2005, the PWDVA saw light of the day and India ushered into a regime of legal framework to combat the menace of domestic violence.

Check your progress-1

- 1) *What is domestic violence? Explain.*
- 2) *What are penal laws?*

5.5 THE DOMESTIC VIOLENCE LAW IN INDIA

As noted above the law relating to domestic violence in India spreads across both the criminal and the civil domains. As a facet of criminal law, it aims at prevention, punishment and deterrence. In the realm of civil law, it aims to offer opportunities and support to the aggrieved women and her family. In this section, it shall be the aim to get an understanding of the law and remedies associated therein.

PWDVA, 2005

The Constitution of India guarantees the right to equality of laws and equal protection of laws to everyone and the right against discrimination solely on the basis of sex. In this light, the Domestic Violence Act of 2005 aims to provide for “more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family.” A striking aspect of this statute is that it provides a broad definition to domestic violence and tries to capture the multi-faceted forms of violence and discrimination that is meted to the women in their households.

Domestic Violence is defined in section 4 of the statute as

“any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it— (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or (c) has the effect of

threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.”

Source: <https://wcd.nic.in/sites/default/files/wdvact.pdf>

In such a background, it is important to note that the legal rights under this act are created in favour of every woman who is in a domestic relationship which need not necessarily be limited to a marital relationship. A domestic relationship can be through consanguinity, marriage, a relationship in the nature of a marriage, adoption, joint family. In *D Veluswamy v D Patchaiammal*(2010), the Supreme Court of India held that for a relationship to be in the nature of a marriage certain conditions are important to be met. These include; the couple must hold themselves out to the society as being akin to spouses, the couple must be of a legal age to marry, they must be qualified to be in a legal marriage and lastly, they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

5.6 RIGHTS AND REMEDIES UNDER THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT OF 2005(PWDVA)

Keeping this framework in mind, the next step is to recognise the rights and remedies available to the women under this act. It is pertinent to note the fact that the PWDVA fundamentally aims at offering opportunities and avenues to the aggrieved women to take charge of her life and come out of the shackles of oppression. As such, the act provides right to compensation, shared household and remedies like monetary relief, protection order, residence order and custody order.

An aggrieved woman or a protection officer (an officer appointed under the act) or any person on behalf of the aggrieved can file an application before the magistrate seeking any one or more reliefs prescribed under the act. Under section 18 of the Act, the magistrate may pass a protection order against the respondent. Thereupon, the magistrate can prohibit the respondent from establishing any contact with the aggrieved woman. This may include, prohibition on entering into the workplace of the women, prohibition on the alienation of the assets of the women including her *stridhan* and prohibition on causing any violence to the dependants or relatives of the aggrieved women. Likewise, a magistrate may pass a residence order under section 19 of the act, to restrain the respondent and his relatives from entering into the shared household of the couple where now the aggrieved women reside. Alternatively, the respondent can be asked to make arrangements for the residence of the aggrieved women including payment of rent, if any. The respondent can even be asked to remove himself from the household.

Furthermore, the aggrieved woman is also entitled to claim monetary relief under section 20 of the Act for herself and her children for any losses that

they may have been suffered due to acts of domestic violence. This relief can include medical expenses, loss of earnings, and maintenance for the woman as well as the child. Compensation can also be claimed for any emotional distress or mental torture caused due to domestic violence. In addition, custody of the children can also be sought under section 21 of the act by the aggrieved women or anyone who is acting on her behalf.

An important right available to the women under the PWDVA is the right to the shared household under section 17 of the Act irrespective of whether she has any right, title, or interest in the same. Earlier, the Supreme Court in *SR Batra v Taruna Batra* (2007) held that a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. However, recently in the judgement of *Satish Chander Ahuja v Sneha Ahuja* (2020) the Supreme Court overruled *SR Batra* to hold that a respondent under the DV act is not only a husband but it can also be the father-in-law of the women. As such, shared household would not only mean the house belonging to or rented by the husband but it would include any house either owned/co-owned or rented by a 'respondent' in a complaint under the DV Act and that the aggrieved person has resided in the said house at any stage of her domestic relationship. Hence, the right of the women also extends over the house of the in-laws where she may have resided during a domestic relationship.

5.6.1 Section 498-A and 304-B IPC

Considerable women population in India experiences severe physical, emotional and sexual violence in their marital homes (Sabarwal, Santhya and Jejeebhoy, 2013). As noted in the preceding sections, the pervasiveness of such violence forced the state to intervene into the family. Prior to civil law remedies aimed at welfare, the state opted for penalizing measures with the enactment of the section on cruelty to a married woman in a matrimonial household. Section 498A of the IPC provides:

Whoever, being the husband or the relative of the 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.

Explanation. —For the purpose of this section, “cruelty” means—

a) any wilful conduct which is 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 (whether mental or physical) of the woman; or

b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Source: https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=562

A few points here are necessary to be made note of. This section offers protection only in case of a marriage. Hence, only married women can take recourse to this section. Secondly, as held in *State of West Bengal v Orilal Jaiswal* (1994) in a criminal trial, the charges made against the accused must be proved beyond all reasonable doubts. This requirement does not stand altered in case of Section 498-A IPC.

Section 304B relates to the death of a married woman within seven years of her marriage in unnatural circumstances or due to burns or bodily injury. However, in order to invoke this section, it is important to be proved that the death of the woman should have been preceded by cruelty, harassment for dowry demands. The relevant portion of Section 304B reads as;

- 1) Where the death of a woman is caused by any burns or bodily injury or occurs 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 for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

5.6.2 Interpretation by the Supreme Court

A reference to few of the landmark judgements of the Supreme Court merit attention here so as to clear some basic concepts underlying section 498-A. In *U Suvetha v State* (2009), the Supreme Court held that for commission of an offence under Section 498-A, following necessary ingredients require to be satisfied: (a) The woman must be married; (b) She must be subjected to cruelty or harassment; and (c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband. Furthermore, in *Reema Aggarwal v Anupam* (2004), the Supreme Court observed that the expression “husband” in section 498-A covers a person who enters into a marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty in the manner provided under Section 498-A, whatever be the legitimacy of the marriage itself for the limited purpose of Section 498-A. In *Vijeta Gajra v. State (NCT of Delhi)* (2010) it was held by the Supreme Court that in order to be covered under the “relative of the husband” one has to be a “relative” of the husband by blood, marriage or adoption. As noted in *U Suvetha*, the “girlfriend or concubine” of a husband is not his relative by marriage, blood or adoption and is, hence, not covered by section 498-A of IPC.

As far as the concept of “cruelty” under section 498A of IPC is concerned it was held in *G.V. Siddaramesh v. State of Karnataka* (2010) that cruelty can either be mental or physical. It is difficult to straitjacket the term cruelty by means of a definition because cruelty is a relative term. What constitutes cruelty for one person may not constitute cruelty for another person.

It is also important to remember the fact that the proceedings under the IPC and PWDVA are disjunct. Therefore, even if a case is being tried under

section 498A of IPC, that does not preclude the aggrieved women from initiating proceedings against the respondent under the PWDVA. The same view has been affirmed by the Supreme Court in *G.V. Siddaramesh*.

5.7 A REFLECTION ON THE PRACTICAL REALITIES

While the law has endeavoured to usher into a constitutional regime of equality and non-discrimination, the reality on the ground is very different. Research points towards the distrust in legal procedure and consequent out of court settlements. Additionally, for women, the lack of access to the courts in itself is a hurdle which is very difficult to cross. Numerous criminal cases are filed in the police stations. However, a significant number of them do not even reach their logical conclusion in the court rooms. Ethnographic research points towards large number of settlements and the inability of the enforcement machinery in catering to the protection of the rights of women (Roychowdhury, 2019). This is not only due to the prolonged legal procedure. It is also due to the fact that the enforcement machinery is heavily dominated by men.

The cross-section of state power and patriarchal social norms push the women into settling out of the courts where they do not have much bargaining power and are made to succumb to the pressure of the family and the society. Speaking of the law, it is in itself insufficient and incapable to deal with issues that women face. Consider the example of section 498A. It is fundamentally under-inclusive as it only applies in cases of married women. It excludes a whole range of other women. The lack of a definite standard or metric to determine cruelty leaves things to the discretion of the police officer to register a case under 498A. Even where a case is registered, the requirement of proof beyond reasonable doubt places an onerous burden on the aggrieved women to get the culprits punished. It is nearly impossible to prove everyday acts of physical and mental cruelty that have taken place within the four walls of the home (Kothari, 2005).

Feminist and social science scholars argue that women compromise and settle because they are surrounded by sexist cultures of “reconciliation” (Lazarus-Black 2007). In India, women who make legal claims against domestic violence face social sanction both from friends and family. They also discrimination within the criminal justice system (Jaising 2007). Even where the court passes orders in cases of domestic violence, there is still a prevalent tendency to look for alternate ways to settle the dispute in question.

The aforementioned problems have also been compounded by the patriarchal approach of the higher judiciary. For example, in *Rajesh Sharma v State of UP* (2017) the Supreme Court issued directions to prevent-what it called- the misuse of section 498A by women. Instead of adopting an adjudicatory approach, it suggested, among other things, that the lower judiciary should aim at promoting settlements between the families. While these observations were later modified in *Social Action Forum for Manav Adhikar v Union of India Ministry of Law and Justice* (2018), the impact of such observations

coming from the highest echelons of justice waters down to the behaviour and conduct of police officers and adjudicators on the ground. What this also reflects is the unsuitability of current state of Indian justice system to deal with the violence and discrimination faced by women in their matrimonial life.

A long path is to be traversed by the civil society, legislature and the judiciary in plugging the loopholes in the current state of affairs. A structural reform with a bottom-up approach is required to be undertaken. Law alone cannot ensure justice. A sustained large-scale effort at combating the violence against women is the need of the hour. Social reform is the way to social justice. Women need to be facilitated in taking action. Strong emphasis on sensitisation programmes among police officials and adjudicators is needed to be conducted on a large scale. Till that is done, one can only hope that things get better and the rule of law prevails.

5.8 LET US SUM UP

Thus, in this unit we studied about domestic violence as a universal phenomenon. How domestic violence is a crime against humanity. Further we learn about the history of domestic violence law in India emerged. What are the limitations of penal law. At the same time, the detailed understanding about the domestic violence law in India, PWDVA, 2005. What kinds of rights and remedies under the PWDVA and how the interpretation by the Supreme Court of India done on it. The unit also suggests a reflection on the practical realities related to domestic violence related laws and case laws.

5.9 UNIT END QUESTIONS

- 1) Write an essay on the history of domestic violence law in India.
- 2) Discuss about penal laws and its limitations that are related to domestic violence.

5.10 REFERENCES

- Abeyratne, Rehan, and Dipika Jain. (2012). "Domestic Violence Legislation in India: The Pitfalls of a Human Rights Approach to Gender Equality". *American University Journal of Gender Social Policy and Law* (21) 2.
- Agnes, Flavia (2019) "What Survivors of Domestic Violence Need from Their New Government" *Economic and Political Weekly (Engage)*, 54, (17).
- Ambast, S., & Sen, S. (2006). Into the "Private"-The Domestic Violence Act, 2005. *Student Bar Review*, 18(1).
- Badrinath, Pooja. (2011). "The Challenge of Subjectivity Within Courts: Interpreting the Domestic Violence Act", *Economic and Political Weekly*, (46)15.

- Bhate-Deosthali P, Lingam L. (2016). “Gendered pattern of burn injuries in India: a neglected health issue”. *Reproductive Health Matters*. 24(47).
- Bhatla Nandita and Anuradha Rajan, (2003). “Private Concerns in Public Discourses” , *Economic and Political Weekly*, (38) 17.
- Crimes in India Statistics (2019) Published by National Crime Records Bureau, Ministry of Home Affairs, accessed dated 2nd Feb, 2021. <https://ncrb.gov.in/en/crime-india-2019-0>.
- D.Sujatha,(2014). “Redefining Domestic Violence: Experiences of Dalit Women” *Economic and Political Weekly*,49, (19).
- Gadkar Sujata -Wilcox (2012). “Intersectionality and the Under-Enforcement of Domestic Violence Laws in India”, *University of Pennsylvania Journal of Law and Social Change*, 15(3).
- INDIA CODE , Digital Repository of All Central and State Acts, Legislative Department , Ministry of Law and Justice , Government of India, https://www.indiacode.nic.in/showdata?actid=AC_CEN_5_23_00037_1_86045_1523266765688&orderno=562
- Jaising, Indira. (2009) “Review of the Campaign for a Law on Domestic Violence”, *Economic and Political Weekly*, 44, (50).
- Jhamb, Bhumiika (2011). “The Missing Link in the Domestic Violence Act”, *Economic and Political Weekly*, 46, (33).
- Kaur Ravneet and Suneela Garg, (2010). “Domestic Violence Against Women: A Qualitative Study in Rural Community”, *Asia Pacific Journal of Public Health*, (22),2, Sage Publication.
- Karanjawala, Tahira and Shivani Chugh (2009). “The Legal Battle against Domestic Violence in India: Evolution and Analysis”, *International Journal of Law, Policy and the Family*, 23, (3).
- Kothari Jayna (2005). Criminal Law on Domestic Violence: Promises and Limits. *Economic and Political Weekly*, 40(46).
- Mckinnon, Sara L. (2016). *Gendered Asylum: Race and Violence in US Law and Politics*. University of Illinois Press.
- Nagpal, (2017). “The Historical Journey Of Anti-Dowry Laws” *Feminism in India* , 21 June. <https://feminisminindia.com/2017/06/21/historical-journey-anti-dowry-laws/>
- Ray. Sawmya (2006). “Legal Construction of Domestic Violence”, *Sociological Bulletin*, 55(3).
- Rose, Evelyn (2015). “A Feminist Reconceptualization of Intimate Partner Violence Against Women: A Crime Against Humanity and A State Crime”, *Women’s Studies International Forum*,53 (31),pp.31-46

- Roychowdhury, Poulami. (2019) “ Illicit Justice: Aspirational Strategic Subjects and the Political Economy of Domestic Violence in India” *Law and Social Inquiry* , (44), 2 , Published online by Cambridge University Press. <https://www.cambridge.org/core/journals/law-and-social-inquiry/article/illicit-justice-aspirationalstrategic-subjects-and-the-political-economy-of-domestic-violence-law-in-india/845D8B623103DA689BDA6ED463F97059> Accessed dated 01-02-2021.
- Palriwala Rajni.(1989) “Reaffirming the Anti-Dowry Struggle”, *Economic and Political Weekly* , Apr. 29, Vol. 24, No.(17), pp. 942-944.
- Sabarwal, S., Santhya, K. G., & Jejeebhoy, S. J. (2013).” Determinants of Marital Violence: Findings from a Prospective Study of Rural Women in India”,*Economic and Political Weekly*, 48(16).
- Sen Rukmini (2020). “Stay Home, Stay Safe: Interrogating Violence in the Domestic Sphere”, *Economic and Political Weekly (Engage)*, (55), 25.
- Subramaniam, M., Krishnan, P., & Bunka, C. (2014). “Women’s Movement Groups in State Policy Formulation: Addressing Violence Against Women in India”. *Indian Anthropologist*, 44(1).
- The State of the World’s Children 2006: *Reaching the excluded and the invisible children of the world* (2005) The United Nations Children’s Fund (UNICEF), accessed dated 2nd Feb, 2021. <https://www.unicef.org/media/84806/file/SOWC-2006.pdf>
- THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 No. 43 OF 2005. The Gazette of India, Part II. Government of India. <https://wcd.nic.in/sites/default/files/wdvact.pdf>

5.11 SUGGESTED READINGS

- Agnes, Flavia (2019) “What Survivors of Domestic Violence Need from Their New Government” *Economic and Political Weekly (Engage)*, 54, (17).
- Jaising, Indira. (2009) “Review of the Campaign for a Law on Domestic Violence”, *Economic and Political Weekly*, 44, (50).
- Kothari Jayna (2005). Criminal Law on Domestic Violence: Promises and Limits. *Economic and Political Weekly*, 40, (46).

UNIT 6 SEXUAL VIOLENCE AND RELATED OFFENCE

Structure

- 6.1 Introduction
- 6.2 Learning Outcomes
- 6.3 The Crime of Sexual Violence
 - 6.3.1 The Constitutional Provisions
 - 6.3.2 The Criminal Law Framework
 - 6.3.3 Offences under the Indian Penal Code (IPC)
- 6.4 Legal reforms in the criminal law on sexual violence
- 6.5 Nirbhaya's Rape Case: A new direction to rape laws
- 6.6 Child Sexual Abuse and the POCSO Act
- 6.7 Vishakha Guidelines and the Sexual Harassment of Women at Work Place Act, 2013
- 6.8 Myths and Realities
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6.1 INTRODUCTION

In this unit, we will study about sexual violence and related offences. We will find out that sexual violence has been existing in society for long. Despite of the stringent laws being made; the incidences of sexual violence are increasing day by day. The incidences of sexual violence are taking place within the private family spaces and also in the public spaces. We will also find out that the law alone is not sufficient to eradicate violence, but at larger level, we need other measures such as altering the structural and power imbalance between the ways the male and female relationship are organized in the patriarchal or the male dominated society.

6.2 LEARNING OUTCOMES

After studying this Unit, you are able to:

- Learn on the laws relating to sexual violence in India?
- Know how these laws are evolved?
- Understand how effective are the laws in addressing the issue relating to sexual violence?
- Critically assess the effectiveness of the law enforcement machinery in addressing the cases of sexual violence perpetrated on women and children.

6.3 THE CRIME OF SEXUAL VIOLENCE

Sexual violence is one of the most heinous forms of violence and the legal framework to address this form of violence has evolved over the years. Sexual violence includes serious actions such as rapes, sexual harassment, molestation, penile penetration, stalking, touching inappropriately, touching the private parts, subjecting to any sexual contact with or exposure to the male organs, or any other such form of action that may cause harm, injury, humiliation and degradation of any girl or a woman.

Earlier, only the offence of rape exists in the law books, now the idea of sexual violence has expanded to include new crimes such as stalking, sexual harassment, voyeurism, as well as expanded definition of rape. The women's organizations in India, the activists, the academicians, all have contributed to this transformation in the legal regime. It is remarkable to know about the legal framework in India on the prevention of sexual violence, therefore in the next section, we will read about it.

6.3.1 The Constitutional Provisions

The Constitution of India guarantees certain fundamental rights to all persons. These rights include:

- Right to Equality and Non-Discrimination (Article 14-16)
- Right to fundamental freedoms, including freedom of speech, assembly, form associations, residence or practice any profession (Article 19 (1) (a) to (f))
- Protection against procedural violations such as being punished for the same offence twice or self-incrimination (Article 20)
- Right to Life and Personal Liberty (Article 21)
- Protection Against Arbitrary Arrest and Detention (Article 22)
- Freedom against all forms of exploitation (Article 23-24)
- Freedom of religion (Article 25-28)
- Rights of minorities to establish and administer educational institutions (Article 29 and 30)
- Right to constitutional remedies in case of violation of any of the rights described above (Article 32 and 226)

The constitution of India guarantees the right to equality, non-discrimination, privacy, dignity, autonomy and health guaranteed under Article 14, 15 and 21 and these include the right to be protected from sexual violence and rape.

6.3.2 The Criminal Law Framework

The criminal law considers sexual violence as crime against women and provides punishment to the accused. The criminal law includes the Indian

Penal Code (that list the offences and punishment for the same), the Criminal Procedure Code (deals with the procedures as to how the crime should be dealt with, what will be the role of police, how the statement is recorded, how the trial should proceed) and the Indian Evidence Act that describes in detail about the recording of evidence.

6.3.3 Offences under the Indian Penal Code (IPC)

The Indian Penal Code was enacted by the British Colonial Administration in 1860 and it contain the list of various offences and prescribe punishment for the same as stated above. For example, it lists the offence of rape (Section 375 – 376), assaulting a woman for outraging her modesty (Section 354) or use of words, gestures or acts to outrage the modesty of a woman (Section 509)

Section 375 define rape as 'A man is said to commit the act of rape has a sexual intercourse'

First, Against her Will and

Second, Without her consent,

Third, with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt

Fourth, with her consent when the consent is obtained by fraud

Fifth, with her consent when the consent is obtained when she is intoxicated, or she is of unsound mind, or when she is in situation that she is unable to consent

Sixth, with her consent when she is under 16 years of age,

Section 376 prescribe the punishment for rape that may range from seven to ten years

Section 354 penalize the person with the imprisonment for two years

Section 509 provides for punishment for one year imprisonment or fine or with both

6.4 LEGAL REFORMS IN THE CRIMINAL LAW ON SEXUAL VIOLENCE

In the late 1970s and early 1980s, three rape cases created a debate around the issue of rape and the changes in the rape laws. One was that of Rameeza Bee, a Muslim woman from Hyderabad. In April 1978, she and her husband were arrested by the police for 'loitering' when they were returning home late at night after watching a cinema. The police demanded a fine. The husband went home to bring money. During his absence, the three policemen raped Rameeza Bee. When her husband returned with money, the policemen beat him to death. Rameeza Bee was prosecuted for enticing the minor girls into prostitution and was convicted.

The second case was of Mathura, a young tribal girl from Maharashtra aged around 14 to 16 years. She developed a relationship with Ashok, the cousin of Nushi, her employer. Ashok and Mathura decided to get married but her brother Gama complained to the local police that Mathura has been kidnapped by Ashok and Nushi. On 26 March 1972, all four, Mathura, Ashok, Nushi and Gama were called to the police station at Desaiganj in the Gadchiroli District of Maharashtra, to record their statements. At 10.30 pm when they were leaving the police station, the head constable Tukaram and constable Ganpat held Mathura back. She was raped inside a police station by Ganpat and an attempt to rape was made by Tukaram. Mathura came out of the police station and raised the alarm. People gathered outside the police station and exerted enough pressure and the First Information Report or the FIR was registered. After a long trial, the Session court acquitted both the accused but the High Court convicted them. Justice Koshal of the Supreme Court reversed the judgement by the High court. In his judgement in *Tukaram v State of Maharashtra* in September 1979, the Supreme Court's judge said that Mathura was habituated to sex, there were no visible marks of injury on her body thereby suggesting that there was no struggle and therefore no rape. (Dhagamwar, 1992) The judge noted, "Because she was used to sex, she might have incited the cops (who were drunk on duty) to have intercourse with her".

This verdict created an outrage. A few days after the verdict was pronounced, Professor Upendra Baxi, Professor Lotika Sarkar, Professor Raghunath Kelkar and Vasudha Dhagamwar wrote an open letter to the Supreme Court in protest. The letter highlights the concept of consent. It is stated that, "Consent involves submission, but the converse is not necessarily true...From the facts of the case, all that is established is submission, and not consent...Is the taboo against pre-marital sex so strong as to provide a license to Indian police to rape young girls".

This letter was the turning point in the history leading to amendments in the rape laws. Spontaneous widespread protests and demonstrations followed by the women's organizations who demanded the review of the decision. Conferences were organized and a debate was initiated for the legal reforms. Public agitation grew louder and many people participated in the protests. All these developments were impelled by the greater sensitivity to the plight of the victims.

Meanwhile, the case of Maya Tyagi came to limelight. Maya Tyagi was a middle-class young woman who on 18th July 1980 was driving to her parent's house in Haryana. Her car broke down on the way. While it was being repaired, a policeman in the civilian dress tried to molest Maya. Her husband beat this policeman. The policeman later returned with the group of other policemen, he then opened fire and shot her husband dead. Maya Tyagi was dragged out of her car, she was beaten, stripped and paraded through the town. She was finally taken to the police station, where she was raped by police. She was later charged with being a dacoit (armed robber). Later she was released on bail. This case was discussed in the Lok Sabha (the Parliament) over four days.

All these three cases eventually individually and collectively led to the major campaign on the issue of rape in custody by the policemen and highlighted the specific form of male power over female and on the representation of the victim within the criminal justice system. (Gangoli, 2007) Eventually, the government made amendments in the rape laws. The Criminal Law Amendment Act 1983 to state that if a victim says that she did not consent to the sexual intercourse, the court shall presume that she did not consent. Besides defining the term 'custodial rape', the amendments shift the burden of proof from the prosecution to the accused. It also added the provision of in-camera trial (in the closed court rooms), prohibition on the disclosure of the identity of the victim and tougher sentences. Though these three cases opened the debate on the rape laws, but at the ground level the situation could not change much. Let us read how Nirbhaya rape case brought changes in the rape laws.

Check your progress-1

- 1) *Read the open letter written by the four professors. What do you understand from it?*
- 2) *What is being said in this letter about the concept of consent? Do you agree. Discuss.*

6.5 NIRBHAYA'S RAPE CASE: A NEW DIRECTION TO RAPE LAWS

Over the years, despite the enactment of laws, the reported incidences of rape and violence against women continue to increase. The data from the National Crime Record Bureau of India shows that almost every 16 minutes, a woman is raped in the country. This number is increasing every year despite the existence of stringent laws and policies.

On 16 December 2012, Jyoti Pandey, a 23-year-old physiotherapist was brutally gang-raped and tortured in a moving private bus in Delhi. She died eleven days later in a hospital in Singapore. The incident generated a wide media coverage and an outrage where not only women's organizations but common people too joined the protests. The discourse raised several issues such as those relating to failure of the state to provide safety and security of women in public places and the debate around death penalty to the rapists.

The Justice Verma Committee consisting of three members was constituted immediately after the outrage being erupted against the gruesome incidence. This was headed by Justice JS Verma. The other two members were Justice Leila Seth and Former Solicitor General Gopal Subramaniam. Within a month, the Committee submitted its report to the Government of India. The Justice Verma Committee criticized the government, highlighted the public apathy and identified the failure of governance as the root cause for sexual crimes. It adopted a multi-disciplinary approach and made significant

suggestions to amend the laws relating to sexual violence. Besides suggesting stringent punishment in cases for sexual assault and including marital rape as a crime, it suggested measures to improve the legal procedures including protocols for medical examination, judicial and police reforms, political reforms and also highlights the construct of gender injustice.

After such recommendations, the Criminal Law Amendment Act or the Nirbhaya Act was introduced in 2013 that made amendments in the several laws. New offenses such as acid attack, voyeurism, sexual harassment, stalking among others were added in the Indian Penal Code and stringent punishment was determined to deal with such crimes. Trafficking of a person by inducing threats, force, coercion, fraud, deception or inducement for the purpose of exploitation is also constituted as a crime. The definition of rape in itself is expanded to include all forms of sexual assaults besides penetration to include touching the private parts, using any objects. Any lack of physical resistance is considered as immaterial to constitute an offence.

The new law added offence of acid attack under Section 326 and provides for punishment for throwing acid (5 to 7 years with fine) and for causing serious hurt with acid (minimum ten years imprisonment to life sentence).

It replaces Section 354 IPC with a comprehensive provision on sexual assault and added crimes such as sexual harassment (Section 354 A) punishment for three years imprisonment and fine.

Sexual assault or use of criminal force with the intention to disrobe her (Section 354 B) Punishment is three to seven years and fine.

Voyeurism prohibits any man from watching or taking photos of woman engaging in a private act (Section 354 C) punishment is imprisonment of one to three years and fine

Stalking (Section 354 C) prohibits a man to follow a woman or contact her despite her clear disinterest or monitoring her electronic communication, punishment is up to three years

A new Section 370 adds the offence of trafficking and 370A include employing a trafficked person

The definition of rape in Section 375 and 376 is broadened to include penile vaginal and penile non-vaginal sexual acts (oral sex and anal sex) as well as non-penetrative sexual acts and increased punishment

• **Certain new offences are also added such as**

- (i) Punishment for causing death or a persistent vegetative state in course of committing rape (Section 376(3) IPC is minimum 20 years to maximum of life imprisonment or with death
- (ii) Intercourse by the person in authority or public authority such as in police custody, in remand homes, in hospital by the hospital staff, rape with a girl under 16 years of age, raping a pregnant woman, raping a woman suffering from disability, (Section 376A IPC) Punishment is

minimum ten years to imprisonment for life or death and fine

(iii) Gang Rape (Section 376 D IPC) Punishment for 20 years to imprisonment for life

(iv) Punishment for repeat offenders (Section 376 E) punishment is life imprisonment or death

- The new provisions state that if a police officer failed to record the First Information Report, he may face imprisonment for six months to two years (Section 54A CrPC)
- It is also added that recording of the information pertaining to sexual assault be done by a woman police officer. (Section 161 CrPC)
- If a survivor is less than 18 years of age she should not be confronted with the accused while giving her evidence (Section 309 CrPC)
- Trial to be completed within two months of filing of charge sheet (Section 357B CrPC)
- Compensation to be paid to the survivor besides payment of fine under other laws (Section 357C CrPC)
- Mandatory medical treatment of survivor in all hospitals and reporting to police. (Section 53 A Indian Evidence Act)
- No questions of previous sexual experience of the survivor can be put during the cross examination (Section 54A CrPC)

In August 2018, the Parliament made some more amendments in the criminal law after the rape of the minor in Kathua region of Jammu and Kashmir in the mid-January and another incident in the Unnao region in Uttar Pradesh. These changes are:

- Minimum sentence for rape was increased to ten years (Section 376 (3) IPC)
- For rape of the girl below 16 years of age punishment shall not be less than 20 years but may extend to imprisonment for life (Section 376AB, IPC)
- Providing death penalty for those guilty of rape of a below 12 years (Section 376 DA IPC)
- Punishment for gang rape of a woman below 16 years of age is life imprisonment and fine (Section 376 DB IPC)
- Punishment for the gang rape of the girl below 12 years of age with life imprisonment with fine or with death (POCSO)

Check your Progress-2

- 1) *What are the new offences on sexual violence contained in the Criminal Law Amendment Act 2013?*
- 2) *Why is the punishment for gang rape more severe?*
- 3) *Do you agree with the punishment for not having death penalty as punishment in cases of rape?*
- 4) *Do you think that harsh rape laws including death penalty for the rape of minors can be an effective deterrent?*

6.6 CHILD SEXUAL ABUSE AND THE POCSO ACT

In order to deal with the cases of child sexual abuse, the 'Protection of Children Against Sexual Offence' (POCSO) Act was enacted in 2012. This law provides a robust framework to protect children from sexual offences such as sexual assault, sexual harassment and pornography.

The Act seeks to safeguard the interest of child at every stage of the judicial process and put in friendly mechanisms in place such as child friendly reporting, recording of evidence, investigation and speedy trial. It created special courts to deal with offences of sexual assaults against children and made special provisions such as the Child Welfare Committees to take care of psycho social well-being of the child. It provides for protecting the identity of the child

Special courts are constituted for the trial of the offence of rape against minors

It defines a child as a person below 18 years of age and it is gender neutral i.e., both the accused and the victim could be of any gender which includes male child and gender non-conforming child.

POCSO Act provides for a comprehensive procedure for reporting of offence as well as recording of the statement of child such as recording the statement of the child is to be done at his/her residence preferably by a woman police officer who will not be in uniform. The police officer will ensure that the child does not come in contact with the accused. The child cannot be detained for any reason and the identity of the child be protected.

The Act mandates that the statement of the child be recorded in the language as spoken by the child and in presence of his/her parents or representatives and be recorded by audio/video means. The accused or his lawyer cannot be present and child's parents have to be given the copy of the documents.

The child's family/guardian is entitled to the legal assistance of their choice if they are unable to afford a lawyer, they have a right to get the legal aid from the State.

6.7 VISHAKHA GUIDELINES AND THE SEXUAL HARASSMENT OF WOMEN AT WORK PLACE ACT, 2013

In 1992, Bhanwari Devi, a Saathin associated with the Women's Development Programme under the Integrated Child Development Services of the Government of Rajasthan was gangraped by the upper caste men when she tried to prevent a child marriage. Her subsequent treatment by police and acquittal of the five accused persons attracted nationwide protests. The court while releasing the accused held that husband could not passively watch when his wife was gangraped, also the upper caste men cannot rape a woman from a lower caste, the accused include uncle-nephew pair and the judge said that a middle-aged man in an Indian village could not have participated in the gangrape in presence of his own nephew. Under the pressure from the women's groups, the state government filed an appeal against this decision. However, decades later, only two hearings have been held in the case, while two of the accused men have died. Meanwhile, Bhanwari Devi was ostracized and boycotted by men in her own family and her village. Yet, her case shaped the sexual harassment law.

Women's groups and NGOs, propagated the view that Bhanwari attracted the ire of her rapists while she was performing her duty. A number of groups under the banner of Vishakha, later filed a Public Interest Litigation in the Supreme Court and in 1997, the Supreme Court pronounced judgement in the matter of Vishakha v State of Rajasthan popularly known as Vishakha Guidelines. This decision defined sexual harassment at workplace, and provided a guideline to deal with it such as formulating the Internal Complaint Committee or ICC at every workplace, holding employers responsible to prevent sexual harassment occurring at workplace, providing powers to ICC to look into complaints of harassment and so on. It is seen as a significant victory of women's movement in India.

However, over the years, it has been experienced that the problems lie in the implementation of the guidelines. Not many companies formulated the Internal Complaint Committees as mandated by the Vishakha Guidelines. Also, the employers try to find various ways to escape their liabilities. So, after 16 years, 'The Sexual Harassment of Women at Work Place' (Prevention, Prohibition and Redressal) Act, 2013 has been enacted. The object of formulating this law is to provide protection against sexual harassment to women at the work place and for the prevention and redressal of sexual harassment. The Act defines sexual harassment as

- unwelcomed acts or behavior, such as physical contact and advances,
- a demand or a request for sexual favor,
- making sexually colored remarks,
- showing pornography,
- any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

The Act also provides that certain other circumstances may also constitute sexual harassment such as preferential treatment in employment, threats, creating a hostile work environment, or humiliating treatment that may affect her health or safety.

The Act envisages constituting an Internal Complaint Committee at every work place having more than 10 employees. In case, the number of employees is less than 10, the Act provides for constituting a Local Complaint Committee (LCC) in every district by the district officer. An aggrieved woman can file a written complaint before the ICC or the LCC. The committee will conduct an inquiry within the period of 90 days and also can give certain interim reliefs to the complainant. The Act lays down the duties of the Employers and the District officers who are also responsible for creating an awareness about the law, sensitize the employees, assist the complaint committee in conducting the inquiry, act upon the recommendations of the committee. The non-compliance of the provisions of the Act may result in fine which may extend up to fifty thousand rupees and also lead to cancellation of his license, or withdrawal or non-approval, or cancellation of registration.

Even though the Act came into force in 2013, the awareness regarding the law including the consequences of the sexual harassment and redressal of the same is still limited. The effective implementation of the Act requires creating an environment where a woman can speak about her grievances without fear and get justice efficiently and effectively. Sensitization of men towards treatment to women at the workplace is essential.

Compensation and Restorative Measures

To strengthen the system to empower the victims, the government also created 'Nirbhaya Funds'. The Supreme Court in several cases has directed to set up the Criminal Injuries Compensation Board for giving the compensation to the rape survivors keeping in mind their pain and sufferings as well as loss of earnings faced by the survivors.

Accordingly, the Parliament enacted Section 357A and Section 357B of the Criminal Procedure Code that governs the framework of victim compensation scheme in India.

As per these legal provisions, the government shall prepare a compensation scheme for the victims and her dependents who have suffered loss or injury as a result of crime including the rape survivors (Section 357A (1) CrPC).

In the cases of acid attack or gang rape, it is provided that the State should pay compensation under Section 357 A in addition to the fine to be paid to her.

The survivor of rape is legally entitled to compensation in India. One needs to contact the State Legal Service Authority or the District Legal Service Authority.

6.8 MYTHS AND REALITIES

In this section, we will counter some of the myths regarding sexual violence

- Myth: Women provoke rape by the way they dress
- Fact: The way women dress is not an invitation to rape. Women in burqa or saree are also raped as women in skirts or jeans. It is men's behavior that is wrong and that has nothing to do with women's dress.
- Myth: Rape is committed by the strangers and occur because women provoke
- Fact: The data on crime against women shows that most of the crime is committed by the people known to the victim. Rape occur in homes and incest is also high.
- Myth; Rape is a crime of passion
- Fact: Rape is an act of assertion of power by men. It is not the lust but it is an act of male-domination.
- Myth: Women cry rape when they regret having sex or want revenge
- Fact: This reinforces stereotype of the rape victim and blame women for the crime committed by men.
- Myth: Prostitutes cannot be raped
- Fact: Sex worker has same rights as any person with regards to consent.
- Myth: If a victim does not complaint immediately it is not at rape
- Fact: A late complaint isn't a false complaint. The trauma of rape can cause the fear or the sense of guilt and shame that may inhibit a victim to make a complaint
- Myth: Death Penalty can deter the crime of rape
- Fact: Death penalty has no impact on reducing the crime. It is the certainty of the punishment and effective process that penalize the accused person guilty of rape that can deter the crime.
- Myth: Only men from certain background commit sexual violence?
- Fact: Perpetrators are from various backgrounds and in many cases are known to the victims. The belief rooted in casteism, classism or the particular religious background is false.
- Myth: Sex within a marriage is consensual. Married women cannot be raped by their partners.
- Fact: Sex without consent in any situation is a rape. Marriage is not a licensed to rape. It is a most dangerous misconception. The Justice Verma Committee too has recommended criminalizing the marital rape but that was not done then. However, many other countries have criminalized the marital rape

- Myth: The majority of cases are false
- Fact: This is erroneous and dangerous misconception. In fact, women complaints are discredited by the legal system as well as by the society. Reporting rape is a difficult task. It is not easy for women to cry rape when she is stigmatized by the society.
- Myth: Its only rape if a victim puts up a fight and resist.
- Fact: It is a deeply flawed argument. There are various reasons because of which women may not resist such as intense fear, powerlessness, and fear of use of further violence by the attacker, fear that the attacker may harm her loved ones and so on.
- Myth: Rape is an act of lust and passion that can't be controlled
- Fact: Rape is about assertion of power and control by men. It is often use as a tool to dominate, humiliate and punish a woman. Even in war, riots, situation of conflicts, women's bodies are targeted to humiliate the other side.

6.9 LET US SUM UP

This Unit highlights the legal framework relating to Sexual Violence and the way it evolved over decades. It has tried to provide an overview of the constitutional and legal framework to prevent and deter sexual violence in India. While citing several cases, it has tried to show how the legal changes have been incorporated and evolved over years. In the light of the above discussion, it may be said that the legal framework to address the issues of sexual violence in India has evolved in the last few decades. Through the legal amendments, new offences have been added such as acid attack, stalking, disrobing a woman besides expanding the definition and punishment for rape. The provisions of POCSO Act the Sexual Harassment at the Work Place Act are comprehensive and intended to be victim-friendly. Improvements have also been made in the procedures of registering the case to recording of the statement and evidence. to make these survivor-friendly. Strict guidelines are being made to protect the identity of the sexual assault survivors and payment of compensation to them. Yet, the crime against women is increasing. The reason lies in not only the mindset and the attitude of the society that degrades and oppresses women, but also in the ways the power operates in the hierarchical, unequal society. Therefore, besides strengthening the law and implementing measures such as creating fast track courts to provide speedy justice in the cases of sexual violence, ensuring the certainty of punishment, strengthening the victim friendly provisions, sensitizing the law enforcement machinery, we also need to address the structural inequalities in the society that oppress women.

6.10 UNIT END QUESTIONS

- 1) Read the judgment by the Supreme Court in the case of Vishakha v State of Rajasthan. What has the Court said about preventing sexual

harassment of women at work place?

- 2) Who constitute the Internal Complaint Committee at the workplace?
What is the role of the Internal Complaint Committee?
- 3) What can a woman do in case she faces the sexual harassment at her place of work? Explain.

6.11 REFERENCE

- *An Open Letter to the Supreme Court written by Professor Upendra Bakshi, Professor Lotika Sarkar, Professor Raghunath Kelkar and Vasudha Dhagamwar, In, Mary E. John (edited) (2008) Women's Studies in India.*
- Dhagamwar Vasudha (1992) *Law, Power and Justice: The Protection of Personal Rights in the Indian Penal Code*, Sage Publications.
- Gangoli Geetanjali (2007) *Indian Feminism: Law, Patriarchies and Violence*, Ashgate, UK.
- INDIA CODE, Digital Repository of All Central and State Acts, Legislative Department, Ministry of Law and Justice, Government of India,
https://www.indiacode.nic.in/handle/123456789/2079?sam_handle=123456789/1362
- Report of the Committee on Amendments to Criminal Law (2013)J by Justice J.S.Verma (Retd) Chairman, Justice Leila Seth (Retd), Member, Gopal Subramaniam, Member. Jan, 23.
<https://spuwac.in/pdf/jsvermacommittereport.pdf>
- Tukaram versus State of Maharashtra,
<https://indiankanoon.org/doc/1092711/>
- Vishakha v State of Rajasthan, <https://indiankanoon.org/doc/1031794/>
- THE CRIMINAL LAW AMENDMENT ACT, 2013. The Gazette of India <https://www.iitk.ac.in/wc/data/TheCriminalLaw.pdf>
- THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013,
<https://www.indiacode.nic.in/bitstream/123456789/2104/1/A2013-14.pdf>
https://www.indiacode.nic.in/handle/123456789/2104?sam_handle=123456789/1362
- THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT,(The POCSO Act) 2012,
<https://www.indiacode.nic.in/bitstream/123456789/2079/1/AA2012-32.pdf>

6.12 SUGGESTED READINGS

- *An Open Letter to the Supreme Court* written by Professor Upendra Bakshi, Professor Lotika Sarkar, Professor Raghunath Kelkar and Vasudha Dhagamwar, In, Mary E. John(edited) (2008) *Women's Studies in India*.
- Dhagamwar Vasudha (1992) *Law, Power and Justice: The Protection of Personal Rights in the Indian Penal Code*, Sage Publications.
- Gangoli Geetanjali (2007) *Indian Feminism: Law, Patriarchies and Violence*, Ashgate, UK.
- Report of the Committee on Amendments to Criminal Law (2013)J by Justice J.S.Verma (Retd) Chairman, Justice Leila Seth (Retd), Member , Gopal Subramaniam , Member. Jan, 23. <https://spuwac.in/pdf/jsvermacommittereport.pdf>



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UNIT 7 FEMALE FETICIDE AND INFANTICIDE

Structure

- 7.1 Introduction
- 7.2 Learning Outcomes
- 7.3 Background
- 7.4 Socio-Cultural Practices
- 7.5 Indian Perspectives
- 7.6 Laws and Regulation
- 7.7 Central and State Government Schemes
- 7.8 Let Us Sum Up
- 7.9 Unit End Questions
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7.1 INTRODUCTION

Patriarchy persists in the capitalist phase of contemporary neoliberal society. Science, technology and modern laws have brought radical changes throughout the world. Paradoxically, customs and patriarchy still lurk in the social/political spaces of India in particular and across the globe in general. Gender based debates are central to various social movements and global policy regime. However, the atrocities against women and girl child are increasing in the day-to-day life. The number of missing women in India raise serious questions related to the gender equations in India (Sen,1992). Leadership of women is being challenged in various ways (Duflo,2004). Issues related to female feticide and infanticide or missing girl child have become one of the vexing societal questions in India. Gender-sex selective deaths are proliferating as well. These problems are raising major questions to equality and ethics in the context of the developing societies. Female feticide is the conscious act of aborting a female fetus. Infanticide refers to the child murder in the first year of life. Existence of the girl child is unbearable for a patriarchal society. On the contrary, boys are preferred and valorized in the context of patrimony and linked caste, class, ethnicity etc. Choice of the individuals irrespective of gender and reproductive rights of women are also challenged in peculiar ways. These retrogressive societal practices question the complex nature of the culture and gender. This unit will introduce you to the various debates related to aforementioned themes.

7.2 LEARNING OUTCOMES

After studying this Unit, you are able to;

- Know the information about feticide and infanticide.
- Socio-Cultural Practices related to feticide and infanticide.
- Understand the legal measures taken by Government of India.

7.3 BACKGROUND

Before engaging with the complex existence of feticide and infanticide, one should understand the larger background of gender and social stratification. Debates on sex ratio often led us to the vexing questions of patriarchy and impact on culture. Prenatal sex selection in the western context has generated major discussions in the field of sociology, anthropology and population studies. Scholars have also analyzed the uneven sex ratio in the Indian context-natal sex selection of the offspring emerged as central to the patriarchal culture of the developing societies. It is speculated that “If such choice were ever made widely available to the Indian population, there is no doubt that people would opt for many more sons than daughters, particularly in the north”(Miller,1997).According to Barbara D Miller, there was “increasing use of sex-selective abortion in several Asian populations since the early1980s. Estimates at the beginning of the year 2000 indicate that several million female fetuses were aborted in the last two decades of the twentieth century...Asian culture that support strong son preference”(Miller,2001:1083)Social stratification in Asian societies have created its own hierarchy among the genders. It is further noted that “Female-selective abortion (FSA) is practiced predominantly but not exclusively in parts of Asia, especially China, Taiwan, the Republic of Korea, Pakistan, and India, and among some Asian immigrant populations in Canada, the United States, and probably elsewhere” (Miller,2001:1083). The proliferation such inhuman activities show the constant nature of dominant gender-basedideology. Social perceptions and sex-linked conditions have even impacted field of politics in India. Political parties have to confront men who demand wives for their votes (Seghal, cited in Shah, Gyawali, Aro,2018:54). The gender relations that are not balanced lead to further societal chaos. The next section analyses the social and cultural questions that are linked to oppression on the basis of gender. Female feticide and infanticide have to be understood in the light of social and cultural peculiarities.

7.4 SOCIO-CULTURAL PRACTICES

Oppressive practices are usually analyzed through the perspectives on tradition and anti-modernity. However, gender bias needs to be analyzed in the context of the complex social and cultural perspectives-practices of diverse communities. There are academic tendencies that read primitive practices with that of the underdeveloped/developing societies. Scholars have exposed the methodological limits of such partial perspectives. For instance,

Barbara Miller further observed the persistence of patriarchal practices exist in the age of capitalism and modernization/economic development. On the contrary, it is observed that “research in Chengdu, the capital city of Sichuan Province, shows that the capitalist economic reforms have brought a resurgence of Confucian-patriarchal-family norms and strategies that strengthen the value of sons and decrease the value of daughters” (Whyte,cited in Miller,2001:1087).Policy regime and international organizations have conducted research on the gender bias and related reactionary, patriarchalpractices. The United Nation’s informal findings show that “200 million females are missing in the world; women who should have been born and grown up, were killed by infanticide or selective abortion” (Cited in Shah,Gyawali,Aro, 2018:53).These forms of research show the brutal nature of the patriarchal culture of countries. It is also noted that “Evidence suggests that female feticide is a result of son preference, and traditionally it was noticeable postnatally through female infanticide. However, these days discrimination starts in the womb in the form of female feticide” (Klasen and Wink, cited in Shah, Gyawali, Aro, 2018: 53). In other words, these bizarre anti-girl/women practices emanate from the ideological realm of patriarchy.

Scholars analyzed that major societal issues are linked to the question of sex ratio. They have studied female feticide and infanticide and its disastrous consequences. It is analyzed “These altered sex ratios are not merely numbers; they also carry a signal for future adverse public health consequences. In Asian culture where marriages are virtually universal, not finding a partner can lead to serious societal repercussions. Theories suggest that young, surplus males will be prone to pursue satisfaction through vice and violence, which can intensify socially disruptive behavior. Furthermore, these situations can result in low self-esteem, sexual frustration leading to violence, especially rape, anti-social behavior, alcohol and substance abuse. If these young males together become involved in crime, they are a threat to the security, stability, and democracy of society; this might also threaten regional and international security (Hesketh,Lu,Xing;Hudson and Den,cited:Shah,Gyawali,Aro,2018:54). However, there are conflicts between orthodox religions and modern-political groups. Therefore, any debates on a particular social problem may appear in different forms in the public sphere. For instance, conservatives have different opinion on abortion. Modern groups and individuals have different reading about abortion. They may link it with choice and sexual orientation. Debates on female feticide and infanticide are also caught in such cultural and ideological conflicts. It has raised debates on the questions related to the complex nature of sex selective abortions and legal abortions. It is observed that whether the abortion has done related sex-selective abortion. Media also is criticized for projecting abortion as only sex selective abortion (Shah, Gyawali, Aro,2018:55). Debates in developing Indian society need to be understood in order to unfold the big questions linked to female feticide and infanticide.

Check your progress-1

- 1) *Write your understanding on female feticide and infanticide.*
- 2) *Discuss the various factors related to female feticide and infanticide.*

7.5 INDIAN PERSPECTIVES

Colonial and post-colonial Indian society engaged with the issues of social body, health and citizenship in different ways. Post-independent society could not completely detach itself from the vestiges of colonialism. Natives engaged with the British Empire in different manner. Debates related to infanticide during British colonialism demonstrate the conflicts between the empire and the natives. British government's policy against infanticide, for Lalita Panigrahi, was "a mature and socially assertive policy". It was guided by humanitarian and philanthropic interests. It also challenged the caste system. It brought change in the behaviour of the castes. Social evils such as kidnapping, polyandry, prostitution and sale of girls emerged as part of infanticide (Panigrahi,1972: xi). This unit does not cover the entire historical debates linked to female feticide and infanticide. It deals with only selected phases in the history of the debates on female feticide and infanticide. Scholars have analyzed the regional variations in the context of unbalanced sex ratios. It is analyzed that "Estimates of India's national SRB (sex ratio at birth) in the early 1990s placed it "as high as 112" (Westley, cited in Miller,2001). In addition to the national average, it is analyzed that regional and class based changes are linked to preference for sons (Basu,cited in Miller,2001).Patriarchy and related practices vary across region.Miller observed that there was scarcity of girls during 1970s and 1980s in north western regions in India. Miller compared it with the data from the eastern and southern regions in India. It is observed that "The general social pattern at that time was of greatest scar-city of girls relative to boys in the propertied groups of the northwestern plains (Miller, cited in Miller,2001). It is also analyzed that strong son preference and unwanted girls are common among propertied and non-propertied classes in South India. Scholars have studied it among those retrogressive tendencies from south India (Chunkath, Athreya, George and Dahiya, cited in Miller,2001). Caste based differences and patriarchy operate in different ways. It is analysed that "Another large interview-based study involving over 1000 study families in the state of Haryana, which is just located east of Punjab found a reported SRB (sex ratio at birth) of 127 males per 100 females among upper caste women, compared with 102 among the lowest caste women (George and Dahiya, cited in Miller,2001:1086). What are the social forces that determine the archetypal animosity against the girls? Girls are also not preferred due to male oriented kinship patterns and dowry (Miller,2001: 1087). It is observed that peculiar patriarchal demographics operate in such context. According to Barbara Miller, patriarchal preferences of mothers, fathers and in-laws for son determine the demographic nature of patriarchal societies. It is noted that "A

fertility preference (for sons or for daughters generally or, more specifically, for offspring of a particular gender to be the first born or the last born) will either increase fertility as parents attempt to achieve their preference, promote high rates of "wastage" of unwanted offspring through infanticide or fatal neglect, or result in a combination of overproduction and high wastage" (Miller, 2001:1087). Societal and cultural peculiarities thus determine the privilege of male over the female. One of the central questions that need to be raised is what are the social structures that operate between the preference for sons and hatred towards daughters? Customs that legitimize men exist in east and south Asian countries. Males are privileged due to their positions in the political and economic spheres. Males are preferred for post-death rituals, requirement of farmers in agriculture, property inheritance by sons and old age support for parents. Continuity of lineage, dowry for girl children in marriage and male bread winner in the families structure they preference of sons (Shah, Gyawali, Aro, 2018:53). It is further noted that "The disinterest in having a female child has led to a situation in which families may choose to abort female fetuses despite legal restrictions; abortions can also occur when the fetus has breached the medically advised gestational limit or maternal limit for safe abortion (Shah, Gyawali, Aro, 2018:54). Scholars have analyzed the far reaching repercussions such backward, cultural-social practices. It is observed that "India and China, which together represent 40% of the world's population, are estimated to have 12-15% more young males than females in the next 20 years ... These surplus males are known as "bare branches" in China, which signify that they are unable to "bear fruit" because of not being able to find a marriage partner (Shah, Gyawali, Aro, 2018:54). Indian context need to be looked as part of the global context of the female feticide and infanticide. Geopolitics of global health determines the various transformations in the health across the globe. It is analyzed that "Legally banning sex detection and abortion throughout the Asian countries is a strategy against the SSA practice; however, it has been suggested that this mechanism made the SSA practice go underground and become more expensive. Also, without addressing the root causes of women oppression, merely prohibiting sex determination might increase the case or female infanticide or slower death from persistent negligence, thus limiting access to resources for girls" (Shah, Gyawali, Aro, 2018:55). Significance and existence of women are thus questioned in multiple ways. It is noted that "...women's devaluation in many Asian societies is embedded in religious beliefs and traditional cultural practices; uprooting of this culture may not be easy and immediate. As described above, female feticide, skewed sex ratios, and the related social, cultural practices are complex challenges, which need serious ethical deliberation in the societies, and also among public health professionals" (Shah, Gyawali, Aro, 2018:55). Political institutions are indulging in the various approaches to curb such practices. However, societal approaches to girl child show the lack of the civil society. Policy makers are trying to improve the situation through legislation and awareness. However, issues at the societal level are gaining different forms. It is observed that "As the Indian government increased criminal penalties for female infanticide; the availability of sex-determining technologies such as ultrasound scanning has led to a rise in sex-selective abortion. The Indian Medical Association (IMA)

estimates that five million female fetuses are aborted each year, and estimated in 1999 that India had approximately 20,000 ultrasound clinics, most unregistered and staffed by unqualified doctors” (Siwal, n.d :4). Scholars have also warned about the corrupt medical practices and reactionary individuals who create further problems. It is critiqued that “Because the Indian demand for fetal sex-determination is so great, doctors can ask for high fees, which have resulted in an increase in fetal sex-determination and abortion businesses and abuses. For example, the IMA revealed that some sex-determination centers perform ultrasound scanning weeks before the fetal sex can be determined and charge women to undergo repeated and unnecessary ultrasonography. Unethical scan centers and doctors have told expectant parents they have a female fetus in order to collect the abortion money” (Siwal, 2005:4).

Questions related to the sex ratio thus challenge the questions related to gender equality in India. It is observed that “The Census 2001 indicates that while there is an increase in the overall sex ratio of the country (927 females per 1000 males in 1991 to 933 females per 1000 males in 2001), the child sex ratio (in the 0-6 age group) has shown a decline in almost all the States as compared to the 1991 Census. There are 16 districts in the country having less than 800 girls per 1000 boys. Out of these 10 are in Punjab, 5 in Haryana and 1 in Gujarat. This means for every 1000 boys 200 girls are missing in these districts. Further, there were 70 districts in the country in 2001 where the decline in child sex ratio was more than 50 points when compared with the 1991 Census” (Siwal, 2005:4). Laws and regulations in the context of female feticide and infanticide need to be understood in order to analyze the existing paradoxes between policy regime and harsh realities.

7.6 LAWS AND REGULATION

Policy regime is usually criticized due to the contradictions between theory and practice. Field of global human rights has been critical of the primitive and anti-modern practices across the globe. It is critiqued that irrespective of the legal banning of feticide in Asian countries, still it persists in strange ways (Shah, Gyawali, Aro, 2018:55). There are countries such as South Korea that took stringent legal measures to normalize the sex ratio. South Korea “which managed to bring the male—female sex ratio back from 1.13 to 1.07 after a strict policy against female feticide was introduced in 1987” (Das Gupta, Zhenghua, Jiang et al, cited in Shah, Gyawali, Aro, 2018:26) South Korea is highly appreciated in the policy regime because it was the first country to report female feticide. It was the first country to ban prenatal sex detection. It controlled the sales and use of ultrasound machines. It also prohibited the disclosure of the sex of an unborn baby. Europe and North America allowed the revelation of baby’s sex before the birth for baby rearing (Shah, Gyawali, Aro, 2018:55) There are various dimensions for the legal initiatives in India. It is observed that the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 was enacted to check female feticide. This Act started in the year 1996. It is comprehensive legislation that laid down conditions for the control and regulation of pre-natal diagnostic

techniques. The peculiarity of that act is it has provisions for “establishing mechanisms responsible for policy making and under the Act and also those responsible for the implementation of the act. The penalties for various offences are also elaborated. During the course of the implementation of this Act, certain inadequacies and practical difficulties in its administration came to the Government’s notice. At the same time newer techniques have been developed to select the sex of the child even before conception leading to a further decline in the sex ratio. These developments were also taken note of by the Supreme Court in its various orders in a public interest litigation filed by an NGO, CEHAT & Others versus Union of India & Others. The Court had laid down amendments to the PNDT Act and the amended Act came into force from February 14, 2003. Its main purpose has been to ban the use of sex-selection techniques before or after conception as well as the misuse of pre-natal diagnostic techniques for sex-selective abortions and to regulate such techniques.”(Siwal,2004:5-6).History of policy making and legislation shows the trajectory of the political institutions’ approaches towards the issues of female feticide, sex selective abortions and so on. It is further noted that “The implementation of the Act rests with the States and Union Territories. As a part of the implementation of the Act, appropriate authorities are constituted and each is assisted by an eight-member advisory committee. The committee consists of doctors, lawyers, social workers, and officers dealing with the media. Supervisory Boards have also been constituted under the chairpersonship of the Minister of Health and Family Welfare to oversee the implementation of act. As per the reports received from States/UTs more than 21,600 centres conducting pre-natal diagnostic procedure including ultrasonography have been registered under the PC&PNDT Act. So far more than 400 complaints have been filed in various courts for violation of the Act and Rules” (Siwal,2004:6).

It is further noted there are limitations related to legislation. In other words, legislation has to be followed with creation of the awareness among the citizens. Both legislation and creation of awareness are essential to challenge the patriarchal societal bias towards the girl child and women. It is analyzed that public and private medias can create awareness among the people. It is also important to conduct workshops at the state, district, municipal, taluka levels. Government’s “Save the Girl Child” was implemented to change the mindset of the dominant-conservative sections ‘gender discrimination. Such approach was to create awareness for treating the boy and girl child on equal basis. Thus, it was aimed to eradicate the inherent sexual bias. However, it is observed that “Framing a social problem in the formal and specific language of law has first clearly defined all the key players and their roles in promoting the practice and, second, put in place institutional mechanisms to enforce norms that will regulate the practice. Legislation and regulation provide a framework within which the role of multiple actors and institutions can be concretely measured and evaluated. For instance, regulation has a critical impact on the larger medical and pharmaceutical industry that has sprung up around reproduction in general and SD in particular, of which doctors are only a part.”(Siwal,2005:7).

One needs to also understand the nuances of legislation and related policy formulations. It is analyzed that “The difficulties and gaps in regulating the use of technologies like obstetric ultrasound for SD should not become the basis for an argument against regulation. A number of measures can be taken to ensure effective implementation. For example, under both the MTP Act, 1971 and the PNDT Act, 1994, specific sites have been classified for legal provision of these services. Universal registration of these sites and listing of diagnostic equipment, granting licenses and requiring that they be prominently displayed, among others, could help curb misuse” (Siwal,2005:7). However, these legal transformations have been transforming in the context of tensions between the public and private sector. It is critiqued that “The PNDT Act can be the first step in a broader effort to regulate the private health care sector. The law, as currently implemented, fails in that it does not specify the role that has been played almost single-handedly by the private sector in spreading SD and SSA across the country. It is worth noting that SD was banned in all public facilities in the mid-seventies. Having discussed the usefulness of laws it is important to point out that they are at best a first step in addressing deep-rooted injustice. George (2002), one of the three petitioners of the PIL, points out that a law and effective use of the judiciary can bring pressure on the executive branch of government to do a better job of monitoring use of these technologies, guide medical ethics that till date have been seriously lacking with regard to SD and SSA, and at the same time serve as a catalyst to address deep-rooted patriarchal norms within Indian society”(Siwal,2005:7-8).Discourses of Public Interest Litigation and gender thus have the history of challenging the age old customs that oppress the girl child and women.The next section discusses about the central and state government’s schemes to alleviate female feticide and infanticide.

Laws passed in India to alleviate female feticide

Other Legislation	Year Passed	Goals
Dowry Prohibition Act	1961	Prohibits families from taking a dowry, punishable with imprisonment
Hindu Marriage Act	1955	Rules around marriage and divorce for Hindus
Hindu Adoption and Maintenance Act	1956	Deals with the legal process of adopting children and the legal obligation to provide "maintenance" for other family members
Immoral Traffic Prevention Act	1986	Stops sex trafficking and exploitation
Equal Remuneration Act	1976	Prevents monetary discrimination between men and women in the workforce

Female Infanticide Act	1870	Prevents female infanticide (Act passed in British India)
Ban on ultrasound testing	1996	Bans prenatal sex determination

Source: SnehTandon, (2006) "[Female Feticide and Infanticide in India: An Analysis of Crimes against Girl Children](#)", in *International Journal of Criminal Justice Sciences*.

7.7 CENTRAL AND STATE GOVERNMENT SCHEMES

It is noted that critical government policies are designed for the protection, education and development of the girl child. It is stated that “National Family Health Survey 2019-21 (NFHS-5) indicates that India has 1020 females for every 1000 males, making the female population of India a larger sub-set. This warrants inclusive, efficient, and sustainable policies to ensure the proper development of the girl child. To inculcate and propagate the vitality of gender equality, India celebrates 24th January as ‘National Girl Child Day’ every year...Last year, India's Prime Minister Narendra Modi saluted the daughters of the nation on ‘National Girl Child Day and acknowledged their accomplishments in various fields. Prime Minister has emphasized on many occasions that India will progress when the girl child shines...National Girl Child Day' is an initiative of the Ministry of Women and Child Development. The motive behind celebrating it is to provide support and opportunities to the girls of the country...NFHS-5 indicates that India has successfully brought down its infant mortality rate to 35.2 from 101 per 1,000 births back in 1978-82. Efforts continue to bring this rate down further. In this vein, the Government of India has initiated multiple policies for the girl child for her protection, education, and development. Crucial ones are Beti Bachao Bet Padhao, Sukanya Samridhi Yojana, Balika Samridhi Yojana, Central Board of Secondary Education (CBSE) Scholarship Scheme/Policy for Girl Education, National Scheme of Incentives to Girls for Secondary Education and State government schemes for the girl child. (Source: <https://amritmahotsav.nic.in/blogdetail.htm?80>)

- **Beti Bachao Beti Padhao** was launched in the year in the year 2015. It is designed to address the disparity in sex ration across the country. It also aims at preventing feticide-biased abortion and post-natal discrimination against daughters. It aims at Ensuring holistic growth and protection of the girl child and equal education and opportunities for girl child. It is implemented over 100 villages that have lower child sex ratio. In addition to those initiatives, Government employees at the panchayat and district level are functioning to eliminate female feticide and infanticide. They are also working for the elementary education of each girl child.
- **Sukanya Samridhhi** Yojana was launched in the year 2015. This particular scheme provides incentives to save money for the future of

female children in the families. It is noted that “Any guardian can open a ‘Sukanya Samridhi Account’ in a girl’s name before she is the age of 10 and can deposit minimum Rs. 250 (maximum Rs. 1.5 lakh) in one financial year. Under this Scheme, this saving provides a tax benefits (up to Rs. 1.5 lakh) for the guardian and also offers 7.6% annual rate of interest. As per the notification from Ministry of Finance (released on 22.12.2014), the account shall mature on completion of 21 years from the date of opening of the account. This timeline and the relatively high interest rate help the sum grow significantly larger by the time of its maturity. This Scheme also allows for premature withdrawal in case of girl's marriage or guardian's sudden death. As per data from Indiapost.gov.in, sum total of 3.58 lakh ‘Sukanya Samridhi Accounts’ have been opened as of December 2021”

- **Balika Samridhi Yojana** was launched” on 2nd October 1997 with the objective of rising the standard of living of female children born into poverty (below poverty line as defined by the Government of India). This Scheme benefits up to two girls per family, provided they are born on or after 15th August 1997. A one-time grant of Rs. 500 is given to a mother giving birth to a girl child in a family that is below the poverty line. Further, the girl child can avail annual scholarships of Rs. 300 to Rs. 1,000 up to Class X”.
- **Central Board of Secondary Education (CBSE) Scholarship Scheme/Policy for Girl Education:** This Scheme identifies “the efforts of parents promoting education among girls and provides encouragement to meritorious students. It provides scholarships to meritorious female students who are the only child of their parents. They must pass the CBSE Class X Examination with 60% or more marks and are continue their school education of Class XI and XII. The rate of scholarship is Rs. 500 per month if the tuition fee is less than Rs. 1,500 per month”
- **National Scheme of Incentives to Girls for Secondary Education** was “launched in May 2008, this Scheme provides incentives to female students enrolled in Class IX. The objective of the Scheme is to establish an enabling environment to promote enrolment and reduce drop out of girls belonging to SC/ST communities in Secondary Schools and ensure their retention up to the age of 18 years. A sum of Rs. 3000 is deposited in the name of an eligible unmarried girl as a fixed deposit upon enrolment in Class IX. She is entitled to withdraw it, along with interest thereon, upon reaching 18 years of age and passing Class X examination”.
- **State government schemes for the girl child:** It is noted that “In addition to the Central Government Schemes, several others by State Governments are also in effect to empower and protect the girl child. For example, Andhra Pradesh’s ‘Bangaru Thalli’ Scheme supports the family of a girl from her birth till her graduation, ‘Mamata Scheme’ by Government of Goa provides financial assistance of Rs. 10,000 to the mother of a female child, ‘Ladli Social Security Allowance Scheme’ of Government of Haryana provides financial aid to families with girl

child/children, ‘Ladli Laxmi Yojana’ of Madhya Pradesh provides financial help of up to Rs 30,000 in the name of the girl child, ‘Kanya Sumangala Yojana’ by the Government of Uttar Pradesh provides financial help in the range of Rs. 2000 to Rs. 5000 as scholarships”

(Source: <https://amritmahotsav.nic.in/blogdetail.htm?80>).

However, civil society play a vital role in achieving development. Civil society has to be vigilant to all forms of oppression to ensure social justice.

7.8 LET SUM UP

In this Unit, we have studied the social and cultural factors that proliferate social evils such as female feticide and infanticide. It also introduces you to the Indian perspectives related to female feticide and infanticide. Laws and regulations dealing with such social evils are also discussed to show the nuances of customs, modern-nation-state and laws. The unit also introduces the central and state government schemes that alleviate female feticide and infanticide.

7.9 UNIT END QUESTIONS

- 1) Discuss the origin of female feticide.
- 2) What are the legal measures taken by the Government of India to prohibit female feticide?
- 3) Analyze the factors that leads to the persistence of female feticide.

7.10 REFERENCES

- Basu, Alaka Malwade (1992) *Culture, the Status of Women and Demographic Behavior: Illustrated with the Case of India*, New York: Oxford University Press
- Chunkath, Sheela Rani and Athreya, V. B. (1997). Female Infanticide in Tamil Nadu: Some Evidence. *Economic and Political Weekly*, 32(17), WS21–WS28.
- Duflo, Esther (2004). ["Unappreciated service: performance, perceptions, and women: leaders in India"](#) (PDF). *Massachusetts Institute of Technology (MIT)*: Department of Economics
- Gettis, J. Getis, and J. D. Fellmann (2004). *Introduction to Geography*, Ninth Edition. New York: McGraw-Hill. pp. 200.
- George, S. M., & Ranbir S. Dahiya. (1998). Female Foeticide in Rural Haryana. *Economic and Political Weekly*, 33(32), 2191–2198. <http://www.jstor.org/stable/4407077>
- Helen Pidd.(2012) ["Indian campaign confronts prevalence of female foeticide"](#). July, 13. *The Guardian*.

<https://www.theguardian.com/world/2012/jul/13/india-campaign-debate-female-foeticide>.

- Hesketh T, Lu L, Xing ZW.(2011) “The consequences of son preference and sex-selective abortion in China and other Asian countries”. *CMAJ*. Sep 6;183(12):1374-7. doi: 10.1503/cmaj.101368.
- Hudson VM, Den Boer A.(2002) A surplus of men, a deficit of peace: security and sex ratios in Asia’s largest states. *Int Secur*: 26:5-38.
- Klasen, S., & Wink, C. (2002). A Turning Point in Gender Bias in Mortality? An Update on the Number of Missing Women. *Population and Development Review*, 28(2), 285–312. <http://www.jstor.org/stable/3092814>.
- Klausen Stephan; Wink Claudia (2003). "Missing Women: Revisiting the Debate". *Feminist Economics*. (2–3): 263–299.
- MacPherson, Yvonne (2007). "Images and Icons: Harnessing the Power of Media to Reduce Sex-Selective Abortion in India". *Gender and Development*. 15 (2): 413–23.
- Miller, Barbara D.(2001) "Female-selective abortion in Asia: Patterns, policies and debates," *American Anthropologist*, 103(4),pp.1083-1095.
- Miller, Barbara D(1997/1981) *The Endangered Sex: Neglect of Female Children in Rural North India*, New Delhi: Oxford University Press
- Panigrahi, Lalita (1972) *British Social Policy and Female Infanticide in India*, New Delhi: Munshiram Manoharlal.
- Sekher, T.V. (2010). "[Special Financial Incentive Schemes for the Girl Child in India: A Review of Select Schemes](#)" (PDF). *International Institute for Population Sciences*.
- Sehgal Manjeet(2014) “Single men in Haryana district ‘demand wives in exchange for their votes’India; 2014”, accessed dated 12 Jan,2023.<https://www.dailymail.co.uk/indiahome/indianews/article-2768538/Single-men-Haryana-district-demand-wives-exchange-votes.html>
- Sen, Amartya (1991) “Missing Women”, accessed dated 12 Jan,2023. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1881324/pdf/bmj00063-0009.pdf>
- Siwal,B.R(2005) “Preventive measures for Elimination of Female Feticide” accessed dated 12 Jan,2023. <https://eldis.org/document/A18526>
http://www.iccwtnispcanarc.org/upload/pdf/8929239093PREVENTIVE_MEASURES_FOR_FEMALE_FOETICIDE.pdf
- Tandon, Sneha (2006). "[Female Foeticide and Infanticide in India: An Analysis of Crimes against Girl Children](#)" (PDF). *International Journal of Criminal Justice Sciences*.
- van Schaik,Carel P and Charles H.Janson(2000) *Infanticide by males*

- Westley, Sidney B (1995) “Evidence mounts for Sex-Selective Abortion in Asia, *Asia Pacific Population and Policy*,34.
- Zhu, W. X., Lu, L., Hesketh, T., Liu, & Zhang. (2009). China’s Excess Males, Sex Selective Abortion, and One Child Policy: Analysis of Data from 2005 National Intercensus Survey. *BMJ: British Medical Journal*, 338(7700), 920–923. <http://www.jstor.org/stable/20512658>

7.11 SUGGESTED READINGS

- Basu, Alaka Malwade(1992) *Culture, the Status of Women and Demographic Behaviour: Illustrated with the Case of India*, New York: Oxford University Press
- Chunkath, Sheela Rani, and V. B. Athreya (1997) “Female Infanticide in Tamil Nadu”, *Economic and Political Weekly*, April 26: WS21-WS28.
- Duflo, Esther (2004). ["Unappreciated service: performance, perceptions, and women: leaders in India"](#) (PDF). *Massachusetts Institute of Technology (MIT): Department of Economics*
- Gettis, J. Getis, and J. D. Fellmann (2004). *Introduction to Geography*, Ninth Edition. New York: McGraw-Hill. pp. 200.
- Sen, Amartya(1991) “Missing Women”, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1881324/pdf/bmj00063-0009.pdf>

UNIT 8 WOMEN IN INSTITUTIONS

Structure

- 8.1 Introduction
- 8.2 Learning Outcomes
- 8.3 Women in Prisons
- 8.4 Constitutional and Statutory Provisions related to Women accused/prisoners
- 8.5 International Instruments and Guidelines
- 8.6 Other Interventions by the State and its Allied Agencies
- 8.7 Prisons in India and Committees
- 8.8 Feminist Interventions
- 8.9 Let Us Sum Up
- 8.10 Unit End Questions
- 8.11 References
- 8.12 Suggested Readings

8.1 INTRODUCTION

The Indian constitution mandates equality as the key principle of social existence and yet many marginalised groups and communities have to face discrimination and subordination. Women are one such group and they have to negotiate with masculinist institutions, structures and processes in their day-to-day existence. We are going to focus upon women who fall into the category of ‘criminals’ as defined by law and understand the protective laws and policies that are in place to safeguard their interest and also their experience of violence and oppression despite these empowering provisions. How has the state tried to accommodate the concerns of these women who are in conflict with law? What happens when the protectors turn oppressors? How far is the law able to address the needs of these women? How can the state be made more responsive and representative? These are some of the questions that we will study in this unit.

8.2 LEARNING OUTCOMES

After studying this Unit, you are able to:

- Understand about how institutions create problems under the category ‘criminals’;
- Familiarise ourselves with some facts related to women prisoners in India;
- Learn about the existing constitutional and other legal provisions safeguarding rights of women prisoners.

8.3 WOMEN IN PRISONS

Prisons have been a part of civilised societies as these are seen as 'correctional' facilities that help in penalising, reforming and rehabilitating those who have committed a crime and are serving a sentence according to the law of the land. In India, the foundation of the modern prison system was laid down during the colonial period. The modern prisons in India originated following the report of the Macaulay Committee or the Prison Discipline Committee (1836-1838), Central Prisons were constructed from 1846 (Pachauri 1994). The contemporary prison system has evolved from those days and grown to an unmanageable size. According to the Executive Summary of the Prison Statistics India for the year 2019, released by National Crime Records Bureau, there are 1,350 prisons in the country, consisting of 617 Sub Jails, 410 District Jails, 144 Central Jails, 86 Open Jails, 41 Special Jails, 31 Women Jails, 19 Borstal School and 2 other jails than those mentioned. (<https://ncrb.gov.in/sites/default/files/Executive-Summary-2019.pdf>)

These jails accommodated 4,78,600 prisoners as on 31st December, 2019. The breakup of this figure includes 4,58,687 male prisoners and 19,913 female prisoners. There are 31 Women Jails set up in only 15 States/UTs with a total capacity of 6,511 in India. The actual strength of woman jail officers/staff, as given in this data, was 7,794 (including 254 medical staff). Women prisoners thus form a very insignificant minority within the category of jailed inmates in India, yet the number is large enough to require proper arrangements by the relevant state authorities. Women prisoners in Indian jails have to face problems like overcrowded jails, severe lack of female staff in prisons including doctors, nurses and counsellors, fewer and unhygienic toilets and bathrooms, inadequate provision of water, scarcity of menstrual hygiene products, inadequate nutrition especially for pregnant and/or lactating women and their dependent children, outdated vocational training which is necessary for proper rehabilitation, limited access to legal aid, threat of physical and sexual violence at the hands of other prisoners as well as authorities, absence of effective complaint redressal mechanisms are some of the key problems (Bhandari, 2016; Women in Prisons, June 2018). There have been many incidents of custodial violence against women accused or prisoners in India despite the guarantee of certain rights and protections available to them.

Source: Report by Ministry of Women and Child Development, Government of India, Women in Prisons, June 2018. <https://wcd.nic.in/sites/default/files/Prison%20Report%20Compiled.pdf>

8.4 CONSTITUTIONAL AND STATUTORY PROVISIONS RELATED TO WOMEN ACCUSED/PRISONERS

In this section, we will learn about some of the constitutional and statutory provisions that guarantee certain basic rights for women in prisons. As we all

know, the Preamble to the Constitution of India, outline the basic features of the constitution by promising social, economic and political justice for all citizens along with equality of status and of opportunity. Article 14, under the Fundamental Rights guaranteed by the constitution of India in Part III, guarantees equality before the law or the equal protection of the laws to the citizens. Similarly, Article 21 lays down protection of life and personal liberty as a fundamental right. These rights are equally available to prisoners with certain restrictions in proportion with the criminal charges against them. The prisons system in India is governed by the Prisons Act, 1894 and the jail manuals of respective states as prison administration is a subject in State list under the Constitution of India. The Transfer of Prisoners Act, 1950 and The Repatriation of Prisoners Act, 2003 are some other relevant Acts. There are specific provisions in the Indian Penal Code (IPC) that also provide certain safeguards to prevent violence against women in institutions like prisons. Section 376 of the IPC, specifies punishments for rape by police officers within the police station or in any premise of the police station, or in custody of the police officers, members of the armed forces or any public servant. Section 376, Proviso 2 provides for minimum 10 years rigorous imprisonment in case any member of the staff of a jail, remand home or other place of custody established “women's or children's institution” which means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name or any such place that is entrusted therewith the responsibility of women and children.

Similarly, Section 46 of the Criminal Procedure Code (CrPC), provides for certain precautions like male police officers are not allowed to touch the woman while making an arrest. Further, under ordinary circumstances, no woman is to be arrested after sunset and before sunrise. The exceptional circumstance where such arrest is to be made during the night, requires special efforts like the woman police officer is to prepare a written report, and obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

Section 51 provides that a female accused shall be searched only by another female with strict regard to decency. Section 53(2) mandates that the medical examination of a woman accused shall be made only by, or under the supervision of, a female registered medical practitioner. In the general provisions relating to searches in Cr.P.C., under Section 100(3), in case of a woman being a suspect, search shall be made by another woman with strict regard to decency. Section 160 of CrPC, which deals with Police officer's power to require attendance of witnesses while investigating a matter/crime, provides that in case of a woman, such investigation shall happen only at the place of her residence. Section 167(1) of the CrPC provides that when the procedure of investigation cannot be completed in twenty-four hours, in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.

Section 416 provides that if a woman sentenced to death is found to be pregnant, the High Court shall commute the sentence to imprisonment for

life. Section 437 provides for relaxed bail requirements in case of a woman arrested or detained in case of non-bailable offence. Many of these provisions were put in place following the Law Commission's 135th Report on Women in Custody (1989).

8.5 INTERNATIONAL INSTRUMENTS AND GUIDELINES

Other than the aforementioned constitutional and statutory provisions, there are numerous international instruments that also lay down some basic human rights for prisoners. While these international provisions are not binding upon respective national governments, Article 51(c) of our Constitution directs the State to foster respect for international law and treaty obligations in the dealings of organised peoples with one another. The courts have often emphasised upon the need to respect these provisions while formulating national laws and policies. We will take up two such relevant documents here.

The United Nations Standard Minimum Rules for the Treatment of Prisoners (1955) were revised and renamed the Nelson Mandela Rules in 2015. (https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf)

Rule 1 stresses upon treating all prisoners with the respect due to their inherent dignity and value as human beings and any type of torture and other cruel, inhuman or degrading treatment or punishment even in the face of gravest provocation is prohibited. These rules prohibit corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments for disciplinary offences. Rule 81 provides for placing the women's wing in a correctional institution under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution and also prohibits the entry of any male member of the staff into the women's wing unless accompanied by a woman officer. It also specifies that women prisoners shall be attended and supervised only by women officers but makes provision for male members of the staff on duty, particularly doctors and teachers, to continue with their professional duties in institutions or parts of institutions set aside for women.

There is more specific set of rules for women prisoners, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, also called the Bangkok Rules (2010). These stress upon the need to take into account the differential needs of women prisoners. Rule 5 specifies the provision of facilities that take care of women's specific hygiene needs, including free sanitary towels and a regular supply of water for the personal care of children and women, especially for those who are pregnant, breastfeeding or menstruating. Rule 31 mandates governments to have 'clear policies and regulations on the conduct of prison staff aimed at providing maximum protection for women prisoners from any gender-based physical or verbal violence, abuse and sexual harassment shall be developed and implemented.'

Check your Progress 1

- 1) Give two provisions each from the Nelson Mandela Rules and the Bangkok Rules that provide for a dignified life of women prisoners.

8.6 OTHER INTERVENTIONS BY THE STATE AND ITS ALLIED AGENCIES

The Union government has, in the past appointed Committees for Prison Reforms and two such prominent committees have been the Mulla Committee on Jail Reform (1980-83) and the Justice Krishna Iyer Committee (1987) specially to address the situation of women prisoners in India. It has recommended induction of more women in the police force in view of their special role in tackling women and child offenders. The Ministry of Home Affairs, regularly issues advisories regarding prison administration including on issues like overcrowding, educational programmes for inmates, sharing best practices, extension of medical facilities including to inmates with mental health related issues and to terminally-ill inmates, grant of parole or furlough, facilities to children of women prisoners, among others and more recently regarding Covid-19 related precautions in prisons. Some of these documents are available on the website of Ministry of Home Affairs at https://www.mha.gov.in/Division_of_MHA/Women_Safety_Division/prison-reforms

The Model Prison Manual, 2016 (<https://www.mha.gov.in/sites/default/files/PrisonManual2016.pdf>) is a standardised set of guidelines approved by the Ministry of Home Affairs and circulated to all States and Union Territories. There have been Parliamentary Committees that have investigated the condition of women in prisons and submitted reports and recommendations like the Committee on Empowerment of Women, 13th Lok Sabha(2001-02), also known as the Margaret Alva Committee after the Chairperson of the committee, (http://wbcorrectionalservices.gov.in/pdf/empowerment_of_women.pdf), and the 16th Lok Sabha (2017-18) (https://eparlib.nic.in/bitstream/123456789/783396/1/16_Empowerment_of_Women_13.pdf).

There have been various judgments pronounced by the Supreme Court of India regarding the rights of women prisoners and mention can be made of few like Hussainara Khatoun &Ors. v. Home Secretary, State of Bihar, (AIR, 1979 S.C. 1360); Sheela Barse&Ors v. Union Of India &Ors, (1986, SCALE (2)230); Dr Upendra Baxi (1) v. State of UP &Anr((1983) 2 SCC 308; Dr. Upendra Baxi (II) v. State of UP (1986) 4 SCC 106); R.D. Upadhyay v. State Of A.P. &Ors, 2006AIR 2006 SC 1946. Another effective intervention by the

Supreme Court of India has been initiated on the basis of a letter written in June 2013, by Justice R C Lahoti, a retired Chief Justice of the Indian Supreme Court, to the then Chief Justice on overcrowding, unnatural deaths, inadequacy of staff and the inadequate training of staff in the Indian prison system. The letter was taken up as a writ petition to remedy the inhuman conditions prevailing in 1382 prisons in India. Consequently, from 2016 to December 2018, several judgements titled *Re: Inhuman Conditions in 1382 Prisons* have been delivered in relation to this petition.

Check your Progress-2

- 1) *Find out about the Open Letter that the 4 Law Professors wrote to the Supreme Court of India in protest against the verdict in the custodial rape case of Mathura. The name of the case was Tuka Ram and Anr v. State of Maharashtra, 1978.*

8.7 PRISONS IN INDIA AND COMMITTEES

The enabling provisions related to women prisoners mentioned in the previous sections and the well-intentioned efforts of various agencies of the state have not been able to ensure a dignified life for these women in custody. The Alva Committee mentioned some problems with regard to women prisoners like absence of standardised and uniform treatment throughout the country as prison management is a state subject even though the Centre can issue guidelines and decide larger frameworks of prison management and reforms. The Committee also raised issues like difficulty in conducting surprise visits to these jails to assess the prevailing conditions, female jails/enclosures being managed by male staff instead of women personnel. Overcrowding in some jails, outdated and nominal facilities for rehabilitation, lack of crèche and educational facilities for children staying in the jails with their mothers, sub-standard conditions relating to food, lodging, clothing, recreation were other concerns. The District Jail, Lucknow, found a special mention in the report as the Committee found that the women convicts were not informed about the wages earned by them and no accounts were maintained in this regard.

Apart from the everyday and routine violence that women in detention have to face, sexual violence and physical abuse is also rampant. You might have read about the Mathura rape case, an incident of custodial rape, wherein Mathura, a young tribal girl, was allegedly raped by two policemen on the compound of Desaijanj Police Station in Gadchiroli district of Maharashtra 26 March 1972. After the Supreme Court acquitted the accused, there was public outcry and protests, which eventually led to amendments in the Indian rape law in 1983.

This was not an isolated incident and People's Union for Democratic Rights (PUDR), a Delhi based civil liberties organisation, published a report in 1994 on Custodial Rapes in Delhi only and the number of custodial rapes were given as 21 between the period 1988-1994 (PUDR Report, 1994). This report

also pointed out how, in the context of a rape or sexual assault, the woman is reduced to a name or another number as the emphasis is on the outcome of the related judgment and the media also sensationalises the case and debates on the need to reform the legal system. The experiences of these women, ‘their physical and social vulnerability to sexual assault, the consequences, and fear of those consequences’ thus hardly get addressed in these debates (PUDR Report, p. 1).

Even the Margaret Alva Committee admitted in its 2001-02 report that “There were also some cases of exploitation of young women prisoners by the jail staff for immoral purposes.”

The 2018 Parliamentary Committee on Empowerment of Women, in its report on Women in Detention, mentioned that it was informed by the Ministry of Home Affairs that in the state of Uttar Pradesh there were 189 cases of custodial rape in 2014 and 91 in 2015. The print and electronic media also constantly reports these instances of violence and abuse but the ground realities hardly change. The Government of India (GOI) has still not devised modalities of consistent documentation of torture-related complaints. The National Crime Records Bureau (NCRB) does not document cases of custodial torture though physical assault might figure in some cases of custodial death. The National Human Rights Commission also prepares occasional reports about police excesses but no sustained and regular documentation is done. Kaur(2018) points out that torture/excessive force is often used to target marginalised communities and control people participating in movements or propagating ideologies which the state perceives as threatening. Jinee Lokaneeta (2014), describes it as a ‘public secret’ that the state continues to deny and yet there is a silent acceptance as it continues to haunt us through frequent incidents that get reported in public domain. Let us try to understand the experiences of women who engage with the state and its agents while being in prison.

Let us read the news article given below in the box.

Case Study 1

Times of India

Ex-women prisoners say conditions bad, inmates tortured

TNN | Mar 8, 2011, 03.33 AM IST

MADURAI: A few women who served prison terms have alleged torture and inhuman treatment within the prisons across Tamil Nadu. They say they were stripped naked and abused verbally and physically and not provided even basic facilities. Three remand women prisoners, now out of prisons, spoke to the media at a meeting organised by the campaign against custodial justice and abolition of torture of the Society for Integrated Rural Development.

Parameswari (25) of Annaiyur in Madurai said she was arrested along with her uncle Kaviarasu in Kadaladi in Ramanthapuram on February 16, 2010. Her uncle, she said, was killed in an encounter with the police in Madurai a

few days later. Alleging that the police foisted false cases of theft against her because they did not want her disclosing details of Kaviarasu's arrest, Parameswari said she was taken to the Tiruchi women's prison on 23rd February last year and was detained there until June 7. "I was stripped naked by convict wardens in the presence of the jail wardens and other prisoners and abused both verbally and physically. It was a humiliating experience," she said.

When asked about the allegations of the prisoners, inspector general of prisons J K Tripathy told TOI he would order a probe if the women made a formal complaint. "I will take action based on the complaint," he said.

Two more prisoners, Munniammal (50), who had been lodged in the Nilakottai sub-jail for robbery, and M Muthulakshmi (45), who had been arrested by the police for illicit brewing of liquor, said they were never given anything but gruel in the prison. Children of prisoners were deprived their quota of milk and egg. And, when they were given milk, it was diluted and the one egg a week was divided between two children, they said. Four to eight prisoners were crammed into a cell and they were forced to use a small corner as their toilet, without even a curtain to provide them privacy.

The women said they had to be ready to offer bribes even for free legal aid. "We also have to pay the escorts who take us to the court as otherwise they would beat us up," they said. Convenor of the campaign M Jeeva said they had studied 15 prisons for women in the state including the central prisons in Tiruchi and Vellore and that serious human rights violations had been noted. The jail manual should be reviewed according to human rights standards and directions of the Madras high court on basic amenities to women prisoners should be implemented.

Source: <https://timesofindia.indiatimes.com/city/chennai/Ex-women-prisoners-say-conditions-bad-inmates-tortured/articleshow/7650943.cms>

This seems to be the reality in our prisons despite the protective provisions mentioned in the initial sections of this unit. Let us read about a recent incident of torture and subsequent outbreak of violence in a Mumbai jail.

Case Study 2

Manjula Shetye, a 45-year-old inmate at the Byculla women's jail in Mumbai, died due to internal injuries on June 23, 2017, allegedly after she was mercilessly assaulted by six female jail staffers. The police informed Bombay High Court that Shetye fell down in the toilet and died due to the injuries suffered due to the fall. Around 200 inmates protested against the incident the next day and there was chaos and violence for which the inmates were booked on charges of rioting. Inmates claimed that Shetye was assaulted when she complained about the quality of food and filthy living conditions while the jail staff claimed that she had an altercation with the officials when they questioned her about granting favours to inmates for cash.

Source: Press Trust of India, Byculla prison riots: Autopsy report reveals Manjula Shetye suffered head injuries, July 5, 2017

<https://www.hindustantimes.com/mumbai-news/byculla-prison-riots-autopsy-report-reveals-manjula-shetye-suffered-head-injuries/story-zgWLQR7XJMsB7pzbTQTE3I.html>

Alka Dhupkar, Anupam Dasgupta, Jail Riot: Byculla women's jail is a hellhole, say former inmates, June 28, 2017

<https://mumbaimirror.indiatimes.com/mumbai/cover-story/std-xii-book-drops-ugly-women-pay-more-dowry-para/articleshow/59328266.cms>

Check your Progress-3

1) Identify the immediate problems faced by women inmates in Indian jails, based on the case studies given above.

8.8 FEMINIST INTERVENTIONS

The previous sections of this Unit enabled us to understand the types of violence faced by women in prisons or such protective institutions. We also familiarised ourselves with the existing framework of laws, guidelines and policies in force, to address the vulnerabilities of women in custody? But we also realised the futility of these provisions as even reports by government agencies indict the existing prisons system for treating the female inmates in inhuman ways but there is no accountability at any level. Convictions are few as supporting evidence is difficult to produce. The repressive power of the state machinery gets active in defence of the accused officials and the cover-up is arranged through various modes. Criminal women, already have low credibility and limited means. Their socio-economic backgrounds add to their vulnerability. Acquittals and reinstatements are common in most cases of custodial violence (See PUDR, 1994 report).

Enquiry officers' faces pressure to prepare a report favouring the accused and there is 'institutionalized reluctance' also as the police hesitate in taking action against colleagues (See PUDR 1994 report). Similar thing happened in the case of Manjula Shetye case as Maharashtra DIG (Prisons) Swati Sathe posted WhatsApp messages in a group of colleagues from prison department seeking 'support' for six jail staffers arrested in the case. Sathe called the accused as 'sisters'. She was subsequently relieved from conducting the departmental inquiry.

Source: PTI, The New Indian Express, Byculla inmate death: DIG steps down as WhatsApp messages spark row, 7th July, 2017

<https://www.newindianexpress.com/nation/2017/jul/07/byculla-inmate-death->

[dig-steps-down-as-whatsapp-messages-spark-row-1625559.html](https://www.dig-steps-down-as-whatsapp-messages-spark-row-1625559.html)

The existing constitutional provisions, laws, policies and guidelines that are presently in place are adequate to give these women a relatively violence free and dignified life in prison or other protective institutions. These are not just benevolent gestures of a ‘welfare state’ but are result of years of struggles by autonomous women’s movements as well as civil liberties groups active throughout the country. The outcome has been a “success” as Sunder Rajan points out but only in terms of the listing of these provisions in the official documents (2003: 30-31). She argues that the inclusion of feminist concerns into official, mainstream discourse enhances the fear of co-optation as well as competition as the state continues to adopt a paternalistic relationship with women in the name of protection (Rajan,2003: 34-35). Most of the provisions related to women in prison, still construct these women in conflict with law as sexualised(reproductive) subjects and hence the emphasis of the reforms or ‘empowering’ provisions is on safeguarding maternal health and ensuring the health of the children of women in prison. These conservative and family-oriented views thus fail to take into account the differential needs of different categories of women in prison. There was no mention of women prisoners with disability and the need to accommodate their specific requirements in any of the existing provisions except for the mention of mental health and the need for psychiatric care. Sign language and foreign language interpreters are not on the list of experts needed for a dignified existence in the prison. There was no mention of caste or tribal identity-based oppression as women prisoners are treated as a homogeneous group with identical requirements. The ideology of protection also renders these women incapable of being trusted with any active agency as they are not involved in the management of these institutions that are solely governed by state actors (Muralidhar, 1999: 292). The power of discretion given to the jail staff in terms of using force is a grey area that allows legal violence against the inmates (Lokaneeta, 2014). Sunder Rajan also attributes the inhuman conditions in institutions for women to cruel regulations, upholding “bureaucratic norms of “discipline” and motivated by “reformist” intentions” where supervision, confinement and deprivation are the key concerns as well as strategies of managements (Rajan,2003:89).

8.9 LET US SUM UP

We do not need more laws and policies to address the inhuman conditions existing in the jails but need to strategically work on the gaps in conceptualising the idea of institutionalisation in the context of women coming from different socio-economic and political backgrounds and their specific needs (Shankardass, 1999). There is need to think about alternatives to prison as well (Hiremath, 2008). The penal as well as non-penal institutions should be democratised and greater participation by the inmates and members of the civil society should be in-built into the system. Systemic accountability should be enforced stringently and a zero-tolerance for human rights violation should be the key responsibility of various stake-holders, both state and non-state actors.

8.10 UNIT END QUESTIONS

1. What are some of the problems faced by women prisoners in Indian jails?
2. Enumerate some of the rights guaranteed by the Constitution of India that can help women in prisons.
3. Discuss some of the statutory provisions of the Criminal Procedure Code of India that give some basic protection to women accused/prisoners.
4. Write a note on the key reforms needed for ensuring a better life for women in prisons.

8.11 REFERENCES

- Bhandari, Asha (2016). "Women Prisoners and their Dependent Children: A Study of Jaipur and Jodhpur Central Jails in Rajasthan", *Sociological Bulletin*, 65 (3), pp.357-379.
- Dhupkar, Alka and Anupam Dasgupta, *Mumbai Mirror*, June 28, 2017, Jail Riot: Byculla women's jail is a hellhole, say former inmates.
<https://mumbaimirror.indiatimes.com/mumbai/cover-story/std-xii-book-drops-ugly-women-pay-more-dowry-para/articleshow/59328266.cms>
accessed on 10th November, 2020.
- Hiremath, Vijay (2008). "Draft Policy on Prison Reforms", *Economic and Political Weekly*, 43 (26/27).
- Hindustan Times. (2017), "Byculla prison riots: Autopsy report reveals Manjula Shetye suffered head injuries". July 5,
<https://www.hindustantimes.com/mumbai-news/byculla-prison-riots-autopsy-report-reveals-manjula-shetye-suffered-head-injuries/story-zgWLQR7XJMsB7pzbTQTE3I.html> accessed on 10th November, 2020.
- Justice Anand Narain Mulla (1983) "Report of the All-India Committee on Jail Reforms: 1980-83". *Ministry of Home Affairs, Government of India*.
<https://www.mha.gov.in/MHA1/PrisonReforms/report.html>
- Kaur, Baljeet (2018). "India's Silent Acceptance of Torture Has Made It a 'Public Secret'", *Economic & Political Weekly*, 53(36).
<https://www.epw.in/engage/article/indias-silent-acceptance-torture-has>
accessed on 14th November, 2020.
- Lokaneeta, Jinee (2014). *Transnational Torture: Law, Violence, and State Power in the United States and India*, New York: New York University Press.
- Ministry of Women and Child Development, Government of India, Report on Women in Prisons, June 2018. <https://wcd.nic.in/sites/default/files/Prison%20Report%20Compiled.pdf> accessed on 22nd November, 2020.

- Model Prison Manual, 2016, Ministry of Home Affairs, Government of India, <https://www.mha.gov.in/sites/default/files/PrisonManual2016.pdf> accessed on 25th November, 2020.
- Muralidhar, S. (1999) “The Case of the Agra Protective Home”, In, Amita Dhandra and Archana Parashar (eds.), *Engendering Law: Essays in Honour of Lotika Sarkar*, Lucknow: Eastern Book Company.
- Pachauri, S.K. (1994) *History of Prison Administration in India in 19th Century: Human Rights in Retrospect*, Proceedings of the Indian History Congress, 55: pp. 492-498.
- People’s Union for Democratic Rights (May 1994) Rape: A Report on the aftermath. <http://pldindia.org/wp-content/uploads/2013/03/PUDR-report-on-custodial-rape.pdf> accessed on 22nd November, 2020.
- Prison Statistics, 2019, National Crime Records Bureau, Ministry of Home Affairs. (<https://ncrb.gov.in/sites/default/files/Executive-Summary-2019.pdf>) accessed on 2nd December, 2020.
- Report of the Committee on Empowerment of Women, 13th Lok Sabha (2001-02) Women in Detention. (http://wbcorrectionalservices.gov.in/pdf/empowerment_of_women.pdf) accessed on 2nd December, 2020
- Report of the Committee on Empowerment of Women, 16th Lok Sabha (2017-18) Women in Detention (https://eparlib.nic.in/bitstream/123456789/783396/1/16_Empowerment_of_Women_13.pdf) accessed on 2nd December, 2020
- Shankardass, Rani Dhavan (199) *Punishment and the Prison: Indian and International Perspectives*, New Delhi: Sage India.
- Sunder Rajan, Rajeswari. (2003). *The Scandal of the State: Women, Law, and Citizenship in Postcolonial India*. Durham and London: Duke University Press.
- The Code of Criminal Procedure, 1973, <https://legislative.gov.in/sites/default/files/A1974-02.pdf> accessed on 13th December, 2020
- The Constitution of India, <https://www.india.gov.in/my-government/constitution-india/constitution-india-full-text> accessed on 13th December, 2020
- The Indian Penal Code, 1860, <https://legislative.gov.in/sites/default/files/A1860-45.pdf> accessed on 13th December, 2020
- The Law Commission of India, 135th report on Women in Custody, 1989. <https://lawcommissionofindia.nic.in/101-169/Report135.pdf> accessed on 19th December, 2020
- The New Indian Express, 7th July, 2017, Byculla inmate death: DIG steps down as WhatsApp messages spark row. <https://www.newindianexpress.com/nation/2017/jul/07/byculla-inmate-death-dig-steps-down-as-whatsapp-messages-spark-row-1625559.html>

accessed on 10th November, 2020.

- The Times of India, Mar 8, 2011, Ex-women prisoners say conditions bad, inmates tortured

<https://timesofindia.indiatimes.com/city/chennai/Ex-women-prisoners-say-conditions-bad-inmates-tortured/articleshow/7650943.cms>

accessed on 10th November, 2020.

- The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, also called Bangkok Rules (2010). https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

accessed on 27th December, 2020.

- The United Nations Standard Minimum Rules for the Treatment of Prisoners (1955)/the Nelson Mandela Rules (2015). (https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-book.pdf) accessed on 27th December, 2020.

8.12 SUGGESTED READINGS

- Arnold, David (2004) “The Self and the Cell: Indian Prison Narratives as Life Histories”, In, David Arnold and Stuart Blackburn (eds.), *Telling lives in India: Biography, Autobiography, and Life History*, Bloomington: Indiana University Press, pp. 29–53.
- Gainsborough, Jenni (2008) Women in Prison: International Problems and Human Rights Based Approaches to Reform, William and Mary Journal for Women and the Law, 14:pp 271-304. <https://scholarship.law.wm.edu/wmjowl/vol14/iss2/5>
- Parveen, Shaila, A Study of condition of Women Prisoners & Their Children in Eastern U.P. Jails National Commission for Women, http://ncwapps.nic.in/pdfReports/A_Study_of_condition_of_Women_Prisoners_and_Their_Children_in_Eastern_UP_Jails.pdf
- Shankardass, Rani Dhavan (2017) *Of Women 'Inside': Prison Voices from India*, New Delhi: Routledge.
- Sharma, Prakash (2017) *Prison Privatization: Exploring Possibilities in India*, New Delhi: Mohan Law House.

UNIT 9 CYBERCRIME

Structure

- 9.1 Introduction
- 9.2 Learning Outcomes
- 9.3 Definition
- 9.4 How Cybercrime Works
 - 9.4.1 Types of Cybercrime
 - 9.4.2 Effects of Cybercrime on Businesses and its Prevention
- 9.5 Cyber law and the need for cyber law
- 9.6 Cybercrime against women in India
- 9.7 Cybercrime against women and cybercrime legislation
- 9.8 Let Us Sum Up
- 9.9 Unit End Questions
- 9.9 References
- 9.10 Suggested Readings

9.1 INTRODUCTION

Cybercrime is any criminal activity that involves a computer, a networked device or a network. "Cyber" is a term that denotes involvement of computers or computer networks; it is derived from the ancient Greek adjective 'kubernētikós', which means governing, piloting, or skilled in steering. The first credited usage of Cybernetic is to MIT mathematician Norbert Wiener in the 1940s. Over the years the word 'cyber' got compounded with many words to represent different aspects connected with involvement through computer and computer networks; cyberspace, cybersecurity, cyberadvocacy, cyber addiction are some examples where adding the prefix cyber lets a person know that the field of action is online or virtual. Cybercrime as a term came into usage in the year 1995 and was first proposed by *Sussman* and *Heuston* to refer to crimes involving computers and computer network. In this unit, we will learn the meaning and definitions of cybercrimes. How the cybercrimes operate in the society. What are the major types of cybercrimes happening in the society. How these crimes also occurred in the context of women. How the legal provisions say about cybercrimes.

9.2 LEARNING OUTCOMES

After studying this Unit, you are able to:

- Know about several definitions of cybercrimes;
- Learn how the cybercrimes operate in the society.
- Understand cybercrimes that occurred in the context of women
- Engage with legal dimension of cybercrimes

9.3 DEFINITION

Cybercrime has no single definition and it is a term that indicates any criminal act conducted using computer and computer-based networks. According to the Anderson and Gardener Cybercrime is “Criminal acts implemented through the use of a computer or other form of electronic communications” (2015). Cyberbullying, Cybertheft, Cyberstalking are some examples of cybercrime, wherein bullying, theft, stalking is carried out entirely in cyberspace and no physical contact is involved. Cyber law is the law governing cybercrime; all the regulatory mechanisms and legal infrastructure that relate to cyber activities come within the domain of cyber law. In India, the IT Act, 2000 lists out few criminal offenses that can be classified as a cybercrime. Certain amendments were made to this Act in 2008 to come up-to-date with the IT developments. The Act includes a wide range of pertinent sections on online commercial transactions, digital signatures, e-commerce, e-governance, cybercrimes etc.

The Indian Legislature does not provide an exact definition of cybercrime, even the Information Technology Act (2000), which deals with cybercrime, does not define cybercrime.

Dr. Debarati Halder and Dr. K. Jaishankar stated in their book ‘Cybercrimes against women in India’ (October 2016) the following definition to cybercrimes:

“Offences that are committed against individuals or groups of individuals with a criminal motive to intentionally harm the reputation of the victim or cause physical or mental harm, or loss, to the victim directly or indirectly, using modern telecommunication networks such as Internet (Chat rooms, emails, notice boards and groups) and mobile phones (SMS/MMS).”

According to the ‘Council of Europe Convention on Cybercrime’, cybercrime is:

“a wide range of malicious activities, including the illegal interception of data, system interferences that compromise network integrity and availability, and copyright infringements.”

The common factors underlying the various definitions explain cybercrimes as crimes involving computer and computer networks. Cybercrimes are crimes where a computer or computer network...

...is the object of the crime (e.g., viruses, malware, DoS (A Denial-of-Service (DoS) attack is a type of cyber-attack in which a computer or another device is rendered unavailable to its intended users.) attacks) and/or

...is the tool to commit a crime (e.g., phishing emails, cyber stalking, identity theft) and/or

...is the location of a crime (e.g., using a computer to store illegally obtained data).

Cybercrimes can be divided into three categories:

- Crimes against people
- Crimes against property
- Crimes against government

The prevalence of internet connectivity and advancement in technology have created a new global platform for criminal activity, which enables crimes to be carried out with ease and anonymity. This has led to an increase in the volume and pace of cybercrimes because the internet's speed, convenience, anonymity and lack of borders makes computer-based crimes such as ransom ware, fraud, money laundering, stalking, bullying etc. easier to carry out and difficult to trace.

9.4 HOW CYBERCRIME WORKS

Digital data, opportunity and motive together provide the fertile ground that leads to the possibility of cybercrimes. Cybercrimes are generally not limited to one geographical space and are distributed in nature, which also means that usually a network of criminals are involved in executing the crime. Cybercriminals use various attack vectors and are always in search of new methods and techniques for achieving their goals while avoiding detection. To further reduce the chances of detection and prosecution, cybercriminals often choose to operate in countries with weak or non-existent cybercrime laws. Cybercriminals range from lone users to state-sponsored actors; the creator of malware using the dark web to sell code, the distributor of illegal pharmaceuticals using crypto-currency brokers to hold virtual money in escrow, the state threat actors relying on technology subcontractors to steal Intellectual Property (IP) are some examples of cybercriminals and cybercriminal networks.

Cybercriminal activity may be carried out by individuals or groups with very little technical skills, or by highly organized global criminal groups that include skilled developers and other relevant experts. Cybercriminals use different types of software to commit crimes, but social engineering or psychological manipulation of people often plays an important part in executing most cybercrimes.

9.4.1 Types of Cybercrime

As mentioned above, there are three categories for classifying various types of cybercrimes. Following are the examples of some specific types of cybercrimes:

- **Cyber extortion:** Cyber extortion involves a threat of an attack or an attack where the hacker holds computer systems, website, data & sensitive information hostage until a ransom is paid, usually in some form of crypto currency. Ransom ware and Distributed Denial-of-Service (DDoS) fall under this category of attack.
- **Crypto jacking:** Crypto jacking involves unauthorized use of people's computers (including servers, smartphones and tablets) to mine crypto

currencies. Crypto jacking attacks may involve loading the mining software onto the victim's system or may run browser embed code when the malicious site is accessed. The motive of crypto jacking, as with many other cybercrimes, is profit, but unlike many treats it is designed to stay completely hidden from the victim.

- **Identity theft:** Identity theft is any crime in which a person steals someone's personal information and data (including financial details, medical details, video-audio streaming, webmail etc.) and uses it to deceive and commit fraud. Dark net offers markets for buying and selling stolen identities.
- **Credit card fraud:** Credit card fraud is a term that denotes fraud involving a payment card, such as a credit card or debit card. A credit card fraud may be authorized or unauthorized in nature. In authorized transactions the person is deceived into making a fraudulent payment and an unauthorized transaction is without the knowledge of the card owner. Stolen payment cards are bought and sold wholesale on dark net markets; hacking groups that have stolen mass quantities of credit cards profit by selling it to lone criminals who use it to thieve from individual accounts.
- **Cyber espionage:** Espionage involves spying out information pertaining to a foreign government or a competing company. Cyber espionage is when systems or networks of an organization or a government are hacked into to gain confidential information. These attacks may be profit or ideology motivated. Cyber espionage includes:
 - gathering, modification or destruction of data,
 - spying on an individual or group through network-connected devices such as webcams or Closed-Circuit TV (CCTV) and
 - monitoring communications, including emails, text messages and instant messages.
- **Software piracy:** Software piracy is unauthorised usage, copying, modification or distribution of software. Trade-mark violations, copyright infringements and patent violations are examples of software piracy.
 - **Various types of software piracy** are:
 - *Soft lifting:* The most common type of software piracy in which the legal owner of the software is one, but the users are multiple
 - *Hard-disk Loading:* Another common form of software piracy wherein a shop owner buys a legal copy of a software and pirates it to multiple users.
 - *Counterfeiting:* Counterfeiting means creating authentic appearing duplicates of genuine/legal software programs and selling at a lesser price.

- *Client-Server overuse*: Client-server overuse is when more than licensed copies of the software are installed by a user.
- *Online Piracy*: In online piracy illegal software is acquired from online auction sites and blogs.
- **Exit Scam**: Exit scam is when a business continues to receive money while not delivering goods, until the buyers catch on, and absconding/ disappearing with the money.
- **Phishing**: Phishing is a technique to extract confidential information, usually through email spoofing. It masquerades as a legitimate request from a reputable third party.

9.4.2 Effects of Cybercrime on Businesses and its Prevention

Businesses can suffer many disastrous consequences as a result of cyber-attacks, which include the following:

- **Financial damage**: In addition to direct financial damage that a business may incur following a cyber-attack, additional costs of increased insurance premiums, enhanced cyber security measures, Public Relations (PR) and other related services add to the financial loss and burden. A business may be sued over the data breach and having failed protect their customers' data may result in fines and penalties for the company.
- **Damage to reputation**: A severe consequence of a cyber-security breach is loss of trust faced by a company, both from customers and investors. Following a cyber-attack firm not only lose current customers but they also lose the ability to gain new customers. Damaged investor perception can cause an acute drop in the value of a company. In addition, the business may face increased borrowing costs and may find it difficult to raise additional capital.
- **Intellectual property damage**: Intellectual property of a business such as product designs, technologies, and strategies may be compromised, resulting in a loss of competitive edge.
- **Operational disruptions**: A cyber-attack may render a business un-operational until the system is sanitised and restored.

A business can minimise cyber-attack risks through an effective cyber security strategy that includes the following steps:

- Develop clear policies and procedures for the business and employees and create a cyber-security incident response plan to support these policies and procedures. Regularly train employees on cyber security policies and procedure and steps to take in the event of a security breach.
- Outline the security measures that are in place to protect systems and data.
- Backup data and information regularly to reduce the damage in case of a ransom ware attack or data breach.

- Use two-factor authentication (2FA) apps or physical security keys. Activate 2FA on every online account.
- Verbally verify the authenticity of requests to send money by talking to a financial manager.
- Create Intrusion Detection System (IDS) rules that flag emails with extensions similar to company emails. Carefully scrutinize all email requests for transfer of funds to determine if the requests are out of the ordinary.
- Keep websites, endpoint devices and systems up-to-date with all software release updates or patches.

Information security and resistance to cybercrime attacks can also be built by encrypting local hard disks and email platforms, using a virtual private network (VPN) and using a private, secure domain name system (DNS) server.

Check your progress-1

- 1) *Define cybercrimes.*
- 2) *Discuss the types pf cybercrimes.*

9.5 CYBER LAW AND THE NEED FOR CYBER LAW

The laws governing the cyber space / the virtual world is known as cyber laws and all the *netizens* come under the ambit of these laws since the jurisdiction is universal. Cyber law can also be described as that branch of law which deals with legal issues related to use of inter-networked information technology.

The rising importance of the internet and the increasing number of internet users created the need for cyber regulation. Cyber law is important because it touches almost all aspects of transactions and activities on the internet, World Wide Web and the entire cyberspace. Internet was initially developed as a research and information sharing tool and was an unregulated space. Over time it gained prevalence and evolved to become a parallel world reflecting most of the activities of the physical world:

- Computers and mobile phones are primary tools of communication for almost everyone across the world.
- Most of the companies keep all their valuable data in electronic form and extensively depend upon their computer networks.
- Government forms including income tax returns, company law forms etc. are now filled electronically.
- Financial resources are stored and accessed virtually.

The anonymity and the global connectivity given by the cyberspace make it a lucrative domain for cyber criminals. Cybercrime cases such as online banking frauds, online share trading fraud, source code theft, credit card fraud, tax evasion, virus attacks, cyber sabotage, phishing attacks, email hijacking, denial of service, hacking, pornography etc. are becoming common. Even in "non-cybercrime" cases important evidence is found in computers / cell phones e.g., in cases of divorce, murder, kidnapping, tax evasion, organized crime, terrorist operations, counterfeit currency etc. This makes cyber laws inevitable and crucial, since all legal issues related to cyberspace are dealt through cyber laws.

9.6 CYBERCRIME AGAINST WOMEN IN INDIA

Cybercrimes against women in India recorded an 110% increase between 2018 and 2020. According to the National Crime Records Bureau (NCRB), reported cases of publishing sexually explicit content online increased from 3,076 to 6,308 between 2018 to 2020(NCRB, 2020) Criminals target women by sending obscene e-mails & WhatsApp messages, stalking women online, spoofing e-mails, morphing images of women into pornographic images and developing pornographic videos without their consent.

Indian women are not aware about the procedures to report cybercrimes, which becomes a deterrent in reporting cybercrimes. The fear of social embarrassment and backlash becomes another dissuading factor for women to report crimes. Many cybercrimes can be effectively addressed if women are able to report it immediately, since this becomes a warning to the criminals of a strong legal action. An enabling social and legal environment that allows women to take action against cybercriminals becomes a discouraging atmosphere for cybercriminals.

Some of the key cybercrimes against women are:

Cyber stalking: Cyber stalking is to stalk, harass and psychologically abuse someone online. A cyber stalker does not make direct physical contact with a victim but follows the victim's online activity, tries to gather information about the victim, makes threats and intimidates.

Harassment through e-mails: Harassment through e-mails includes blackmailing, threatening, bullying, and even cheating. It usually employs fake ids, which makes detection difficult. Spam mails containing viruses and worms such as Trojan, love bug etc. are sent to women. Men use fake email id to blackmail women into meeting their demands against the threat to publicize their morphed images online.

Harassment through online impersonation: This type of cybercrime is lately on the rise wherein men create fake email and/or fake social networking accounts of women and publicize their morphed images.

Misuse of social networking sites: Nowadays a large number of harassment cases are reported by women in which their pictures are morphed and posted online using their fake ids, along with their other personal information.

Several times people post morphed photos on social networking sites with obscene content.

Defamation: Cyber defamation includes both libel and defamation. It involves publishing defamatory information about a person on a website, or circulating it among the social circle of the victim.

E-Mail spoofing: E-mail spoofing generally refers to an e-mail that emerges from one source but has been sent from another source and usually involves financial frauds. The receiver's system is bugged when they open the email and thus data is illegally accessed.

Phishing: Phishing involves thieving of personal information such as username, password etc. with the intent of further using it for frauds and crimes.

Morphing: Morphing is tampering of a picture by an unauthorised user. The image is tampered to create pornographic material. Women's pictures are downloaded by fake users, tampered and re-posted /uploaded on different websites.

Cyber Pornography: Cyber Pornography includes pornographic websites and pornographic magazines that are produced using computers and the internet. Several cases have been reported where women morphed and doctored pictures are posted on porn sites.

Trolling: Trolls are professional abusers who use fake social media ids to create a cold war atmosphere in the cyber space. They spread conflict on the internet and use the anonymity provided by the internet to their advantage. Criminals post inflammatory or off-topic messages in an online community with the intention to harass a person.

Fraud on dating websites: There have been innumerable cases where women have been lured by men through dating sites. These encounters then lead to rape and in worse cases murder.

9.7 CYBERCRIME AGAINST WOMEN AND CYBERCRIME LEGISLATION

The Constitution of India guarantees equal rights to women. Keeping in tune with the Constitution, the Indian Penal Code and the Code of Criminal Procedure have specific provisions to address crimes against women, but the IT Act 2000 does not have any provisions that specifically deal with crimes against women. This overlooked aspect and the need to incorporate women specific provisions in the IT Act, 2000 were brought into light by the first cybercrime case of India, The Ritu Kohli case is the first known case of cyber stalking in India. Mrs.Ritu Kohli in 2001 filed a police complaint against an unidentified person who was using her identity to chat over the internet at Delhi channel of <http://www.micro.com/>. The person was engaging in obscene conversations using her identity and was also sharing her address and other contact details including phone numbers. Consequently, Mrs.Kohli received almost 40 obscene calls in three days, mostly at odd hours. The said

calls created extreme psychological trauma and disturbances in the personal life of the complainant. Following the complaint the police investigated the entire matter, traced the IP address of the offender and arrested him. A case was registered under the section 509 of IPC for outraging the modesty of Mrs.Ritu Kohli. However, IPC Section 509 refers to ‘words, gestures or acts’ in person and there is no mention when the same crime is done on the internet, which can be done anonymously with no direct verbal or physical contact with the victim. Thereafter the offender was released on bail, since none of the conditions mentioned in Section 509 covered cyber stalking. This was a wakeup call for the Government to make provisions for cybercrimes and protection of the victims against crimes committed in the cyberspace. The impact of cybercrimes on women is more psychological than physical in nature, whereas the laws ensuring women’s security focuses on the physical aspect, rather than the psychological.

The case led to discussions around the need for making cybercrime provisions in the IT Act, 2000. Additions were thus made by the way of amendments and Information Technology Act, 2008 (ITAA 2008) came into being. ITAA 2008 is the primary legislation to deal with cybercrimes in India. The following cyber offences were included as part of this amendment:

Sr. No.	Sections under the Information Technology (Amendment) Act, 2008	Punishment
1.	Section 66A: <i>Cyber Stalking</i> i.e., sending offensive messages through any communication services like a computer or mobile phone.	Imprisonment up to 3 years along with a fine. However, In Shreya Singhal Versus Union of India. Writ petition (criminal) no.167 of 2012- Supreme court held that section 66A of the Information Technology Act, 2000 is struck down in its entirety being violative of Article 19(1)(a) and not saved under Article 19(2).
2.	Section 66B: <i>Receiving stolen computer’s resources or communication device dishonestly.</i>	Imprisonment up to 3 years, or a fine of 1 lakh or both.
3.	Section 66C: <i>Identity Theft</i>	Imprisonment up to 3 years along with a fine up to 1 lakh.

4.	Section 66D: <i>Phishing</i> , i.e., cheating by online impersonation.	Imprisonment up to 3 years along with a fine up to 1 lakh.
5.	Section 66E: <i>Voyeurism</i> , i.e., violating privacy of an individual	Imprisonment for 3 years along with a fine up to 2 lakhs or both.
6.	Section 66F: <i>Cyber Terrorism</i>	Life imprisonment.
7.	Section 67. for publishing or transmitting obscene material in electronic form.	First conviction: imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees. Second or subsequent conviction: imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.
8.	Section 67A: <i>Online Publishing/ or transmitting sexually explicit contents.</i>	First conviction Imprisonment up to 5 years along with a fine up to 10 lakhs for first time offence. Second or subsequent conviction- Imprisonment up to 7 years with fine of 20 lakhs for repeat offence.
9.	Section 67B: <i>Child pornography:</i> for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form	First conviction Imprisonment up to 5 years along with a fine up to 10 lakhs for first time offence. Second or subsequent conviction Imprisonment up to 7 years with a fine of 10

		lakhs for repeat offence.
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Following are some of the *important Sections under the Indian Penal Code* for protection of individuals from cybercrimes:

Sr. No.	Sections under Indian Penal Code (IPC)	Punishment
1.	Section 354. Assault or criminal force to woman with intent to outrage her modesty	2years of imprisonment and/or fine
2.	Section 354A punishes the offence of <i>Sexual Harassment</i>	3 years of imprisonment and/or fine.
3.	Section 354 B: Criminal force to woman with intent to disrobe	3 to 7 years of imprisonment along with a fine
4.	Section 354 C criminalizes the offence of <i>Voyeurism</i> , i.e., the act of capturing the image of a woman engaging in a private act, and/or disseminating the said image without her consent.	3 years of imprisonment for first offence and 7 years of imprisonment along with a fine on repeat offence.
5.	Section 354D: Stalking	<input type="checkbox"/> Upto 3 years + Fine for first conviction <input type="checkbox"/> Upto 5 years + Fine for second or subsequent conviction Read more at: https://devgan.in/ipc/section/354D/
6.	Section 469: Forgery for the purpose of harming the reputation of any person or knowing that it is likely to be used for that purpose	3 Years + Fine
7.	Section 503 punishes <i>Criminal Intimidation</i> , which is threatening a person with injury to their reputation.	Imprisonment which may extend up to 2 years, and/or fine.
8.	Section 507 punishes <i>Criminal Intimidation</i> through an anonymous	Imprisonment which may extent up to two years.

	communication.	
9.	Section 509 punishes Uttering any word or making any gesture intended to insult the modesty of a woman, etc.	Simple imprisonment for 3 years + Fine
10.	Section 228A Disclosure of identity of the victim of certain offences, etc.	Imprisonment which may extend up to two years and fine.

Apart from the above-mentioned provisions under the IPC and the ITAA, 2008, the Government of India has taken following steps for prevention and resolution of cybercrimes:

- *Cybercrime cells* for reporting and investigation of cybercrimes have been set up in all states and UTs.
- *Cyber Forensic and Training Labs* have been setup in various states viz Kerala, Assam, Maharashtra, Mizoram, Manipur, Nagaland, Arunachal Pradesh etc. The training labs train police officers and judicial officers to better understand cybercrimes.
- *Cyber Forensic Labs* have been set up at Mumbai, Bengaluru, Pune and Kolkata. These labs are setup in collaboration with Data Security Council of India (DSCI) and NASSCOM.
- *Regular awareness and training programs* are conducted through law schools and universities; National Law School, Bengaluru /NALSAR University of Law, Hyderabad and other Law Universities conduct several awareness and training programs on Cyber Laws and Cybercrimes for Judicial officers.

9.8 LET US SUM UP

In today’s digital age the “virtual world” reigns supreme in all spheres of our lives. It shapes our political, social and cultural context and is a space for engagement at par with the physical world. All aspects of human nature, including harassment, abuse and crime are reflected in the cyber space. However, cybercrime does not stay limited to the cyber space and staying away or going offline does not solve the problem. What is needed is awareness and laws that are able to check cybercrimes. Laws need to be framed and enforced to meet the gravity and scope of cybercrimes and with the realization of the extent of personal and social damage that cybercrimes can lead to.

Computer networking, newly developed technologies, the resultant opportunities and the anonymity accorded by the cyberspace have given rise to cybercrimes in the past few years. While cybercrimes are on a rise the non-localised and incognito nature of the internet makes detection and arrests difficult. In India recorded 52,974 cybercrime cases in 2021, rise of over 5%

from 2020 (50,035 cases) and over 155 from 2019 (44,735cases) (thequint,2022) under both the Information Technology (IT) Act as well as the Indian Penal Code (IPC).

To address the problem of cybercrime at a social level, the Government of India enacted the legislation to address this issue. Information Technology Act in 2000, and the Information Technology (Amendment) Act, 2008 are steps in the direction of cyberspace regulation and tackling cybercrimes. In addition to the ITAA-2008, certain Sections under the Indian Penal Code (IPC) also book the individuals committing such crimes. Legal provisions on cyber stalking and online harassment are also included under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Cybercrime is a serious issue and different types of cybercrimes like cyber stalking, cyber terrorism, cyber pornography, morphing, forgery, email spoofing, identity theft, etc., have an extremely detrimental impact on the society. When it comes to cybercrimes prevention is a big aspect and knowledge is the tool that can protect individually and collectively. It is thus important for every person to be aware of these crimes and remain alert and active to avoid any personal or professional loss.

9.9 UNIT END QUESTIONS

- 1) What do you understand by cybercrime, what are its types?
- 2) What is cybercrime against women? What are the ways to prevent it?
- 3) Discuss the legislative framework to prevent cybercrimes against women in India

9.10 REFERENCES

- Brenner W Susan, (2010), “Cyber Crime Criminal Threats form Cyberspace” Praeger, New York.
- Bhanot,Astha, (2013), Gender Violence, Pointer, Jaipur, India
<https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%201.pdf>
<http://debaraticyberspace.blogspot.com>
- Farooq, Ahmad (2011), “ Cyber Law in India”, New Era law, New Delhi
- Halder Debarati and K. Jaishankar (2011), “Cyber Crime and Victimization of Women’s Law, Rights and Regulation”. IGI Global, New York.
- K. Sita, Manikyam, (2009), “Cyber Crime – Law and Policy perspectives”, 40 Hind Law House, Pune.
- Kumar, Sanjeev&Priyanka,. (2019). CYBER CRIME AGAINST WOMEN: RIGHT TO PRIVACY AND OTHER ISSUES,

<https://indiankanoon.org>.

- Sexna,Sobha,(2014), “Crime against women”, Deep and Deep , Delhi.
- The Information Technology (Amendment) Act, 2008
- www.ncvc.org
- <https://www.thequint.com/videos/news-videos/crime-in-india-report-2021-ncrb-murders-rapes-suicides-accidents-cyber-crime-against-women#read-more>.

9.11 SUGGESTED READINGS

- Ahmad Farooq, (2011), “ Cyber Law in India”, New Era law, New Delhi
- Brenner W Susan, (2010), “Cyber Crime Criminal Threats form Cyberspace” Praeger, New York.
- BhanotAsha, (2013), Gender Violence, Pointer, Jaipur, India.
<https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%201.pdf>
<http://debaraticyberspace.blogspot.com>
- Halder,Debarati and K. Jaishankar(2011), “Cyber Crime and Victimization of Women’s Law, Rights and Regulation”. IGI Global, New York.
- Kumar, Sanjeev&Priyanka,. (2019). CYBER CRIME AGAINST WOMEN: RIGHT TO PRIVACY AND OTHER ISSUES.
<https://indiankanoon.org>.
- K. Sita ,Manikyam, (2009), “Cyber Crime – Law and Policy perspectives”, 40 Hind Law House, Pune.
- Sexna,Sobha,(2014), “Crime against women”, Deep and Deep , Delhi.
- The Information Technology (Amendment) Act, 2008
www.ncvc.org
<https://www.thequint.com/videos/news-videos/crime-in-india-report-2021-ncrb-murders-rapes-suicides-accidents-cyber-crime-against-women#read-more>.