Interpersonal Crimes: A Critical Study of Systematic Bias against Men

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Editors’ Introduction: 
Revisiting Interpersonal Crimes and Victimization

K. Jaishankar and Natti Ronel

Criminal behavior is a behavior or chain of behaviors related to people. Usually we tend to describe criminal acts by emotion-raising titles and labels, to hold certain myths concerning these behaviors, to attempt to impose regulations and laws that may be more or less efficient to reduce crime, and to socially react to those involved, both as criminals and as victims, as though they fully represent the master status we attach to these scenes. But, beyond all these and other reactions, crime is between people, and affects the lives of people, individuals or groups, criminals or victims at any level. Sometimes it is a private event between individuals, who closely know each other, as is the case in domestic violence, however in other times it may happen in the public sphere, but still, it is between involved people. Even when we consider the newly defined "Green Criminology" where crime is against the environment, still people are involved as criminals and as affected victims, since these acts have lasting effects on the lives of a great mass of individuals. Whenever and wherever we approach it, crime is an interpersonal event, and this simple fact has to be reminded time and again.

The wish for simplicity tends to divide the criminal scene into "the pure criminal" and "the pure victim". Even when we clearly know that it is rarely as simple, such a description is almost inevitable. It assists us to gain a sense of control over criminality (mostly illusionary control) and to justify the legal and social reactions. Nevertheless interpersonal encounters are never as simple, and crime, as an interpersonal occurrence, is not distinct. In any case, victims are never to be blamed for the criminal act imposed on them, however, in many times individuals who perform criminal activities might be recovering victims as well and an individual who at a given moment experienced victimization can be an aggressor in other cases. Criminal behavior is a non-simple, confusing, interpersonal event(s).

The up-to-date understanding of the complexity of crime reveals areas of criminality and populations that traditionally were less known or even were not considered as criminals. For example, domestic violence, a well-established field of study and practice, is a relatively new one, representing new understandings. Sexual offences and trafficking of individuals also exemplify such relatively new recognized and defined domains of practice and study that recently became well-established. Within these examples, we see that the new understanding contains a simultaneously new consideration of women, children and minorities as vulnerable groups that are widely affected by crime. As said, currently it is an established known fact; however it is still relatively new and developing knowledge.
Second International Conference of the South Asian Society of Criminology and Victimology (SASCV 2013)

SASCV hosted its second international conference (SASCV 2013) during January 11—13, 2013 at Hotel Singaar International, Tamil Nadu, India. The theme of SASCV 2013 was “Revisiting interpersonal crimes and victimization”. The major sub themes were: 1. Interpersonal Crimes against and by Women, 2. Interpersonal crimes against Children and Youth, 3. Men as Victims: Myths and Realities, 4. Culture Conflict and Victimization of Groups, 5. Interpersonal Cyber Crimes: Problems of Social Networking. SASCV 2013’s mission is to revisit the roots of crimes and victimization, in a domain where people only now look at the branches and have forgotten the roots which are the reasons for most of the contemporary crimes and victimization.

The papers presented at SASCV 2013 attempt to further establish this knowledge, to further understand crime as an interpersonal, complex event that affects known and less known vulnerable populations:

1. Interpersonal Crimes against and by Women

Traditionally, women suffered from discrimination against them, but also from behaviors only recently became to be known and defined as criminal. Battering by intimate partners, forcing sexual activities, abusing at any social level, are few illustrations of how interpersonal experiences of women were widely affected. Unfortunately, still it is, however in a growing number of countries it is considered as offence and is the subject of law enforcement, and in many cultures it is no more accepted. Changing social, cultural and personal attitude towards women, which changed their role and status in societies, also changed their role concerning criminality. On the one hand, women may now differently act in order to stop an attempt to victimize them and may meet different, more positive social reaction then a few decades ago. On the other hand, the new social role of women opened new social opportunities, and also raised new opportunities for crime. Women, traditionally less involved in crime, are now presenting new forms of criminal activities, which have to be studied deeply. Is the social reaction towards female criminality should follow the known one towards male criminality? Or based on gender difference, also the social reaction should follow different lines? These are examples of new topics for study and practice.

2. Interpersonal crimes against Children and Youth and Children in Conflict with Law

To continue the above discussion on women as victims of crime and as criminals as well, children and youth provide a topic with even newer understandings. Behaviors of abuse against children and youth were traditionally considered legitimate and socially accepted. Sometimes in the name of education or that of keeping family roles in traditional societies, however even in ultra-modern societies children and youth, as vulnerable individuals, still suffer from various degrees of abuse. But children and youth belong to social groups that might be in conflict with the law, based on their personal
characteristics. Although most children and youth who experience some conflict with the
law can become spontaneously matured from rebellious, law-breaking activities, still the
social reaction they meet many times leads them into greater law breaking. How do we
better act to children and youth who are in conflict with the law? How can we practice
the innovative "positive criminology" perspective with them?

3. Men as Victims: Myths and Realities

Most individuals who perform crimes are male. It is an accepted norm. Since many
criminal events are held in the male realm, they happen between men. However, men are
expected to be "the strong sex", and victimization, a sign of weakness, might contradict
masculinity, as many cultures claim. Victimization, in such a culture, affects the perceived
manhood of individuals. In a rapidly changing world, where new knowledge and new
social process are in a mutual race, there is a need for a better understanding of men as
victims. Better understanding may provide a basis for better practice with victimized men,
a practice that might follow the recently defined "positive victimology" perspective.

4. Culture Conflict and Victimization of Groups

The complexity of crime as interpersonal event is mostly revealed when we focus on
culture and group conflicts. The change of power along history in between groups created
lasting cultural narratives of victimization and struggle, unfortunately sometimes narratives
of resentment and wish for fight. Regrettably we see it almost anywhere. The rapid
globalization creates more areas of inter-cultural meetings. On the one hand, it reduces
tension by constant mutual exposure. On the other hand, however, old narratives of
cultural or racial discrimination do rise, sometimes as counter forces of globalization, and
less privileged groups still pay the toll. The process of abusing "the other" based on
cultural excuses does find new targets in the new order of global world. Is it preventable,
or it lies within our human fate?

5. Interpersonal Cyber Crimes: Problems of Social Networking

Cyber society regularly invents and opens new social opportunities. The interpersonal
arena is growingly cyber focused than direct. But new arenas are also new opportunities
for old acts of abuse, and the highly accessibility of the new social networking creates
innovative methods of attracting possible victims. There is a need to provide a state-of-
the-art knowledge base for prevention of cyber victimization, for education of safer use
and for immediate intervention when needed.

Conclusion

Crime is a human act(s) in between people. While offending is human and
universal, struggling against it, or beyond it, is no less universal and human. New
opportunities for crime are also new opportunities for human growth out of it. We hope
that the following papers will contribute to our understanding of these new opportunities
that represent the old – our old and lasting ability to be fully human.
Interpersonal Crimes against and by Women
Marital rape: A socially and legally justified crime in India

Akansha Singh

Introduction

Marital rape is a widespread problem for a woman that has existed for centuries throughout the world. Physical and sexual abuse of women has been widely recognized in India, with several legislations providing medicine for the scars inflicted by crimes such as rape, molestation, abduction, cruelty etc. The noose has been tightened on these offenders and the former legal requirements for conviction have been allayed. Reforms have been brought about in the 150-years old Indian Penal Code, judicial activism has often rendered landmark judgements for the protection of the rights of women, and legislative intent, social organizations and mass media have played an active role in bringing about an awareness regarding these issues. But amidst all this social and legal progress, a very heinous crime has percolated through the very fabric of matrimonial relationships and has established itself as a justified act. There is a curious silence surrounding the crime of marital rape or spousal rape. The author in this research paper seeks to throw light on this latent reality which is eating away at the very core of the institution of marriage, pointing out the lacunae in the laws enshrined in our country regarding this issue and suggesting reforms to bring about a change in the society and the legal system.

Marital rape can be defined as any. Finkelhor and Yllo determined three forms of coercion that are generally applied by husbands in the act of marital rape – social coercion which is the pressure women feel because of cultural expectations or social conventions, interpersonal coercion that occurs when a husband threatens the wife into having sexual intercourse but the threats are not violent in nature and threatened or actual physical coercion which is at the core of rape. Stereotypes about women and sex continue to be reinforced in our culture through both mainstream and pornographic media. Not just men and the society, but also women refuse to give this non-consensual form of sexual intercourse a name, and refuse to recognize it as a wrong against the individuality of women. It has been grossly overlooked in the country's legal literature on rape and sexual abuse. The social norms have established sexual relations between a husband and wife as an embarrassingly intimate subject. Despite women's progress in India as compared to the earlier decades since independence, men still consider women to be their chattel and the

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1 Russell, Diana E. H. (1990), Rape in Marriage, Indianapolis IN, Indiana University Press.
wives let themselves be crushed under this social mindset. This paper recognizes the need for change.

**General indicators of women's equality and prevalence of sexual violence in India**

To fully comprehend the inability of women to fight this injustice called marital rape, the issue necessitates the understanding of the condition of women in India via the general indicators of women’s inequality and the prevalence of sexual violence in our country. Numerous statistical and social science reports enlighten the masses of the equality, or rather inequality, of the women in India on a social, economic and legal footing when compared to men. Women are suppressed in all spheres of public and private life. When it comes to violence against women, there will of course be a gap between the number of reported incidents and the number of actual incidents, on account of the several reasons which inhibit women from dragging the offenders to Court, which will be discussed at a later stage in this paper.

India's sex ratio is 940 females per 1000 males, according to the provisional report of the Census 2011\(^4\). The Central Statistical Office's publication of 2011\(^5\) lays down these statistics about women in India, which act as general indicators of the well-being, progress and overall social and economic health of the fairer sex. India ranks 114 in 2009 among 178 countries in terms of Gender Development Index (GDI). The mean age at marriage was observed to be 20.7 years for females in India. The female mortality rate in the age-group 0-4 years is 16.1. Women are under-represented in governance and decision-making positions. At present, women occupy less than 8% of the Cabinet positions, less than 9% of seats in High Courts and the Supreme Court, and less than 12% of administrators and managers are women. Delivery at a health facility is an indicator of programmatic effort for safe motherhood. It is observed that only 47% deliveries took place at a health facility in India\(^6\). According to National Family Health Survey–III\(^7\) in the rural sector currently married women take 26% decisions regarding obtaining health care for herself and 7.6% in case of purchasing major household items. 10% decisions are taken by females in respect of visiting their family or relatives. For urban areas, these figures are 29.7 %, 10.4 % and 12.2 % respectively.

When we study the statistics of violent crimes against women in the country, we see a staggering trend. According to the National Crime Records Bureau's report of 2011,\(^8\) 10.38% of the total crimes against women (which would include everything from cruelty, kidnapping, molestation, sexual harassment, immoral trafficking etc.) reported in the year

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\(^4\) Census 2011, Census Organization of India, New Delhi.
\(^5\) Women and Men in India 2011, 13th issue, Central Statistics Office, Ministry of Statistics and Programme Implementation, New Delhi
Marital Rape

2010, were incidents of rape. The rape victims were mainly between the ages of 18 to 30 followed by the age group of 30 to 50, with 2.5% being under the age of 10. Around 43% of the victims were minors. In 7.5% of the cases, the offenders were related to the rape victims. Moving on from rape, 19.01% of the total numbers of reported crimes against women are incidents of molestation and 44.02% of the total crimes against women fall under the category of cruelty by husband and relatives, indicating a disturbing amount of abuse of women in the private spheres of their homes. According to the Deccan Herald, only one in 69 cases of rape gets reported in India. No statistics or data have been gathered specifically on the problem of marital rape in India, pointing at the lack of consciousness regarding this issue. The only relevant statistics on spousal rape has been provided by the research conducted by Finkelhor & Yllo in 1985 and Russell in 1990 in the USA. 10% to 14% of ever-married women have experienced at least one forced sexual assault by a husband or ex-husband. Studies of battered women staying in shelters and women seeking relationship help show 1/3rd to 3/4th of those asked reported sexual assaults by their husbands or intimate partners. Most of the women reported being raped on more than one occasion, and 1/3rd of the women under study reported being raped more than 20 times over the course of their relationship.

Legal framework for addressing marital rape

Marital rape is not a recognized offence in our country. The Exception to section 375 in the Indian Penal Code, 1860 clearly states that “sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.” This is referred to as 'spousal exemption.' This means that non-consensual sexual intercourse with a wife, when the wife is above the age of fifteen, is not a criminal offence and the husband cannot be prosecuted for such an act, even if the intercourse was without her consent or against her will, which are two of the qualifying conditions for the offence of rape under the aforementioned section in the cases not involving a married woman under the age of fifteen. This is a blatant violation of a married woman's human rights. She is thus, expected not just by the society, but also by the legal system to renounce her right to refuse and let herself be at the mercy of her husband's sexual advances.

We must then study the punishment for rape under the various circumstances mentioned in section 376 of the IPC. The offence of rape is punishable by imprisonment of minimum 7 years to maximum life, along with fine. Marital rape is punishable only if the wife is below the age of fifteen. The law makes no exemption for rape of a woman under the age of twelve, whether she is a wife or not, and provides for a rigorous imprisonment ranging from 10 years to life. If the wife is between the ages of twelve and fifteen, the offender is mildly punishable with an imprisonment up to 2 years or with fine.

9 Deccan Herald, 25/11/2008
10 infra note 3
11 infra note 1
12 Hereinafter referred to as “IPC.”
or both. There is no imprisonment or fine for the rape of a wife above the age of fifteen, and the aggrieved wife cannot bring the husband to justice for the commission of this heinous act.

Section 376A of the IPC is another provision to be considered in this research. This section criminalizes the rape of a wife, during the period when the married couple has been separated by a judicial decree or under any custom or usage. The husband for the commission of this act shall be punishable with imprisonment which may extend to 2 years or with fine or both. This has been included by the Criminal Law Amendment Act, 1983 as a piece of advancement towards the goal of protection of women from sexual assaults, and is indeed a beneficial legislation for married women. But the fact that the amendment was effected to protect the sexual respect of only wives who are undergoing judicial separation and not to punish the rape of married women in general is reflective of the social mindset that wives cannot deny their husbands the fulfilment of their sexual urges if they are cohabiting and will remain a blight on the intention of the legislature, casting a shadow on the conviction of the law-making body to protect the married women of India.

Section 498A of the IPC criminalizes the subjection of a woman to cruelty by her husband or relatives of the husband. The relevant explanation of the section defines cruelty as conduct that is likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb or health. This section thus, protects the wife from the insistence of the husband on perverse sexual conduct and excessive and unreasonable demands of sexual intercourse. The wife can also seek divorce on this ground. But it still does not explicitly include marital rape in its scope of application. Moreover, the punishment laid down is mere imprisonment up till three years, along with fine.

Further, the occurrence of marital rape during cohabitation is not a ground for divorce. Section 13 of the Hindu Marriage Act 1955, section 27 of the Special Marriage Act 1954 and section 10 of the Indian Divorce Act 1869 lay down the grounds based on which the wife can present a petition for divorce in the relevant Court of law, cruelty being one of them. It is true that marital rape can come under the scope of cruelty if it has been accompanied by physical abuse, but if the case involved rape by the husband wherein the consent was obtained by the threat of hurt, which in a non-marital relationship has been held to be commission of rape, then the wife cannot seek divorce.

A relevant legislation to be considered in this research is the Protection of Women from Domestic Violence Act, 2005. The Act aimed at bringing about a revolution in the gender laws, proved to be a disappointment to the issue of marital rape. It provides civil remedies to the offence of cruelty. It lays down the duties of the Government, protection officers, shelter homes, police officers etc. The act, according to section 3, covers marital rape only under the circumstances of life-threatening or grievously hurtful conduct. So if

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15 Hereinafter referred to as the “Domestic Violence Act.”
the non-consensual sexual intercourse is not accompanied by such behaviour, the wife cannot seek any relief under this Act. Moreover, by providing only civil remedies, it does not criminalize the offence.

Judicial Treatment of Marital Rape

There aren’t any cases dealing directly with marital rape in India. But a study of the judgements on rape given by Supreme Court and the High Courts is important to understand the judicial perspective on the offence of rape and how it is the violation of a woman’s right to sexual privacy. In the case of Vikram Singh v. State of Haryana, which was a case of gang rape wherein the husband was also involved in the rape, the Punjab & Haryana High Court punished the husband with life imprisonment and a fine of Rs. 5000. The Court stated that “a rapist not only violates the victim's privacy but also her personal integrity and such a person do not deserve any sympathy of law or society. The honour of a woman has to be protected.” The Supreme Court in Bodhisattwa Gautam v. Subhra Chakraborty held that rape is the violation of a woman’s right to life, which includes right to live with human dignity. Every woman is entitled to sexual privacy and it was not open to any and every person to violate her privacy when he wished. The spousal exemption from the offence of rape gives credibility to male superiority and transforms the marital bond into an ungoverned, arbitrary sphere where the State cannot interfere to bring about equality and justice. In the case of Rafiq v. State of Uttar Pradesh it was held that “when a woman is ravished, what is inflicted is not mere physical injury but the deep sense of some deathless shame. The judicial response to Human Rights cannot be blunted by legal bigotry.” The contention of this paper is in conformity with the above judgements.

Position in other countries

It is important to study the position of marital rape in other countries. There are 76 countries that have made this act a criminal offence, which includes the developed countries of USA, UK, France, Japan, Russia, Australia and South Africa. India, Indonesia and Vietnam are the only 3 nations that treat spousal rape as a form of non-criminal domestic violence. Among the 40 countries that have not yet criminalized marital rape are Afghanistan, Bangladesh, Pakistan, and most of the underdeveloped countries of Africa like Ethiopia, Kenya, Uganda, Yemen etc.

16 Criminal Appeal No. 583-DB of 2001, Decided On: 06.02.2003
17 (1996) 1 SCC 490
18 Maharashtra v. Madhukar Narayan. [AIR 1991 SC 207]
19 Robin L. West (1990), Equality Theory, Marital Rape and the promise of the Fourteenth Amendment, 42 FLA L.REV. 45. p. 71
20 1980 Cr.LJ 1344 SC
When it comes to the nations based on the English common law, the major countries of UK, Canada, Australia, New Zealand, Hong Kong and Israel have criminalized marital rape.\(^{22}\) In England, the judicial view on this issue till around the mid-1990s did not recognize the act as an offence. This was illustrated most vividly by Sir Matthew Hale, in his 1736 legal treatise, Historia Placitorum Coronae, where he wrote that such an act could not be considered to be a criminal offence of rape since the wife "hath given up herself in this kind unto her husband, which she cannot retract."\(^{23}\) It was not until \(R\ v\ Clarence\)^{24} that the question of this spousal exemption first arose in an English courtroom, but in this judgement the concept of implied consent was upheld. \(R\ v.\ Miller\)^{25} in the year 1954 held that the wife must legally revoke her consent to sexual intercourse for the act to fall under the scope of the criminal offence of rape. But in the year 1991 the House of Lords in the landmark case of \(R\ v.\ R\)^{26} set aside this marital rights exemption stating that "the fiction of implied consent has no useful purpose to serve today in the law of rape" and the appellant was convicted for raping his wife.

In the U.S. too, there has been a gradual change in the law regarding marital rape. The principle of spousal exemption was formally embraced by the American legal system in the year 1857 in the judgement of \(Commonwealth\ v.\ Fogarty\).\(^{27}\) Before that time, the spouse was typically exempted from the state sexual assault laws, for reasons rooted in the historical views set forth above. The U.S. States did not begin to criminalize spousal rape until the late 1970s. Women’s rights advocates began efforts to change these laws, and by July 5, 1993, marital rape was a crime in all 50 states. The first state to abolish the marital rape exemption was Nebraska in 1976, and the last was North Carolina in 1993.

**Social Reasons for Underreporting**

There are a number of social reasons for the underreporting of the occurrences of marital rape by wives. Women themselves are afraid to make an issue out of the sexual violation of their bodies by their husbands because of the social stigma attached to it. The fear that society will look down upon her and her family prevents the wife from approaching the police for protection and the judiciary for redressal. Another factor is the concern that the issue of marital rape would adversely affect the fragile minds of children and impress upon them a negative concept of marriage and family values, leading to their social retardation and alienation. In most cases where the wife is financially dependent on her husband, there is a constant pressure from him and his family members upon the wife to not report the occurrence of such an incident, generally accompanied with threats of violence and the withdrawal of financial sustenance. The mindset of the traditional Indian society which stresses upon implied consent, i.e. the bond of marriage comes with an

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\(^{22}\) *ibid*

\(^{23}\) Hale M. (1736) *Historia Placitorum Coronae*, volume 1, p. 628

\(^{24}\) (1888) 22 QBD 23

\(^{25}\) [1954] 2 QB 282

\(^{26}\) [1992] 1 AC 599

\(^{27}\) 74 Mass. 489
irrevocable consent on the part of the woman with regards to sexual intercourse, instilled within the wife extinguishes the wife’s knowledge of her right to resistance. This societal demand of submissiveness along with the general taboo in the Indian social order regarding the discussion on marital sexual relations in the public sphere makes it very difficult for the wife to fight for her physical rights, and hence the number of reported incidents of marital rape is lesser than it should be.

Arguments for criminalization

There are nine commonly argued points in favour of the criminalization of marital rape. The first is the physical effect of the act on abused wives. The physical effects of marital rape generally includes injuries to the vaginal and anal areas, bruising, soreness, torn muscles, fatigue, lacerations and vomiting. Women who have been assaulted and raped by their husbands may suffer broken bones, black eyes, bloody noses, and knife wounds that occur during the sexual violence. Campbell and Alford in their paper report that one half of the marital rape survivors in their research sample were kicked, hit or burned during the sexual acts. Secondly, spousal rape causes great emotional distress to the victim which persists for a long period of time. Long-term effects often include disordered eating, sleep problems, depression, problems establishing trusting relationships, and increased negative feelings about themselves. Some marital rape victims undergo flashbacks, sexual dysfunction, and emotional pain for years after the incidents. Some of the short-term effects of marital rape include shock, depression, fear, suicidal tendencies, and post-traumatic stress disorder. Compared to women raped by strangers, wives who have been raped by their husbands report even higher rates of anger and depression.

The third argument is that there are certain anomalies in the Indian Penal Code regarding the act of marital rape. Sexual intercourse with a woman under the age of sixteen is statutory rape according to the clause sixthly of section 375 of the IPC. And if the woman is above the age of fifteen and married, then sexual intercourse between her and her husband will not be rape, according to the exception provided in the same section. But, if the woman, who is between the ages of fifteen and sixteen is married to a man, and her husband has sexual intercourse with her, be it with or against her will and consent, it will not amount to rape under any circumstance. This is an anomaly and it goes against the statutory rape provision enacted to protect young girls, the only reasoning being that the girl is married to her rapist. There is another anomaly in this provision. The legal age for marriage for women has been provided as eighteen by the Child Marriage

28 infra note 2. p. 5
Restraint Act, 1929. This was enacted to protect the rights of young women under the age of eighteen. The Commentary to this legislation states that “the object is to eliminate the special evil which had the potentialities of dangers to the life and health of a female child, who could not withstand the stress and strains of married life and to avoid early deaths of such minor mothers.” But section 375 of the IPC protects the right to sexual privacy of wives only till the age of fifteen. Thus, there is a very large bracket from fifteen to eighteen whose basic rights to life and health and reproductive freedom are being violated by this provision. There is a third anomaly in the law on rape, provided in section 376 of the IPC, which provides for punishment for the offence of rape. Here, the punishment for the rape of the wife between the ages of twelve and fifteen is imprisonment for a maximum term of two years, or fine or both. Section 375 clearly excludes wives above the age of fifteen from the ambit of rape. But, when it comes to determining the punishment, the wives under the age of fifteen, but above twelve get lesser justice than rape victims outside the wedlock or raped wives below the age of twelve.

Fourthly, section 376A of the IPC protects wives from marital rape only if they have been judicially separated, and not if they have been living separately upon their own volition, even if for a long period of time. Fifthly, section 122 of the Indian Evidence Act, 1872 prevents communication during marriage from being disclosed in Court unless one spouse is being prosecuted for a crime against the other. So this provision will provide for the disclosure of marital communications only in criminal cases, like cruelty and battery. The Domestic Violence Act provides for civil remedies for the sexual abuse of wives, and the communication, though relevant, would be inadmissible in a proceeding under this Act. Hence, it is impossible to combine the Domestic Violence Act and the aforementioned section, unless marital rape is criminalized.

The sixth argument is on the basis of Article 21 of the Constitution of India, which provides for the fundamental right to life. The Supreme Court has in its judgements extended the scope of this right to life to the right to live with dignity and the right to health. Marital rape as discussed above violates these two fundamental rights of the wife. Seventhly, Article 14 of the Constitution provides for equal protection of law to each and every citizen of the country. Again, the non-criminalization of marital rape goes against this fundamental right, by legally differentiating between women who have been raped on the basis of the marital relation between the victim and the abuser. The eighth argument is that the international community has recognized the married woman’s right to sexual privacy. The position of other countries on the issue of marital rape has already been discussed. The United Nations Declaration of Elimination of Violence against Women.

36 A/RES/48/104, 20 December 1993
affirms that “violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women” and in Article 2 explicitly includes marital rape within the scope of physical, sexual and psychological violence occurring in the family, which the Article recognizes as violence against women. The Supreme Court has held that the International Covenants and Declarations as adopted by the United Nations have to be respected and regard must be had to them for construing domestic law. The meaning given to the words in the Declarations and Covenants has to be such as would help in effective implementation. And lastly, if a wife refuses to have sexual intercourse with her husband over a long period of time, causing mental and emotional distress, the husband can seek divorce on its basis, and there is no justification for the husband forcing his wife to resume sexual relations against her will.

Arguments against criminalization

There are some common arguments against the criminalization of marital rape in India that are generally put forth by family rights activists. The primary opposition is by the idea that spousal sexual relations fall under the private sphere and the revocation of the implied consent associated with the traditional concept of marriage by legislation or judicial activism would be an excessive interference with marital rights and hence, will corrode the fabric of marriage. This feminist demand of the woman’s right to refuse sexual intercourse post marriage is often hailed as the violation of the procreation and conjugal rights of the husband. Another argument is that such a law will become an unfair weapon in the hands of the wife who can pin false charges of rape against the husband. Marital rape is said to be difficult to disprove on account of continued sexual relations and the often lack of bruises due to passive consent. The criminalizing law can then be misused by dissatisfied wives wanting to hurt the social standing and the general well-being of the husband. The third rationale provided is that marriage stands for the coalition of the identities of the husband and wife. The wife belongs to the husband and the husband belongs to the wife, and hence the state cannot take any penal action against any sexual act of either spouse against the other.

Rebuttal to the above

But there is a rebuttal to each of the aforementioned arguments. Firstly, the concept of marriage has been changed in India by amendments to our existing laws by the legislature and the judiciary. Concepts like judicial separation, divorce, divorce based on the irreparable breakdown of marriage, legal age for marriage as 18 for girls and 21 for boys,

37 Vishaka & Ors v. State of Rajasthan [AIR 1997 SC 3011]
punishment for bigamy, maintenance provision for the spouse after divorce and the recognition of rape during judicial separation have moulded the traditional Indian concept of marriage into a modern, more liberal form followed by the progressive countries of the world. Hale’s statement in Historia Placitorum Coronae upholding the idea of marital exemption from the criminal offence of rape was overruled by the English judiciary in 1991, establishing lucidly in common law that the wife is not a chattel of the husband. Spousal rape itself has destroyed the sanctity of the marriage bond by violating the wife’s right to her body. Marriage does not require the woman to sacrifice her human rights at the altar. Coercion of the wife into having sexual intercourse is in contravention with the basic principles of fundamental right to life. Secondly, regarding the abuse of the criminalization of marital rape, the primary rebuttal is that each and every law comes with the scope of being misused by the ones who can, but that does not mean that the law should not be passed. If there are no laws to check the actions of the people and penalize them for their wrongs, it would send the society as we know it spiralling down into the state of nature, where in Thomas Hobbes words, life is “solitary, poor, nasty, brutish and short.”

If we take the example of sections 354 and 509 of the IPC, which are concerned with sexual harassment, women can definitely misuse these provisions by registering false complaints, but there are numerous cases that evidence that these laws, despite its loopholes, have aided women in their movement for their right to their bodies. It is the responsibility of the legislature and the judiciary to make considerations for the difficulty in collecting useful evidence, like the lack of bruises on the body and private parts may be because the wife could not resist the act of rape out of fear of grievous hurt. Courts have held in the past that even if there are no bruises on the genitalia of the woman to prove that the sexual intercourse happened and it was non-consensual, the accused can be convicted for rape. “The assumption, and indeed the expectation, of resistance are predicated upon a number of stereotypes, family assumption and misunderstandings about sexual assault. According to this view, when suddenly confronted by a rapist, a woman will struggle, fight back, and vehemently resist the assault, thereby proving her lack of consent to the sexual contact. However when assaulted, some women might choose not to physically resist because, for example, they might feel that their safety, and perhaps even their life, is better protected by not resisting.”

The Supreme Court has in a number of leading judgements held that passive consent i.e. consent given under fear of injury or duress does not exclude the act from the scope of rape. Also, the

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39 Hobbes T. (1651), Leviathan, Republished by Forgotten Books, p. 86
40 “assault or criminal force to a woman with the intent to outrage her modesty”
41 “word, gesture or act intended to insult the modesty of a woman”
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statute can establish a clear distinction between marital rape and domestic violence, so that a case that falls under the latter cannot be unjustly tried within the scope of marital rape. Thirdly, the social progress of the country requires equality in marriage. The husband cannot coerce the wife into having sexual intercourse against her will. The Hon’ble Supreme Court in State of Maharashtra v. Madhukar Narayan Mardikar\(^{46}\) said that a “woman is entitled to right to sexual privacy and it is not open to any and every person to violate her privacy when he wished.” There is no implied consent to sexual relations upon the whims and fancies of the husband. The Apex Court extending the ambit of Article 21 held that mere existence is not the right to live. It is a right to live with dignity. It gives the women right to health, right to profession, right to privacy, protection against sexual harassment, right to live with human dignity as part of her right to life.\(^{47}\) Right to equality stipulates that express consent should be given by both the partners, whether they are married or not.

**Law Commission recommendations**

The Law Commission of India laid down certain recommendations regarding changes in the law governing the offence of rape in its 172\(^{nd}\) Report on Review of Rape Laws\(^{48}\). The Report suggests that the definition of rape be substituted by the definition of sexual assault, so that the offence shall include all forms of penetration, and not just peno-vaginal. “It is also necessary to include under this new definition (sexual assault) not only penile penetration but also penetration by any other part of the body (like finger or toe) or by any other object.”\(^{49}\) The Law Commission also recommends that it should be “open to the prosecution to request the court to provide a screen in such a manner that the victim does not see the accused, while at the same time providing an opportunity to the accused to listen to the testimony of the victim,”\(^{50}\) so that the fear of the rape litigation process does not inhibit the victim from reporting the offence. If marital rape is criminalized, these recommendations shall benefit the abused wife. Another suggestion in the report is that Section 376A of the IPC should be amended. This section which provides a lesser punishment to a husband who sexually assaults his own wife living separately in the aforesaid circumstances, the representatives of Sakshi argued, is arbitrary and discriminatory. “In the circumstances, while recommending that this section should be retained on the statute book, we recommend enhancement of punishment under the section.”\(^{51}\)

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\(^{46}\) AIR 1991 SC 207  
\(^{47}\) Suo Moto v. State of Rajasthan [RLW 2005 (2) Raj 1385]  
\(^{49}\) ibid. Chapter Three. para 3.1  
\(^{50}\) ibid. Chapter Six. para 6.1  
\(^{51}\) ibid. Chapter Three. para 3.3
Suggested Reforms

There are certain reforms that need to be introduced in our legal and judicial system. Foremost of all, sections 356 and 357 should be amended to include the marital rape of the wife of any age within the scope of the offence of rape and to provide punishment equivalent to that which would be imposed upon a rapist under general circumstances. Practical mechanisms must be established for the proper registering of complaints. There must be special police units consisting of women to handle such complaints, so that the abused wives are not inhibited from lodging their complaints at police stations out of the fear of male authority. The Code of Criminal Procedure (Amendment) Act, 2008 provides that “any offence under section 376 and sections 376A to 376D of the IPC shall be tried as far as practicable by a Court presided over by a woman.” The cases on marital rape can too be tried preferably by female magistrates to ensure that there is no bias towards the male abuser. Another reform can be establishing legitimate state-funded Sexual Assault Services especially for victims of spousal rape, to educate them into initiating criminal proceedings against the husbands, to dispel the fear of litigation and society and to help them to co-operate with the police in investigations. “Women who have become victims of violence should have a right to professional help. Cost-free phone hotlines for women are important for first contacts for providing information about victims’ rights and for initial counselling. In order to be protected from violence, victims must also be granted the right to safe accommodation and adequate help.” The State can provide legal aid, financial aid and alternate shelters to abused wives who are financially dependent on their husbands until the judgement has been passed by the relevant court, to prevent their relapse into their sexual abuse history by their withdrawing their complaints under family and monetary compulsion. Also, bruises or injuries to the body or private parts should not be the sole determining factor for conviction under the offence of marital rape. Since, wives generally give into the rape by their husbands out of fear or societal expectations; it is difficult to obtain these physical signs as evidence of the lack of consent. Conviction under marital rape should also be included as a ground for divorce, so that the wife can have the option of severing her marital relations with her abuser. The offence of marital rape should be cognizable, non-bailable and non-compoundable to convey the seriousness of the crime. The legal positions on marital rape, cruelty and domestic violence should be clarified, so that there is no conflict or confusion. The rape of a woman by her husband should exclusively come under the ambit of marital rape, and not cruelty or domestic violence. Also, “the police and judicial authorities were not regarded as cooperating partners but from a feminist point of view they were rather part of the problem than of the solution, as they were dominated by men and showed little sensitivity or even hostility towards the interests and needs of women who had become victims of

52 Amendment of S. 26 of Code of Criminal Procedure, 1973
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violence." Hence, the State should take measures for the sensitization of the judges and the police by organizing regular workshops and seminars wherein they would be formally educated with respect to the prevalence of sexual violence against the women in India.

Conclusion

To conclude, marital rape reflects the perversity of not just the husband, but also of the legislature and the criminal justice system and the Indian society in general. It ravishes the dignity and sexual privacy of the victim. Wives in these abusive traps should be uplifted and given a position which is at par with men. The judiciary and the police must be sensitized towards this issue. The mere fact that the parties are married should not be the reasoning for imposing a lighter sentence. There is a need for change in the social outlook on the issue of marital rape and also, the empowerment of women so that they can themselves fight for their personal rights. The law has till now pretended to be blind to the prevalence of this heinous practice, but the new progressive code of the international order requires India to mould its laws on women into one which provides justice.

54 ibid.
An evaluation of treatment programs for female offenders in correctional settings

Carrie Sullivan, Paula Smith and Edward Latessa

As the incarceration rate continues to increase each year in the United States, the number of offenders reentering the community from prison has also increased. At the same time, the criminal justice system is experiencing an influx of female offenders. To illustrate, the number of women in corrections increased by nearly 50 percent between 1990 and 2009, while the male offender population has grown at only half this rate (BJS, 2010). These trends indicate a clear need for more effective community-based correctional treatment strategies in general, and for more effective gender responsive strategies in particular.

Community-Based Correctional Interventions

Research suggests that community-based interventions are associated with larger reductions in recidivism in comparison with institutional programs (Andrews, Zinger, Hoge, Bonta, Gendreau & Cullen, 1990; Lipsey & Wilson, 1998, Gendreau, French, & Taylor, 2002). One proposed reason for this trend in program evaluation research is that it is more beneficial to treat offenders in their natural environments (in vivo), and therefore prosocial skills can more easily be transferred and applied to “real life” situations (Gordon, Arbuthnot, Gustafson, & McGreen, 1988; Henggeler, Melton, Brondino, Scherer, & Hanley, 1997). Other authors have further noted that the inhumane context of prison might interfere with rehabilitative efforts (Toch, Adams, & Grant, 1989). Thus, the increased effectiveness and decreased cost of most community-based strategies relative to incarceration underscores the need for additional program evaluation research.

One example of a community-based intervention used across the United States is the transitional residential community correctional program, commonly referred to as the halfway house. While these programs were primarily designed to provide a step-down for offenders transitioning from prison to the community, residential community correctional programs are also used as an alternative to imprisonment (Latessa, Travis, & Lowenkamp, 2005; Latessa & Travis, 1991). This provides a more secure setting for offenders not appropriate for probation, without subjecting them to the negative effects of imprisonment. Residential community correctional facilities have the ability to offer programming to address the needs that impact an offender’s ability to refrain from criminal behaviors, including substance abuse, criminal thinking, lack of education and employability (Lowenkamp & Latessa, 2004).
The effectiveness of residential community correctional programs at reducing recidivism varies widely (Latessa & Travis, 1991; Lowenkamp & Latessa, 2004; Lowenkamp & Latessa 2005; Lowenkamp, Smith, & Latessa, 2007). Latessa (1998) noted several common shortcomings of halfway house programs, including inadequate assessment, low qualifications and high turnover among staff, and lack of theoretically based treatment models. This study aims to contribute to the empirical literature on the characteristics of the most effective community-based interventions.

The Principles of Effective Intervention

Research has demonstrated that certain program-level characteristics are associated with effective treatment programs (Andrews et al., 1990; Gendreau, 1996). From this literature, the “principles of effective intervention” were developed. These principles provide researchers and practitioners with a template for creating effective correctional treatment programs.

The principles of effective intervention are perhaps most simply defined in terms of the risk, need and responsivity principles (Andrews and Bonta, 2010). The risk principle suggests that higher risk offenders receive supervision and treatment comparable with their risk level. The need principle asserts that criminogenic needs, or those offender needs related to criminal offending, should be the primary treatment targets. Finally, the responsivity principle consists of both general and specific responsivity. General responsivity suggests that most offenders respond to behavioral interventions, thus correctional treatment programs should adhere to cognitive-behavioral models. The specific responsivity principle urges that treatment should vary based upon the individual learning styles of the offenders (Andrews et al, 1990).

Gender Responsive Programs

A key tenant of the principles of effective intervention is the matching of offenders to treatment in a way that accounts for risk, need, and responsivity factors. There is however, debate in the criminal justice field as to the extent that these principles apply to females. For example, males make up the vast majority of the correctional population and most quantitative data represents male offenders. Furthermore, previous research has demonstrated that women may have different pathways to criminal behavior, and therefore their treatment needs differ from that of men (Daly, 1994; Bloom, Owen & Covington, 2003; Reisig, Holtfreter & Morash, 2006). Therefore, in planning treatment services, female offenders are currently being overlooked. This paper examines the program level characteristics associated with reductions in recidivism for females versus males in a large sample of community-based correctional interventions and will help further the debate related to the most effective methods for assessing and treating female offenders.
Research Questions

The purpose of this research is to identify both unique and shared indicators of effective treatment for male and female offenders. Specifically, this study addresses the following research questions:

1. What program characteristics are important for both male and female offenders?
2. What program characteristics are more important for male offenders?
3. What program characteristics are only important for male offenders?
4. What program characteristics are only important for female offenders?
5. What program characteristics are important for neither male nor female offenders?

In order to address these questions, this study examined the key characteristics of 134 programs, 75 of which are exclusively male and 59 of which include female offenders. The program characteristics associated with a reduction in recidivism over respective control groups was compared in order to identify important factors for both male and female offender populations. This study is important as the results can be used to assist correctional programs in developing gender responsive strategies, thereby informing the allocation of limited resources as well as enhancing public safety.

Results

While overall findings appear to support the idea that program level characteristics and treatment strategies are similar for male and female interventions, these results also suggest some important differences.

RESEARCH QUESTION 1: What program characteristics are important for both male and female offenders?

Characteristics significantly correlated with reduced recidivism for programs serving males and females:

- Avoid co-ed living units, educational programming, and visitation time
- Ensure that staff delivering treatment value the treatment efforts (i.e. support rehabilitation)
- Use of validated need assessment tools (i.e. tools that assess specific criminogenic needs)
- Ensure that reinforcers and punishers are individualized
- Avoid providing a program overview as the only source of family involvement
- Limit the use of external providers for aftercare
- Avoid use of AA/NA or other self-help programs as the only source of aftercare
RESEARCH QUESTION 2: What program characteristics are more important for male offenders?

*Characteristics significantly correlated with reduced recidivism for programs serving males; improved effect size for programs serving females, but difference did not reach significance:*

- The program has a higher operating budget
- A risk/need assessment is in place*
- Avoid use of a biopsychosocial tool
- Avoid assessment of past abuse issues*
- Intake decisions are made by an intake coordinator or team rather than exclusively by the program director
- Written exclusionary criteria are in place
- When risk is assessed by an outside provider (e.g. probation department), full copies of the assessment are provided to the program
- Reassessment of risk and/or need areas are conducted
- Vocational achievement is targeted*
- Family affection and communication is targeted
- An eclectic group (e.g. process group) is not offered
- Groups are assigned based on need levels
- A higher number of groups are provided
- Use of role play and graduated rehearsal of skills*
- Offenders are separated by risk level*
- There is not intensive community monitoring while on pass
- Early release is used as a reinforcer/incentive for positive behavior*
- Isolation is used as punishment/sanction, but traditional therapeutic community strategies are avoided*

RESEARCH QUESTION 3: What program characteristics are only important for male offenders?

*Characteristics correlated with reduced recidivism for only programs serving males:*

- The program director is involved in service delivery
- The bulk of employees are not seasoned in the corrections field (i.e., do not have 2 or more years of correctional experience)
- A validated substance abuse tool is used
- Three or more assessments are conducted (i.e. a range of needs are assessed)
- A small proportion of low risk offenders are served (less than 25%)
• Tier 1 criminogenic needs are targeted (i.e. antisocial attitudes, peers, and personality)
• Tier 2 criminogenic needs are targeted (i.e. substance abuse, family, education, employment, and leisure)
• Drug and alcohol issues are targeted
• Family affection and communication is *not* targeted
• Trauma/PTSD is targeted, where needed
• The Thinking for a Change curriculum is offered
• A substance abuse group is offered
• An anger management group is offered
• A vocational/educational group is offered
• The program uses a structured curriculum
• A cognitive-behavioral model is the primary treatment model
• The program has over a 5 month length of stay
• Family treatment interventions are provided

RESEARCH QUESTION 4: What program characteristics are only important for female offenders?

*Characteristics correlated with reduced recidivism for only programs serving females:*

• The program seeks staff that believe treatment works
• The bulk of treatment staff do *not* have higher education levels
• Family problem solving skills are targeted, but the offenders’ relationship with their children or the offenders’ parenting skills are *not* targeted
• When the offender is reinforced, she is told why she is being reinforced
• Avoids family activities as the mechanism for involving the families in treatment
• More than 50 percent of offender families are involved with the treatment program

RESEARCH QUESTION 5: What program characteristics are important for neither adult *male nor female* offenders?

*Characteristics having minimal effect on outcomes (i.e. no significant differences found) for programs serving males or females:*

• A high staff to resident ratio
• Support for the program from the community with which it is housed
• Harmony between the staff and managers of the program
• Staff evaluation of hard skills such as paperwork, attendance/tardiness, dress and productivity
An evaluation of treatment programs for female offenders

- The program excludes offenders with mental illness
- Educational achievement is targeted
- Offenders’ relationship with significant others is targeted
- Low self-esteem is targeted
- Mental health is targeted
- Social or economic needs are targeted
- Childhood abuse and neglect issues targeted
- General cog-based groups are offered (e.g. thinking errors)
- Family group is offered
- Life skills group is offered

*Lack of variation on item for one or both genders*
Parenting Style and Patriarchal abuse of educated women:  
A study of victimization of mothers in India

Debarati Halder and Megha Shree

Introduction
With the Bhattacharya children witnessing the peculiar legal and social pressure on their mother due to the postnatal emotional stress coupled with constant interference in mother-child bonding, the issue of victimisation of modern educated mothers has resurfaced with new meanings. The news reports have re-established the facts that in modern India, many educated mothers are victimised in the hands of their matrimonial families in questions of child upbringing. Even though in India the courts have accepted the role of authoritarian mothers over permissive fathers (Halder, 2012) for child upbringing, there are numerous instances where the mothers are constantly interfered, abused and humiliated by the family members (sometimes in front of the child) regarding their parenting patterns and skills. In the proposed papers we claim that such sorts of victimisation of mothers take place especially in cross cultural families, where the mother comes from different region and culture, or where the family unit consisting of the parents and the children, has shifted to upper income strata or upper educational level than the father’s ancestral families.

Methodology
The paper will rely upon mixed methodology including doctrinal as well as empirical methodology. On the basis of five case studies, (three from Tirunelveli and two from Delhi) and relying upon scholarly literature available on issues such as domestic violence, abuse of married women and custody issues, we aim to show the patterns of victimisation of educated mothers by their husbands as well as the in-laws, the motivating factors behind it and the consequences of the same. The paper would also propose a practical solution to the problem.


Review of literature

As it can be seen in the literature specifically meant for violence against women (Kumeri, 2007) and domestic violence and abuse against women (Hans, 2012; Gaiha, Jha & Kulkarni, 2009; Srivastav, 2011), speak volumes of violence against and abuse of women even in the present times. Shockingly, women are still abused for various reasons ranging from dowry, giving birth to female children, marrying as per their own choice, opting for higher education and job etc. However, issue of victimisation of educated mothers by her in-laws has remained much neglected. From the literature available on the abuse of women and domestic violence against women, it can be seen that irrespective of their educational qualification and employment status, many women have been victimised by their matrimonial families for wanting to be ‘what she wants to be’ or how ‘she wants to run her family’. These literatures provided a pattern as how these women are victimised; for instance, either they are physically abused like beaten by the husband and female members of the matrimonial families like the mother in law or sister in law etc; or they are psychologically abused such as hurling extremely harsh words pointing at her physical beauty, intellect, parental background etc. Along with this, as Halder (2012) pointed out, women are also tortured on the issue of custody of the child in matrimonial disputes and often, this has direct cause and effect relationship with the ego clash of parents (especially of fathers’ or father’s family members over the mothers’) in regard to right to bring up the child as per the wish of the mother.

The following five case studies would further establish the fact that mothers may be victimised by their in-laws in regard to child upbringing pattern chosen by the mother.

Review of the case studies

<table>
<thead>
<tr>
<th>Place</th>
<th>Education</th>
<th>Whether the family unit has shifted to upper income/educational qualification strata from the father/mother/sister/brother-in law</th>
<th>Whether the victim mother belongs to different region/different cultural/economic background</th>
<th>Pattern of victimisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tirunelveli</td>
<td>Under Graduate</td>
<td>yes</td>
<td>no</td>
<td>The mother-in-law stops the victim from scolding her children when they do any wrong; tells the victim that she is incapable of managing the children;</td>
</tr>
</tbody>
</table>
tells the children that they should not follow their mother’s footsteps, she is rough mouthed and she does not take care of the family.

<table>
<thead>
<tr>
<th>Location</th>
<th>Education Level</th>
<th>Allowing to Speak in Mother Tongue</th>
<th>Allowing to Look after Studies</th>
<th>Criticising for Choice of Colour and Design</th>
<th>Calling Ways of Parenting Critical</th>
<th>Discussing Anything Against In-laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tirunelveli</td>
<td>Under graduate</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>Tirunelveli</td>
<td>Post graduate</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>Delhi</td>
<td>Under graduate</td>
<td>yes</td>
<td>yes</td>
<td>The mother in law constantly criticise her for bringing up the child in</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
‘modern ways’ and not following her advises, she also criticises her for choice of the school, the way of feeding the child etc. The victim is abused in front of the child for various fictitious reasons and the child is encouraged to shout at her mother.

Patterns of victimisation of educated mothers by the in-laws

As can be seen from the case studies, the pattern mostly involves the following:

- Criticising on the ways of handling the child
- Teasing or criticising the mother when she speaks to her child in her own mother tongue
- Using sharp words to remind the victim that she should not follow the cultures of her parental home/region
- Provoking the husband to fight with the victim on the issue of ways of child upbringing
- Insulting the victim in front of her children
- Encouraging the children to speak back to the mother with teasing and humiliating words.

Possible effect and consequences on the mother and the child

Some of the responders whom we contacted for this purpose of this study stated that this is a normal practice of households where the mother prefers to go for job and needs to depend on the in-laws. However, we argue that such sort of attitude towards mothers who prefer to be different than their in-laws, especially mother/sister-in-law, must be considered as alarming. It can fall in the category of domestic violence against women when such sorts of approaches create deep and long term psychological effect on the victim and her child. The victim can feel extremely hurt, her right to speech and expression can be hampered and over all, in the long term, she may develop severe depression, hatred towards people of the region to which her matrimonial family belongs.\(^{57}\) The child on the other hand, may grow negative feelings towards the mother. The child can in turn, grow into another wife-abuser or may also develop hatred towards

\(^{57}\) In case the victim do not belong to the same region as her husband and in-laws
the language that his mother speaks. Such sort of victimisation may also make the child rude, depressed and withdraw from relatives of both the sides.

**Conclusion**

The literatures above would advocate the fact that it is women more than men, who try to support several oppressive social norms such as supporting honour killing, female infanticide or even dowry demands. The root cause could be that in India majority of women are economically dependent on men. Many women may feel secured to be in the traditional oppressive social system than to brace the rough world. Resultant, older women may feel extremely reluctant to accept the role of women of younger generation in child upbringing as per modern ways. This attitude hugely influences the other younger members of the matrimonial family, like the sister in law. We claim that such attitude also hampers growth of a mixed and united modern Indian culture, apart from fuelling domestic quarrels in front of the child.

The situation can be controlled by the following measures

- Pre marriage counselling of both the immediate family members of the bride and groom.
- Creating focused laws to bring in this particular issue under the purview of domestic violence law
- Encouraging more ‘mixed marriages’

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58 In case the mother speaks different language than the father
Now-a-days, women empowerment is a buzz word in the governmental corridors. We see around that various reputed universities and institutes in today’s India are consistently and (seemingly) emphatically involved in this process as if a) we, as a society, have been since long, or civilization ally, discriminating against or marginalising the other gender, the women in India and b) in terms of institutionalisation, we have always been conscious to popularise the institutes/processes which can establish that Indian society is not gender biased. But, academics apart, we as a part of Indian society (urban and rural both paradoxically) all aware that we do discriminate with the other sex and contributes its becoming a weaker sex socio-politico-economically. Why this? Or is it so natural to discriminate against women in all societies? If it is universally so true that, marginally or generally, women are socially and politically exploited, then what is the rationale behind it, if there exists any, in any of the societies of the world.

Our attempt, in this research paper, is to focus on the issues related to the search for the rationales which caused the making of contemporary India where women are increasingly used and abused, socially and politically. Ironically, the civilization understanding of Indian society forces us to infer that women in Indian society, since its past, have always been revered. Its mythology, folklore and legend support this rationale. Precisely, a woman, socially so revered, can not be marginalised politically in any society. Examples are well explanatory if we quote the Scandinavian societies in Europe. But it is not the same for the whole lot of developed neo-liberal societies of the West. Globalisation, not only in India, but also in Europe and in Americas, catered negatively to the restoration of the well-being of the other gender, the women. How education, that emphasises its claims on the merit of rationality, delivers the justification of this kind of deficit in gender-justice? In this research paper, we would try to reach to those causes and frame a thematic interpretation, analysing a particular case of Indian story of women and gender as an identity construct.

These are the two extreme and binary positions of women in India we often refer to, one is the poetic expression of social realities, another is the constitutional ideals to envision women empowerment. It seems at times unusual to introduce the political representation of a social reality with a poetic start. But, as we all are aware, poetry has a social context and is connoting the social realities since time immemorial to humankind in the brief, sure and succinct manner. Indian women now have seen some changes in the
formation of her identity. Constitutionalism, along with certain social and reformatory movements, also led to these visible changes. Notwithstanding, we can also not counter the fact that new pictures of violence and discrimination against women have also taken place in the new age of Indian independence. Gender in India, but particularly in urban India, has seen a visible progressive path, heading more towards a greater and equal participation in education at par with the male counterparts, jobs in service sector, particularly in private sector where the professional qualifications, based on skill-based education, is more in demand sports, and even politics. Considering the quotes given above, three different propositions of women we perceive in continuation in the historical consciousness of Indian civilization, under the varied forms of political systems. One is a moral reflection of women-hood, as portrayed in the first quote of Maithili Sharan Gupt a celebrated Hindi chhayavadi (romanticism) poetess, another stand is suggestive of the interface of modernity and new political system under the guard-ship of constitutionalism in post-independence India, of which Dr.B.R.Ambedkar was a singular symbol. Yet another portrayal of women in Indian society is reformatory (in its entirety) put forth by Mr.M.K.Gandhi (hereafter Gandhi) in modern India, though unlike Dr.B.R.Ambedkar (hereafter Ambedkar), he was not the chief or the only exponent of that strand of social evolution in modern-India. This research paper, in its brief effort, is an attempt made to overview the different currents of the evolution of “women-hood” in Indian history, under the different times and varied political systems and, to find out the “political” connectivity in the variables of gender evolution in India. Brief but very stringent references are considered here for the analysis of women progress in India.

Textual Genealogy: Status of Women in Ancient India

In its strict sense of historiography, not many profound references are found in past about the position and status of women in ancient Indian history. Most of the times, in the absence of the ‘accepted and agreed-upon’ historiography in its modern / Western sense, the references are found rather oppositional, presenting the extreme opposite / negative views of the position of women in ancient India. Since the present conditions of women in Indian society are not reflective of the continuity of a tradition where the status of women can be confirmed at par with men, we may conclude that in past, reasons notwithstanding, women were not as empowered as men. Certain specific references of women who were found with equal footing with men in ancient India can not be considered as if the society at large were not discriminatory in gender issues. In brief, we may take the references one by one for specific understanding of the issue. The position of women in ancient India did not remain ‘constant’. The declaration of Manu in “manusmriti” that Gods are pleased with those households where womenfolk are held in prestige suggests a mere ideal plank of the society of that time since the social realities are vocal about how the women were considered as ‘inferior’ humans to men, devoid of many human rights, almost like a ‘shudra’ within a family. As a girl she was under the tutelage of her parents, as an adult, of her husband, and as a widow, of her sons. Patriarchy was the institution and source of creating the conditions of living of women in that time.
The freedom of a woman is clearly specified by this reference of Manu in ‘manusmriti’ that by a girl, by a young woman, or even by an aged woman, nothing must be independently even in her own household. In ancient India, women had been considered subordinate to men. Perpetual war and pastoralism brought the patriarchal element to the forefront and relegated women to a lower status. In the Rig Vedic times the society had certainly left the state of gathering and hunting, and women held a status of relative equality as their participation was found to be necessary in the production process. In the Rig Veda, as suggested in many translations and commentaries on Rig Veda, the husband and the wife were called ‘dampati’ indicative of an egalitarian society where relations between sexes were found based on reciprocity and relative autonomy in their respective spheres of activities. Both the sexes equally were allowed to participate in the sacrificial rites. They were allowed, like their male-counterpart, to get education and its dissemination. Women were found taking part in the deliberations of ‘vidatha’ (earliest folk assembly) [Rig Veda, viii, 31.5.] During the period of the later ‘samhitas’ the condition of women was considered relatively satisfactory. Women were regarded as an equal sharehoolder as men of the responsibilities and duties at home as well. They were invited to the Vedic studies after the ‘upanayan’ (Ceremony of Initiation for education). In Indian mythology, Sita, wife of Ram, is described as offering prayers.

The deterioration in the status of women supposedly started around nearly 300 BC onwards. Another great Indian epic, ‘Mahabharat’ suggests that the women were considered not at par with men. Women were considered fickle-minded, to be easily won over by abundance and flamboyance. Woman was depicted in some characters as the lurer, and hence the root of evil. Between Indian mythology and Indian society, what paradox do we see that women are found as the symbols of faith and worship, whereas at social level, the status of women is found degraded and exploitative.

Indian Political System and Women in Post-Independent India: Routes forward

Indian National Movement saw a growing participation of women in modern India. Some scholars assert that the freedom movement helped women in their own struggle for freedom since feminism and nationalism were found closely linked that time and in those socio-political conditions. Gandhi’s ideology of recruiting women in politico-public life, without hurting their family institution, and mobilising women also helped for women’s liberation movement consequently. Many other leaders were found establishing women’s organisations that time. Subhash Chandra Bose formed Rashtriya Mahila Sangh that played a very momentous role in freedom struggle. Women were accepted as the vehicles of change and given opportunities of equal participation. To Gandhi, women, by virtue of their nature, were found more suitable for his non-violent methods of struggle against colonialism.
Elderly abuse in India: Special reference to age old women widows

Gisa Sara Joy and Nasafi Rehman

Introduction

In our Indian society, old age is a celebration in itself. We always get blessings from our loved ones “to live for more than 100 years”; “May God add my years to your life” etc. But what if this really happens? In such a fast moving society where people don’t even have time to give proper care to their children, then the question of looking after the parents is not even in the picture. It is a very disturbing fact that almost 47.3% cases of elderly abuse are reported to have children as perpetrators.

The earlier Indian society had a joint family system. Therefore, as there were more members in the family, elderly abuse was not that prevalent. However as time passed by joint family system was replaced by nuclear family system. Resultantly, patience and contentment in younger people became very less. Younger generations find it very hard to adjust with their ageing parents.

There is a greater need for awareness at this stage. Older persons need awareness as to how not to depend on anything and everything at their children and also the young need to understand the age old problems and issues. However, I am of the view that such awareness programmes, even if given, are of no help. Therefore, I recommend that the government should take initiatives in implementing better schemes for the benefit of old people.

Often, we find that old women widows are subject to more torture and cruelty from children. This is because more than 50% of them are uneducated and live at the expense of their children. Recently a newspaper reported that in Kerala, a bed ridden mother who was around 80 was put in dogs cage as the daughter in law refused to look after her. How should we react to such incidents? Most often what we do is feel pity for the old women and then later forget about it.

We need to redefine elderly abuse as per value based Indian society. Incidences of mistreatment of older persons are increasing day by day. Elderly abuse has become the reality. Whatever are the reasons, whatever is the situation the fact is that older persons are the victims, they are the sufferers. Roots of intergenerational bonds are deep in almost all Indian societies. That’s why even today majority of older persons have no complaints about their life and changing world.
The Changing Scenario

The stark reality of the ageing scenario in India is that there are 77 million older persons in India today, and the number is growing to grow to 177 million in another 25 years. With life expectancy having increased from 40 years in 1951 to 64 years today, a person today has 20 years more to live than he would have 50 years back. However, this is not without problems. With this kind of an ageing scenario, there is pressure on all aspects of care for the older persons – be it financial, health or shelter. As the twenty first century arrives, the growing security of older persons in India is very visible. With older people living longer, the households are getting smaller and congested, causing stress in joint and extended families. Even where they are co residing marginalization, isolation and insecurity is felt among the older persons due to the generation gap and change in lifestyles. Increase in lifespan also results in chronic functional disabilities creating a need for assistance required by the older person to manage chores as simple as the activities of daily living. With the traditional system of the lady of the house looking after the older family members at home is slowly getting changed as the women at home are also participating in activities outside home and have their own career ambitions. There is growing realization among older persons that they are more often than not being perceived by their children as a burden.

Old Age has never been a problem for India where a value based, joint family system is supposed to prevail. Indian culture is automatically respectful and supportive of elders. With that background, elder abuse has never been considered as a problem in India and has always been thought of as a western problem. However, the coping capacities of the younger and older family members are now being challenged and more often than not there is unwanted behavior by the younger family members, which is experienced as abnormal by the older family member but cannot however be labeled.

India ranks high in Elderly Abuse

A nationwide survey by the NGO Help Age India revealed that Bhopal ranks first in elder abuse, followed by Guwahati, Lucknow and Ahmadabad. Bangalore ranked seventh on the list while Jaipur ranked the lowest. The survey was conducted in 20 cities, namely Delhi, Mumbai, Kolkata, Bangalore, Hyderabad, Guwahati, Patna, Chandigarh, Panaji, Ahmedabad, Shimla, Jammu, Kochi, Bhopal, Bhubaneswar, Puducherry, Jaipur, Chennai, Dehradun and Lucknow. The study covered the elderly in the age group of 60 plus. The report revealed that at least 31 percent of elderly faces abuse and 24 percent face abuses almost daily. Most of the abuses (56 percent) are committed by sons and 26 percent by daughters-in-law. In most of the cases, elderly people remain silent without reporting the incidents to anyone.

In a majority of cases, elders subjected to abuse do not even know that there is a police helpline available to them, and those who are aware of the services rarely use them, in order to protect ‘family honor’. As per the survey elderly women were subjected to more abuse when compared to the men and those above 80 when compared to the younger.
Types of Elderly Abuse

Abuse of elder’s takes many different forms, some involving intimidation or threats against the elderly, some involving neglect, and others involving financial chicanery. The most common are defined below.

Physical abuse

Physical elder abuse is non-accidental use of force against an elderly person that results in physical pain, injury, or impairment. Such abuse includes not only physical assaults such as hitting or shoving but the inappropriate use of drugs, restraints, or confinement.

Emotional abuse

In emotional or psychological senior abuse, people speak to or treat elderly persons in ways that cause emotional pain or distress.

Verbal forms of emotional elder abuse include
- Intimidation through yelling or threats
- Humiliation and ridicule
- Habitual blaming or scapegoating

Nonverbal psychological elder abuse can take the form of
- Ignoring the elderly person
- Isolating an elder from friends or activities
- Terrorizing or menacing the elderly person

Sexual abuse

Sexual elder abuse is contact with an elderly person without the elder’s consent. Such contact can involve physical sex acts, but activities such as showing an elderly person pornographic material, forcing the person to watch sex acts, or forcing the elder to undress are also considered sexual elder abuse.

Neglect or abandonment by caregivers

Elder neglect, failure to fulfill a caretaking obligation, constitutes more than half of all reported cases of elder abuse. It can be active (intentional) or passive (unintentional, based on factors such as ignorance or denial that an elderly charge needs as much care as he or she does).

Financial Exploitation:

This involves unauthorized use of an elderly person’s funds or property, either by a caregiver or an outside scam artist.

An unscrupulous caregiver might
- Misuse an elder’s personal checks, credit cards, or accounts
- Steal cash, income checks, or household goods
- Forge the elder’s signature
- Engage in identity theft
Typical rackets that target elders include

- Announcements of a “prize” that the elderly person has won but must pay money to claim
- Phony charities
- Investment fraud

Health Care fraud and Abuse

Carried out by unethical doctors, nurses, hospital personnel, and other professional care providers, examples of healthcare fraud and abuse regarding elders include

- Not providing healthcare, but charging for it
- Overcharging or double-billing for medical care or services
- Getting kickbacks for referrals to other providers or for prescribing certain drugs
- Overmedicating or under medicating
- Recommending fraudulent remedies for illnesses or other medical conditions
- Medicaid fraud

Legislation to Ensure Age old Security

To ensure old age security the Maintenance and Welfare of Parents and Senior Citizens Act was passed. The bill proposed to provide for;

- Appropriate mechanism to be set up to provide need based maintenance to the parents and senior citizens
- Providing better medical facilities to senior citizens
- For institutionalization of a suitable mechanism for protection of life and property of older persons
- Setting up of old age homes in every district.

Recommendations and Conclusion

Nationwide programmes should be organized in schools and colleges to sensitize children towards ageing and aged. NGO’s has been working towards this through its Student Action for Value Education (SAVE) Programme which aims to inculcate values of care and respect for the elderly in school going children to create an age friendly society. Secondly, a robust social security system should come into being that not only ensures income security for the elderly, but also gives them opportunities for income generation. Thirdly, involvement of society at large in prevention of elder abuse is indispensable.
The agony of womenhood reflected through victims of contemporary crimes

Gouri Naik

Emergence of victimology in 70’s is credited to bring forth the plight of crime victim by describing him as a ‘forgotten entity’ in criminal justice system. Once an active participant, common law system has successfully managed to completely remove victims from criminal justice process, victim’s status got reduced to a witness to a crime against state. The quality of life in a society is largely determined by the manner in which the laws are enforced. It is widely recognized in India that victims do not have express legal rights and protection enabling them to be a part of criminal proceedings, and this tends to result in disinterestedness in the proceedings and consequent distortions in criminal justice administration. There will be no takers for the rights guaranteed by Constitution or law if realisation of rights proves to be costlier than rights themselves. Generally two types of rights are recognized in the continental countries of the victims of crime, firstly, the victim’s right to participate in the criminal proceedings, and secondly right to seek and receive compensation from the criminal court itself for the injuries suffered as well as appropriate interim relief in the course of proceedings. In India these rights have not been very expressly and prominently integrated in the criminal procedure. The decline in penological importance of restitution and non-recognition of victim’s functional role in crime gained theoretical support from the endeavour to find different bases for criminal and civil liability. Victims who want offenders to make good of the losses are left to the civil justice system.

Coming to the centre point of this paper i.e. women as victims of crime, in a country like India the society being male dominant or patriarchal the position of women in the society is secondary although there are instances of equality in various aspects the status of the woman is always after that of a man. Inequality still exists largely in terms of gender bias, this is the root cause why women fall prey vulnerable to various crimes may it be personal, mental, physical, etc. We need to look at the position of women as a victim not only of a crime, but also in a country like India being woman itself is being a victim. Having a look at India’s socio-economic conditions each and every woman is having vengeances at the other gender and the society at large. These vengeances being never taken into account leads to humiliations and thus result into victimizing the woman in n’ number of ways. The author is intending to restrict its scope to reproductive crimes going on interpersonal lines (medical termination of pregnancy, pre-natal diagnosis, in-vitro fertilization, ART, surrogacy, etc).
At present the provisions of Medical Termination of Pregnancy Act, 1986 (MTP Act), The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 Act, (PC-PNDT Act) or the proposed Assisted Reproductive Technologies Bill 2010 (The ART Bill), do not exhaustively meet with the needs of the hour. As well as various flaws in these laws are making women more vulnerable to various crimes that can be termed as reproductive crimes, they may range from forced abortions, female foeticide, surrogacy various In Vitro Fertilization (IVF & IUI) Treatments wherein gross violation of rights occurs but unfortunately many times these violations are not recognized as an offence or a crime and thus women fall prey to victimization. One angle is that, the society at large is many a times unaware of rights, their violations and remedies, but in case of reproductive crimes the agony is different here the rights are not legally recognized and hence remedy is far away. However looking into socio- legal background, Indian society has witnessed many instances of reproductive crimes which have generated much heat on women victimization may it be the case of Nikita Mehta for aborting the foetus with abnormality which is not touched through the provisions of MTP Act, may it be Baby Manji’s case which brought forth the debating issue of legalizing surrogacy as well as other complexities involved into the issue relating to exploitation of women through various modes and at various stages for which she is left without any remedy and our legislature is interested in passing the ART Bill 2010, without analyzing the viability as well as consequences of the same.

Coming to the issue of female foeticide in India PC-PNDT, Act being there since almost two decades it has failed to achieve its object, and female foeticide continues to be a problem resulting into, increase in; violence against women, abortion due to family pressure to have male child, more men in the society due to sex selective abortion, it also violates the provisions of Indian Penal Code (S. 312 To 318), but rarely the cognizance is taken. Upcoming technology has given man many opportunities to develop faster, but at the same time it has challenged the nature, carrying out various experiments on human body, specifically reproductive techniques which involves use of various drugs as well as techniques that can cause long term losses or harms to the health of woman. Many times these experiments are failure and they affect mental and physical health of woman. Talking in terms of human rights all these reproductive crimes leads to gross violation of human right and victimization of women at each and every step. The woman who is been a victim of a reproductive crime is left with an inadequate remedy or mostly no remedy at all. In most of the cases it is left to the civil justice system, but at the same time it is forgotten that when it comes to the restitution of the victim, personal satisfaction of the victim is also very much essential the major hurdle is how to achieve this aspect of criminal justice in reproductive crimes. Many a times such offences result adversely on well being of a woman as a social trauma and hence it needs a special consideration. As the author has pointed out use of technology going against nature, it also involves ethical dilemmas putting forth the question of procreational liberty; is it a right to procreate or unfettered liberty given under the Constitution needs to be reexamined in the realm of Indian society. The recent case of Indian woman who died because of unavailability of
recourse by law of abortion in Ireland is an eye opener to the situations in India also, as what we need is a progressive criminal justice system that makes communities safer, protect personal liberties and limits abuse of power by governmental authorities, also support the rights of individuals to have the children they want, to raise the children they have and plan their families by safe, legal access to abortion and contraception and it can be achieved only when all people have the economic, social and political power to make healthy decisions about their bodies sexualities and reproduction. Also it is very much important that the system should take into account that only criminalization of accused is not a solution, but need to address the losses suffered by the victims by ensuring their constitutional rights and providing adequate and appropriate remedies. As reproductive crimes are social phenomenon they can be better addressed through social services.

Finally author would like to sum up saying that; reproductive justice is equally important as of criminal justice and our system which takes enough care of rights of an accused person should also have some gratitude towards the victim of the crime also! Providing victim a prompt and sufficient remedy, active participation and protection in the trial process and recognition and restitution of the rights of the victim is important part of furthering the cause of reproductive justice. Women being a weaker section of the society the present legal system and the approach of criminal justice system are making them more vulnerable to the victimization.

To conclude, nature has given this incredible capacity of procreation to the woman, the very inception of life begins in her womb, and the existence of whole human race is from her. We must protect woman from being victimized and respecting the nature she should get her basic right to live with human dignity!
Spousal Rape: An Increasing Menace

Greeshma Rai and Benjamin Thomas

Women, like men are endowed with the fundamental right to live with dignity, like J. Saghir Ahmad has stressed. Considering the hardships that the female gender has been and is being put through, women deserve this right more than anybody else. But all the voices appealing for such a right have fallen to deaf ears through the centuries. Evidently, sexual offences being committed against women have been on a rampant increase. Out of all the sadistic and barbaric offences that man can commit, it is commonly considered that rape is the most traumatic one. The very thought of mutilating a woman forcefully itself is very disturbing. Sexual violence by itself, apart from being a dehumanising act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her honour and offends her self-esteem and dignity—it degrades and humiliates the victim.\textsuperscript{59} A very prominent ‘type’ of rape is spousal or/and marital rape. In most cases, Marital Rape occurs in societies which believe in the unjustified conventional assumption that once married, the husband essentially owns the wife. What this results in is a situation in which the husband imposes himself at every level and the wife is required to be at his beck and call. The extent of this is spread onto the aspect of love making and sexual desires. Yes, Sex is probably\textsuperscript{59}(emphasis on probably) the most important basis of a happy married life and yes, a passionate love life does have to exist between the sheets, but this doesn't give the husband any authority to dominate the bedroom and force his wife to make love when she simply doesn't want to. It is at this juncture that the drawn lines are crossed and the sanctity of the institution of marriage is imputed. Marital rape is essentially a betrayal of trust. Unlike a ‘stranger rape’ (if distinction in types of rape has to be made) it does not involve only physical violence and sexual violation. Marital rape is so destructive because it betrays the fundamental basis of the marital relationship; because it questions every understanding you have not only of your partner and the marriage, but of yourself. The victim ends up feeling betrayed, humiliated and, above all, very confused. In recent years, many countries have felt the necessity of criminalizing spousal rape. But very few seem to have taken this seriously.

For the purpose of clarity and context, it would be prudent to define the term in itself. Though traditional definitions associate rape to only female victims, more and more societies today are embracing the gender independent nature of rape, given that it is equally damaging and likely to occur to a male victim as it is to a female one. In a society which is slowly opening up to unconventional sexuality, it is important to address the

\textsuperscript{59} Former Chief Justice A.S.Anand
gender parameter in the definition of rape. However, due to the fundamental nature of our discussion, and for the sake of unconfused efficacy, we will talk about it from a female victim standpoint. Manu declares that the wife, the son and the slave – these are unpropertied; whatever they earn is the property of those to whom they belong. Since the early days societies have predestined the woman to be under the ownership of man. As a child, she belongs to her father, and once she comes of age, the ownership is thereby transferred to the husband. This may be due to the breadwinner-homemaker protocol that existed in those times, but somehow the notion stayed engraved in the psyche of even the modern man. This could be one reasoning as to why such a phenomenon as spousal rape may exist today. When a sense of ownership overshadows the feelings of love and respect, an act as despicable is likely to manifest. Sexual frustration can cause people to stoop to loathsome levels, and this is also true in marriage or other such arrangements of cohabitation. Studies have shown direct correlation between sexual frustration and violent behaviour, and spousal rape in an amalgamation of the two. Yet another reason could be the sheer dependency of the wife on the husband for her subsistence. This case is particularly true in developing nations such as India, where the husband is the sole earning member in the family. Refusing his demands for sex could have worse physical consequences, even to the point of abandonment, and the wife is forced to give-in against her will, physical predisposition or mental state. In a situation where this condition continues for an extended period of time which could be even many years, the trauma can result in permanent mental and emotional injury.

In its 1993 Declaration on the Elimination of Violence against Women, the United Nations High Commissioner for Human Rights established marital rape as a human-rights violation. Spousal rape is a crime in most parts of the Western world. It is an irony that while we are celebrating women’s rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violations of human dignity of the victims of sex crimes. Though world over, Marital Rape is a recognized penal offence; there have been a lot of drawbacks in curbing the same. When a woman does not succumb to traditional socialization and does not conform to traditional gender roles, she is more likely to be beaten by her family and abused by her spouse. This is because of the existing dominant nature of men in the society. So in order to have the upper hand in the relationship, partners may resort to marital rape in case the other partner refuses sexual intercourse. These acts of violence also tend to be socially accepted. In how many instances will a spouse report on her better half? In most of the instances what happens is that the very offence of Rape committed by a spouse is hushed up and hidden, most times by the victim herself. It is even more appalling that people who know what the victim is undergoing also generally hush up such incidents of commission

60 Manu, VIII, 416
62 Goode and Tambiah, 1973
63 Agnes, 1990; Srinivasan, 1998
of crime against women especially where the offence is a sex related one.\textsuperscript{64} What about countries where Marital Rape is not a recognized offence? In a few countries, the national religion mentions that a husband has paramount powers over his wife and if he needs to satisfy himself, he doesn’t necessarily have to obtain his wife’s consent to do the same. He can do so by forcing her to have intercourse with him. Thus, sexual assault by a husband on his wife is not considered to be a crime; a wife is expected to submit. It is thus very difficult in practice to prove that sexual assault has occurred unless she can demonstrate serious injury. The report of the Special Reporter noted that light sentences in sexual assault cases can send the wrong message to perpetrators and to the public at large; that female sexual victimisation is unimportant.\textsuperscript{65} In such countries, how will the violence against women be curbed at all?

Criminal law has to be the one that takes stock of social reality of the place and the people so it has to be true to the kind of story the women may have to narrate in this country. It has to be representative in character and has to take notice of the kind of treatment meted out to women and hence not be patriarchal so as to ignore the male proclivities and criminal form of deviancy at the cost of women. Official surveys reveal that male participation in criminal form of deviancy is on the increase worldwide and also attest to the fact that women are the easy targets, so has the volume of crime against women witnessed disproportionate increase.\textsuperscript{66} The UN Population Fund states that more than 2/3rds of married women in India, aged between 15 to 49 have been beaten, raped or forced to provide sex. In 2005, 6787 cases were recorded of women murdered by their husbands or their husbands’ families. 56% of Indian women believed occasional wife-beating to be justified.\textsuperscript{67} The rampant increase of this crime which is clearly elicited by statistics calls for its immediate criminalization. With the criminalization of marital rape, women achieve formal equality under the law and in their marriages – women are recognized as autonomous persons, not property. The criminalization of marital rape helps to establish a culture of accountability for women’s human rights, and to improve the physical safety and security of women. It contributes to the creation of societies that respect women’s rights, and helps to reduce the vulnerability of women to other forms of violence. It protects women from a form of violence that has serious health consequences, including the spread of HIV/AIDS. Ending marital rape immunity means that in taking marriage vows, women are not required by law to cede control over their own bodies. In short, married women should always have the right to say NO to sex at any time, in any context, for any reason.

\textsuperscript{64} C.B. Mamoria, Social Problems and Social Disorganisation, (1981) 1047
\textsuperscript{65} Report by the Special Reporter to the UN, Ms. Radhika Coomaraswamy, 1994
\textsuperscript{67} Marital Rape and the Indian Legal Scenario, Priyanka Rath
The spatial dimension in women’s fear of crime

Hannah Christopher, Srinivas Tadeppalli and G. Subbaiyan

Introduction

As major forms of anti-social behaviours, crime is always one of the most important issues gaining most attention and concern from human society because they cause death, injury, fear, damage, and inconvenience as well as huge financial expense and loss. Crime is the result of a complex interaction of economic, social, cultural factors, alongside the physical environment that houses it. The feeling of safety in the physical environment hosting activities of all types is influenced by a range of factors. It is difficult to separate the relative contributions to fear of crime by social and cognitive components of territorial functioning and the physical components emerging from territorial marking. Several interdisciplinary studies aim to examine the factors that impact fear of crime and how the feeling of security can be promoted through laws, policies, environmental design and educating the public about their safety and the actual victimization risk. This paper is an attempt to study the impact of the built environment surrounding the bus shelters, on the spatial behavior of women and their perception of security during the waiting time.

Women and Fear of Crime

Studies have been made in the area of ‘Fear of crime’ for several decades and it still attracts interest from social, economic, political and research perspectives. Studies show that elders, women, urbanites and people belonging to lower social and economic background are among the selective groups that fear crime more than the others (Hale, 1996). Across all researches, women consistently seem to fear crime more than men, despite their risk of victimization being lower than men. Women carry weapon, dress modestly, travel in groups, use motorized transport to protect themselves from people with unpredictable nature. Women make more daily trips but travel fewer miles; Women chain trips. Women try not to frequent places where the potential for sexual attack is perceived to be high (Valentine, 1992). Women express more fear and constrain their mobility, self-expression and social experience or engage in behavioural fear to lower their chances of victimization (Sur, 2012).

Research points out that individuals worry about crime when they feel a lack of control over the situation as they appraise a threat and worry about the consequence of risk. Women’s vulnerability due to difference in physical capabilities with men, inability to control interaction with strangers makes them fear that they are most often the ‘targeted victim’ (Jackson, 2009). Ferraro tries to explain women’s worry about crime through his sexual assault hypothesis. He points that for any type of crime (theft, physical attack or
verbal abuse) the end result could be sexual assault and thus making women fear crime more than men, despite their lower victimization rates. Moreover, women’s rape and sexual assault rates are ten times higher than men’s. This prominent risk of victimization makes women more likely to be fearful of rape or sexual assault (Ferraro, 1996).

**Women and the Spatial Dimension of Public Space**

Women feel that the space around her is an extension of her personal space that either deprives her of her right to experience it or gives her the freedom to explore it. Conventional beliefs accept the private spaces as women’s realm while portraying the public sphere is predominantly the man’s space. Significant revisions have happened in this century shuffling the household and family structure, changing the division of household responsibilities and bringing more women on the streets. Women’s increasing involvement in employment has thus altered this personal space of woman. Perception of security behind closed doors varies from the perception of security on streets. Thus this study aims to understand women’s perception of the built environment and study the impact of the physical features of this built surrounding on their fear of crime.

**The Study**

The bus stops taken for study were selected in the city of Tiruchirappalli, the fourth largest city (corporation) in Tamil Nadu. Bus transport is the major form of public transportation catering to an approximate population of 1 million. Approximately 100 bus stops are provided and maintained by the city corporation authorities. 14 bus stops were chosen for investigation based on the various aspects considered for the study. The features include land use of surrounding areas, lighting in and around the bus stop and the visible openings and set back details of the surrounding buildings. A total of 248 women waiting at the bus stops were surveyed to ascertain association between the features of surrounding built environment and fear of crime at bus stops.

**Analysis and Results**

The variation in the mean fear of crime of people among bus stops was analyzed using Analysis of Variance (ANOVA) and bus stops were grouped based on pair wise comparison of bus stops level mean fear of crime using post hoc analysis with Tukey’s method. ANOVA revealed a significant variation in the total (combined day and night time) fear of crime \[F (13,402) =10.174, p<.001\] among the 14 bus stops. ANOVA revealed a significant difference in the total (combined day and night time) mean fear of crime \[F (3,412) = 33.352, p<.001\] between the four bus stops groups. The post-hoc analysis indicated that mean fear of crime of people at bus stops (group IV) with good mix of land uses and without negative uses; and bus stops (group III) with medium mix of land uses and without negative uses were significantly (at 0.05) lower than the mean fear of crime of people at bus stops (group II) with medium mix of land uses and with negative uses; and bus stops (group I) with low mix of land uses and with negative uses.
There was a significant difference in the night time mean fear of crime among the seven bus stop groups \(F(6, 409) = 17.966, p < .001\). The post-hoc analysis indicated that mean fear of crime of people at bus stops with good street lighting and surrounding premises lighting, and in which the bus shelter lighting is present were significantly (at 0.05 level) lower than all other bus stops. It was noticed that surrounding premises lighting was the second influential factor next to street lighting, whereas shelter lighting did not effectively influence the fear of crime more particularly when the street lighting was good.

There was a significant difference in the level of total fear of crime of people between the six bus stop groups classified based on the site layout buildings \(F(5, 410) = 19.149, p < .001\). Analysis indicate that bus stops located in places where all or most buildings are attached buildings without compound walls and detached buildings with compound walls offer more surveillance. Fear of crime of people at bus stops with less number of surrounding building openings and outdoor spaces visible from the bus stop was higher than that of bus stops with more number of surrounding building openings and outdoor spaces visible from the bus stop. The mean fear of crime of people at bus stops with more number of building elements such as niches, projections, large columns that block prospect and offer concealment was higher than that of bus stops where these elements either not present or less in number.

Multiple regression analysis was conducted to determine the best linear combination of independent variables (People's perception about contribution of land use, lighting, layout of buildings, visible openings and hiding elements of buildings) in predicting the fear of crime of people waiting at the bus stops. Land use yielded the highest beta weight (-.319), followed by hiding elements (-.174) lighting (-.168), and openings and outdoor spaces (-.149). The adjusted R2 was .378, which suggested that thirty eight percent of the variance in fear of crime was explained by the independent variables in this model.

**Conclusion**

Features of physical environment provide natural surveillance to public and enhance the perceptions of personal security of people. Gender seems to be strongest predictor of personal level fear of crime at bus stops. Among the prominent features of the built environment the land use mix seems more influential followed building features like visible openings and building setbacks. The influence of street lighting on fear of crime was more evident than the influence of bus shelter lighting and surrounding premises lighting. Thus peoples’ opinion about the contribution of these physical features of the built environment, on their perception of security, is significantly dependant on the specificity of the individual features.
From a victim of abuse to homelessness

Helena Menih

In 2006 the number of homeless people in Australia reached 104,676 which were five per cent higher than five years previously (ABS, 2008). In response to the increase in the homeless population, the Australian government published a White Paper proposing to halve the homeless population and offer supported accommodation to rough sleepers by the year 2020 (FaHCSIA, 2008). One of the main suggestions was to intervene early to prevent homelessness. In order to prevent people from becoming homeless, the reasons for homelessness need to be explored. Furthermore, in order to decrease the number of homeless people their needs and coping strategies have to be examined to recognize and establish the solutions that would achieve the goals of halving the homeless population. This project aims to examine women’s pathways into homelessness, the main reasons for homelessness and their experiences of homelessness. The project is grounded in the experiences of homeless women themselves.

Parker and Fopp (2004) point out that Australian research is predominantly quantitative and that qualitative analyses of homelessness are relatively undeveloped. Furthermore, the research that has been conducted in the United Kingdom, North America and Australia, has been carried out predominantly on men (Parker and Fopp, 2005), which demonstrates an obvious gap in the knowledge in the field of homelessness. Thus the need for a more in-depth understanding of why women become homeless and how they cope with homelessness is essential. As a result, this research project aims to give ‘voice’ to homeless women and to make them visible. This requires an exploratory research design, which is used in instances where limited knowledge exists on the research topic (Brewer, 2000). The qualitative approach adopted for this research enabled the researcher to explore and provide an understanding of interactions of experiences and meanings of the research participants. This was achieved with ethnography. The research methods employed include participant observation and life history interviewing.

In this presentation some preliminary findings from ethnographic research with homeless women in Brisbane (Australia) will be presented. Essentially, the findings confirm the importance of sensitive ethnographies to give voice to vulnerable urban ‘others’. Throughout the participant observant phase and life history interviews it was established that one of the common reasons why women become homeless is violence at home, which may be physical, sexual or verbal. Since this project uses qualitative methods, the percentage is not known. What is known, are the stories of violence some of women on the streets of Brisbane told.
Zorza (1991), in a study in Philadelphia found that domestic violence was the most common reason (with 42 per cent) for women’s homelessness. When these women tried to escape abuse they ended up on the streets or in the shelters. However, even when being sheltered there was no guarantee of escaping abuse, as most shelter only allow short stay, which meant that in a search of a roof over the head most of the women returned to their abusers (Zorza, 1991). Up to 31 per cent of women in New York returned to their home. The concern Zorza (1991) raised is of great importance, since Healy (2002) explains that 45 per cent of women in Australia named domestic violence, sexual, physical or emotional abuse as the main cause for their homelessness.

Throughout the interviews in this research project it was established that when women seek safety after leaving their ‘safe haven’ a lot of them find comfort on the streets. Why would the streets be safer is something only these women can explain? The interviews demonstrate that even after experiencing the streets in their true colour these women did not return back home. They stayed and kept going. Some of them are now settled in their ‘own’ home and some are still surviving on the streets looking for a way out.

Chamberlain and Johnson (2000) prepared an early intervention research paper for homelessness where they discussed five patterns of at risk population, referring to people who are in housing crisis. When at risk population is not being addressed properly this can lead to loss of accommodation which can result in homelessness and this can in some cases lead to chronic homelessness. Chronic homelessness can be very hard to exit for majority of population (Chamberlain & MacKenzie, 1992). The final pattern of at risk population focuses on women who are at risk due to domestic violence (Chamberlain & Johnson, 2000). Here the emphasis is on the search for alternative accommodation which is safe and secure. Women’s refuges/shelters are considered one of the essential services that enable women to access safe accommodation when escaping domestic violence (Chung, Kennedy, O’Brien & Wendt, 2000).

For an early intervention the emergency shelters are essential. Nevertheless, throughout the interviews it was established that if a woman does seek sanctuary within a shelter, she will not spend enough time there to escape ‘imminent’ homelessness. Further, due to the lack of available beds in emergency shelters she might be turned away. In the city of Brisbane there are approximately 4000 homeless women (all types of homelessness) and only three emergency shelters. In 2010 there were a total of 46 beds dedicated to women, 30 to young people and over 200 for men in the city of Brisbane (Actnow, 2010).

This presentation concludes that one of the most prominent reasons for women’s homelessness is violence they experience at home. Further, early intervention literature suggests that one of the essential steps towards preventing homelessness for women, who experience violence, is the importance of emergency shelters. The reality is different. There is a clear lack of emergency shelters that would accommodate women seeking sanctuary. This consequently means these women find safety on the streets.
Domestic violence as form of crime against women
(Legal framework and practice in Nepal)

Hema Pandey

Crimes against women are found to be present in different parts of the world in different forms. Rape, pornography, prostitution, trafficking, sexual harassment, female genital mutilations, accusation of witchcraft, domestic violence are various forms of violence against women (Sangraula, 2010). Domestic violence ranks top among these which very often is not reported in the formal justice mechanism but is mostly prevalent in the internal spheres of the society. In South Asia, (40-70)\% of women and girls report experiencing some form of physical, sexual, or emotional abuse, and half of all women face violence in the home (Asia Foundation, 2010).

Domestic violence are existing in various forms such as alcoholism related physical and mental torture, gender based beating women, incest, polygamy, marital rape, sexual abuse, burning, murder of wife or daughter - in - law, humiliating verbal abuse, dowry related torture, emotional insult and economic deprivation, family coercion to abide by certain form of conduct or behavior, discrimination in treatment: less health care, inadequate foods, excessive workload, restriction on social relations, education (Sangraula, 1998) and alike. Despite of the laws to get legal remedy, victims of the domestic violence are more victimized because "domestic violence is a private affair and hence not of the kind which would attract the attention of others and this, along with a number of other inhibiting factors on the part of the victim and her relations, leads to an abysmally low reporting to law- enforcement agencies" (Siddique, 2001). Nepal, a state party to CEDAW has been committed towards its obligation by framing Domestic Violence Offence and Punishment Act 2009 and Its Regulation, 2010 and amending other concerned laws too. However, due to weak remedial procedures (Informal Sector Service Centre [INSEC], 2012) and numbers of others factors, victims are less prone to Criminal Justice System. Thus, this paper tries to analyze the prevailing legislation in this regard along with the real existing scenario in Nepal.

Method

The Researcher has prepared this paper with Analytical as well as Case Law Study Method. For the purpose, information and data are collected from the concerned Legislations i.e. Domestic Violence (Offence and Punishment) Act, 2009, Textbook, Journal Articles and Reports from various institutions i.e., INSEC. Additionally, two landmark cases relating domestic violence decided by the Supreme Court of Nepal have been purposively referenced.
Result

An overview of the Legislation

Article 20(3) of the Interim Constitution of Nepal, 2007 provides that no physical, mental or other form of violence shall be inflicted on any woman, and such an act shall be punishable by law. Domestic Violence (Offence and Punishment) Act, 2009 is one of the major significant achievements in criminalizing domestic violence, punishing the offenders and protecting the victim of domestic violence.

Criminology Perspective

The Act defines domestic violence as an offence punishable by law in a very comprehensive way which includes any form of physical, mental, sexual and economic harm and also the acts causing reprimand or emotional harm caused by a person to a person with whom s/he has family relationship.

Penology Perspective

The Act has provided the punishment from NC3000/- up to 25,000/- fine or 6 months of imprisonment or both for the persons committing the act of domestic violence. Additional 10 % punishment is awarded to the persons holding the public post if commits an offence of domestic violence and who repeats the offence. Comment: The amount of punishment is very low. Even discretionary power can be exercised by judge to fix punishment. Additionally, punishment approach is not reformative because the person committing domestic violence even after the completion of the imprisonment may not realize his/her mistake and can develop the sense of revenge against the victim or complaining person. It would be dangerous to the victim and perpetrator both.

Victimology Perspective

The Act has defined victim as any person who is, or has been, in a domestic relationship with the defendant and who alleges to have been subjected to an act of domestic violence by the perpetrator. Complaint mechanism seems to be liberal since any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may immediately lodge a written or oral complaint in Police Office, National Women's Commission or Local body. Victim of the domestic violence can even directly enter into the court for justice. Additionally, the court can pass various orders against the perpetrator to provide immediate protection till final decision of the case, if it seems necessary from the preliminary investigation. Further, the court can order the perpetrator to compensate the victim on the basis of an act of domestic violence and degree, the pain suffered by the victim and the economic and social status of the parties. Comment: the definition is not wide enough as it does not incorporate the persons who are dependent on the victim. There is no any supervising mechanism to see whether the perpetrator has obeyed the court order or not. Likewise, it has not provided the measures in case if victim of an act of domestic violence need long term protection. Similarly, law
cannot define pain because pain suffered by the victim even within in the family relationship has zero tolerance and has actually no language to express it at all.

**Procedural Aspects**

Time limitation is 90 days to lodge the case and its state party case. The cases shall be heard in close camera proceeding if the victim so requests. However, does not restrict disclosing the identity of the victim through the means of public media prior to the court proceedings. Further, disputes can be settled through reconciliation if victim so desires. However, there is no any mechanism which could observe whether the reconciliation has been actually executed or not. The case filed under this Act has to be decided within 90 days from the date of the statement made by the respondent which is actually long.

**Court's Observation**

In the case of Sapana Pradhan Malla and Others, challenged and amended provision of National Code Number 9 and 9(a) of the Chapter on Marriage which allowed the husband to have second marriage, if the wife suffered from any incurable contagious sexual disease or was incurably mad. According to the Court, such grave conditions of mental and physical disease required to be confronted by the husband and not run away from his responsibility. Creation of the possibility of another marriage and validation of the marriage would create domestic violence which had to be stopped (National Judicial Academy, 2010). In the case of Jyoti Poudel and Others (writ no 064-WO- 0186 of 2064), Supreme Court of Nepal gave an order to establish Fast Track Court for hearing cases relating to violence against women, especially domestic violence.

**Practical Scenario**

Number of the victims, sex and age: in the year 2011, 648 cases of violence against women were reported among which 272 cases were particularly the event of domestic violence (INSEC, 2012). All victims are female and (18-30) age group are found highest. Causes of domestic violence: patriarchal norms and values, imbalanced social structures, poverty, illiteracy, male dominance and so on give rise to domestic violence. 13 women were killed by the family members of the husbands in dowry related crimes in various places and husbands were often culprit. Likewise, 44 women were killed on the allegation of disobeying family members, for objecting to the consumption of alcohol by male members of the family (INSEC, 2012).

**Conclusion**

This paper must be interpreted with its limitations. Domestic violence is studied from criminology, penology and victimology perspective. The crime of domestic violence in Nepal is prevailing in various forms. Despite of constitutional and legal guarantee of right of women to be free from violence and get legal remedy in case of the violation of the very right, women are rarely making complaint in formal justice mechanism. Due to very long formal process, long duration in decision making, lack of effective execution
mechanism and alike, women are less interested towards criminal justice system. Additionally, state has failed to establish the Fast Track Court to settle the disputes involving violence against women, especially domestic violence even after the court's order. Thus, researcher suggests making necessary amendments in the Act to provide real justice to the victim of domestic violence on time with establishment of Fast Track Court or Family Court.

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Crime against market women and reporting practices in Oyo, Oyo State, Nigeria

Johnson Ayodele

Introduction

There are several difficulties that impinge on the collection of reliable statistics on criminal activity and victimization in Nigeria (Alemika, 2004). Being a multi-faceted social challenge, crime has no easy fix. Nevertheless, crime reporting is one of the most effective public responses to crime issues. Here, the unwillingness of market women to report crimes or their tendency to underreport them is critical to overcoming the dearth of data problem. The history of crime and its reporting by women in contemporary Nigeria has focused essentially on the interactions that occur among the victim, criminal justice system and the offender. In the quest to discover a great deal about how certain crimes are and are not reported; the network of social intervention, gender composition of crime reporters, the twin spectacles of the apprehension and ‘escape’ or ‘release’ of offenders have stimulated this inquiry.

The effect of crime on market women’s businesses can be devastating for the wider community in the following regards: it often subjects women traders to repeat victimisation and disruptive turnover; crime affects their ability to meet their customers’ deadlines, attract new customers and ultimately cause them to face the risk of businesses closing down and putting local patronage at risk. Business crimes affect profitability; deter investment and scarce financial resources are drained partly through crime prevention measures. On the whole, crime is a drain on the economy, inhibiting progress and damaging competitiveness. It imposes direct and indirect costs on the business, and it is often the impact of crime, rather than the direct cost, which is most devastating (Robson and Teague, 2005).

Therefore, any assault on the business sector is therefore an assault on economic vitality, business stability and social wellbeing of all Nigerians. It is the realisation of this that makes an inquiry into crime reporting practices of market women an overwhelming desire. Granted that many market women may be dissatisfied with the outcomes of formal legal remedies because they ultimately may fail to provide a sense of justice, reporting their crime experiences to the police as a part of an integrated effort at crime prevention is yet about the best way that market women can avoid bearing enormously burdensome direct, personal costs of often unseen but devastating personal effects of crime. However, the undue exposure of market women to victimization and the attendant underreporting of their experiences of crime is a serious problem in Nigeria and has become an important issue for public policy. It is therefore, imperative to provide adequate and timely
information about the dynamics of the victimisation of women traders at the various markets in Oyo town. The only way to achieve this important objective is to stimulate women traders to form and display structured crime reporting culture in the study area.

Methods
The study location was Oyo town, mostly inhabited by the Yoruba people. The population for this study essentially comprises female traders aged 18 years and above, who are resident and do their trading in Oyo town. The study randomly selected 210 female traders at Akesan, Sabo and Mosadoba markets in Oyo town as respondents to copies of a questionnaire. These markets were selected based on their strategic population of traders, customers and volume of economic exchange that take place at the markets. The cultural characteristics of these markets make respondents selected from them quite representative of the population for the study. Also, five focus group discussions were conducted to capture the underlying thoughts of market women’s experience of crime, their crime reporting practices and possible ways of ensuring safer commercial interactions in Oyo markets. Focus group discussion respondents were selected through purposive sampling (opinion leaders such as market women leaders, police officers, customers).

Both qualitative (Focus Group Discussions) and quantitative (Questionnaire Instrument) methods were used for data gathering. Focus group discussants were selected across different socio-economic backgrounds within the study area. Each of the FGDs consisted of eight participants. To make the sample size representative of the entire population of market traders in the study area, three markets were randomly picked from the markets in Oyo town. From each of the three markets, seventy respondents were randomly selected to respond to copies of a questionnaire. In all, 200 copies of a questionnaire were correctly completed, and analysed for the study. From these responses, information about respondents’ socio-demographic characteristics, exposure to victimisation and crime reporting practices were captured. Some striking expressions were used as ethnographic summaries to strengthen and validate quantitative analysis where and when necessary in this paper.

Findings
From the survey, theft of money is more pronounced as 20 (60.6%) respondents confirmed that their victimisation involved theft of money, 7 (21.2%) held it involved loss of food items and 6 (18.2%) said it was moveable economic items at Oyo markets. The fact that many other informal conflict resolutions structures exist side by side with the police in Oyo town to which victims could channel their reports account for the spread revealed by this study. Twenty five (65.8%) reported their victimisation to Town Associations; 7 (18.4%) directed theirs to traditional rulers and 6 (15.8%) reported to Oodua People’s Congress (OPC). In spite of the necessity of crime reporting to crime control, rather than suggesting that police should be reformed, market women 19 (50%) recommended that the government should invest in mass security education and 19 (50%) recommended that voters should elect good leaders to ensure public safety.
Conclusion

Just as a bird cannot fly with one wing, the economic recovery of Nigeria cannot be actualised by Nigerian men doing business alone while excluding Nigerian women. For the economic agenda to thrive and meet post-modern expectations of development, it must be desirably engendered so that it does not, inadvertently, become endangered. It is in the light of the foregoing that it becomes obvious that the victimisation of market women and their unwillingness to report their experiences to the police will injure crime statistics and worsen public safety. The little succour provided by informal social control mechanisms may also be significantly made insignificant if appropriate steps are not taken to kindle women traders’ commitment to proactive crime reporting. A secure female population of traders will almost inevitably engender socially and economically self reliant families, low matrimonial frictions and stable society. Since security plays a prominent role in the economic relevance of market women; families should endeavour to build around these vulnerable economic actors a network of support that does not only protect them from being well unprotected against victimisation but encourage them to report crimes to the police. On its part too, government should overhaul agencies of public safety to make them people driven and command public confidence so that crime reporting will become a matter of course to all citizens, especially market women.

Recommendations

To reduce crime against market women and kindle the reporting activities of the few that might affect them in Oyo, the present study recommends first and foremost that market women should favour a paradigm shift from the mindset that crimes against businesses are natural costs of doing business and therefore facts of business life. Alternatively, they should overcome their cultural limitations and begin to disclose crimes they have been traditionally disinclined to report. To attain this, public policy should simplify crime reporting procedures to empower women to report crimes against their varied economic interests and imbibe the culture of business risks insurance so as to enjoy compensation in times of inevitable victimisation and invest more on crime prevention strategies for less cost of business crime.
Security aspects of the elderly woman population: The role of social forces

Jyothi Vishwanath

Introduction

Globalization and urbanization have potently drawn the younger generation, aspiring brighter futures, away from their native lands and aged parents, towards the large industrial centres, towns, cities and countries. These urban crystallized centres of economic activity, witnessing increasing inflow of migrants and massive unemployment, foster a class of persons with evil intentions of amassing wealth wrongfully by easy means; thereby constitute breeding grounds for crimes and criminals. The elderly persons especially the single women pose a soft target for these urban money craving criminals. In their declining age and health, leading isolated lives due to the unfortunate death of their spouse and migration of children, they are gripped by the increasing fear of untimely death caused at the behest of these criminals.

Indian Population – Composition and Dynamics

Population ageing is a significant emerging world demographic phenomenon. According to United Nations Population Division, India’s population aged 60 and above will reach from 8% in 2010 to 19% in 2050; that of 65 and above may increase from 5% to 14% and those aged 80 and above will triple from 1% to 3%. The proportion of widows aged 60 and above stands higher at 54% as compared to 16% of the widowers.

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\(^{68}\) Globalization denotes a process of integration of an economy with the rest of the world. It refers to integration of economies across the world particularly through trade, investment and free financial flows of capital, labour and technology. See Bhumali (2006), pp.1-2 for details; see Loots (2002).

\(^{69}\) United Nations (UN) statistics point towards explosive growth of aged populations across the globe. By 2050, around 1/3\(^{rd}\) i.e., 33% of the people living in the world’s most developed countries viz., North America, Western Europe and parts of Asia will be at least 60 years old, up from less than 12 percent in 1950.

\(^{70}\) India’s 60 and older population is expected to encompass 323 million people. -www.prb.org accessed 7 October 2012 at 1.40 p.m.

\(^{71}\) A steep increase is expected in the number of very old people i.e., above 80 years which is projected to grow by a factor of 8 to 10 times between 1950 and 2025. -www.krepublishers.com accessed 7 October 2012 at 3.25 p.m.

\(^{72}\) This increase accompanies with it a variety of social, economic, health & security challenges. The stark reality of the ageing scenario in India is that presently there are 77 million elderly persons & this number is presumed to touch a staggering 177 million in the next 25 years. This is mainly because life expectancy has increased from 40 years in 1951 to 64 years today. -Prakash, Indira Jai. (1999). Ageing in India, retrieved October 17, 2012 at 10.24 a.m from http://www.who.int/hpr2/ageing/ageinginindia.pdf.
Indian elderly population is currently the second largest in the world due to many factors.

**Conceptualisation of Elderly Woman**

Gender, an important variable, influences quality of life at all ages. Men outnumber women at all ages till about 70 years in India. Only in the very old age group, 80 and above (Dandekar, 1986) women population outnumbers that of men. Older lonely and isolated women are a growing presence in India facing triple jeopardy of age, gender and poverty. Extension of life in later years amounts to extended widowhood for women due to cultural practice of men marrying younger women and uncommon widow remarriages.

**Globalization, Urbanization and Crime**

By 2025, two-thirds of the humanity will domicile in cities (Narasaiah, 2007a). High crime rates deciphering in poorer neighbourhoods with higher population density, deteriorated living conditions and a huge unemploye d labour force is a horrifying impact of globalization and urbanization. Urban tensions manifest through increasing violence and brutal crimes (Narasaiah, 2007b). Indian urban centres present a pathetic picture of overcrowding, congestion, slums and deviances (Narasaiah, 2007c), growing gap between the rich and the working class, forcing a significant economically and socially deprived human segment turn violent and criminal in nature.

An industrial society, imbied with values of competition and achievement, inevitably involves degradation of the elderly (Brogden & Nijhar, 2000a). The elderly status declines with the loss of economic power and geographical mobility of younger generation (Brogden & Nijhar, 2000b), thereby leading to dissolution of extended families and isolated elderly life. Social isolation, dependency, physical ailments and mental feebleness makes them more vulnerable to crime (Brogden & Nijhar, 2000c).

**Elderly Persons especially Woman as Crime Victims**

Frequent murders of the home alone elderly and more particularly, the elderly woman proves their utter vulnerability to brutal crimes. The 2005-2006 National Family Health

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73 Ibid.
74 This population dynamics & demographic transition in the Indian population structure is the combined impact of increasing life expectancy, rapidly declining fertility, mortality & morbidity rates, an overall improvement of the quality of life, better knowledge of preventive & curative health care & largely available health services to large segments of the population.
75 Except among the older population, the ratio of male is higher as compared to that of females in India due to factors like female feticide, female infanticide, vast number of deadly crimes against woman, maternity mortality & dowry deaths.
76 Supra n.6.
77 Ibid.
78 Around 60% of the people in the cities in India live in burgeoning, impoverished squatter settlements. See Narasaiah (2007), p.1 details.
Survey\textsuperscript{79} in India found that around 5\% of the Indians aged 60 and above lived alone while around 14\% of the Indians aged 60 and above lived with only a spouse. Old-age security for women acquires prominence since women tend to live longer than men. Currently, Indian women aged 60 can expect to live two more years than their male counterparts.\textsuperscript{80} Due to their frailty,\textsuperscript{81} they become natural victims to the opportunistic offenders and perpetrators, (Brogden & Nijhar, 2000d) the latter being vile, evil and callous and mostly family members, caregivers, service providers and neighbours in whom the elderly have trust.\textsuperscript{82}

Female victims outnumber the male victims.\textsuperscript{83} It has to be borne in mind that elderly woman population is less exposed to street or public crime as compared to the younger generation (Brogden & Nijhar, 2000e). They face the risk of physical and sexual abuse, theft, robbery, hurt, kidnap, pickpocket, cheating, assault, molestations, rape and murders for property and money. Financial and property frauds and material exploitation too are common.

**Conclusion: Role of Social Forces**

For appropriately curbing the crimes against elderly woman with heavy hand and assuring them proper protection, the legislators, society, neighbours, police and judiciary all need to join hands and take initiatives in the right direction. A holistic approach, with particular emphasis on an active and empowered citizenry should be carried out vigorously to curb criminality and abuse of the elderly women and for making their sunset years truly a golden age.

**References**


\textsuperscript{79} The National Family Health Survey (NFHS) is a large-scale, multi-round survey conducted in a representative sample of households throughout India. For details refer http://hetv.org/india/nfhs/index.html accessed October 12, 2012 at 1.59 p.m.
\textsuperscript{80} www.hsph.harvard.edu accessed October 7, 2012 at 3.04 p.m.
\textsuperscript{81} The elderly people are viewed as senile, lonely, used-up bodies, rotting away and waiting to die. -Troll, I. and Smith, J. (1976) “Attachment through the Lifespan”. Human Development, p.2.
\textsuperscript{82} http://www.newkerala.com/topstory-fullnews-82549.html accessed October 7, 2012 at 11:09 a.m.
\textsuperscript{83} Gruesome crimes have been committed against senior citizens living in Delhi in the last few years. Overall, 500 murders of senior citizens were committed in Delhi in 2005, 511 in 2004 and 547 in 2002. So far this year, according to police records, the city and the national capital region (NCR) have already witnessed 18 murders of elderly couples. In addition, out of the 18 murders last year, 11 took place in south Delhi which is inhabited mostly by the upper middle class and rich. The motive was mainly robbery, as the police claim the city’s elderly are soft targets. -Sr.Ct gets hearing Retrieved October 7, 2012 at 3.04 p.m from www.silverinnings.com.
Law relating to crimes against women under Indian Penal Code with special reference to Assam

Kasturi Gakul

Women represent the very kernel of human society around which social transformation must take place. Social progress can be achieved through gender equality which forms the basis of a just society. However even in the 21st century no country around the world including India has been able to claim that it has achieved cent percent gender equality. Gender inequality becomes more apparent in an environment of gender based violence and crimes against women. Any crime against women is an affront to her inherent dignity and is an impediment to the achievement of equality, justice and peace.

The Universal Declaration of Human Rights 1948 under Article 1 proclaims that *all human beings are born free and equal in dignity and rights*. UDHR also asserts that everyone is entitled to all the rights and freedoms set forth in UDHR without distinction of any kind such as race, sex, colour etc. The words ‘all human beings’ and ‘everyone’ include both men and women. Yet women seem to have been relegated to category of non-humans in many cases where crimes are committed against them as if women do not deserve respect and dignity but must be recipient of unwarranted pain, shame and humiliation.

Crimes against women in India are increasing at an alarming rate inspite of Indian Penal Code (IPC) being in force. The percentage of total IPC crimes in India has increased from 8.8 in 2007 to 9.4 in 2011 as per National Crime Bureau Records (NCBR) 2011. The present paper will primarily analyze the situation of crimes against women under Indian Penal Code 1860 in Assam.

Objectives of the Paper
1. To identify different crimes against women as incorporated in Indian Penal Code 1860,
2. To analyze the data relating to crimes against women under IPC perpetrated against women in Assam from 2007 to June 2012,
3. To highlight the causes for increase of crime against women in Assam,
4. To put forward constructive suggestions to bring changes/ amendments in IPC to safeguard women against victimization, and
5. To give general suggestions for mitigating the crimes against women in Assam.

Methodology
The methodology applied in the present paper is Analytical and Descriptive method.
Sources of Data

Both primary and secondary sources have been used. For the purpose of this paper, data relating to crimes against women under Indian Penal Code (IPC) 1860 in Assam has been collected from sources such as office of DIG, CID Assam, Assam State Commission for Women, Guwahati Assam, Assam Human Rights Commission, Assam and some non-governmental organizations.

Crimes against Women (CAW) under Indian Penal Code (IPC) 1860

Laws relating to women are those enactments which are intended exclusively for upliftment and protection of dignity and status of women in society. Women in India may be victim of general crimes such as murder, cheating, robbery, etc, however only those crimes which are especially perpetrated against women thereby victimizing them are characterized as ‘Crimes against Women’. Crimes against women in India are broadly classified under two categories- Crimes under IPC and Crimes under the Special and Local Laws (SLL).

This paper is confined only to the following crimes against women under IPC – Rape (Sec.376 IPC), Kidnapping and Abduction (Sec.363-373), Cruelty by Husband (Sec.489-A), Molestation (Sec.354) including Sexual Harassment (Sec.509) and Dowry Death (Sec.304B).

Analysis of Data

Table 1 - Crimes Against Women (CAW) Under Indian Penal Code (IPC) in Assam from the year 2007 to 2011*

<table>
<thead>
<tr>
<th>Crimes under IPC</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>Total</th>
<th>Percentage Variation of 2011 over 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape</td>
<td>1437</td>
<td>1438</td>
<td>1631</td>
<td>1721</td>
<td>2011</td>
<td>8238</td>
<td>16.9</td>
</tr>
<tr>
<td>Molestation</td>
<td>789</td>
<td>1268</td>
<td>1389</td>
<td>1611</td>
<td>1446</td>
<td>6503</td>
<td>-10.2</td>
</tr>
<tr>
<td>Dowry Death</td>
<td>100</td>
<td>73</td>
<td>159</td>
<td>143</td>
<td>162</td>
<td>637</td>
<td>13.3</td>
</tr>
<tr>
<td>Kidnapping and Abduction</td>
<td>1471</td>
<td>1613</td>
<td>1906</td>
<td>2486</td>
<td>2998</td>
<td>10474</td>
<td>20.6</td>
</tr>
<tr>
<td>Cruelty by husband</td>
<td>3000</td>
<td>3410</td>
<td>4335</td>
<td>5189</td>
<td>5745</td>
<td>21679</td>
<td>10.7</td>
</tr>
<tr>
<td>Total</td>
<td>6797</td>
<td>7802</td>
<td>9420</td>
<td>11150</td>
<td>12362</td>
<td>47531</td>
<td>10.9</td>
</tr>
</tbody>
</table>

*Source- DIG, Office of CID, Guwahati, Assam

Table 1 depicts an increase in the number of CAW under IPC in Assam from 6797 in 2007 to 12362 in 2011. The total number of CAW reported was 47531. Rape: Increasing trend in number of rape cases has been observed from 1437 in 2007 to 2011 in 2011. A substantial increase of 16.9\% was recorded in 2011 over 2010. Molestation: Incidents of molestation in Assam have decreased by 10.2\% in 2011 over 2010. However from 2007
to 2011, cases have increased from 789 to 1446. *Kidnapping and Abduction*: A substantial increase of 20.6% in 2011 over 2010 has been observed in these cases. It has increased from 1471 in 2007 to 2998 in 2011. *Dowry Death*: The cases of dowry death have increased from 100 in 2007 to 162 in 2011. Substantial increase of 13.3% observed in 2011 over 2010. Dowry was hardly heard of being practiced in Assam. Yet the data in Table 1 clearly indicates that in Assam, dowry is prevalent and demand for dowry coupled with cruelty by husband has led to many dowry deaths—total of 637 cases from 2007 to 2011. Dowry death comprises a small number of the total number of CAW. However rate of increase over time in dowry death and cruelty by husband is alarmingly high. This is conformity with the study done by Sharma and Das (2005) for the time period 1997-2002 in Assam. *Cruelty by Husband*: Among all CAW under IPC (Table 1) highest number of cases has been reported under cruelty by husband which was 21679. These cases have increased from 3000 in 2007 to 5745 in 2011. Substantial increase of 10.7% in 2011 over 2010. This is in conformity with the findings of Mridula Devi (2009) for the time period 1998 to 2007 in Assam. Cruelty by husband is a commonly occurring atrocity on women (Medhi, 2005).

### Table 2 - Number of cases registered under IPC on Crimes Against Women in 2007*

<table>
<thead>
<tr>
<th>Crimes under IPC</th>
<th>Case Registered</th>
<th>Case Solved</th>
<th>Final Report</th>
<th>Police Investigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape</td>
<td>1437</td>
<td>496</td>
<td>126</td>
<td>815</td>
</tr>
<tr>
<td>Kidnapping</td>
<td>1471</td>
<td>301</td>
<td>275</td>
<td>895</td>
</tr>
<tr>
<td>Dowry Death</td>
<td>100</td>
<td>20</td>
<td>01</td>
<td>79</td>
</tr>
<tr>
<td>Molestation</td>
<td>789</td>
<td>496</td>
<td>198</td>
<td>95</td>
</tr>
<tr>
<td>Cruelty by Husband</td>
<td>3000</td>
<td>1088</td>
<td>310</td>
<td>1602</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>6797</strong></td>
<td><strong>2401</strong></td>
<td><strong>910</strong></td>
<td><strong>3486</strong></td>
</tr>
</tbody>
</table>

*Source* - Assam State Commission for Women (ASCW), Assam

### Table 2.1 - Number of cases registered under IPC on Crimes Against Women In 2008*

<table>
<thead>
<tr>
<th>Crimes under IPC</th>
<th>Case Registered</th>
<th>Case Solved</th>
<th>First Report</th>
<th>Police Investigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape</td>
<td>1437</td>
<td>806</td>
<td>151</td>
<td>480</td>
</tr>
<tr>
<td>Kidnapping</td>
<td>1613</td>
<td>523</td>
<td>419</td>
<td>671</td>
</tr>
<tr>
<td>Dowry Death</td>
<td>73</td>
<td>38</td>
<td>05</td>
<td>30</td>
</tr>
<tr>
<td>Molestation</td>
<td>1368</td>
<td>756</td>
<td>268</td>
<td>344</td>
</tr>
<tr>
<td>Cruelty by Husband</td>
<td>3410</td>
<td>1756</td>
<td>503</td>
<td>1151</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>7901</strong></td>
<td><strong>3879</strong></td>
<td><strong>1346</strong></td>
<td><strong>2676</strong></td>
</tr>
</tbody>
</table>

*Source* - ASCW, Assam
Table 2.2 - Number of cases registered under IPC on Crimes against Women In 2009*

<table>
<thead>
<tr>
<th>Crimes under IPC</th>
<th>Case Registered</th>
<th>Case Solved</th>
<th>First Report</th>
<th>Police Investigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape</td>
<td>1631</td>
<td>835</td>
<td>208</td>
<td>588</td>
</tr>
<tr>
<td>Kidnapping</td>
<td>1906</td>
<td>627</td>
<td>683</td>
<td>596</td>
</tr>
<tr>
<td>Dowry Death</td>
<td>159</td>
<td>56</td>
<td>14</td>
<td>89</td>
</tr>
<tr>
<td>Molestation</td>
<td>1389</td>
<td>713</td>
<td>391</td>
<td>285</td>
</tr>
<tr>
<td>Cruelty by Husband</td>
<td>4355</td>
<td>2197</td>
<td>721</td>
<td>1437</td>
</tr>
<tr>
<td>Total</td>
<td>9440</td>
<td>4428</td>
<td>2017</td>
<td>2995</td>
</tr>
</tbody>
</table>

*Source- ASCW, Assam

Table 2.3 - Number of cases registered under IPC on Crimes Against Women (Caw) from January to May 2010*

<table>
<thead>
<tr>
<th>Crimes under IPC</th>
<th>Case Registered</th>
<th>Case Solved</th>
<th>First Report</th>
<th>Police Investigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape</td>
<td>637</td>
<td>285</td>
<td>72</td>
<td>280</td>
</tr>
<tr>
<td>Kidnapping</td>
<td>1025</td>
<td>246</td>
<td>257</td>
<td>522</td>
</tr>
<tr>
<td>Dowry Death</td>
<td>53</td>
<td>25</td>
<td>06</td>
<td>22</td>
</tr>
<tr>
<td>Molestation</td>
<td>593</td>
<td>301</td>
<td>147</td>
<td>145</td>
</tr>
<tr>
<td>Cruelty by Husband</td>
<td>2014</td>
<td>808</td>
<td>330</td>
<td>876</td>
</tr>
<tr>
<td>Total</td>
<td>4322</td>
<td>1665</td>
<td>812</td>
<td>1846</td>
</tr>
</tbody>
</table>

*Source- ASCW, Assam

An analysis of Table 2, 2.1, 2.2, 2.3 reveals that from 2007 to May 2010 total number of cases registered relating to CAW under IPC with ASCW was 28460 out which 12373 cases were resolved. Highest number of cases registered was in the year 2009 i.e. 9440. ‘Cruelty by husband’ recorded the highest number which was 12779. The total number of cases under police investigation was 11003. Investigative Agency has failed to discharge their duty properly as 51.3% in 2007, 33.9% in 2008, 31% in 2009 cases of CAW were still pending at the end of these years, thus delaying the dispensation of justice to victims.

Table 3 - Number of complaints received regarding Crimes Against Women in Assam by ASCW from the year 2007 to 30th June 2012*

<table>
<thead>
<tr>
<th>Crimes under IPC</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012(30th June)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape</td>
<td>04</td>
<td>10</td>
<td>05</td>
<td>04</td>
<td>04</td>
<td>09</td>
<td>36</td>
</tr>
<tr>
<td>Dowry/Dowry Death</td>
<td>09</td>
<td>22</td>
<td>05</td>
<td>06</td>
<td>12</td>
<td>12</td>
<td>66</td>
</tr>
<tr>
<td>Cruelty by Husband</td>
<td>12</td>
<td>45</td>
<td>25</td>
<td>25</td>
<td>56</td>
<td>57</td>
<td>220</td>
</tr>
<tr>
<td>Kidnapping</td>
<td>03</td>
<td>08</td>
<td>04</td>
<td>-</td>
<td>03</td>
<td>04</td>
<td>22</td>
</tr>
<tr>
<td>Sexual harassment</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>02</td>
<td>02</td>
</tr>
<tr>
<td>Total</td>
<td>28</td>
<td>85</td>
<td>39</td>
<td>35</td>
<td>75</td>
<td>84</td>
<td>346</td>
</tr>
</tbody>
</table>

*Source- ASCW, Assam
Table 3 depicts that total number of complaints received by ASCW on CAW under IPC from 2007 to 30th June 2012 was 346. Highest complaints were received with regard to Cruelty by husband which was 220.

Table 4 - Number of cases relating to Crimes Against Women in Assam received and disposed of by Assam Human Rights Commission (AHRC) from 2008 to September 2012*

<table>
<thead>
<tr>
<th>Crimes under IPC</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012 September</th>
<th>Total</th>
<th>Cases Disposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape</td>
<td>01</td>
<td>03</td>
<td>-</td>
<td>-</td>
<td>01</td>
<td>05</td>
<td>02</td>
</tr>
<tr>
<td>Dowry Death</td>
<td>03</td>
<td>03</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>06</td>
<td>04</td>
</tr>
<tr>
<td>Kidnapping</td>
<td>01</td>
<td>-</td>
<td>01</td>
<td>02</td>
<td>01</td>
<td>05</td>
<td>02</td>
</tr>
<tr>
<td>Molestation, Sexual Harassment</td>
<td>03</td>
<td>01</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>04</td>
<td>04</td>
</tr>
<tr>
<td>Cruelty by Husband</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>01</td>
<td>01</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>8</td>
<td>7</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>21</td>
<td>12</td>
</tr>
</tbody>
</table>

*Source – AHRC, Assam

Table 4 shows that a total of 21 cases of CAW under IPC were received by AHRC from 2008 to September 2012 of which 12 cases were disposed.

Causes of Crimes against Women in Assam

Women in Assam enjoy a very good degree of autonomy as compared to their counterparts in India. However it is sad that as per the latest report of NCBR 2011 Assam has second highest rate of crime against women at 36.9 during 2011 as compared to 18.9 crime rate at the National level. The NCRB report states that there were 2,28,650 incidents of crimes against women in the country out of which Assam registered 11,503 incidents.

There are a number of causes which are instrumental in increasing crimes against women in Assam. Insurgency and internal conflicts in Assam have led to army operation such as ‘Operation Rhino’ which had resulted in rape, murder, molestation of large number of women (MASS, 1994).

Government indifference coupled with corruption has been the most aggravating cause of crimes against women in Assam (Dutta, 2012). Most often government orders probes against culprits of CAW only to appease the public outcry. CCTVs have not been adequately installed by government of Assam in public places.

Social stigmatization attached to CAW causes the victim ending up as a accused as the women who speaks out/complains against their offenders are subjected to public scrutiny who discuss about her dress, character, why she was out of home etc. Sometimes victims and their families not do co-operate in police enquiry for fear of social reputation (Medhi, 2005). Some local media also create negative publicity against victims. Intolerance towards
freedom of women to live and move about independently among the so-called ‘civilized men’ and phasing out of moral values are threatening the very fabric of Assamese society.

Male dominance in the non-tribal Assamese Society has rendered many women silent, restricting them from challenging social values and norms on the pretext that it is only women who bear the duty to protect her family reputation.

Lethargic and unresponsive-aggressive attitude of police is also a matter of concern in Assam. Their trivialization of CAW and habitual failure to provide timely response and prompt investigation often discourage women from reporting against crimes. Insufficient number of women police in Assam as they comprise only 5.3 per cent of entire police force for 3.11 crore population of Assam (Census of 2011).

Punishment under IPC relating to CAW is not proportionate to the victimization of the women. It does not act as an effective deterrent as evident from the increase of CAW in Assam from 2007 to 2012. Stringent penal provisions against offenders can deter others from perpetrating CAW.

**Incidents of CAW in Assam**

A minor girl was raped and murdered on 3rd July 2002 in the waiting room of a travel agency in Assam. Victim’s family went through a horrible ordeal in the quest for justice. Societal reaction did expedite the action against culprits. In 2007 an Adivasi girl was stripped naked and assaulted by a mob of men in broad daylight in the very streets of Guwahati. Late arrival of the police complicated the situation and she ran naked to save her life. In 2012 she is still fighting for justice. In July 2012 Assam along with the rest of India watched in horror as a mob of more than fifty men molested a woman of 24 years on a busy road leading to capital as she came out of a pub at night in Assam. Police arrived late and government action initiated only after pressure from public and nongovernmental organizations. A girl was gang-raped by army jawans in North Lakhimpur. The victim died bearing marks of inhuman torture on different parts of her body. Post mortem blocked by culprits. Assam government offered one lakh rupees which the victim’s family refused (Devi, 2009).

**Constructive suggestions to bring changes/amendments in Indian Penal Code**

Provisions under IPC on CAW do not address the psychological trauma, public humiliation that the victimized women endure.

Rape law under Sec 376 IPC must be amended to address forced penetration of objects and parts of the body into the vagina and anus, and forced oral or anal intercourse. Attempt to rape must also be made a criminal offence under IPC. In many judgments, the Courts have reversed the convictions under Sec 376 to Sec 354. This devalues the pain a woman suffers at the hands of lustful men. Moreover aggravated forms of rape such as marital rape should be recognized as a criminal offence punishable with minimum seven years of imprisonment. Indian law does not permit a girl below 18 years to marry, then how can IPC have a provision which exempts a man who has intercourse with his wife.
who is 15 years. Minimum sentence for rape must be increased from 7 to 10 years. Provision for compensation to victims must be made.

Punishment under Sec. 354 and Sec 509 must be enhanced so as to act as effective deterrence. Imprisonment of seven years must be imposed.

Law requires that in dowry death cases, cruelty by husband or relatives must be proved. This provision is not feasible as it is normally very difficult to prove cruelty after death of victim. Minimum imprisonment for bride burning and dowry death should be enhanced to life imprisonment or capital punishment in rarest of rare cases. Bail should not be granted in where wife is burnt.

**General Suggestions**

- Positive attitudinal changes must be brought about in the society towards victims of crime. People should realize that emotional support to victims can work as a panacea for their physiological and psychological trauma. Counselling should be provided to victims.

- Women must be empowered through education and awareness programmes about their rights. Provisions of making justice legal system more responsive and disseminating knowledge on issues of gender sensitization as per National Policy for Empowerment of Women 2001 must be properly implemented.

- Recommendation of Malimath Committee to establish specialized courts for dealing with CAW should be implemented. Speedy procedural laws in case of rape must be brought about for simple and speedy trials. Concerned government must work in collaboration and co-operation with women, public and civil society to bring into force constructive and practical reforms in laws, regulations and policies which are women friendly. Government should take prompt action in combating CAW and order immediate impartial probes and enquiries.

- It is very crucial that woman must break away from shackles of silence and be responsible for fighting against crimes that threaten their human right to live free from violence.

- Stringent action must be taken against police who refuse to record First Information Report in time.

- More women police personnel must be deployed for handling CAW in both in normal times and also during insurgency or internal conflict situations.

- Police patrolling at all times in public places must be intensified.

- ASCW and AHRC should be given more autonomy and enforcing power to implement their decisions rather than being only a recommendatory body. Literal interpretation of law by courts may lead to miscarriage of justice, so the Judiciary must resort to judicial activism and give liberal and creative interpretation of law.
Conclusion

Crimes against women can never be justified, but are only condemnable. Humanity takes a step back with every act of crime. Assam known for its calm public culture is drawing attention for crimes against women leaving much to be desired for the safety and security of women. It is hoped that State government initiative in November 2012 in setting up a women task force-Verangana to deal with CAW and installing CCTVs will just be the beginning of concerted strategies to be adopted for emancipating women against victimization. Law must be complimented by social vigilance to bring a wave of social activism to fight for establishing a peaceful egalitarian society in Assam.
Victims of Battered Relationship in India

Mani Prakash and K. P. Thressiamma

Introduction

From time immemorial, women being a physically weaker sex have been subjected to violence. The origin of abuse and exploitation has been seen in various religious cultures. For many years rape, domestic abuse, and other forms of violence against women were considered to be private matters, best kept silent in the family. Efforts to eliminate such abuses were deemed futile and when placed against “real issues,” concern with gender specific violence is often still minimized as trivial84.

Violence against women is increasingly being recognised as a major political, social, legal, economic and developmental problem. Whether domestic violence operates as direct physical violence, threat, or intimidation, it perpetuates and promotes hierarchical gender relations. It is manifested in several forms, but all serve to preserve male control over resources and power85.

The process to bring about a change in the situation has begun on the legal front. The law in India provides elaborately for the protection of women against violence and cruelty in domestic life. There are various provisions in the Constitution and other statutory laws which give account of special protection to the rights of the women. Yet, a lot need to change in the social arena. Unless, the society recognises and condemns strongly the present practices of oppression, it shall be difficult to win a battle against violence only on basis of law.

This paper seeks to analyse the violence in intimate relationships with special focus to victims of battered relationships in India, how this assault on women creates a gap in the administration of justice and what are the legal provisions to bridge this gap, whether the existing legislations are adequate and proper to deal with the problems of battered women and what remedies can be suggested to reduce battering of women in Indian Society.

85 BATTERED WOMEN: A SOCIO-LEGAL PERSPECTIVE OF THEIR EXPERIENCES IN NAIROBI
Nature of the Problem

Battering of women is transmitted from generation to generation. It is both widespread and dangerous. It is found in many cultures and religious communities in the world. For instance, in Mahabharata one sees that ‘Youdhishtira’ pawned his wife as chattel when he was gambling (indulging in dyootham) with Kauravas. A medieval Christian scholar propagated Rules of Marriage in the late 15th century, which specified:

When you see your wife commit an offense, don’t rush at her with insults and violent blows...Scold her sharply, bully, and terrify her. And if this doesn’t work...take up a stick and beat her soundly, for it is better to punish the body and correct the soul than to damage the soul and spare the body...Then readily beat her, not in rage but out of charity and concern for her soul, so that the beating will redound to your merit and her good.

Koran says “Men have authority over women because Allah had made the one superior to the other, and because they spend their wealth to maintain them.” It is clear from these instances that the battered women syndrome is not a new one. And it is not limited to any social and cultural groups in the world.

Usually, battering of women remains hidden and the available information underestimate the extent of abuse. There are many reasons why all forms of violence against women including battering go underreported. First is the need to protect the family privacy and dignity. Because people generally believe that incidents of battering within intimate relationships undermine a family’s image of public respectability. Second is the fear of subsequent family aggression in case the incident of battering is reported. Finally, the legal system’s response towards victims of battered relationship has been generally ineffective.

Definition of Battered Relationship

Many terms have been used to qualify the act of violence against women including woman abuse, domestic violence, battering, assault, spouse abuse etc. Domestic violence against women is most often battering, which has been defined by Campbell and Humphreys as repeated physical and sexual assault by an intimate partner within a context of coercive control. Article 2 of the Declaration on the Elimination of Violence against Women provides that ‘...Violence against women shall be understood to encompass, but not limited to, inter alia,

(a) Physical, sexual and psychological violence occurring in the family including battering, sexual abuse of the female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices, harmful to women, non-spousal violence and violence related to exploitation.

88 Supra P-25
Victims of Battered relationships in India

In India, the Protection of Women from Domestic Violence Act 2005 recognises battering of women even though the word ‘battered women’ is not used in the Act. Under this Act, Domestic violence means and includes, inter alia; “causing hurt, injury or danger to life, limb, health, safety or well being whether mental or physical.

Further the term cruelty defined in the Code of Criminal Procedure includes “any conduct, which is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb, or health of the woman.90 This definition includes psychological or physical acts which may cause bodily injury or mental agony.

Who is a Battered woman?

In State v Kelly91, Justice Wilentz noted this definition from a mental health expert, circa 1984 “Battered woman is one who is repeatedly subjected to any forceful physical or psychological behaviour by a man in order to coerce her to do something he wants her to do without concern for her rights. Battered women include wives or women in any form of intimate relationships with men. Furthermore, in order to be classified as a battered woman, the couple must go through the battering cycle at least twice. Any woman may find herself in an abusive relationship with a man once. If it occurs a second time, and she remains in the situation, she is defined as a battered woman."

Indian Legal System’s response to Battering – Promises and Pitfalls

In India women are subjected to violence and abusive treatment from time immemorial. All the same there are many legislative measures to protect and safeguard the inherent dignity and worth of women. The following Constitutional and Statutory measures are particularly directed towards curbing the violence arising out of battered relationships.

- Constitution of India guarantees dignity of the individuals irrespective of sex, religion, race, caste or place of birth. It makes special provisions92 for the upliftment of the status of women.
- The Protection of Women from Domestic Violence Act 2005 is the major enactment that deals with violence between spouses. It covers all women who are or who have been in abusive relationship. The Act empowers the Magistrate to pass ‘protection orders’ in favour of the victim of abuse to prevent the abuser from subjecting the victim to further violence.
- The main objective of Section 498-A93 is to protect a woman who is being harassed by her husband or relative of the husband.
- Section 354 of the Indian Penal Code makes an assault or use of criminal force to any woman with intent to outrage her modesty, a crime.

90 Criminal Law (Second Amendment Act 1983)
91 97 N.J. 178 (1984)
92 Constitution of India 1950. Art 15(3)
93 Criminal Law (Second Amendment) Act of 1983
• Section 509 of the Indian Penal Code provides for the acts that are intended to outrage the modesty of a woman. For instance uttering any word, making any sound or gesture, exhibiting any objects etc.

• Adultery is a most damaging offence that occurs in an intimate relationship. It has irreparable impact on the psychological health and cause mental agony to women. Section 494 of the Code make it a crime and provides for punishment.

• Section 113 A and 113 B of the Indian Evidence Act94 and Section 304 B (1) make a presumption of dowry death where the death of a woman is caused by any burns or bodily injury or under abnormal circumstances within seven years of marriage.

An analysis of the above legal provisions reveals that there is no dearth of legislations in India to deal with the instances of battered relationships effectively. Legislations exist but seldom implemented or sometime provisions are strict but not adequate. For instance, the legislative will to eliminate this age old violence is often half-hearted. For even though the issue is deep rooted and widespread, there is no specific legislation to deal with it. In India there is no concept of spousal /marital rape. It is important for the law to acknowledge that the ‘marital rape’ is a rape notwithstanding the relationship between the parties.95 Further Section 509 prescribes only a nominal punishment for insulting the modesty of a woman. Even though both Sections 354 and 509 are aimed at protecting the woman, they may not be adequate enough to serve the purpose intended by these provisions. However, the legal system is not a complete solution to battering unless the problem is equally condoned by the public at large.

Towards the legal road to freedom –Suggestions

✔ There is necessity for relook to the provisions in the law relating to the Protection of Women from Domestic Violence, so as to define crime arising out of battered relationships clearly.

✔ Code of Criminal law needs to be amended to the extent of having a specific section providing for the punishment for crime arising out of battered relationship.

✔ The concept of marital rape needs to be given legal sanctity.

✔ The time has ripened to depart from the traditional response to abuse such as reconciliation of the partners to mandatory arrest and punishment of the batterers by the police.

✔ Media must play an active role in promoting civilised attitude in the society in the area of violence in intimate relationships.

✔ Proper and pro-active response from the law enforcement agencies can deter violence of battered relationship.

✔ Organising women in group to raise a collective voice against the systemic oppression and torture committed against them.

94 Criminal Law (Amendment) Act of 1986
95 Supra, see p. 2 at 163
Conclusion

The struggle for power and control is at the heart of battering process. It is as old as civilization. Unfortunately status of women in India is no better as any other in the world. On one hand we have many legislations to protect women from all forms of violence on the other hand the laws are neither adequate nor strictly implemented. It is true that the woman suffer injustices first by the man who promised to love and care for her and second by our system of justice. In life there is no honor in silent suffering. There is no affection and comfort to be found in love that is abused. The need of the hour calls for strict implementation of the existing laws and collective commitment of the public at large to liberate Indian women from crimes arising out of Battered relationships.
Legal Control of Social Monster of Dowry in India: An Analysis

Manjit Singh Nijjar

Introduction

Dowry is one of the most despicable, detestable and condemnable vice that has been afflicting Indian society. It has spread its tentacles everywhere, has engulfed every section or echelon of our society and has eaten away the moral values on which it thrived. The human greed has reached such irresistible limits that married women are being killed for not bringing sufficient dowry. The unabated incidents of exploitation, harassment, torture, suicide and killing of brides for want of dowry are sending shock waves to civilized society-a repository of human rights and gender justice.

Historical Background and Causes of Dowry

The social and spiritual doctrines have a tremendous impact on the system of dowry which was generally unknown in early Hindu Society but in rich families some gifts were given to the bridegroom at the time of marriage. It is only in medieval times that we find the dowry system assuming alarming proportions¹ and even remained practiced during Mughal period². Even the British rule could not contain this practice inspite of its disapproval as a social policy. In due course of time, the practice of dowry, which initially was more or less voluntary, assumed the attributes of coercion, compulsion and force and more over it also engulfed the traditionally non-dowry practicing communities such as the Muslims, the Christians, the Parsis, and the Jews.

The problem of dowry is multi-factor phenomenon and some of the main causes of it are Marriage of daughter as moral and social duty of parents, Social security, Arranged marriages, Marriage within caste and religion, Lack of proper inheritance to girls, Moth and candle relationship, Materialistic attitude and consumerism, Inferior status of women, Status symbol, Educational inequality, Economic inequality and unemployment, Role of black money, Migration toward cities, Rigid divorce laws, Misuse of loan, Imitation and rotation of money, Lack of proper enforcement of laws etc.

Laws Prohibiting Dowry

Dowry attracted prohibitory legal attention when King Deva Raya II of Vijaynagar³ in 15th century promulgated a fiat prohibiting it in South India. It was followed by Sind Deti Leti Act, 1939⁴, Bihar Dowry Restraint Act, 1950⁵, Andhra Pradesh Dowry Prohibition Act, 1958⁶ and at national level Dowry Prohibition Act, 1961⁷ was passed for banishing this vice through pain of penal law. Besides this new substantive and procedural provisions were incorporated in the general criminal law and sections 498-A and 304-B were added
to the IPC 1860 whether cruelty to married women and dowry death were made cognizable offences. Similarly, section 113-A and 113-B were inserted in the Indian Evidence Act 1872 to enlarge the scope of section 306 of the IPC and to raise the presumption of culpability of husband and his relatives in case of dowry related offences. On the recommendation of Joint Parliamentary Committee and the Law Commission of India, The DPA was amended by the DP (Amendment) Act 1984, which made the provisions of the Act more stringent and effective. The DPA defines the term dowry, makes penal provisions for giving or taking dowry, penalty for demanding dowry, ban on advertisement and declaring agreements for giving or taking dowry to be void. If dowry is given it is to be for the benefit of wife or her heirs. Section-7 makes provisions for cognizance of dowry offences and under Section-8 such offences are cognizable, non-bailable and non-compoundable. Section-8A deals with burden of proof in certain cases and 8-B deals with appointment of Dowry prohibition officers. For the proper enforcement of the Act rules under Section 9 and 10 of the Act can be framed by Central or State governments.

**Dowry Related Offences**

Till 1983, the Indian Penal Code, 1860 did not contain any specific provision to deal with violence against women within the matrimonial home and particularly dowry related offences. The guilty husband and in-laws could be prosecuted only under the general provisions of the Indian Penal Code relating to murder, attempt to commit murder, abetment to suicide, causing hurt, assault or use of criminal force, outraging the modesty of a woman, wrongful confinement and causing disappearance of evidence etc. The Criminal Law (Amendment) Act, 1983 created an entirely new offences hitherto unknown to criminal law in India. Chapter XX-A entitled, “Of Cruelty By Husband Or Relatives of Husband” which contains only one Section 498-A, was inserted in IPC to deal with persistent and grave instances of dowry demands etc and such offence was made punishable with imprisonment which may extend up to 3 years. Despite the DPA 1961 and Section 498-A these laws could not effectively handle the dowry offences and the constant increase in the dowry death with shocking revelations attracted the attention of the concerned persons. On the recommendation of the Law Commission of India the Parliament in 1986 introduced a new law by the DP (Amendment) Act 1986 relating to the offence of Dowry Death by inserting a new section 304-B in the IPC. Such dowry death was made punishable with imprisonment for a term which shall not be less than 7 years but which may extend to imprisonment for life.

**Return of Dowry and Criminal Breach of Trust**

There are several causes and types of dowry, but in most of the cases, whatever be its form, it is given for the use and benefit of woman. As the only medium of dowry is wife and it comes with the wife, so it should remain with the wife and if required, should go with the wife. In different parts of the country there are customs regarding return of dowry in case of divorce or estrangement. Such provisions are also under Section 27 of
the Hindu Marriage Act 1955, Section 42 of the Parsi Marriage and Divorce Act 1936, Section 8 (1) of the Family Courts Act 1984. Section 6 of the DPA also lays down that dowry must be held in trust for the wife and must be transferred to her within the stipulated time. Non-return of dowry has been declared as a criminal breach of trust under Ss 405 and 406 of the IPC.

Evidence in Dowry Related Offences

In dowry offences the prosecution hardly gets direct evidence and many a times the case is based on dying declaration, circumstantial evidence, or evidence of neighbors. The Indian Evidence Act 1872, which was not of any appreciable help to the prosecution till 1983, was amended along with DPA to create presumptions regarding cruelty, harassment and dowry death. Section 8-A was inserted in the DPA and Sections 113-A and 113-B were added in the Indian Evidence Act to achieve the desired results.

Role of Enforcement Agencies

Law without enforcement is no law at all. In the context of the dowry related offences, the police, prosecutors, dowry prohibition officers and non-governmental voluntary organizations have been assigned specific roles for enforcement of the law and assist the court in bringing the guilty to book. Role of police is very important to prevent dowry crime, bring the offenders to justice, filing of FIR, investigating the crime, recording dying declarations, examination of witnesses, preparation of charge sheet, inquiry into the un-natural death etc. Prosecutors and DPOs play very important role at different stages of prosecutions. Role of lower judiciary is particularly to take cognizance of the offence, granting bail and sending the offender on remand. Similarly higher judiciary plays an important role in interpreting the provisions of dowry prohibition law according to the changed social scenario to provide justice to the helpless dowry victims. The sentence in dowry related offences can be death, life imprisonment, imprisonment or fine.

Dowry Offences and Indian Judiciary

Indian higher judiciary has discussed different facets of dowry issue in the following important judgments:

- Shobha Rani v Madhukar Reddy AIR 1988 SC 121
- State of West Bengal v Orilal Jaiswal AIR 1994 SC 1418
- Lichamadevi v State of Rajasthan AIR 1988 SC 1785
- Pratibha Rani v Suraj Kumar AIR 1988 SC 628
- State v Laxman Kumar AIR 1986 SC 250
- State of Uttar Pradesh v Ashok Kumar AIR 1992 SC 840
- Shanti v State of Haryana AIR 1991 SC 1226
- Appasaheb and Another v State of Maharashtra 2005
- Hiralal v State AIR 2003 SC 2865
- Baldev Singh v State of Punjab AIR 2009 SC 913
Legal control of social monster of Dowry in India

- Kanti Lal v State of Rajasthan AIR 2009 SC 2703
- Dasrath v State of Madhya Pradesh (2010)12 SCC 198
- Uday Chakraborty v State of West Bengal AIR 2010 SC 3506
- Vijay Kumar v State (2010)2 SCC 353
- K M Reddy v State of Andhra Pradesh (2011)2 SCC 790
- Bachni Devi v State of Haryana (2011)4 SCC 427
- Ashok Kumar v State of Haryana AIR 2010 SC 2839
- Bansilal v State of Haryana AIR 2011 SC 691
- Preeti Gupta v State of Jharkhand AIR 2010 SC 3363
- Lalita Kumari v State of UP AIR 2012 SC 1515
- Sushil Kumar v UOI (2005) 6 SCC 281

Dowry Related Crimes during 2007-2011 and Percentage Variation in 2011 over 2010

<table>
<thead>
<tr>
<th>Crime Head</th>
<th>Year*</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>Variation in 2011 over 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dowry Death</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2.7 %</td>
</tr>
<tr>
<td>S-498-A</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>5.4 %</td>
</tr>
<tr>
<td>DPA</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>27.7 %</td>
</tr>
</tbody>
</table>

The officially reported incidents of dowry death have increased from 8093 in 2007 to 8618 in 2011 and the cases of cruelty to married women from 75,930 in 2007 to 99,135 in 2011 and similarly the cases under DPA have risen from 5623 in 2007 to 6619 in 2011 showing a constant alarming increase in all dowry related offences.

Suggestions

Dowry is very serious problem for our society and for its proper handling a multi-pronged strategy is required and some of the submissions in this regard are as under:

(A) Legal Action

(1) Amendments in the Dowry Prohibition Act 1961

- Proper definition of giver, taker and abettor of dowry offences
- Compulsory registration of marriage with complete list of gifts
- Appointment of Dowry Prohibition Officers
- Statutory ceiling on marriage expenses
- Dowry complaints by friends, NGO’s etc.
(2) Amendments in the Penal Code and Procedural Laws
  • Enlargement of scope of s 498-A IPC and s198-A of Cr PC etc. by including friends, NGO’s etc. in these sections.
  • Efforts to check misuse of dowry prohibition law by liberally invoking provisions of s 211 of IPC and s 250 of CrPC.
  • Clear provisions regarding proper recording of dying declaration
  • Post mortem in all cases of unnatural deaths of married women
  • Investigation of dowry offences by senior police officials
  • Compensatory provisions in s 304-B
  • Compounding of dowry offences in exceptional cases

(3) Amendments in other laws
  • Demand of dowry as a ground of divorce u/s 14 of HMA1955 etc.
  • No voting rights to persons convicted for dowry offences
  • Application of Coroner’s Act 1871
  • Legal aid to dowry victims
  • Special courts to decide dowry cases
  • Restraint on second marriage
  • No remission and B Class facilities to convicts in dowry offences
  • Provisions in State and other Civil Service Rules concerning prohibition of dowry
  • Role of banks and other financial institutions

(B) Social Action
  • Girl’s education and removal of socio economic inequalities
  • 2 ) Role of relatives and neighbors
  • 3 ) Role of women’s and other commissions and organizations
  • 4 ) Social boycott of dowry offenders
  • Publicity and propaganda
  • 6 ) Role of political parties
  • 7 ) Role of Panchayats and Municipalities
  • 8 ) Role of religion
  • 9 ) Dowry- less mass marriages etc.

The discussion is ended with the hope that let ancient virtues of Indian Culture reflecting humanism and human rights pervade entire fabric of the Indian Society and rid it of its materialistic allurements which weigh humanity in monetary terms. Strong resurgence of public opinion supported by law should banish devil of dowry from the soil of saints who provided rich cultural heritage which remains an essence of modern civilized society committed to respect human rights of all sections of the society especially of the weaker sex whose protection is the primary responsibility of every member of society.
Female criminality in India: Causes and preventive measures

Mili Kishore Kumar and K. Jaishankar

Introduction

The history of mankind reveals that the woman has been the foundation stone of a family in particular and society in general. Especially in India, a woman is seen as preserver of social norms, traditions, customs, morality and family cohesiveness. In present world a woman has taken up added responsibility of making a mark of her own to have an identity along with nurturing her family. However, it is sad to see that women’s achievement is also getting extended towards criminality in the social, cultural, economic and political milieu of India. Female Criminality in India is at rise along with the increase in crime against woman. The issue has reached to an alarming level which has compelled all the socially responsible scholars to focus on root cause of female turning to criminal activities in larger numbers. Female criminality has been theoretically stated as complicated; less understood and subject to easy control. The social environment contributes a lot to the making of women criminals. This paper deals with type of causes of female criminality emerging due to socio-economic changes and provides recommendations to prevent women from becoming offenders.

The gravity of the challenge increases manifold when we go through the available data on crime from the National Crime Records Bureau (NCRB). While women criminals are still a minority- they comprise only 6.2% (NCRB Crime report 2011) of the criminals convicted for crimes under IPC (Indian Penal Code). The Crime in India Reports reveal that the number of females arrested for criminals activities in 2001 were 1,44,608 and this shot up to1,93,555 in 2011. Also, interestingly, the nature of crimes committed by them too, is gradually witnessing a sea change- from softer crimes like drug trafficking and prostitution to heinous crimes as murder. 3439 women were arrested for murder in 2005; 3812 in 2007; 4007 in 2009 and 4443 in 2011 that is an increase from 5.4% in 2005 to 6.3% in 2011 (NCRB figures).

Review of Literature

Female criminality is a part of Criminology that has generally been neglected due to the low crime rate of women. It is observed that all of the traditional Criminal Justice theories are theories that were created to explain male criminality. Women make up a small percentage of offenders. Rising female crime rates make up much less than 10 percent of total crime rate. Thus, both social and monetary resources are spent on the male crime phenomenon which has a larger impact.
Theories of Female Criminality

Most early theories of female criminality focus on individual characteristics (physiological and psychological) not economic, social or political forces. In the nineteenth century, Lombroso and Ferrero (1895) wrote a book called, "The Female Offender". Their theories were based on atavism; a belief that all individuals displaying anti-social behavior were biological throwbacks. The born female criminal was considered to have the criminal qualities of men and the worst qualities of women. Frances Kellor (1873-1952) found very few of Lombroso's findings could be replicated. Instead, she found the social environment that the criminal came from was an important crime predictor. Clara "Jean" Weidensall (1900's) found reformatory inmates scored lower on most tests; they had lower IQs and were more frustrated, unstable, suspicious and unthinking. Weidensall and Kellor were women but they were too influenced by the stereotypes of the time and identified women as the breeder of criminals and elevated criminal women to the status of "social menace". William Isaac Thomas (1863-1947) extends the biological argument to include psychology, but it was still based on underlying biological assumptions. He believed that with better socialization into "natural" gender roles we could eliminate female criminality. Criminologists like Kingsley Davis (1908-1997) believed that prostitution was a structural necessity; that it served a needed function in society. Predominant theories such as Thomas (1907) and later, Pollack (1961), believed that criminality was socially induced rather than biologically inherited. Pollack (1961) believed, it is the learned behaviour from a very young age that leads girls into a masked character of female criminality, that is, how it was and still is concealed through under-reporting and low detection rates of female offenders. He further states, in our male-dominated culture, women have always been considered strange, secretive and sometimes dangerous.

Sheldon (1896-1980) and Eleanor (1898-1972) Glueck, in their work Five Hundred Delinquent Women (1934) identified both social and hereditary (biological) factors of female offending. They believed both mental instabilities and marginal economic circumstances contributed to crime. Suggested treatment options included isolation. The contemporary theorists reject earlier theories based on psychological and physiological viewpoints. Criminal behavior, as Sutherland and Cressy insisted, is learned through interaction with other persons. The learning includes both techniques for committing the crime and a more subjective element- the specific direction of motives, derives, rationalisations and attitudes. Role theorists like Heidensohn and Hoffman offer explanation of female criminality in terms of social differentiation of gender roles. Hoffman emphasised that different socialisation given to girls expect them to be non-violent and do not allow them to learn how to fight and use weapons. It prevents the women to acquire necessary technical ability or strength for crime. Meda Chesney-Lind and Lisa Pasko (1997) in their book entitled, The Female Offender: Girls, Women and Crime, provide a revealing look at how public discomfort with the idea of women as criminals significantly impacts the treatment received by this offender population. Bhojule (2009) in her work, Female Crime in India and Theoretical Perspectives of Crime,
examines nature of criminals and trends of female crime and attempts to provide some theoretical perspectives of female criminality.

**The Present study**

The purpose of this study is to recognize causes of Female criminality in India and discuss the preventive measures to bring down the rise in crimes done by women. Studying the available data, it is observed that along with the increase in total crime rate, crime committed by women is increasing. The total percentage of female criminals among the total criminals arrested for committing various crimes in 2001 has risen from 5.4% to 6.2% in 2011. Looking at the figures one would think that it is hardly 0.8% increase in a decade. However, going into details, it is observed that the nature and severity of crimes in which women are involved has undergone drastic change. Earlier there were lesser records of women involving in heinous crimes, however as time passed, women arrested for much harder and sophisticated crimes is at rise.

**Causes of Female Criminality**

Causes based on biological viewpoint postulated by early criminologists were baseless and does not apply to women in India.

**Psychological Viewpoint**

Women who are not passive and content with their traditional roles as mothers and wives are maladjusted. Maladjusted women refuse or fail to internalize the values associated with the role in the society. Women convicts display emotional instability, insecurity, rejection or frustration. They would have encountered harsh living conditions, disappointments in love and a large number of unfortunate experiences which generally made it difficult for them to face realities of life. Stress is higher for women on average than for men, primarily due to blocked opportunities, and the conflicting message of motherhood versus work. Women with lower social status experience higher stress, on average, than women with higher social status. Women are afraid to express anger because it could alienate those around them. So they suppress anger and most women cope by changing anger to guilt, failure, and sadness. Women “bottle up” their feelings until it finally explodes in lethal violence. Women experiencing peaks of stress are more likely than men to explode with episodes of extreme uncontrolled violence. Situations that cause continuous stress and isolation combine with poor coping skills and the over controlled personality to result in violence.

**Sociological Viewpoint**

A plethora of writings on sociological viewpoint emerged during the last few decades. This viewpoint stress upon how social factors lead to a woman turning a criminal. Women in India, in spite of so much development and awareness face inequality in every phase of life. Equality for women is not practiced as it is stated in Constitution of India. Due to facing inequality, women miss most of the opportunities in life which in turn affect her
financial independence and thus her economic status is lowered. Women in our society are always expected to understand and adjust according to the world changing around her. This unequal position of women in society due to social oppression and economic dependency on men and the state needs to be addressed. In most ways, crimes women commit are considered to be final outward manifestations of an inner medical imbalance or social instability.

Feminist/Liberation Theories

When women received social equality, they would also expand their liberation into illegal activities. With greater access, greater opportunity for crime would follow; especially financial and white collar crimes like fraud and embezzlement. Women have so many choices of which they didn't before. The involvement of women in terrorist activities, smuggling, violence, communal riots etc. witnessed the adoption of untraditional trends of crime by them, defying all available theories and trends of crime, because most of these crimes are problems of structural immorality and ethnic affinity. These explanations do not explain crime situation in India in spite of the fact that in our country there is a Women's Liberation Movement. This movement is confined to the urban areas whereas a large number of female criminals in our society come from the rural areas where women never talk of equal rights with men and there is no breakdown of sexual inequality.

It therefore, becomes the need of the day to study the problem from fresh angle in order to understand the phenomenon in its totality- recent trends, etiology, personality traits and its impact on society. Family tensions or 'under-the-roof culture' (Gibbons, 1976), Self-concept deficiencies and perceptions of lack of opportunity (Datesman et al., 1975), and Excessive weight or other physical problems (Cowie & et al., 1982) are some of the causes.

Apart from the above mentioned theories, India has a deep-rooted social stigma of considering a girl child as burden. This stigma compels women to kill their girl baby in the womb/ after birth or abandoning/selling off. It compels women to commit crime for dowry or family honor. Compels women to drag their girl child into the world of flesh trade or marry off at early age. In turn the victims living in denial and cruel milieu set by her own, ends up becoming a hardcore criminal. This situation involves a mix of all above mentioned theories.

Data

In order to understand the rise in Female criminality, it is necessary to see beyond the percentage of crime committed by female as compared to total crime in a year. When we observe the percentage, it appears to be very small or insignificant. However, when referred to the actual figures, one could understand the difference. Below given is the detailed table of Persons Arrested Under IPC Crimes During 2011, (Crime Head-Wise and Gender-Wise):

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92
<table>
<thead>
<tr>
<th>Sl.No.</th>
<th>Crime Head</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
<th>Percentage To Total</th>
<th>Male</th>
<th>Female</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>MURDER</td>
<td>66150</td>
<td>4443</td>
<td>70593</td>
<td>93.7%</td>
<td>6.3%</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>ATTEMPT TO COMMIT MURDER</td>
<td>72895</td>
<td>3179</td>
<td>76074</td>
<td>95.8%</td>
<td>4.2%</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>C.H. NOT AMOUNTING MURDER</td>
<td>6928</td>
<td>160</td>
<td>7088</td>
<td>97.7%</td>
<td>2.3%</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>RAPE</td>
<td>28112</td>
<td>766</td>
<td>28878</td>
<td>97.3%</td>
<td>2.7%</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>KIDNAPPING &amp; ABDUCTION</td>
<td>54956</td>
<td>2527</td>
<td>57483</td>
<td>95.6%</td>
<td>4.4%</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>DACOITY</td>
<td>16758</td>
<td>250</td>
<td>17008</td>
<td>98.5%</td>
<td>1.5%</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>PREPARATION &amp; ASSEMBLY FOR DACOITY</td>
<td>11360</td>
<td>19</td>
<td>11379</td>
<td>99.8%</td>
<td>0.2%</td>
<td></td>
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<tr>
<td>8</td>
<td>ROBBERY</td>
<td>35252</td>
<td>294</td>
<td>35546</td>
<td>99.2%</td>
<td>0.8%</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>BURGLARY</td>
<td>66819</td>
<td>1549</td>
<td>68368</td>
<td>97.7%</td>
<td>2.3%</td>
<td></td>
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<tr>
<td>10</td>
<td>THEFT</td>
<td>197401</td>
<td>6806</td>
<td>204207</td>
<td>96.7%</td>
<td>3.3%</td>
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</tr>
<tr>
<td>11</td>
<td>RIOTS</td>
<td>334525</td>
<td>19461</td>
<td>353986</td>
<td>94.5%</td>
<td>5.5%</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>CRIMINAL BREACH OF TRUST</td>
<td>23284</td>
<td>760</td>
<td>24044</td>
<td>96.8%</td>
<td>3.2%</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>CHEATING</td>
<td>88147</td>
<td>4717</td>
<td>92864</td>
<td>94.9%</td>
<td>5.1%</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>COUNTERFEITING</td>
<td>2063</td>
<td>67</td>
<td>2130</td>
<td>96.9%</td>
<td>3.1%</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>ARSON</td>
<td>12077</td>
<td>303</td>
<td>12380</td>
<td>97.6%</td>
<td>2.4%</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>HURT</td>
<td>479835</td>
<td>36063</td>
<td>515898</td>
<td>93.0%</td>
<td>7.0%</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>DOWRY DEATHS</td>
<td>19814</td>
<td>4764</td>
<td>24578</td>
<td>80.6%</td>
<td>19.4%</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>MOLESTATION</td>
<td>52069</td>
<td>1698</td>
<td>53767</td>
<td>96.8%</td>
<td>3.2%</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>SEXUAL HARASSMENT</td>
<td>9687</td>
<td>193</td>
<td>9880</td>
<td>98.0%</td>
<td>2.0%</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>CRUELTY BY HUSBAND AND RELATIVES</td>
<td>139403</td>
<td>41298</td>
<td>180701</td>
<td>77.1%</td>
<td>22.9%</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>IMPORTATION OF GIRLS</td>
<td>203</td>
<td>18</td>
<td>221</td>
<td>91.9%</td>
<td>8.1%</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>DEATH DUE TO NEGLIGENCE</td>
<td>90046</td>
<td>267</td>
<td>90313</td>
<td>99.7%</td>
<td>0.3%</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>OTHER IPC CRIMES</td>
<td>1144506</td>
<td>63953</td>
<td>1208459</td>
<td>94.7%</td>
<td>5.3%</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>TOTAL COGNIZABLE CRIMES UNDER IPC</td>
<td>2952290</td>
<td>193555</td>
<td>3145845</td>
<td>93.8%</td>
<td>6.2%</td>
<td></td>
</tr>
</tbody>
</table>

(NCRB figures)
Crimes that has highest percentage of female share (2009-2011)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CRUELTY BY HUSBAND AND RELATIVES</td>
<td>22.9%</td>
<td>22.8%</td>
<td>23.7%</td>
</tr>
<tr>
<td>2</td>
<td>DOWRY DEATHS</td>
<td>19.4%</td>
<td>21.2%</td>
<td>22.2%</td>
</tr>
<tr>
<td>3</td>
<td>IMPORTATION OF GIRLS</td>
<td>8.1%</td>
<td>13.6%</td>
<td>22.4%</td>
</tr>
<tr>
<td>4</td>
<td>HURT</td>
<td>7.0%</td>
<td>7.0%</td>
<td>6.9%</td>
</tr>
<tr>
<td>5</td>
<td>MURDER</td>
<td>6.3%</td>
<td>6.1%</td>
<td>6.4%</td>
</tr>
<tr>
<td>6</td>
<td>RIOTS</td>
<td>5.5%</td>
<td>5.4%</td>
<td>5.6%</td>
</tr>
</tbody>
</table>

Female arrested under IPC harsh crimes in figures (2009-2011)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>DOWRY DEATHS</td>
<td>4764</td>
<td>4937</td>
<td>5182</td>
</tr>
<tr>
<td>2</td>
<td>MURDER</td>
<td>4443</td>
<td>3798</td>
<td>4007</td>
</tr>
<tr>
<td>3</td>
<td>ATTEMPT TO COMMIT MURDER</td>
<td>3179</td>
<td>2921</td>
<td>2748</td>
</tr>
<tr>
<td>4</td>
<td>KIDNAPPING &amp; ABDUCTION</td>
<td>2527</td>
<td>2349</td>
<td>2031</td>
</tr>
<tr>
<td>5</td>
<td>MOLESTATION</td>
<td>1698</td>
<td>1557</td>
<td>1280</td>
</tr>
<tr>
<td>6</td>
<td>SEXUAL HARASSMENT</td>
<td>193</td>
<td>206</td>
<td>159</td>
</tr>
</tbody>
</table>

Observing two of the above tables, we can understand that women are most arrested in the domestic violence cases. Be it Cruelty by husband and relatives or dowry deaths, both has woman harming another woman.

Preventive Measures

Preventive measures for Indian context could be divided under three sub-headings:

Preventive

As one of the very popular proverbs states, ‘Prevention is better than cure’, it is always wise way to start with prevention even before venturing into correcting what already has gone wrong. Government of India has already introduced several provisions to fight the stigma of inequality in our country and generate equal opportunity for women. However, due to poor implementation of law and plans, condition of women in most the states remain as it was decades ago.

Women are victimized and crime against women is rising day by day, which in turn influences female criminality. Under the preventive measures to be taken, Government should encourage the following:

1. Compulsory Sex education and general awareness classes for women
2. Constructive social action movement to bring in people power to implement law and plans
3. Pre-marital and post-marital counseling for women and her family, which is must for women to know her right against crime and induce harmony in family
4. Treat domestic violence cases harshly to avoid future crimes
5. Law against dowry must be implemented properly

Corrective and supportive

Corrective and supportive measures are a must for women who are dragged in to criminal activities due to social, political and economic compulsions but are willing to lead a good life. Women are mostly tagged as 'criminals' not because they had 'criminalist tendencies' but because their family male members were so tagged. Most of the thefts committed by women are not the result of psychological or social aberrations but are due to family and economic compulsions. Women convicted for minor thefts are mainly housewives who usually lack money to be able to buy things which were later stolen. Many are cases wherein a woman after completion of her punishment for a crime committed is not allowed to return to normal and safe life due to societal pressure. For such women and also for the female criminals spending their term in prisons, proper counseling, guidance and support should be given to prevent them from going back to their old life.

Above mentioned measures are being carried out in various prisons, social and charitable trusts/agencies. However, they are very meager as compared to women who need a change.

Rehabilitative

Rehabilitation needs ample support from Government to set up institutions for helping out women who are either victimized or have turned criminals due to unavoidable circumstances in life. Women arrested in several cases would have played secondary/supportive roles. Their involvement in the offence is closely tied to woman's role as a wife. They seem to commit crimes in roles auxiliary to men, in keeping with their sex roles. Such women need to be adopted by rehabilitation centers’ to train them to be independent and learn new ways to support themselves financially to lead a life of content.

Conclusion

Female criminality in India does not show a particular trend or reason. Nor do any of the above theories sufficiently prove the causes for the crimes committed by female. The social environment contributes a lot to the making of women criminals. Women who have been abused, the chances of them taking to crime are high. But in most cases, it is more to do with the patriarchal society. According to psychologist Bhagat, “Men get women into crime”. It appears that female offenders have lost faith in social system. Despite constitutional guarantees of equal rights and privileges, women's fate could not be changed. Discrimination prevails from birth till last breath. Even her education, her involvement in every work equally is not enough to give any credit to her. The problem becomes manifold when despite her awareness and ability she is to obey orders of man (in form of father, brother, husband etc.) of lesser ability. Her own opinion is brutally crushed.
overheard and she is subjected to victimisation because she is a woman. So they end up taking law in to their hands. Thus, in Indian context it is a must to give women her deserved space and respect in the society to reduce crime against women and in turn female criminality.

References


Female criminality in India


Violence on women in the name of culture - Emphasis upon appropriate interpretation of laws relating dowry death

A. Nagarathna and K. Sachidananda

Introduction

Giving and taking dowry is an immemorial traditional practice of not just in India but also of Bangladesh, Pakistan, Sri Lanka and Nepal. The System of giving valuables to the daughter in India was in vogue since earlier days and was justified as her pre-mortem right, since a married daughter was legally incapable of inheriting her father’s property (Sarkar, 1987) and to accord her economic security. In the ancient texts what went with the bride was regarded as her Stridhan (Bride’s wealth) and law recognised her absolute ownership over it to the exclusion of everyone including the husband (Sarkar, 1987).

Crimes on women in the name of culture

The cultural practice of giving and taking dowry in course of time, took form of crime, victimising women. Violence on women in the ‘name of’ and ‘for’ dowry is on increase not just in India but in other south Asian countries such as Bangladesh, Nepal, and Pakistan.

According to a report of National Crime Records Bureau, total of 2,276 female suicides due to dowry disputes were reported in 2006, that is six a day on an average (Zee News Bureau Report, 2007). While in 2010, 8391 dowry death cases were reported across India, meaning a bride was burned every 90 minutes (Bedi, 2012).

Indian Legal Framework – Problems and perspectives

In order to curb this misuse of the cultural practice of dowry, India has passed various regulatory laws. Indian Penal Code, Criminal Procedure Code and Evidence Act were amended by the Criminal Law (Second Amendment) Act, 1983 so as to deal with this menace more effectively.  

96 Through this Act, Section 304 B and 498-A were inserted into Indian Penal Code. According to Section 304B, if a married women dies an unnatural death within seven years from the date of her marriage and if it could be established that soon before her death, she was subjected to cruelty in relation to dowry by her husband or in laws, the law presume that her husband or such in-laws who subjected her to cruelty caused her death, hence the burden of proving innocence shifts upon such accused. Section 498A deals with cruelty on women, whether connected with dowry or not. Both offences are cognizable and non-bailable in nature. On the other hand, Section 198A, which is inserted into Criminal Procedure Code, apart from making the offence non-bailable also empowers the court to take cognizance of the offence either upon a police report, or upon a complaint made by the aggrieved party or by a woman’s parents, brothers, sister, etc. Section 113-A and 113-B, inserted into the Indian Evidence Act, 1872, provides for presumption of guilt of ‘abetment’ and of ‘causing death’ upon the accused, if a married women commits suicide or dies an unnatural death within seven years from the date of her marriage, upon proof of certain facts.
As the liability under Section 304B read with Section 113 B of Indian Evidence Act and 307 read with Section 113A of Indian Evidence Act are based on presumption, the nature of punishment is lesser in comparison to the punishment generally inflicted for 'causing death'. In a 2010 case, Indian Supreme Court emphasised upon the possibility of imposing death sentence for dowry death cases. The Supreme Court, expressing serious concern over dowry death cases, where young women are being killed, said that such offences are to be treated as the 'rarest of rare' ones and extreme punishment of death should be awarded to offenders [J. Venkatesan, 2010]. It is important to understand that "there is distinction between section 302, 304B and 306 of IPC, if charge is framed under section 304B, but after recording and appreciation of evidence the case proved to be a caused under section 302, the charge can be altered and the accused can well be punished under section 302 and if the court finds that the case under section 302 to be a rarest of rare cases, then the offender can very well be awarded with capital punishment [Law Commission of India, 2007]. On the other hand, for a case clearly falling under section 304 B, the Indian Law Commission even though did not recommend death penalty, has favoured the increasing of the minimum sentence from seven years to ten years in such cases [indlaw, 2007]. But in practice, provisions relating to culpable homicide are seldom utilised against offenders even in cases genuinely requiring its application.

In addition to Indian Penal Code, the Dowry Prohibition Act of 1961 prohibits the giving and taking of dowry. Strangely the Act exempts the application of the law to "presents which are given at the time of a marriage to the bride or bridegroom (without any demand having been made) provided that such presents are entered in a list, if such presents are of a customary nature and its value is not excessive in terms of financial status of the person giving such presents” (Section 3(2)). It is this exemption which is often misused by people practicing the system of dowry. Unfortunately, the amendment proposed by the Ministry of Women and Child Development, instead of taking recourse to curb the menace has resorted to the ‘monitoring’ path, according to which the list of gifts, in form of a sworn affidavit, has to be notarized, signed by a protection officer or a dowry prohibition officer and kept by both the parties, failing this can invite heavy penalty including a three-year term in jail for not only bride and groom but also their parents (The Indian Express, Jan 18, 2010).

Interpretation of the term 'dowry' is done very narrowly, thus exempting ‘demand associated crimes from the ambit of dowry related law. Indian Supreme Court in Satbir Singh v. State of Punjab’, restricted the meaning of the term dowry as “any property or valuable given or agreed to be given in connection with the marriage” and hence

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97 In BHOORA SINGH –V- STATE 1992 ALJ 749 It was observed: “such crimes are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence is not easy to get. This is why the legislature has by introducing Secs. 113A and 113B in the Evidence Act tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within seven years of marriage.”

98 AIR 2001 SC 2828
exempted “the customary payments in connection with birth of child or other ceremonies” from legal liability (Supreme Court, 2001).99

Adding to the above, the problem of misuse of these laws, resulting in ‘legal terrorism’ has raised strong criticisms against such women centric legal approach by men. It is essential to check the abuse of law with effective measures.

Conclusion

Dowry Death continues to haunt Indian society in spite of special laws existing to tackle the menace due to various reasons, such as cultural backing to the system, erroneous interpretations of laws associated with skimpy form of liability.100 It is essential to use appropriate provisions and make accurate interpretations of such provisions to effectively deal with crimes committed in the name of the culture of dowry. This requires solutions to the current problems of misapplication and misinterpretation of laws.

99 Ibid.
100 Liability of offenders under section 304B is lesser serious, for being based on presumption.
Facets of crimes relating to women and the trend of criminal justice – The Indian context

N. Ravi

‘A society in which women is not subjected to any discrimination, violence, exploitation, sexual harassment, etc’, was the goal sought to be achieved when the founding fathers of the Constitution of India incorporated certain special provisions in favour of and for the benefit women. We have miles to go to see the light of such a society.

In addition to the socio-economic and educational factors, the biological weakness of a woman makes her an easy and vulnerable victim to tyranny at the hands of men. “Indian woman is unjustly treated as unequal by society for the genetic sin of her discriminated sex” Attributing lower status to women in society, thereby dominating over and discriminating against women, all these have culminated into their regular exploitation and victimization, further developing into institutional and situational violence against them. And the outcome is crimes against women which kept changing with time and place, mindset and techniques.

Crimes of any kind as under the traditional law could be committed against women. However there are certain crimes which are specific to women contained under several provisions of Indian Penal Code, though not in a separate chapter entitled ‘offences against women’. Rape, dowry deaths, cruelty and physical and mental torture by husband and relatives, abduction with ulterior purpose, kidnapping and importation of girls, molestation and intimidation could be cited as some of the offences which specifically relate to women. In addition, a number of offences are perpetrated against women in different forms as identified and dealt with under certain special laws.

The most humiliating aspect of crimes against women is the fact that the status of women in the hierarchal structure of the society comes in the way of securing justice for her. It is horrifying that in some of the specific crimes against women, say dowry death, cruelty and torture, violence is unleashed against women by another women as an abettor, accomplice.

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101 Articles 14,15,16,19,21,23,39 and 51A of Constitution of India
102 Iyer Krishna.V.R: ‘Humans without Rights’
or as the offender herself. Sexual harassment of a female is a real menace which is on the increase due to legislative inadequacy and “it is a gender discrimination against women and is incompatible with the dignity and honour of female”\footnote{Visaka v. State of Rajasthan, AIR 1997 SC 3011.} Sex determination and selection and the consequential feticide and infanticide establishes the inferior status of women. Systematic rape, sexual slavery and forced pregnancy require a particular and effective response.

How far the set of laws reflect the required \textit{change in legislative mind-set} over the period of transformation in view of and in pace with the new demands of time\footnote{In the context where women have become more independent, have to step out of the confines of their home to earn a living, and are being increasingly exposed to non-traditional tasks.} and new trends of crime against women? Does it require a complete refurbishing of the substantive and procedural laws? Whether the legislations and the legal system under which the criminal justice is administered are gender-neutral is the oft-raised question.

\textit{With regard to rights of persons who get involved in the criminal justice process}, made available\footnote{Envisaged and protected by the Constitution and Criminal Procedure Code.} throughout the process from the very stage of arrest to sentencing and imprisonment, the law is gender-neutral in the sense that it makes all those rights as available to a male arrestee, under-trial, accused, convict and a prisoner are available to a female also and prohibits any discrimination based on sex. In case of women those rights are furthered under Criminal Procedure Code which emphasizes\footnote{Sections 41,46(2), 51(2),53(2)} that a woman cannot be taken to police station for interrogation after sunset, arrest of a women should be done with the assistance of a women police personnel, search of women arrestee should be done by a women police adhering to high degree of decency and not affecting the dignity of women.

The problem is the way in which crimes against women, the victims and women accused of offences have been dealt within the criminal justice system. The social status of woman compounds her gender justice. For the victims of crimes like rape sexual assault and exploitation public exposure is most agonizing than the crime inflicted on her. There has been a lot of criticism regarding the treatment of these victims in the court during examination. Often necessitates the judicial interpretation to specify norms of appreciation of evidence in such crimes. For the offence of adultery committed by the husband, criminal law does not give his wife, certainly affected by his adulterous behavior, the right to prosecute him.

The judicial endeavour and contribution, in terms of progressive interpretations, in the enforcement, promotion and protection of the rights of women, in criminal justice is very significant. Where there is a legislative vacuum, the Supreme Court took the lead and laid down a number of guidelines in a plethora of decisions. The landmark rendering in \textit{Vishaka v. State of Rajasthan}\footnote{AIR 1997 SC 3011.}, wherein the Court defined “Sexual Harassment”, opened up the vistas for any woman employee who is subjected to any sexual harassment of any
kind can take recourse to initiating criminal proceedings, disciplinary action and also seek compensation from the guilty employer and other persons responsible for the harassment. As interpreted by the Supreme Court the provision of law dealing with crime of adultery is to protect institution of marriage and not woman.

Protecting the right of women under criminal law, the Supreme Court held that when prosecuting for the offence of outraging the modesty of women normally the testimony of the victim should be accepted and that such testimony should inspire confidence of the court even if there is absence of any corroboration in the case. The D.K.Basu commandments apply equally to women and hence the female on arrest should be provided with such information and vested with such rights as specified by the Supreme Court. In recognition of the biological differences and special needs of women, certain rights are specifically related to women are provided, more of them envisaged, enforced and promoted by judicial renderings.

In police station there should be provision for keeping the female suspects in a separate lock-up, not along with male suspects, and should be guarded by female constables. It is necessary that the interrogatories of a woman should be carried our only in the presence of a woman police. That the arrested female has a right to be medically examined should be informed to her and should be allowed to exercise that if opted. It is a requirement that the magistrate before whom the female arrestee is produced should enquire whether she has any complaint of torture in police custody.

The legal system, though sensitive to some of the problems faced by and the issues of women, as it is observed, takes a paternalistic view of women and women rights. Its tendency to see women affected by crimes committed against them as victims to be protected and not as citizens who require rights should thoroughly change. Women should be shown special treatment wherever they interfere in the system whether as complainants, victims, accused, witness or inmates of institutions. The state shall endeavor to set up specialized institutions with exclusive jurisdictions for meeting the needs of women coming in contact with the criminal justice and correctional system. As a device to enforce and protect women rights, the National Women Commission is vested with the power, as one of its functions, to inspect or cause to be inspected a jail, remand home, institution or other place of custody where women are kept as prisoners or otherwise and to take up with the concerned authorities for remedial actions if found necessary.

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111 Section 497 of Indian Penal Code
112 State of Tamil Nadu v. Karuppu Swamy and Others 1993 1 SCC 78
15 Ss. 53 & 54 of Criminal Procedure Code.
116 National Policy for Custodial Justice to Women, as recommended by the Expert Committee on Custodial Justice
Facets of crimes relating to women

The legislature and the judiciary should seek to give women a greater control over their lives. They must be promoted to reach the position that they stand out and resist the tyranny. Any legislation would have effect only when the mentality and perception of people about women drastically change. More of awareness campaign for the mass concerning the menace of violence, torture, harassment, dowry deaths and cruelty should be taken up by media, state and religious organizations.
Rape: A study from the perspective of victims in Nepal

Neetij Rai and Bikash Thapa

Introduction

Rape is one of the heinous crimes which have been in almost every society through ages. Rape, being a combination of illegal sex and violence is a traumatic experience for the victim (Qadri, 2009). The term “rape” is derived from the Latin term 'Rapiod' meaning to seize or take by force (Curzon, 1993). However, over the years its definition and scope has broadened.

Ballentine's Law Dictionary defines Rape as having of unlawful carnal knowledge by a man of a woman, forcibly or against her will (Anderson, 1969). Similarly, Blacks Law Dictionary has defined rape as an unlawful sexual intercourse without consent after the perpetrator has substantially impaired his victim by administering, without the victim’s knowledge or consent, or drugs or intoxication for the purpose of preventing résistance. It may include sexual intercourse with a person who is unconscious. Marital status is now usually irrelevant and sometimes so is the gender (Garner, 2011).

Most crime constitutes two parties, namely criminal and victim. But generally, the criminal justice system has paid the whole attention to the crime and criminal only (Pradhananga, 2002), while the victim is often neglected. However, Rape is a lot different from other crimes as it shatters the life of victim and compels to bear the agony throughout the life. It not only amounts to a brutal attack on integrity and dignity of women but also unjustifiably disregards her legitimate control over her body (Vibhute, 2002). It not only is associated with the physical trauma itself, but it also involves the infliction of immense psychological trauma (Chapman, 2001).

Rape being inhuman offence not only inflicts serious wound against victim’s personal liberty but also affects the entire society (Curzon, 1993). Mental health professionals agree that rape is a stressful situation that may have an immediate and disruptive impact on a victim's emotional and psychological state (Hilberman, 1976).

Rape victims may display feelings of fear, anger, shock, and anxiety in an overt, hysterical fashion immediately following the attack, or may appear stable, calm, or subdued (Burgess & Holmstrom, 1974). Recent research shows that a year following the rape, victims "are more depressed, get lesser enjoyment from their daily lives, report being more tense and fatigued and report more interpersonal problems" than women who have not been raped (Ellis, Atkeson & Calhoun, 1981).

Methodology

The research is doctrinal. Researchers have collected data from primary and secondary sources of data from various journals, websites and books and only focused on the cases
regarding rape. Researchers have analyzed the adequacy of laws and case laws of Nepal in the light of the findings of the doctrinal research.

Findings: Nepalese Context

Nepalese Laws

There is no separate Act regarding rape in Nepal. A Chapter on “Rape” is enumerated in the National Code, 2020 (1963). However, the National Code has been amended 12 times and during the passage of time some amendments has also been in the laws regarding rape. Nepalese law [Rape, Sec.1] defines rape as- A person is liable for the offence of rape if he procures sexual intercourse with or without the consent of women under 16 and without the consent of women above 16.

Explanation

a. Consent obtained by threat, fear, undue influence, fraud, abducting may not be termed as consent.
b. Consent obtained when one is not in consciousness may not be termed as consent.
c. Even if there is slight penetration, then also it may be termed as rape.

There are some provisions in regard to the victims.

✓ Punishment is inflicted as per the age of victim. (Rape, Sec 3)
✓ Additional punishment is inflicted to perpetrators who commit rape to handicapped or pregnant women. (Rape, Sec 3a)
✓ Provision of Marital Rape. (Rape, Sec 3)
✓ The investigation must be conducted where possible by a policewoman, if not than by policeman in presence of woman social worker. (Rape, Sec 10a)
✓ The hearing must take place in the camera court. (Rape, Sec 10b)
✓ It is state party case and limitation to file a case is 35 days. (Rape, Sec 11)
✓ The woman is entitled to get compensation from the perpetrator as per the nature of loss she has born. Even if she is dead, her minor children, if any, are entitled to get compensation. (Rape, Sec 10)
✓ A rape victim has right to abort till 18 weeks if she conceives during the incidence. (Homicide, Sec 28b)
✓ Any person who rapes or cause to rape with intention to inherit her property is not entitled to get her inheritance. (Rape, Sec 9)

Nepalese Practice

In the case of Sapana Pradhan Malla v NG (Nepal Government) (Nepal Kanoon Patrika {NKP} 2065, P 1458) the court held that since the limitation provided by the Sec 11 of Rape chapter is insufficient to provide justice to the victim hence, the court issued a directive in the name of Nepal government to make necessary arrangements regarding the increase in the limitation of rape.

Similarly, in the case of Triratna Chitrakar v NG (NKP 2066, P 784) it was observed that keeping in mind the social, psychological, physical, intellectual, economic harm and
other life long impact sustained by the victim the provision of compensation is stated, hence the victim need not go according to the legal provision of chapter on ‘Punishment’ to obtain her compensation.

Similarly, in the case of NG v Mubarak Mir Musalman (NKP 2067 P 1588) the court held that harm sustained by the victim is main element to be identified in the case of rape. Physical, mental and psychological damage is irreparable harm sustained by the victims in rape cases.

Moreover, in the case of NG v Pawankumar Yadav etal (NKP 2067 P 1802) it was observed that when both the rapist and victim are children, then if the court only emphasizes the rights of rapist child then the rights of victim child will be encroached and would cause havoc in the society. If it is interpreted that the child victim should not be compensated like the adult victim then that would incite impunity in the society.

**Conclusion**

Victims are now an integral part of criminological study. Previously they were not given much importance but now the trend seems to be changing and the importance of protecting the rights and needs of victims is being realized gradually. Nepalese law has tried to address all the forms of rape. The punishment system is based on the age of victim which clearly acknowledges victim as the focal point in the offence of rape. Moreover additional punishment is inflicted to perpetrators who commit rape to handicapped or pregnant women. The concept of marital rape, adequate compensation to victim, is also admirable. However, her psychological trauma may never be healed even by providing her adequate compensation. Similarly, provision of in-camera hearing and requirement of women investigating officer to record the victim’s statement is also a commendable provision to maintain the dignity and privacy of victim.

However, the chapter still needs some more clearance on compensation of the victim. The law remains silent regarding compensation if an insolvent person commits rape. Similarly, necessary steps should be enumerated regarding the compensation. Moreover, enough endeavors have not been done to prevent rape through any awareness campaign and also the state seems passive in rehabilitation of rape victims.

Thus, rape victims, who suffer lifelong physical, psychological and social agony, are totally different from any other victim. Hence, they need to be given more priority. Thus, to protect the rights and interest of rape victim is of paramount importance and the Nepalese law and Supreme Court seems to have acknowledged the fact. However, there is always a scope to do more.

**References**


Rape


Problem on foreign labor migration has long been one of problems existing in Thai society since the political administration was changed from the absolute monarchy to democracy, which was a system providing liberty to people. Everybody has an equal liberty, but may be different in people’s role, duty or social-economic situation, which was considered as laissez-faire system and was not monopolized by the government. This administration system therefore attracted foreigners migrating into Thailand for liberty. In addition, they believed that Thailand was full of fertility of resource, while the culture was opened widely, and Thai people were friendly and generous. These things therefore stimulated the foreign labors to enter into Thailand for earning their living or having a business, although such immigration was illegal.

A problem on transnational human trafficking was an important criminal problem effecting to the image of Thailand. Since the transnational human trafficking processes were mainly related with the drug trafficking processes, the operators must be influenced persons, politicians, police officials, or other public officials, having corruption behavior together with committing the offences. The offences on the transnational human trafficking always included sexual abuse, especially with female foreigners who were from Myanmar, Laos, Cambodia, or other foreign countries such as Russia, Vietnam, and China. Meanwhile, many Thai women were also seduced and threatened by this transnational human trafficking to have sex trafficking in overseas. The victims were seduced by being informed that the job in overseas were maid or babysitter. Besides the human trafficking process having seducing behavior, they also had both physical and mental abuse, and forced those women to have sex with customers in order to net with unreal debts or in order to avoid the physical abuse. The operation of the human trafficking process affected in the national level since the country where explicitly contained this kind of offences would be pressed and boycotted by the developed countries and neighboring countries, including be pressed on economy and other social measures such as suspending the assistance on knowledge, budget, and human resource under the reason that Thailand neglected to this issue and had no measure to stop this transnational human trafficking process.
1. Case study on real events at “Tea House” and “Ting Lee Shop” in Sri Maha Po District, Prachinburi Province

On April 27, 2011, Mrs. Pavena Hongsakul, the chairperson of the Pavena Foundation for Children and Women, together with Mr. Prawit Chaibuadaeng, the director of Eastern Special Center, Department of Special Investigation (DSI), and 30 DSI officials with special team from Pavena Foundation went to a karaoke restaurant, named Tea House and Ting Lee Shop, located in the edge of Klongrangkokkwang Road, Ta Toom Sub-district, Sri Maha Po District, Prachinburi Province, in order to arrest the human trafficking processes that seduced and forced Lao and Thai young women to be a prostitute in those places. At the same time, more than 20 Lao girls, aged between 13-17 years old, who were seduced to be in custody and forced to become prostitute, were released. The spy was disguised to be a customer who wanted to receive the sexual service, which the service fee included 500 baht for hourly service, and 1,000 baht for a night service. In this regard, the exhibits of list of victims, and both used and new condoms were found. Moreover, the cruel behavior of this human trafficking process were found by forcing the women to have sex with at least 5 customers, but those women only had one meal per day. In case any women failed to follow the instruction, they were assaulted their body with no water and no meal. The seduction was processed by Thai agent who informed those Lao women that he would take them to work in the restaurant in Thailand, and paid 5,000 baht to their parents. After that, the victims were claimed that the agent had advanced 10,000 baht for travel expense and operational expense. Those expenses would be settled by deducting from the wage later. When arriving at the restaurant, the victims were in custody and were forced to be a prostitute. There were 10 men keeping an eye on them for not running away. However, the victims had never received any wage. On the other hand, they had only one meal a day and some were assaulted by being squeezed on their neck, being beaten, or punched. Later, the victims had requested a customer to notify the police and finally they were released.

After being helped by the officials, the victims of the human trafficking process were physically and mentally rehabilitated at Baan Kredtrakarn Foundation, Pakkred District, Nonthaburi Province. To have a conversation and to record the testimony of foreign girls and women, being victims of the human trafficking process, the actual information showed that those women and girls didn’t know the meaning of prostitution and they didn’t know that they had to become a prostitute. They only knew that they would work at the restaurant or massage shop that they could dress modernly.

2. Theories relating to female foreigners being victims in the human trafficking process

Strain Theory of Robert Merton said that the social culture determined the culture goals of people in the society that people should struggle or attempt to obtain in what they want. However, not everyone that can achieve such social goal, the pressure then occurred. This pressure had occurred in each individual with different level, but it always occurred with low-social status or low-classed people. This type of people could not
achieve the goal because they were limited in knowledge, expertise, opportunity, and effort.

According to Merton’s theory about the anomie, the group reacting to social pressure was found in 5 modes. In the part of the human trafficking, it was categorized as innovation mode. The human trafficking group accepted the social goal on accepting the power in the society being from the richness, but they didn’t see the way to get such richness under the method accepted by the society. Therefore, to achieve the goal by human trafficking, which was not accepted by the society and it was in negative way, was a method to lift up the economic status in order to be accepted by the society. This method on achieving the gold had refused any norm, value, and morals. Meanwhile, the goals of foreign women and girls who were victims of the human trafficking was to have a better life, to help and support their family, and lastly to use their collected money in their hometown which was in accordance with the social culture. Those women and girls aimed to the final goal as determined by the society, but the way to achieve it was very difficult. They therefore lifted up their social status in illegal way or easily being victims of the human trafficking process.

Rational Choice Theory that Becker (1968) believed that an individual is free to decide to act illegally and the selection guideline for illegal act depended on satisfaction or maximum benefit, or comparing between gigantic benefit and penalty. This was because Thai law had never seriously penalized the human trafficking process.

The human trafficking process saw this benefit more than the penalty when they were arrested, or they had a confident that their process was assisted by politicians or police officials or other corrupted officials to be free from any arrest. The human trafficking process would return those people with some benefit, but the victims were the foreign women.

According to the information from foreign women aged 20 years old in “Tea House” and “Ting Lee Shop”, she said that a man bought her a temporary service (30 minutes) for 800 baht per time. She got only 300, while the owner got 500 baht. In case of a night service, they charged 2,500 baht per night. The woman got only 500 baht, while the owner got 2,000 baht. In fact, the victims only got the return in figure, but the physical money was kept at the owner and deducted for debts and additional expenses such as accommodation and food. Summarily, those women would never get any money.

From the ledger attached by DSI officials, Tea House had monthly income of 3,000,000 baht. After deducting all expenses, total income was about 1,500,000 baht. Most of expenses included food and accommodation, and for bribing to the corrupted officials by levels. Ting Lee Shop had monthly income of 2,000,000 baht. After deducting all expenses, total income was about 1,000,000 baht.

Feminism was a study on sexual orientation towards attitude, knowledge, and existing belief that woman was devalued. This was a pressure to have a change in gender which caused the radical feminism. This feminism viewed that the source of female abuse was from the patriarchic structure because the belief, social value, political role of male having long been dominant the female role. Such male dominant didn’t mean to dominate
Organization of Human Trafficking

individually, but it was the structure itself that dominated. The society gave the value to things relating to man and patriarchy rather than of woman and feminism.

Patriarchy means a system evaluated the value of men higher than of women. It was an attitude dominant and influenced in the society. The result was that female must be disadvantage and was determined her role, in order to respond to the society where a man was a leader, more than considering on opportunity and progress of women. The women were getting rid of a chance to develop their ability and expertise. As a result, women could not lift up their status by having a better chance than men (Teeranat, 1999:48, referred in Chutarat, 2003: 15). According to the concept on division of different sexual role of both male and female, Kate Millet (Kate Millet, referred in Waruni, 2002:90) believed that it was from the following causes.

Woman’s role involved in the experience relating to role of gender and maternity role only such as being an housewife, looking after and feeding her children. The female socialization was molded to be weak and to depend on family which was a basic and main unit of the patriarchic society. The duty of women in the family was segregated by role of gender which caused men and women having different level. This segregation was clear until it was accepted by the society as a normal practice.

It was long cultivated that woman was subordinate of man from culture, society, and being long raised up, to be a prostitute, like a commodity of sexual response of men. The victims were in custody of 2-3 armed men who had a duty for delivering those women when being bought for sexual service. The women and girls were forced to have sex in the specified place. The men would wait until the sexual service finished. To be labeled as a weak gender caused these women and girls being frightened to run away, or even to fight for their own freedom.

Labeling Theories aimed to explain the process of creating the idea of people in the society on the perception towards the offenders or person having deviational behavior. To label or to condemn can bring up a deviational behavior or illegal behavior. Harvard Becker (Becker 1963) applied the principle of symbolic interaction for explaining such deviational behavior that came from the reaction of people in the society. That was groups of people in the society created the deviational behavior by determining criteria in order to differentiate the behavior from the value or social norm to be the deviational behavior. Then, this criterion was used for labeling some types of people and made those people to be a man outside the society. This can specify the process of social reaction into 3 steps: 1) criteria determination, 2) criteria implementation, and 3) Labeling some people to be a man outside the society. Becker believed that the society consisted of many groups of people and each group had different criteria. Therefore, the observation was why some groups of people could determine the criteria to be enforced in the society. Becker called this group of people that “people who controlled the criteria determination” (Moral Entrepreneurs). Meanwhile, opinion or value of some groups could not be criteria for behavior determination. Becker said that the process on labeling people to be a man outside the society was the most important process. Any person who would become a man outside the society depended on the result of labeling more than the violation of
criteria. The significant factor was behavior on circumstances which differently enforced the criteria or law.

In the part of female foreigners who illegally entered into the country for working, according to the value of middle-classed men in the society, they opined that these women were illegal labor trying to smuggling into the country. Therefore, to buy the sexual service with these women was not wrong. The middle-classed men in the society therefore seemed like a person controlling the power on determining the criteria under Becker’s theory. No matter the sexual service was voluntary or not, such middle-classed men were still self-fish to think that their money spending was correct and labeled these women that deserved to be bought by the man.

3. Cause Analysis in Foreign Women being Victims of Human Trafficking Process

Social inequality – Foreign women migrating or moving into Thailand were all no income and no social opportunity (in their country).

The lifestyle of women in Lao society was similar to that in Thai society which was under the patriarchic society. Women must be ready for responding the patriarchic emotion. As for the social opportunity, men must have the right to prior get that opportunity. To be abused and segregated was a pressure to those women and girls to make a decision to migrate and change their role by taking care of their family, not working a home without any return. These women tried to lift up their status that they were not a property of any men and did not depend on the men. This idea may be a factor being easily seduced to the cycle of the human trafficking.

Poverty had long been a problem and was difficult to solve. The poverty was a strategy that the human trafficking process used for seducing those women and girls. They lied to the victims about getting a better life with their own income to support the family, and the remaining income can be kept for their future.

When Lao entered into the democracy society in 1975, the new ruling government under the socialist ideologies has applied the centralized economy until 1986. Then it changed to the liberal economy. After that, Lao government encountered the problems on environment, society, culture, and fairly income distribution. These reflected that the change of economic nationalism can lift up the materialism living of people in the city to be better. Conversely, this created an economic gap between urban and rural society. To focus on money and power led to the exploration of things important to the society. To acquire the money must exchange with working. The phenomenon of labor migration from Lao society with economic collapse to the labor society in the industrial neighboring countries, especially Thailand, had occurred.

Seduction method - The victims were informed by their friends or persons they knew suggested or found them a job. This seduction may be conducted by the human trafficking process itself, starting from their hometown. There were 2 seducing methods in the human trafficking.
1st Method: By Agent – In this method, the agent or broker would seduce women or girls who were interested in and decided to work. Such agent or broker was a respectful person or person in the family or had close relationship with those women or girls.

2nd Method: By human trafficking process – The human trafficking process would directly approach to those women or girls by making them to believe and agree that to work in Thailand can help them to earn more income with easy job and well dressed.

Before those women or girls were seduced to be a prostitute, they lived with their parents or close relatives in their hometown. When those people influenced them to make a decision based on believing in the human trafficking group, it was a chance to be a victim.

It seemed that those women voluntarily migrated to Thailand, but actually the word of “voluntary” should be understood correctly that they were voluntary to work, not to be a prostitute.

From the original country to Thailand, the route would pass the border attached to the south of the northeastern part of Thailand. Ubon Ratchathani Province was a big gateway, then through Amnajcharoen and Mukdahan Provinces, to the custom house at Mekong River Basin, which was about more than 1,000 km. The immigrant smuggling for illegal entering into Thailand can be divided into 3 methods: 1) by food, 2) by boat, and 3) by car. All methods were full of troublesome, including hiding from police officials, military officials in both Myanmar and Thailand. They had to encounter poisonous animals, epidemic disease, or lack of healthy nutrition with no clean water or fresh food. They may get serious illness and finally die because of suffering from Malaria and Typhus. Moreover, in order to be worth for labor smuggling, not to be suspected by the officials, and to disguise themselves, the truck for transporting the foreign labors was adapted. The foreign labors were limited their seat in that truck and caused them unable to breath. Some of them lastly died. Those dead men could not help themselves or asked for any help. In addition, the immigrant smuggling caused those women, girls, or foreign labors to have the debts which could not negotiate. They only hoped that when they worked they could release such debts and can create the new life with convenience.

When those foreign women or girls had entered into Thailand, the human trafficking process would start by distributing them to the entertainment places where desired the girls or had already booked for those women or girls. The entertainment place was considered as a high profitable business, although the expense must be paid to the human trafficking agent, and to the public officials for safeguard. Only small expenses were paid to those women and girls. From the evidence found in the restaurant, it confirmed that the restaurant got the operational profit from providing sex service and such return was huge and worth to commit the offence.

The said return was a good motivation that made the human trafficking process committed the crime without considering any correctness. The economic theory said that a person would have a reasonable process of making decision in committing a crime. As the Rational Choice Theory of Becker (1968), he believed that an individual was free to make a decision for conducting illegal action. The approach to select committing the
crime depended on being satisfied or the maximum benefit. When comparing the huge profit and penalty to be received, Thai law has not yet provided the penalty for the human trafficking process. The penalty of the human trafficking under Section 52 said that any person committed an offence on human trafficking shall be imprisoned from 4 - 10 years, and shall be fined from 80,000 – 200,000 baht. If the offence under the first paragraph conducted to a person aged more than 15 years old, but not over 18 years old, such person shall be imprisoned from 6 – 12 years, and shall be fined from 120,000 – 240,000 baht.

If the offence in the first paragraph conducted to a person aged lower than 15 years old, such person shall be imprisoned from 8-15 years, and shall be fined from 160,000–300,000 baht. There was no any penalty for the foreign labors that smuggled and illegally migrated. On the other hand, the law would protect these foreign labors to get the protection right under the law. If they run away or were seduced to work, they would be sent back to their country. Except the case the foreign labors committing other offences, they would be taken the legal proceeding before sending back to their hometown. With this regard, the human trafficking process seducing the foreign women and girls has still remained and be widened.

The journey of women or girls to the prostitution cycle started from a karaoke restaurant, named “Tea House”, with the debts being claimed that their parents were already got the money. Those women or girls were forced to be a prostitute in order to earn money and settle the debt. Every girl was controlled in the upper floor and was locked in the restaurant. If there is any necessary affair which needed to go out, the man (fancy man) would ride a motorcycle for them and wait until they finished. They were controlled, threatened, and forced to work to which they didn’t want. These things made women having a status as a slave or an object, and were tortured by men. They were suffered physically and mentally.

4. Guideline for Preventing Foreign Women from being a Victim of Human Trafficking Process

Guideline for preventing foreign women from being a victim of the human trafficking process must be from the cooperation of every party, including government officials, and private sectors in order to heal the victims. Meanwhile, people shall be the eyes of the officials or at least shall not be a person labeling or destroying the dignity of these foreign women. There were two phases of preventive guideline, which included short-term and long-term phases.

**Short-term preventive guidelines**

- To seriously add the measure of laws enforcement and arrestment process for the human trafficking by undergoing the prostitution with foreign women. This shall receive the cooperation from government officials and to help the offender shall be prohibited. In addition, the law must be effective to every offender without exception.
• To provide the penalty for the corrupted officials relating to the human trafficking process in the case of foreign women prostitution. When finishing the arrestment process, the information about bribery must be followed and penalized the offenders because the human trafficking process was conducted in the network. The criminal organization has clearly divided the duty. Therefore, to solve this problem, the penalty must be provided for the relevant officials.

• To physically and mentally rehabilitation the foreign victims who were seduced. In the part of victims, they were sent to Baan Kledtrakan in order to recover their body and mind. At present, the Prevention and Suppression of Human Trafficking Fund has been established under the Prevention and Suppression of Human Trafficking Act B.E. 2551. The fund would be raised in order to help the victims in their health recovery and for the living expenses in a short period.

**Long-term preventive guidelines**

• To provide knowledge to foreign labors in both Thailand and overseas in order to protect themselves for not being a victim of the human trafficking process by coordinating with the neighboring countries. The trick of the human trafficking process must be disseminated to the society for their acknowledgement and not being a victim in this criminal.

• Organizations relating to the employment of foreign labors shall be monitored and provided the proper work to these foreign labors. Such labors must be legal by registering with the government.
21

Woman - Peril of her own sect:
A paradigm of human trafficking in Gujarat, India

Pavithran Nambiar and Suhas Nambiar

The study falls under the purview of violence especially the virulent form that is termed as the structural violence (Galtung, 1969) which is latent or indirect. This covert form of violence has been institutionalised within the society as part of its prevailing system of values and beliefs based on caste, slavery, racism or colonialism which fundamentally violate the dignity and integrity of individual members” (Gurr, 1971).

Human trafficking remains as a modern-day slavery of labour or commercial sex exploitation – is the largest criminal industry in the world that generates profits in billions of dollars every year. It is included in the ‘dark figure’ of unreported crimes makes information difficult to obtain. Keeping all limitations in mind this study tries to bring out an existing phenomenon – which is enigmatic to society needs loud thinking from various quarters especially intellectuals, activists, law maintaining agencies, researchers of our present day globalized society.

Definition

The UN has defined human trafficking “as the recruitment, transfer, harboring or receipt of persons by threat or use of force” (Kimbel, 2008). Persons are trafficked for two reasons: labour or sex. In both cases the victims vary in age and sex from state to state and the labour trafficking victims are often sexually abused also. This is a serious violation of human rights that occurs within countries, across borders, regions and continents and thus around the globe.

Trafficking of humans is primarily carried out for variety of purposes such as sexual exploitation, forced labour, hazardous job, forced marriage, begging maiming, drug peddling, petty crimes, domestic servitude, organ transplant or child pornography.

Objective

The rationale behind this paper is to analyze the role of woman in perpetrating female trafficking in Gujarat. Hence the focus is on cases were women involved in crimes against other women by deceiving them and pushing them into flesh trade. Moreover, instances in which women forced other women to practice prostitution were also examined.

Methodology

This study basically empirical, tries to find out how far such a phenomenon is rampant in an economically dynamic state. The exercise began with library work – various
journals, books, dailies, weeklies etc published in India and abroad were referred. Unfortunately, indigenous works on human trafficking are scarce made the work all the more difficult.

Secondary data was collected from Police records of three years, i.e., 2010-2012 all over from Gujarat. After studying the cases to understand the role of woman in victimizing other women by luring them under false promises and pushing them into flesh trade. A few minor girls who were victims had been interviewed. On top of that when an incident of trafficking of minor girl was reported, the researcher personally met the victim and interviewed her.

**Trafficking and Laws**

Important laws pertaining to human trafficking in different forms are mentioned here. *Immoral Traffic (Prevention) Act, 1956*,

- Sec. 3 (punishment for keeping brothel)
- Sec. 4 (punishment for living on the earnings of prostitution)
- Sec. 5 (procuring, inducing or taking person for prostitution)
- Sec. 5A (recruiting, transporting, transferring, harbouring, or receiving person for the purpose of prostitution)
- Sec. 6 (detaining persons in premises where prostitution is carried on)
- Sec. 7 (prostitution in or in the vicinity of public place)
- Sec. 9 (seduction of a person in custody)

In addition to this, various sections of Indian Penal Code, Bonded Labour System (Abolition) Act, Child Labour (Prohibition and Regulation) Act, Juvenile Justice (Care and Protection of Children) Act, Transplantation of Human Organs Act, Prohibition of Child Marriage Act, etc. also exist for registering cases relating to trafficking in different circumstances.

**Gujarat Vista:** Cases reported under ITPA in Gujarat during the last 10 years is given below ITPA, 1956:

<table>
<thead>
<tr>
<th>Year</th>
<th>2003</th>
<th>04</th>
<th>05</th>
<th>06</th>
<th>07</th>
<th>08</th>
<th>09</th>
<th>10</th>
<th>11</th>
<th>2012(till August)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.of cases</td>
<td>63</td>
<td>30</td>
<td>41</td>
<td>82</td>
<td>40</td>
<td>46</td>
<td>30</td>
<td>31</td>
<td>27</td>
<td>20</td>
</tr>
</tbody>
</table>

**Woman Brothel Owners:**

Majority of these cases involve trafficking of women and children from other states to Gujarat and pushing them into prostitution. Similarly, there were also many incidents in which women from inside the state were coerced to be a part of flesh trade. A distinctive factor in all these incidents is that it was the women who played crucial role in trafficking and forcing other women and girls into this menace, making it a crime by women against
other women and girls. To illustrate this, some of the ITPA cases registered in 2010, 2011, and 2012 are examined.

A series of raids carried out at different brothels in Ahmedabad in 2010 resulted in the arrest of 49 agents/pimps and 57 prostitutes (CID Crime records on human trafficking). The agents/pimps included 28 women who were brothel-owners. These women brought women and girls (including minor girls) not only from different places of Gujarat, but from other states like Maharashtra, West Bengal, Jharkhand and Orissa for running their brothels. These women/girls were given false promises, assured jobs in Ahmedabad, and once they reached here, they were forced to engage in flesh trade. If anybody objected to it, they were locked in rooms, tortured mentally and physically, denied food and freedom to move around. These women brothel-owners belong to different states and were in different age groups.

**Native state of women brothel-owners**

<table>
<thead>
<tr>
<th>Native state of women brothel-owners</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gujarat</td>
<td>3</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>1</td>
</tr>
<tr>
<td>West Bengal</td>
<td>20</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>1</td>
</tr>
<tr>
<td>Orissa</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>28</td>
</tr>
</tbody>
</table>

**Age of women brothel-owners**

<table>
<thead>
<tr>
<th>Age of women brothel-owners (in years)</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>18 – &lt;23</td>
<td>9</td>
</tr>
<tr>
<td>23 – &lt;28</td>
<td>11</td>
</tr>
<tr>
<td>28 – &lt;33</td>
<td>5</td>
</tr>
<tr>
<td>33 – &lt;38</td>
<td>1</td>
</tr>
<tr>
<td>38 – 45</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>28</td>
</tr>
</tbody>
</table>

2011:

As mentioned earlier, 27 cases were registered under ITPA in 2011 in Gujarat. In this connection, 64 male and 39 female offenders were arrested. Out of the 39 female offenders, 21 women offenders were brothel owners, and they kept women and girls at their disposal. Age of these woman brothel owners is as given below:
### Age of woman brothel-owners (in years) vs Number

<table>
<thead>
<tr>
<th>Age of woman brothel-owners (in years)</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>18 - &lt;23</td>
<td>0</td>
</tr>
<tr>
<td>23 - &lt;28</td>
<td>1</td>
</tr>
<tr>
<td>28 - &lt;33</td>
<td>4</td>
</tr>
<tr>
<td>33 - &lt;38</td>
<td>8</td>
</tr>
<tr>
<td>38 – 45</td>
<td>6</td>
</tr>
<tr>
<td>Above 45</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>21</strong></td>
</tr>
</tbody>
</table>

The arrests were made from all parts of Gujarat like Rajkot, Bhavnagar, Jamnagar, Ahmedabad, Vadodara, Godhra, Gandhinagar, Junagadh and Surat. Majority (19) of the woman brothel owners ran their business at their house, one woman ran flesh trade at a beauty parlour and another at a guest house.

**2012:**

In 2012, up to August, 20 cases were registered in which 51 males and 31 female criminals were arrested (ITPA, 1956). Of these female offenders, 18 were running their own brothels. They used to bring women and girls from all parts of Gujarat and from other states.

### Purpose of the case study

To prove the role of women in enticing and forcing their fellow-beings to sex trade/practice. For further illustration, five cases of brothel owners and four cases of minor girls trafficking are given.

### Reasons of being perpetrator and victim of sex trade

From the study, role of women is clearly evident. Human trafficking starts with the abduction or recruitment of a person and it continues with the transportation of the person from his or her place to another destination and is followed by exploitation (Richard, 1992).

- The foremost reason is poverty and despairs and leaves their place on promises of employment.
- Ignorance of the consequences of trafficking.
- Availability of cheap labour.
- Demand for sex
- Organized crime

### Impact of trafficking

- Trafficking survivors undergo psychiatric, depressive, psychotic disorders.
• Depression and suicidal thoughts are common.
• The mental state of survivors includes helplessness, withdrawal, disassociation, self blame, etc.
• Stigmatized and outcast and facing moral and legal isolation.
• Vulnerable to HIV/AIDS infections, drug addiction and high risk abortions.

Findings of the Study
• Women played crucial role in running brothels, they lured women and girls, and if needed, forced them to engage in flesh trade.
• Women have significant role in ‘selecting’ girls and trafficking them to Gujarat.
• Women traffickers were known to all the victims’ families.
• They took advantage of poverty of the victims’ families.
• They lured victims’ families through false promises that they could get work for their wards in Gujarat.
• After bringing girls to Gujarat, they are forced to engage in flesh trade. Those did not budge were locked in rooms, threatened, beaten and not given food.
• Economically well off women also indulged in girls’ trafficking.
• All these cases involve crime by women against women.

References
CID Crime records on human trafficking.
Interpersonal crimes against and by women:  
An Indian perspective

F. Peter Ladis, Ganeshappa Deshmane and Sujata Tikande

Introduction

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

Article 1 of the Universal Declaration of Human Rights has influenced many leading legal systems of the world against many forms of discrimination on various bases including sex or gender. The Indian legal system too incorporated this nondiscrimination policy in its very Constitution to eliminate all forms of discrimination. India has been a traditionally male dominated society over the history making women to suffer from many social and economical disabilities. Thus, there arose the need of providing special provisions for the upliftment of women and got incorporated under Article 15(3) of the Indian Constitution whereby the State is not prevented from making any special provision for women. To give effect to this provision various Acts were enacted some of which are remedial in nature while others are penal.

Women are considered as one of the vulnerable group of people and their vulnerability has been the reason for crimes being committed on them making them further vulnerable. The International Community has made several attempts to protect women from the predominance of male chauvinism. But the problem, as identified by the authors, lies on the crimes committed against women by women where women are both the victims as well as the criminals. The authors have made a systematic analysis on this concept and this research paper is an attempt to show how the judiciary has interpreted such penal statutes. The object of this study is to contribute certain valuable suggestions whereby strict interpretation of penal statutes needs reconsideration at modern times to grow with the growth of humanity.

Jurisprudence of Strict Construction of Penal Statutes

One of the important philosophical principles that the criminal legal system has incorporated is that even if ninety nine criminals go unpunished one innocent should not be hanged. This jurisprudential thought has its implications both for good and bad effects in the society. The good effect is that punishment is not that so easy as the crime has to be

\[117\] Article 1, Universal Declaration of Human Rights, 1948.
proven beyond reasonable doubt. The bad effect is that the criminal proceedings have taken years and decades for the final decisions taking the statistics of the pending cases to new heights. The crime dies with the criminal and so many criminals go unpunished because of the lengthy procedures to prove the guilty beyond reasonable doubt and this takes the crime rates high in few societies.

While construing a provision in a penal statute if there appears to be a reasonable doubt or ambiguity, it shall be resolved in favour of the person who would be liable to the penalty. If a penal provision reasonably be so interpreted as to avoid the punishment, it must be so construed. If there can be two reasonable constructions of a penal provision, the more lenient should be given effect to. Punishment can be meted out to a person only if the plain words of the penal provision are able to bring that person under its purview. No extension of meaning of the words is permissible. A penalty cannot be imposed on the basis that the object of a statute so desired.\textsuperscript{118}

The strict construction of penal statutes can be manifested in the following four ways:

- in the requirement of express language for the creation of an offence;
- in interpreting strictly words setting out the elements of an offence;
- in requiring the fulfillment to the letter of statutory conditions precedent to the infliction of punishment; and
- In insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction.\textsuperscript{119}

On the one hand the above manifestations help to prevent the unnecessary punishments meted by the innocents. On the other hand many criminals because of want of proper dispositions go free. Thus, there is a need for change of understanding of such principles of interpretation when it comes to penal statutes.

An overview of crimes by and against women in India

At the very outlook of the crimes against women gives the impression that commonly the crimes are committed by men against women. However, a clear analysis ought to be made not on the number of criminals and crimes but on the average of crimes and the offenders. In other words, the total number of crimes against women is not the question but the varieties of crimes meted by women ought to be considered. When such analysis is done, one can realize that the average of crimes against women by women will exceed that of men against women.

For example, the common crimes against women by men are rape, adultery, molestation, domestic violence, etc., whereas there are various other crimes committed against women in which women play the main role in the crime. Prostitution or human trafficking of women, dowry death, bride burning, abortion of female foetus, pre-natal diagnosis, etc., are the crimes where women play the key role being one of the offenders.

\textsuperscript{118} T. Bhattacharyya, The Interpretation of Statutes, 6\textsuperscript{th} Edition, Central Law Agency, Allahabad, 2006, p. 89.

\textsuperscript{119} See, Maxwell, Interpretation of Statutes, 12\textsuperscript{th} Edition, pp.239-240.
The in-charges of the brothels in the major cities of India are the women who have employed few men as dalal, the middle man, to run prostitution. Such examples of crimes by and against women can be multiplied. A report on ‘Elder abuse and crime in India’ released by Help Age, India, after the study of nine cities in the country says, “Nationally, daughter-in-law emerged as the major abuser of the elderly (63.4 per cent) followed by son (44 per cent) in the year 2011”.

Although the official figures of arrested persons in India during 2011 indicates more men than women, study is yet to be conducted to bring out the above mentioned average. In most of the cases, women are either bailed out or acquitted from their criminal liability when they are co-offenders for the reasons and privileges enjoyed under Article 15 (3) of the Constitution of India.

Provisions for the protection of women and their interpretation

Historically Indian women have been enjoying few privileges in the society in spite of the atrocities meted by them. They are worshipped as deities and cursed as devils; respected for good fortune and rejected for bad omen. The Indian Judiciary has taken lenient views to protect the weaker sex or the vulnerable group of people when it comes to the conflict of rights. However the power vested with the judiciary is to interpret only and the strict construction has to be given to the penal statutes. When there is an ambiguity or doubt, the benefit will always go in favour of the accused or the offender and not in the interest of the victim or the State.

The following are the few of the enactments in India that have been enacted to protect the rights of women:

• Dowry Prohibition Act, 1961
• The Immoral Traffic (Prevention) Act, 1956
• The Protection of women from Domestic Violence Act, 2005
• The Indecent representation of Women (Prohibition) Act, 1986
• The Child marriage Restraint Act, 1929
• The medical Termination of Pregnancy Act, 1971
• National Commission for Women Act, 1990
• The Equal Remuneration Act, 1976

In interpreting the penal provisions of these Acts the judiciary is bound to give a strict interpretation and no objective of the Act has to be construed. Because of such strict construction, the benefit of doubt goes in favour of the accused who, many at times, is a woman in this study.

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120 http://www.aimpf.org/now-bahu-assumes-the-role-of-abuser (visited on 02.11.2012)
121 http://ncrb.nic.in/CD-CII2011/additional_tables_cii_2011.htm (visited on 02.11.2012)
123 Refer the above cases of Indian Judiciary: The accused women mostly mother-in-law have been acquitted due to want of sufficient evidence or witnesses; benefit of doubt has gone in favour of the accused.
Conclusion and Suggestions

In the light of the above discussion the authors have come to the conclusion that the principles used for the interpreting the penal statutes have served their purpose to a large extend. However, when it comes to the fact where the crimes are committed by and against women, these principles have been found to be inadequate to do justice. The following are some of the suggestions the authors would like to put forth for the effective implementation of criminal justice:

- While interpreting the penal statutes where women are the victims and the criminals, harmonious construction could be practiced as an exemption to the common principle.
- Jurisprudence of Compensatory Justice must be included in the provisions of the enactments.
- In the absence of the compensatory provisions, the judiciary should construe the provisions in such a manner that the victims get adequate compensation. Such compensation should be recovered from the women offender and from the assets of her husband or guardian.
- Awareness of the rights of women especially when victimized by women should be spread as it is done when crime committed by men.
Combating the problem of Trafficking of women for the purpose of prostitution: Nepalese perspective

Ranjeeta Silwal and Salina Kafle

Introduction
Nepal from the historical times has been under the patriarchal control, and this control of societal system objectifies women as a sex commodity and takes prostitution as a traditional occupation of women (Sangraula, 2011). For e.g. the Badi community and Deuki system along with the practice of sending daughters to serve the ruling class which also involved sexual works (esp. Nuwakot and Sindhupalchwok district) (Evans & Bhattarai, 2000). In this context, act of trafficking is simply regarded as the means to supply the service providers to fulfill the demand of the sex market. The possibility of the human trafficking is due to the constant demand and the buying and selling of the person as the commodities. Thus, Sex trafficking is a ‘large scale, highly organized and profitable international business venture transcending state borders and nationalities of women who supply the commodity of sex and of men who demand it’ (Bertone, 2000).

The market economy of trafficking consists of certain “Push” factors: Gender discrimination and the feminization of poverty, social and economic disadvantage including disturbed and difficult family background like divorce, alcoholism, sexual, physical and emotional abuse (Sanghera, 2000) contributing to the vulnerability of women and the “Pull” factor: the demand for the commercial sex. The pimps and the brokers play a bridging role and turn it into their selfish opportunity of victimizing girls and selling them for prostitution.

The term ‘trafficking’ is not novel to anybody aware about the proliferating crime syndicates, especially transnational, looming large and threatening to rapture the very fabric of human society. Human Trafficking and Transportation (Control) Act (HTTCA) 2064, partially complying with the UN Trafficking Protocol in its Section 4 defines that if anyone commits acts for selling or purchasing a person for any purpose or use someone into prostitution, with or without any benefit, extract human organ except otherwise determined by law, or go for in prostitution that shall be deemed to have been committed human trafficking. The State Cases Act defines the crime of trafficking in women and girls as an offence against the state of Nepal.

Methodology
The research is doctrinal. The researcher has collected data from primary and secondary sources of data from various newspapers, websites and books and only focused on the cases regarding the trafficking of women for the purpose of prostitution and
ignored other trafficking related article. The researcher has analyzed the adequacy of laws and Policies of Nepal in the light of the findings of the doctrinal research.

Findings

In the offence of Human trafficking "Victim" means a person who is sold, transported or put into prostitution (HTTCA, 2007). The trafficked victim substantial deprivation of the fundamental rights gets associated with their Right to live with the dignified life. Every year 20,000 girls are trafficked to India only (Kantipur, 2012). From April 2011-January 2012, Maiti Nepal only rescued 2,133 girls from being trafficked (Republica, 2012). For rescuing the victim and punishing offenders human trafficking i.e., enjoys extra territorial jurisdiction (Acharya, 2009)

Trafficking is a crime because of the elements of abuse and the violations that are committed against women not because of the movement or mobility per se (Sanghera, 2000).

For the restoration, rehabilitation and reintegration to the society different legislative measures has provided the rights of the victims. Anti- Trafficking law of Nepal has incorporated several provisions effective to victim which includes:

- The victims are compensated with the fine received from the offender. A court shall issue order to provide compensation to the victim which shall not be less than half of the fine levied as punishment to the offender (HTTCA, s. 17(1)).
- Trafficking cases should be tried in-camera court proceedings (HTTCA, s.5). Further, the act safeguards right to confidentiality of the person who puts written request to remain unnamed for reporting the offence committed or may be committed. And respecting the victim's privacy "no one shall publish or broadcast the real name, photograph or any information which is detrimental to his/her character"(HTTCA, s. 25). However, some seriousness is required for the implementation of this provision.
- The burden of proof lies to the defendant. The motion maker does not have to collect the evidences to prove the guilt. (HTTCA, s. 9).
- NG has been providing financial and technical support to eight rehabilitation centers established by different organizations. Center manage for the social rehabilitation and family reconciliation of the person stationed at the Center and medical treatment and consultation service and facility to the victims.(HTTCA, s. 13)

Different Approaches for Access to justice for victims of Human Trafficking

Prevention Dimension

The establishment of District Committees on Controlling Human Trafficking in all 75 districts in 2009/10 and National Committee on Controlling Human Trafficking (NCCHT) led by the MOWCSW is another important step that has been made for the prevention of trafficking.
Combating the problem of trafficking of women

Protection Dimension
The state mechanism as Nepalese police along with NGO’s and INGO’s have been monitoring to control crime especially for the control of the laborer for the illegal migration is essential to protect women and children from the trafficking. The protection can be carried out in the time of attempt or after the commission of the crime. It cannot be denied the active involvement of the NGO’s and INGO’s in the field of anti-trafficking (The Himalayan Times, 2068; Gorkhapatra, 2069). There is no time limitation for legal remedies and the victims can file the case against traffickers at any time. Thus, the different approaches can be applied for the restoration of the victim to the society and for administering justice to them.

Crime Control Approach
The Nepalese legal provisions are more concentrated to the criminals rather than to the access to the victims. The principle concern of the repressive crime control strategy is to stop crime, not violation and exploitation of women, whose interests are secondary, or presumed to be generally served, by stopping the criminals (Pearson, 2001).

Conclusion
There is no authentic government data to state the total number of victims nor are the traffickers and ways used to deceive the girls. Albeit Nepalese laws use the 'protection', 'prevention' and 'prosecution' method, it oversight the victim's perspective. Furthermore the laws of Nepal are rather retributive than right based. It cares more about the punishment to the offender than the right of victim i.e. the laws are not victim centric.

There are many NGO’s/INGO’s and even the government departments functioning to combat and nullify trafficking from the country and have achieved it to some extent. Despite that, lack of victim centric laws is the major loophole. Thus, the writers suggest the government and the responsible authority to amend the laws making it more victims centric.

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Kathmandu School of Law.


Prostitution: Criminalization or victimization of women

Rishab Garg and Ritwik Sneha

Prostitution is an ancient profession which has not seen recession in any era. It is a crime where a person who earns the monetary benefit is punished and tabooed but the person who derives an equal pleasure remains untainted. The earliest traces of prostitution have been found in the Sumerian civilization in Southern Mesopotamia which dates back to 2400 B.C. (Lemer, 1986). The ancient religious system of "Devadasi", or maidens dedicated to God, dates back to the 3rd century A.D. (Pande, 2008).

Prostitution in Asia is not a profession its slavery, you cannot escape or leave this profession, the best way out is to die of AIDS (Mam, 2008). The profession has seen continuous growth paving its way through trafficking and exploitation of women in the past few decades. The face of prostitution in Asia has many expressions. It ranges from women and girls who are tortured, beaten and threatened to offer themselves at the beck and call of their pimps and customers. The other face is depicted by those women who are willingly selling their bodies, hidden behind the walls of five star hotels and luxury resorts.

Government of various nations have penalised prostitution to uphold the dignity of woman as well as put an end to certain allied crimes. These laws have definitely saved various children, adolescents and women from the trappings of the flesh trade but the questionable part arises in regard to the deterrent effect of these laws. The business is still booming under the veil. These laws need change from being penal to rehabilitative in cases of prostitution as its distinct characteristics separate it from other contemporary crimes.

The women in prostitution are offenders given that the law penalises this profession. These women are mostly victims of hormones, circumstances and sometimes of men (Lacey, 2008). Even if buying and selling is symbiotic most of the times in sex trade, the psyche of a woman cannot handle the use of their bodies for lascivious purposes for a long time, thus they fall prey to mental disorders such as lack of trust in people, self abhorrence, lack of self confidence which acts as a centrifuge pulling them further towards crimes such as drug abuse, drug peddling and such other minor offences. The female prostitutes are active objects and are selling their labour power in an open market forgetting the fact that they are the most vulnerable segment of the wage earners (Rosen, 2011).

The dichotomy in the laws and its sheer ignorance towards the reasons behind the actual causation of crime is a gruesome problem. The rationale behind every law is constant that is to deter crime. In the case of prostitution, law and crime does not have a strong linkage at all. The law is all on papers and does not even reach the periphery of crime. In the same way, laws of the countries which penalise only the woman for being involved in sex trade are not deterring the crime. (Geis, 1972) These laws provide a
pseudo feeling of protection and content in the minds of the citizens who think these laws will be effective in curbing the crime of sex trade but reality has painted a different picture.

The 'force' factor behind entering this profession cannot be undermined. The combination of socio-economic pressures on women throw them into this vicious profession and though the finality of their act may seem to be voluntary but their choice was actually inevitable. Poverty, illiteracy, the lack of employment opportunities, professional skills coupled with the sexual inequality makes an abysmal combination which pushes women and girls into prostitution.

The victimization of small girls aged between four to ten years who are kidnapped and sold in the flesh markets. They are taught the skills of this profession at an early age and are prepared to embrace the profession as their sole career option. (Mam, 2008) In such a situation, the law makes no distinction between these victims of circumstances and those who willingly imbibe the essentials of this profession. In the eyes of law both of them are criminals and hence deserve punishment. These girls when they reach their twenties are already victim of rape, physical assault, psychological distress, childhood trauma and posttraumatic stress disorder. (Farley, 2003)

Generalising the punishment in case of prostitution means treating the victim in the same way as the criminal. There have been cases where young girls have been enticed by men to run away from home in the name of love, money, fame and later they sold them to the highest bidders. In such cases, ignorance of the victims is their only crime and the treatment they get from the law enforcement authorities is for the same. There are various cases where girls from Nepal were brought to India under the aforementioned influences and were sold in the red light areas of the cities. In few cases when these girls managed to run away they were sent back to their brothels by the law enforcement officers. These girls were denied help from all the four corners then they are blamed for their miseries.

The question which we need to ask ourselves is that are we seriously working towards eradicating this crime? The apparent answer seems to be negative. From the law to its enforcement every perspective attached to this crime is stigmatised. The presumption of guilt on the part of woman, on one point can be considered to be deterrent but it is not rehabilitative. The practitioners of this profession needs rehabilitation not biased punishments. Keeping the legal approach apart these women are also victims of the value system. The woman who sells her body is tainted and marked as a "bad woman" but a man who enjoys her company is not stigmatised at any step. The phallocentric society has emanated this unequal status for men and women. Hence, one of the reasons behind persistence of this crime is the male dominated society. The women are criminalized due to their lesser bargaining power. They are made accost with the demands of men to balance the morality of the society.

A categorization among the women captured in this profession is essential to provide rehabilitation to those who are in need of it. The proper implementation of the laws made to curb the menace of prostitution needs to distinguish among the women and separate the victims from those who enter the profession for the perquisites of affluence, out of
curiosity, due family-related psychological disturbances or rebellion against society and some incidental causes could be low-paying job or job insecurity.

The Supreme court of India in its positive initiative towards rehabilitation the sex workers in the landmark judgment of *Budhadev Karmaskar vs the State of West Bengal*, stressing on the right to live with dignity guaranteed under Article 21 of the Constitution of India which circumscribes the prostitute's right to live with dignity held that a five member panel should be set up to make a list of those sex workers who wished to be rehabilitated and work towards providing alternative means of livelihood to the sex workers.

The role of media is immense in educating the public about the victimized women and acts towards changing the traditionally biased attitude towards prostitutes and handles the problem in a better way than the government.

References
Economic Power of a Mother: The Truth behind the Veil

Ritika Behl

We all are well aware about the fact that a child is prone to various kinds of abuses. Such abuses can be divided primarily into four heads: emotional abuse, physical abuse, sexual abuse and neglect. Though apparently neglect and emotional abuse appear to be similar, the needs of children are different and are even dealt differently in both.

This paper revolves around the emotional child abuse which is suffered by children on the hands of their working mothers’. There is no exhaustive definition of a working mother but generally they can be defined as ‘that mother who is juggling her responsibility towards her career and her motherhood’. It is said the home is the first school for a child and his mother is the first teacher, the first individual with whom a child starts interacting. Indeed a mother is the primary role model in every child’s growing years. Thereby it is also evident that the child is dependent on his mother for his emotional, physical and psychological wellbeing and development.

Further a child is even hungry for her care and undivided attention, at least during infancy. Infancy is the stage when a child starts developing. A child’s motor skills change rapidly during the first two years which require close observation and interaction with the child. The foundation of Cognitive and Social-emotional development of a child is laid in the first five years of his life. Care refers to the behaviours and practices of caretakers (mothers, siblings, fathers, and childcare providers) to provide the food, health care, stimulation, and emotional support necessary for children’s healthy survival, growth, and development. Thereby the ‘mother’ is not the lone caretaker of a child. The word “caretaker” is inclusive of mother, her spouse and family primarily.

Child emotional abuse has been observed as an extreme habitual pattern of hostile or aggressive parenting which impairs the full development the faculties of a child. It has been observed by various researchers that many parents who abuse their children were themselves maltreated as children and this behavioral pattern stems from their childhood events only. The emotional child abuse can lead to lower IQ and lower educational achievements besides impairing the moral reasoning of a child including less empathy, less compliance and less developed conscience. It opens gateways towards criminal tendencies and various mental problems like depression, anxiety etc.

The available resources are always given extreme importance whenever child development is an issue. But what many don’t realize is that optimum utilization of available resources is also another inevitable aspect. Such resources can be divided into human, economic and organizational resources. Human resources include the caregiver’s knowledge, education, physical and mental health; and their confidence. Economic
resources include caregiver’s autonomy, control over available economic resources and control over time. Organizational resources deal with alternate caregivers, community care arrangements and emotional support provided to the primary caregiver. These resources can be optimally utilized at community, district, national and international levels.

**Why working mothers’?**

Another question which comes to mind is why is it so important for a woman to work? An economically independent mother is open to more access to resources of care. The education of woman is a key factor which affects her status, in home and society. It further affects the kinds of care practices which can be followed by her for the child. The financial autonomy and decision making power are the key potentials for which it becomes necessary for a woman to work, especially when she’s deciding to plan a family. When we understand that we can optimally use limited resources for the best of child we begin to understand that enhanced care giving would be an indispensable aspect. A child has to be understood as a product of family and community as a whole. A mother though responsible; is not the sole responsibility holder with respect to a child.

Here the focus has been on working women because their circumstances themselves have seeds of emotional abuse. It has been extremely important for the women of 21st Century to be financially independent and self-reliant. The gravity varies from society to society but indeed when motherhood has professional growth as its competitor it can definitely lead to imbalance in certain forms. A working mother is more plausible to be a victim of professional stress and anxiety, which coupled with inharmonious relations with spouse and/or his family, can further worsen the matters. Besides the aspect that a mother is a working woman, crucial role is played by her husband and family. The support which such alternate caregivers have to provide to the mother and the child starts from the stage of pregnancy itself and should be extended for an infinite period.

**Presence of other factors**

Conjointly presence of many other factors like alcohol and drug abuse and domestic violence can also aggravate the scale of emotional abuse of a child. The emotional security and trauma suffered by a woman who is affected herself by alcohol/drug abuse or because of her spouse increases the pressure on her mind whereby the frustration levels rise impeccably. The wounded mother is more susceptible to be a blamed mother. Such women many a times suffer from guilt, shame and inadequacy which can interfere with their parenting skills. They are at a risk of either becoming overprotective towards their child or neglectful. Many a times they might have been inadequately nurtured themselves.

**Adequacy of Indian Laws in dealing with emotional abuse of children**

Since India became independent it was required to fight against various plagues of the society. From the very beginning children and women were made an essential part of the pathway towards development. Impeccable efforts were made to adhere provisions of Convention on Civil and Political Rights, and Convention of Economic, Social and
Cultural Rights, which were ratified in 1979. If we would assay the Five-year plans which have been undertaken by Indian government since independence we can conclude that the reforms have rotated around few issues. These issues undeniably were the pivotal steps towards progress. Such issues were inclusive of health & sanitation, education, nutrition, child marriage, child labour, child sex ratio etc. The reforms had been directed from “need based” policies to “right based” policies. However extremely less importance has been given to the psychological needs, emotional needs and need for care. Though Article 39 of Directive Principles of State Policy is a directive against moral and material abandonment of children yet no concrete efforts have been undertaken to protect the children against the emotional abuse.

Various studies have revealed that 83% of the children suffer emotional abuse at the hands of their parents only and it is equally faced by both the genders. Thereby in a society where physical abuse is faced by 88.66% of the children and the offenders are parents only and where sexual abuse is faced by 53.22% of children, certain reformative policies specifically working on emotional abuse are impending. India ratified the Convention on Rights of Child in 11th December, 1992. Article 19 of the Convention works as a detriment against abuse and neglect of children but has not been given a corporeal shape.

Steps required to be undertaken

In many countries around the world uttermost emphasis is given on child protection against emotional abuse especially at the hand of parents. The majority of programmes focus on victims or perpetrators of the abuse. Very few emphasize primary prevention approaches aimed at preventing child abuse and neglect from occurring in the first place. The variety of solutions which can utilised by a country depends on various factors like poverty, social capital, education and other factors, specially varied characteristics of parents.

Family Support Programmes

There have been a high level of development in parental practices and the programmes which provide family support have been extended extensively. The approach adopted by such programs generally is to educate parents on various issues of child development and help them in improving/ enhancing their skills in managing their child’s behavior. Though most often these programs have been intended to be utilized by those families where the abuse has already occurred or are under a high risk of such occurrence, it would be beneficial if proper education and training is provided in this area. Responses to child abuse and neglect depend on many factors, including the age and developmental level of the child and the presence of environmental stress factors.

Training and Education

Such training and education should be provided to not just parents but also prospective parents. In an Asian country, Singapore the parental training starts at secondary level of
education itself with the name of “preparation for parenthood” classes. For such families where child abuse has already occurred there the approach is to prevent any such further occurrence of abuse and to minimize the effect of the abuse that has already taken place. For example under the program Wolfe et al, random mother-child pairs were assigned either to the comparison group. Mothers who had received such training reported fewer behavioral and adjustment issues with their children. Further it was proved that mothers who underwent such training had run a lower risk of maltreating their children.

**Family visitation**

These have been tested to be most beneficial as they help in full utilization of community resources and help in limiting the risk of youth crime also. During the home visits, information, support and other services to improve the functioning of the family are offered. One such program is run in Cape Town, South Africa under the name of ‘Parent Centre’, home visitors are recruited from the community, trained by the centre and supervised by professional social workers. Families are visited monthly during the prenatal period, weekly for the first 2 months after birth, from then on once every 2 weeks up to 2 months of age and then monthly until the baby reaches 6 months. At that time, visits may continue or be terminated, depending on the supervisor’s assessment. Families may be referred to other agencies for services where this is felt appropriate.

1. **Training for health care professionals**

   Training the health care professionals to analyse and realise the presence of various symptoms of emotional abuse whether at health centres or in schools should be emphasised. The health care professionals should undergo training for the same as there is no straightforward method of reaching the actual presence of abuse.

2. **Legal Remedies**

   There can be legal systems which can be devised to check the emotional abuse of a child but since India is a developing country the challenges are aplenty. Therefore the government at state and central level has to consider various elements before considering and implementing a legal remedy. Though the stringency of a remedy may vary from state to state or society to society what should be kept in mind is that it works as a deterrent more, than a punitive legal principle.

**Mandatory and Voluntary Reporting**

This sort of reporting has been made a part of legal system by various developing countries like Israel, Rwanda, and Sri Lanka besides many developed countries like United States. The reasoning behind the introduction of mandatory reporting laws was that early detection of abuse would help forestall the occurrence of serious injuries, increase the safety of victims and foster coordination between legal, health care and service responses. Various types of voluntary reporting systems exist around the world, in countries such as Croatia, Japan, Romania and the United Republic of Tanzania. In the Netherlands, suspected cases of child abuse can be reported voluntarily to one of two separate public
agencies. Both these bodies exist to protect children from abuse and neglect, and both act to investigate suspected reports of maltreatment.

**Child Protection Services**

Child protection service agencies investigate and try to substantiate reports of suspected child abuse. The initial reports may come from a variety of sources, including health care personnel, police, teachers and neighbours. If the reports are verified, then the staffs of the child protection services have to decide on appropriate treatment and referral. Such decisions are often difficult, since a balance has to be found between various potentially competing demands – such as the need to protect the child and the wish to keep a family intact. The services offered to children and families thus vary widely.

**Community Based Efforts**

Community based efforts may focus on single units like schools or on the whole community, which can be divided into various sectors for the purpose.

**School Based Programmes**

Generally the main objective of these programs has been to make children aware about the sexual abuse. These programmes have further trained the students to recognise threatening situations and how to communicate to an adult about any such incident. Such type of programmes can further be designed to help children analyse the presence and continuance of emotional abuse at home. Children can further be trained and such skills can be provided to them that they are able to lower the effect of such emotional abuse. Another important step that can be taken even by school authorities, including teachers, is that behavioural abnormalities should be duly ascertained.

**Prevention and educational campaigns**

Widespread prevention and educational campaigns are another approach to reduce child abuse and neglect. These interventions stem from the belief that increasing awareness and understanding of the phenomenon among the general population will result in a lower level of abuse. This could occur directly – with perpetrators recognizing their own behaviour as abusive and wrong and seeking treatment – or indirectly, with increased recognition and reporting of abuse either by victims or third parties.

**Societal Approaches**

Most of the programs primarily deal with the child and the offender but do not address the root cause of the issue. The main cause can be a variety of factors like poverty, illiteracy, employment opportunities etc. Further it has been noticed that increasing the availability and quality of child care, rates of child abuse and neglect can be significantly reduced. Research from several countries in Western Europe, as well as Canada, Colombia and parts of Asia and the Pacific, indicates that the availability of high-quality early childhood programmes may offset social and economic inequalities and improve child outcomes.
International Treaties

There are various International Treaties and Conventions which directly relate with child abuse. They have undoubtedly paved the way for various developments in relation to child rights and protection. In November 1989, the UN General Assembly adopted the Convention on Rights of Child.

A guiding principle of the Convention is that children are individuals with equal rights to those of adults. Since children are dependent on adults, though, their views are rarely taken into account when governments set out policies. The Convention on the Rights of the Child provides clear standards and obligations for all signatory nations for the protection of children. The Convention on the Rights of the Child is one of the most widely ratified of all the international treaties and conventions. Its impact, though, in protecting children from abuse and neglect has yet to be fully realized.

Recommendations

There are a series of methods and policies which can be devised to prevent and to minimise the effect of emotional abuse on children. The focus can vary from family and schools as a unit to community being divided into various sectors. It has to be implemented in such a format that root cause of the problems can also be averted in some manner. The initiative has to be taken by and specific efforts for the same have also to be undertaken by various governments units, researchers, health care and social workers, the teaching and legal professions, nongovernmental organizations and other groups.

Better assessment and monitoring

Specific efforts have to be taken towards this direction that a proper assessment of such abuse should be made possible. Every school must have a group of pediatrics who can help in analysing the development of the children of the school, especially in primary classes, where the effect of emotional abuse can be most intimidating. A proper investment mechanism has to be devised by the government to monitor emotional child abuse. It might consist of collection of case reports, surveys, which can be conducted periodically, where academic institutions and health care departments can be of immense help and support. It is essential that systems for responding to child abuse and neglect are in place and are operational. In the Philippines, for example, private and public hospitals provide the first line of response to child abuse, followed by the national criminal justice system, which helps the child in attaining expert help and support at all stages.

Policy Development

Governments should assist local agencies to implement effective protection services for children. New policies may be needed: a) To ensure a well-trained workforce in this area; b) To develop responses using a range of disciplines, Doctors, Pediatrics, Sociologist; c) To provide alternative care placements for children; d) To ensure access to health resources; e) To provide resources for families.
Conclusion

Emotional child abuse is a serious global disease which is isn’t biased between developing and developed countries. Although the developed countries have realised the pitfalls of such abuse, developing countries are still on the pathway to accept emotional abuse as a deterrent to their society. Recognition and awareness, although essential elements for effective prevention, are only parts of the solution. Prevention efforts and policies must directly address children, their caregivers and the environments in which they live in order to prevent potential abuse from occurring and to deal effectively with cases of abuse and neglect that have taken place. The concerted and coordinated efforts of a whole range of sectors are required here, and public health researchers and practitioners can play a key role by leading and facilitating the process.
Chhaupadi: Victimizing women of Nepal

Roshi Bhandaree, Binita Pandey, Manisha Rajak and Pramila Pantha

Introduction

Chaupadi Pratha generally prevails in Hindu society of Mid Western and Far Western region of Nepal. This practice stems from the belief that when a women/girl have her periods, the woman is “impure” and could pollute household. This belief stem out from the myth that Indra was cursed for killing the Brahmins and this curse was transferred to women as menstruation. Females are forced to stay in the shed for thirteen days during their first and second menstrual cycle, seven days in their third cycle and four days of every other menstrual cycle. The practice of Chhaupadi is also followed by woman during child birth and for up to eleven days after the delivery (Directive Regarding Chhaupadi Elimination, 2008). Even their babies are sent to live in these sheds with their mother. The shed is called Chhaupadi Goth, which has a dreadful living condition with temperature drop up to freezing zero.

Review of literature

The women and infants are exposed to various infections and long-term ailments. Even if the lady dies there, the society doesn’t allow the family to bring the dead body near the house. Every year, newspapers report stories of women raped, killed by wild animals, bitten by snakes or dead of cold during their stay in the goth. Only a minority of the rape cases are likely to be reported given the social stigma associated with such incidents. During a study conducted in Nepalese schools by Wateraid in 2009, only 11 percent of the respondents declared not practicing any form of restriction or exclusion during menstruation (Wateraid, 2009). Very recently, the chhaupadi system has been blamed for the extraordinarily high rate of uterine pro-lapse in women where, in one sample district, “over 60% of women are estimated to be living with the condition” (Human Rights Council, 2011). According to Nepal’s Monthly Monitoring and Annual Performance Review Worksheet 2009-2010 average of 96 cases of menstruation disorders were reported each month by married and unmarried women in the district primary health center of Dolakha. In 2008, there were 281 deaths due to complications during the delivery for 100,000 live births in Nepal. This figure, according to numerous experts, is probably largely underestimated.

The neonatal mortality rate (during the 28 days following the birth) reaches 32 for 1000 live births and a lot of newborns succumb to pneumonia or diarrhea after living their first days in a cowshed (IRIN, 2009). Menstruating women are not permitted to take the nutritious food and milk products. (NWC, 2008)
Present Study

The Interim Constitution of Nepal 2063 (2007) has progressive provisions regarding women’s right. Article 20 has guaranteed the right of women and article 29(2) reads as “no one shall be exploited in the name of any custom, tradition and usage or in any manner whatsoever”. Section 12 of Civil Rights Act 1955 has stated no one shall be deprived of his/her life or personal liberty. Children’s Act 1992 (2048) in its Section 4(3) has provision of proper health care to the pregnant mothers and the mothers who have recently given birth to a Child. Section 7 of the same Act has mentioned– no child shall be subjected to torture or cruel treatment.

There are different human rights instrument assuring women’s right, dignity and equality with men. UN Charter as well as UDHR assures equal rights, freedom and non discrimination to everyone. It is also assure that right to liberty of person, it has protect to person from torture or to cruel, inhuman or degrading treatment or punishment and all are entitled to equal protection against any discrimination. Article 25 mention that the right to a standard of living adequate for the health and well being. It give special emphasize to motherhood and childhood for entitled to special care and assistance.

ICCPR and ICESCR are based on the principle of human dignity, equality, nondiscrimination, freedom, liberty and justice. Article 2 of CEDAW has urged the state parties to make policy of eliminating discrimination against women. Nondiscrimination, equality and state obligation is core principles of the CEDAW. According to article 2(e) and 2(f) the state parties has to undertake all appropriate measures to eliminate discrimination against women by any person organization or enterprise and to take all appropriate measures, including legislation; to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

Methodology

The 28 incidents of Chhaupadi that occurred in between 2010-2012 A.D were studied. They were collected from different national newspapers of Nepal through random sampling method and as well using legislative and case research method the existing laws and decisions of Supreme Court of Nepal to eliminate Chhaupadi were studied. In every incidence, the news published date, place (district), age victim, violence against victim, it’s consequences upon them were collected through tabulation method. The findings were again statistically tabulated and graphically interpreted through chart.

Results

Total 28 incidents were recorded in news paper articles of the year 2010-2012. Among them 9 incidents were related to death of the women/ girls, 2 regarding the illness, 7 incidents reflecting the ill practice of chhaupadi. Also 5 regarding awareness program of chhaupadi whereby one program was ineffective. Rest of the 5 relating to issues of family ostracism, girls being expelled from school due to chhaupadi, a girl being beaten due to chhaupadi practice and so on. However it is estimated that the impact is far more grave.
then perceived since the recorded data is only from newspapers and not a complete independent comprehensive research.

The direct victims of this practice are the women from menarche to menopause and post delivery. However the psychological and sociological impact span throughout the lifetime of women. This practice is the direct imposition of patriarchy on the biology of women. The indirect victims of this practice are the children of the victim and if the woman dies then the family members fall upon this criterion. The perpetrators are the family members of the victim. In the course of forcefully making them follow this practice women and girls are physically and mentally coerced.

One of the glaring example of initiatives is the Directive to Eliminate Chhaupadi Pratha 2008 (Chhaupadi Unmulan garna baneko Nirdesika, 2064). Still, women and girls are forcefully made to follow this ill practice in the name of culture and tradition. The literate girls are also being victim.

In the case of Dil Bahadur Bishwokarma vs Council of Ministers (September 2004 (2061/1/19)) the Supreme Court declared the practice as a discrimination against women and a violation of women's rights, and issued directive orders to the Government to take appropriate legal and other measures to prohibit this practice. Similarly, the SC underlined the crucial role of NGOs in carrying out educational and awareness campaigns against inhumane and discriminatory practices like Chhaupadi. A committee established by the Ministry Of Health and Population has already carried out an in-depth research on the adverse impacts of such practices on women’s health.

Conclusion

Equal rights of men and women are inalienable, interrelated, interdependent and inherent rights. These rights cannot be curtailed in the name of the cultural practice. As for why women do not report these incidents is because of natural obedience engraved by ages of practices which makes women believe that she herself is impure. The 21st century has brought a consciousness among limited demography that such practice is in fact not good. This change of belief can only be attributed to an increase in level of education. However the movement of an elimination of this practice lacks an integrated attempt from all sectors whereby the practice prevails in majority. It is absolutely necessary to break the belief system through the realization that a culture if harmful is no culture. ‘No harm no culture’ means that chaupady can never be taken as a culture. The grotesque condition one lives in when suffering from the menstruation cycle can only be justified in the in realm of injustice. The victim of the crime suffers individually and the victims usually have the realization that they are not to blame and also aspire towards rehabilitation. In the case of chaupady the victim accepts violation as fate and considers discrimination to be natural. This makes it a bigger challenge to combat as the struggle is not only against the injustice but also towards the change in mentality of all.
Prostitution is the oldest profession of the world and having its influence since time immemorial. With the passage of time the institution is changing radically. But society’s stereo-type attitude remains same. It is interesting to note that this institution is only known for women participation, is having their no agency. Whereas if we look at the definitions of prostitute, in Roman law under Justinian in the digest of 533 which define prostitute as, “A woman who gives herself publicly for money and not for pleasure. Further according to J.G. Mancini in his book ‘Prostitutes and their Parasites’, define prostitute as the act of women repeatedly and constantly practicing in sexual relationship with anybody, on demand, without choosing or refusing any partner, gain, freely and without force, her principle object for profit and not for pleasure. In both these definitions the whole fabric is revolved around women and it completely denies male participation. Further the society’s view is so narrow that it blames women as only culprit for the prostitution. Though prostitution is invariably a transaction between two people, but here it is male partner who always excluded from picture.

Even Suppression of Immoral Traffic in Women and Girls Act 1956 define prostitution as ‘the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or kind.’ It is unfortunate however, that for the ages it is only women who have been branded and isolated as prostitutes. Here no one is looking the other aspect of the issue. How someone can deny the fact that without its recognition, how the institution has got its importance? Here no one is observing the role of the male partners who act as the customers of prostitutes. Without male participation how it is possible that institution can flourish in its present form? How can one overlook the fact that the world’s oldest profession is came into being and is still thrives as an answer to man’s insatiable thirst for intimacy and physical pleasure. It continues as a counter-measure to the restriction the organized society imposes on the sexual life of man. Hence here due to this double mind game of society the prostitutes are forced to live a miserable life. There is no one bothering about the reasons that why she choose prostitution as profession. It is evident from various reports that in 80 to 90% cases it is the poverty and other economic barriers which forced her into prostitution.

Further the approach of law is also narrow on the issue, as it is neglecting the root cause of the problem and just involves in blame game. Is law is working in the direction to achieve that stage which leads to create a ‘just society’, where each and everyone can a live a dignified life in a way they want? In order to make law to be just, it must based on
Kantian reason, otherwise it would deprive people from freedom and make obstacles in their natural growth. There is a need to act by following the ontological and epistemological aspects of law. In order to form just and intelligible law/ proposition, we have to test it on the conditions of validity, existence and effectiveness. It is only through this we can create coherence in a changing society and it can be possible by having clear ‘teleos’ of law. Here in order to reach at the roots of problem, one has to understand its relation with other contributory factors. Trafficking is most important among them and as it is said that if prostitution is the oldest profession of the world then trafficking is as old as prostitution. It is the mode to facilitate and enhance the sex trade. Further with the involvement of women in this process, the relation between prostitution and trafficking become too complex and harmful. It is the main channel through which interpersonal crimes are committed against women. In order to find the solution to the debate, one has to find the roots of the problem, for that one should act with the open mind and eye, unbiased form all societal aspects. The point is supported by the French Philosopher Michel Foucault, who in his book ‘Archeology of Knowledge’, pointed that one has to internalize the things and only then one should formulate his opinion. Hence in order to overcome the harms of prostitution there is need to have evenhanded public discourse. Despite criticizing prostitution with naked eyes, there is need to question ‘a priori’ propositions. As a democracy we are following the majority rule and ignoring the individual’s freedom of choice. Here discrimination of women from womb to tomb is well known. Due to the narrow mind set of society prostitution is treated as a social evil. Due to stereo-type behavior of society, our laws and policies on the issue are also biased with the presumption that prostitution is wrong per se and anyone who engaged in prostitution by what so ever reason is an accused rather than victim.

According to the Immoral Trafficking Prevention Act, 1956, commercial sex and soliciting in a public place are punishable offence. The Act is intended to protect women from being trafficked, i.e. forced or coerced in selling sex. As stated above that sex work is not itself socially sanctioned but considered immoral, sin or crime. So law enforcement agencies like police misinterpret the ITPA and go after the sex workers instead of the traffickers. Thus sex workers suffer harassment both at the hands of traffickers and the police. The Act is based on the International Convention for Suppression of Trafficking in Persons and the Exploitation of the Prostitution of others, 1949. On the basis of the convention to which India is a signatory, ITPA is based on the principle that sex work is exploitation and is incompatible with the dignity and the worth of the human beings. The stated goal of the act is to eliminate trafficking; it does not criminalize sex work or sex workers, but rather act by the third parties facilitating the sex work. Thus Act punishes anyone maintaining a brothel, living off earning of prostitution and procuring, inducing or detaining for the sake of prostitution. But this entire system ends up either criminalizing or victimizing the sex worker, while having a minimal impact on the traffickers or those responsible for exploitation. Data on the enforcement of the Act indicate that over 90% of those arrested under the Act are women sex workers. The other includes the brothel keepers, pimps and clients. Section 7 and 8 of the Act directly target sex workers by
penalizing sex work in public place and solicitation, respectively. Section 8B, under which 90% of women are arrested, forbids “soliciting in a public place”. Thus a law aimed at protecting women is being used to punish them.

There are various loopholes in the Act. The one of the main confusion is regarding the ambit of term ‘public place’, as Act prohibits the prostitution in the public place or in the vicinity of public place. But there are number of examples where through private areas situated in a public area, such activities are carried out. Even though there are the provisions for search of places under the Act, but generally it is only sex workers who are detained from such places and the main culprits remains absconded. The wide ambit of the term ‘any person’ used in section 4(1) of Act, which provide punishment for living on the earning of prostitution. It is troublesome as it can include any individual even the family members of the prostitutes. Perhaps this may be one of the causes that family members of sex workers generally ignore them and hesitate in fighting for their rights. These ways only light of hope for sex workers in fighting for their rights is also got diminished. Further section 10-A of the Act talks about the detention of sex workers in corrective institution. If female offender is found guilty under section 7 and her character is such that it is expedient to detain her. So here section giving the authority to detain a prostitute on the basis of her character, which is very easy to prove as loose. Hence it is the time to move a head form debate of legalizing or not legalizing prostitution. One has to start treating prostitutes as the legal subject. It is their right as a citizen of the country. By following the new paradigm, prostitution should be treated as the ‘work’, and prostitutes should be provided with the protection of law so that they can lead a dignified life. Further there is need to have rehabilitation schemes for them so that one who want to leave their profession can easily get settled with the societal main stream. But ultimately it is society’s role which plays a vital role.
Single Mothers - Victim of double jeopardy in the society

Shreya Sinha and Priti Sharma

Single mother and dead father are two sides of the same coin and different ways of saying the same thing but the former is considered more derogatory. A single woman has to face a lot of humiliation which a widow does not have to. She is rejected and outcasted from the society. Widowed women are however, somehow ‘ennobled.’ Women who have the courage to walk out of a marriage when ill-treated should actually be admired, but instead they are looked down upon as women who could not make their marriage work. Unmarried single women also face hostility. In most of the cases it is often seen that it is a woman who makes the life of another woman miserable be it the woman who is the mistress of a husband or the normal gossiping woman of the neighborhood looking for some “hot interesting” topic to blabber on.

It is not a simple matter of turning a deaf ear to gossip, but a question of tackling practical problems like school admissions or getting the children married. Furthermore our Indian society looks harshly upon divorced women, invariably blaming them for the break-up. Due to which the woman herself feels inferior. It is the society that hullabaloos the situation. Society creates crimes against a single mother- the one who has been deserted by her husband for anyone else or who left her husband for some or the other reason. This condition of women is prevalent in all sections of the society irrespective of the age caste, class and social order.

Several times it so happens that the husband commits adultery on the woman and if she raises her voice then her sanctity is questioned. A house maid was deserted by her husband because he did not have sons from her and also accused her of having extra marital affair. He himself however was of doubtful character and married his own brother’s wife thereby leaving the poor woman and her three daughters. A middle aged woman having seven children was also deserted by her husband because he thought her to be adulterous instead it was he who married again. Here both of the husbands had committed adultery and were neither interested in family planning nor took responsibility of their children. A woman is battered, tortured, deserted and if luckily divorced then not given sufficient amount as maintenance in order to harass her mentally and economically. Even the judiciary system of India has not come forward for the upliftment of the single or divorced women. In Noor Saba Khatoon v Mhd Quasim\(^{124}\), the supreme court gave only two hundred rupees as alimony to the divorced woman and her three daughters. The society thinks that there is no person to safeguard the alone lady so they directly or indirectly

\(^{124}\) 1997
always try to harass her, molest her both mentally and physically. In most of the cases, due to excessive societal pressures women become guilt ridden and shameful about their relationship status. They become resentful and take a lot of anxiety about their and their children’s future due to which they bring out huge personality changes.

A single married woman is always considered as an open sex distributor by the society, society always tries to question the character of a single mother because they think she is not having a person who can fulfill her sexual desire so she is always considered to be desperate for having a happy sexual life. She is subjected to total isolation by the society. If a lady solely up brings her child then the society thinks that she is alone because of own ‘bad deeds’ towards her husband and that she deserves to be alone and deserted. But this isolation does not help her from getting out of the numerous assaults and taunting which a single mother has to face every moment of the every single day of her life.

The role of single parent is challenging one especially when the family is headed by a woman. It is more difficult when a woman who has never previously worked outside the home to work due to the economic deficiency. To add more to this problem the woman is subjected to sexual harassment at her workplace by her male co workers. She has to do some or the other ‘favour’ in order to get her work done or to even survive in the grapevine of the corporate world and if she fails to do such favour then she is harassed some or the other way like allotment of more night shifts than necessary or by making the poor lady slop more and more.

The role of a single mother requires that the parent takes on responsibility that may have been shared by their spouse. Single mothers experience additional role strain as a parent because they have to perform the duties of both the mother and the father. In addition to becoming the primary wage earner, a woman is forced to shoulder other responsibilities of her husband. Due to multiple roles playing a lack of structure and inconsistent enforcement of parental standards is their due to which most of the children who are brought up under such circumstances end up being malnourished and delinquent in nature.

It is not compulsory to up bring a child with a father but a single mother faces problem in up bringing a child of opposite sex, even if the child is of same sex then it is difficult for her to protect her. Adolescent boys with a single mother sensitize to appropriate gender with their mother telling them certain household chores. It is difficult for a single mother to handle a child of opposite sex because the task asked to them normally narrated by a father to a son, and even a male is always emotionally strong so it is difficult to make them understand the things that father should have told them, and that is reason they have to give negative reaction.

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Majority of mothers cannot make a decision regarding higher education of their children. For this their poor financial status, lack of knowledge and proper guidance may be blamed. Majority of the single mothers have found it hard to maintain discipline among the children due to absence of male members. The mothers complain about loneliness, trauma and depression and find it difficult to handle the responsibility of child-care and to establish a routine for their children.\(^{127}\)

An Indian women is brought up with the ‘Cinderella Syndrome’ where her prince charming is her everything, she is taught to be obedient and dependent to her husband due to which when her so called ‘prince charming husband’ leaves her she is completely shattered and the society being the sheer opportunist tries to take all due advantage. She is humiliated and taunted at societal level, battered and bullied or sometimes burned alive inside her own house by her own parents or in-laws where ever she decides to live work place. A single mother is sexually harassed or even raped at her work place. It has also been seen that women who live alone are subjected to higher risks of robbery and murder unlike the ‘normal married women’.

Thus we can clearly see how brutally the so called 21\(^{st}\) century modern society punishes a poor lady by inventing varieties of crime against her just for the sole reason that she decided not to suffer any more of her husband’s tyranny or torture but rather stand alone and fight for herself and her child’s rights.

Dalit rape victims: An analysis of Victim Justice in India

G. Shunmuga Sundaram, R. Sivakumar and L. Xavier

Generally women faces all sorts of victimization like gender discrimination, female infanticide, inequality of education, gender harassment, dowry, rape and so on. But rape is one of the heinous crimes against the women in the world. It’s totally against her will, unnatural, foreseeable, immorality and illegally. It is a typical crime where the victim has to suffer mentally, physically, psychologically, socially, culturally and economically for the rest of her life. In that sense once a victim of rape always a victim (Swamy, 2008). Dalits literally means that "broken" people, (Untouchables) at the bottom of India's caste system. Dalit rape is not only the crime against women; it’s mainly the crime against Dalits on the basis of caste. Normally women and children are vulnerable in our society but Dalits and Dalit women are more vulnerable and easily a prey for exploiting by the upper caste people. Traditionally dalit women are kept sadism of verbal abuse, sexual label, unclothed, forced to drink urine and eat faeces, gender discrimination, politically excluded, illiteracy, banded labour are only experienced by Dalit women in India. One of worst Devadasi system is conventionally followed in Indian temples that are to sexually exploit and forced prostitution of girl child who belongs to the dalit community. Dalit women are threatened by rape and gang rape as part of showing that the caste is dominated by the higher castes in India. The statically evident shows that day by day the atrocities against dalit women especially rape is increasing in India. Generally there were 24,270 rape cases registered in India. According to National Crime Records Bureau of India (here in after NCRB), three Dalit women are raped every day and its report 2011 shows that a total of 1,557 cases of Rape of women belonging to Scheduled Castes were reported in the country during the year 2011 as compared to 1,349 cases in the year 2010, thereby reporting an increase of 15.4% (Crime in India, 2011).

The majority of rape cases against Dalit women are not registered more often due to the threat by the dominant caste people. Analyzing the justice of dalit rape victims in 2006, the official conviction rate for Dalit atrocity cases was just 5.3 percent. According to NCRB the average conviction rate for crimes against Scheduled Castes and Scheduled Tribes stood at 31.8% and 19.2% respectively as compared to overall conviction rate of 41.1% relating to IPC cases and 90.5% relating to SLL cases (Crime in India 2010).The lack of protectiveness and improper investigation of law enforcement, dalit women are hate to approaching them and dislike to register the cases. Dalit Women are also unaware of their laws and their protective groups like National Commissions and NGOs. Even the cases are registered due to lack of appropriate investigation by police, repeated victimization by prosecution in the time of trail and delaying in nature of judgment. So
the victims of dalit women are not considered by the legal systems after the victimizations. Its manly affects the essential life of dalit women. The broken dalit women have lack of courage to face the legal proceedings and threat by the dominant caste people and finally the case leads to acquittal in nature.

**Dalit women status in India**

Contemporarily women in India is empowering in due to the availability of education, achieve women rights, employment opportunity, political participation and so on. But dalit women are not like that, very few only come out the obstacles and empowered. “Dalit women are considered as easily available for all forms of violence. The Indian justice system cannot serve as a deterrent for crime when there is no consequence for the perpetrators of violence against Dalit women (Navsarjan, 2012). In India nearly 18 percent of dalit population with little less than half being women, which mean 90 million dalit women living in India. Dalits are very few in getting political, financial and high social status. Even dalit getting political influence they are suffered by dominant caste people. In India so many dalit women reserved Panchayat constituency are presented but it’s difficult to nominate the dalit women. Even they are selected as a president they are not rule and show is power. Dalit women presidents have been facing challenges from their caste Hindu vice presidents, who have emerged as the biggest threat to democracy (Palanithurai, 2012). They are harassed by the dominant Caste Hindu coworker and people of their constituency. In Tamil Nadu very recent dalit women Panchayat leader are not permit to participate the Independence Day celebration and another one attempt to murder for implementing panchayat rules. It’s very shocking in Chennai high court Dalit judge keep on harassed on the basis of caste by the non-dalit court colleagues (he Hindu, 2011). In India most of women manual scavengers and bonded labours are belongs to the dalit community. Normally they are illiterate and vulnerable in our society.

**Atrocities and victimizations of dalit women in India**

Dalits women status is vulnerable and pathetic condition in India. In India most of dalit women are depends upon the landlords for their employments. They are working in daily wages and bonded labours. So the workplace is the primary sexual violence take place of dalit women. They face physical assaults, verbal abuse, sexual harassment by the landlords and supervisor in the place. Most of the brick kiln and match boxing making industry are female workers belongs the dalit community and they are vulnerable and easily become a prey for the upper caste people. Then the reporting behavior is very less due to the affect of employment and some other reasons (Karthika & Jaishankar, 2008). Commonly dalit women faces violence in public places like streets and in around their villages and towns. Regularly dalit women face violence’s in within the home. Dalit women face targeted violence even rape and murder by the state actors and powerful members of dominant castes used to inflict political lessons and crush dissent with the community (Navsarjan, 2012). Dalit women are forcibly incarcerated, sexually harassed and rape in police stations and also dalit women faces violence in government sectors become grounds for violence.
Dalit Rape Cases and its Justice

Justice of rape cases is difficult one in our criminal justice system. According to the UN Commission on the Status of Women study there were 76 reported cases of rape or gang rape (20 in Gujarat, 35 in Maharashtra, 21 in Tamil Nadu), nearly (30.9 per cent) remained pending in the courts and the status of (42.5 per cent) was unknown the nature of dalit rape cases in India (UN Commission on the Status of Women 2004 to 2009). As per NCRB, Police closed about 21% of cases under the SC/ST (PoA) Act till 2009 (Crime in India, 2009). There are 44,864 cases pending charge sheeting in 13 years even after the investigation. In most of the rape victim know their perpetrator but the conviction of offender is complicated one. Most of the dalit rape cases are pending in nature due to main reason for improper investigation of law enforcement and its take to failure of justice. Incident of dalit rape are mostly gang rape by the upper caste people. In this since police are failure investigate and arrest the offender even they are arrest the culprit they are escaping by using the loopholes of law. In Tamil Nadu recorded a conviction rate of 88.70 percent in sexual harassment cases in 2001. But the percentage decrease to 57.05 in 2011. All India Average of sexual harassment conviction rate is goes down in India 27.70 percent (The Hindu, 2012). In famous Poonam Devi case she was gang raped by the dominant caste persons and no one was arrested. Later she took revenge by killing the offenders. In Tamil Nadu Vacathi rape case is an example for delayed dalit rape victims’ justice, an evident shown in India. Nearly two decades after only they are getting the justice. They are doubly victimized - first at the hands of their attackers and later by the hands of judicial system that fails to offer them protection and justice. A Dalit woman who is a survivor of rape will face so many obstacles in bringing her case to the attention of the police and the courts. She will face omitting from her community and family. Finally she gets difficulty in accessing the justice system.

Conclusion and Suggestions

Dalit rape is one of the inhuman and degrading issues of the Indian democracy. First its affects the Human Rights in India. In the Indian legal scenario dalit rape victims and their justice is a questionable one. Our present day system of criminal Justice System and the social set up is not favoring dalit rape victims. Registered dalit rape cases are only the tip of the iceberg in India. According to NCSCST (National Commission for Scheduled Caste & Scheduled Tribes) observed given the large extent of total 5,52,351 atrocities committed against SCs and 86374 atrocities committed against STs during 1995 -2010 under this 56.3% of cases registered under not in appropriate sections, thereby dilute these cases causing more and more acquittal and withdrawal. The average rate of pendency in court is 82.9%. At the end of 2009, 80.5% remained pending for trial across the country (NCSCST report, 2010).Based upon this analysis to sensitize proper registration of dalit rape cases in the police station and to conduct proper investigation then only increasing level of conviction rate. Find the dalit vulnerable areas and opening the Dalit police station to protect and prevent the dalit from the atrocities. Conduct the ground level
Dalit rape victims

sexual harassments victim survey in the dalit vulnerable area. Appoint an independent judicial body to investigate and punish the offenders, including any officials or police. Creating awareness about the available laws to the Dalit communities and increasing the reporting behavior. Originate Special court for dealing dalit rape cases and increase speedy justice. To form the effective monitoring committees in state and district level of dalit atrocities cases. Government should increase the compensation amount and creating employment assistance. All of the above so called upper caste people bring to end violence against the dalit women and perpetrators get stringent punishments in the court of law without delaying.

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Mental health status and alienation of criminal women: A psychological study

Sylaja Sureshkumar

Introduction
At present it has been widely accepted that crime is not just an accidental phenomenon, something which exclusively concerns an individual, originating within him or her and having nothing to do with the surroundings, and social milieu, and also that it is the frustrating outcome of the social situation which provides stimuli to an individual leading him or her to criminal behavior.

In the past in criminological studies female offenders are usually not mentioned at all, either their very existence is ignored or they are held to be too insignificant to be worthy of consideration. Women are in the way of progress with the men in all areas, and unfortunately the trend is seen in the criminal area also. Withdrawing from the stereotyped feminine role they become more hard and tough. In India females are actively participating in naxal groups.

Hypothesis
There will be significant difference among criminal women, normal women and criminal men in their mental health status and alienation.

Method
a. Sample
The sample consists of 100 criminal women and two groups of control subjects with 100 normal women and 100 criminal men. Criminal subjects selected from different prisons in Kerala. Normal women are also selected from Kerala.

b. Tools
(1) M.H.S.Scale
This scale was developed by Gireesan and Sanandaraj (1988). The test measures six components they are Attitude towards self, Self-actualization, Integration, Autonomy, Perception of reality and Environmental mastery. The sum of subscale scores is taken as the Mental Health Status Score. The split-half reliability coefficient of the subscales varied between 0.73 to 0.89. The validity coefficients using another similar scale varied between 0.73 to 0.87. All these coefficients are significant at 0.1 level.
Mental health status and Alienation of Women

(2) Alien Inventory

This scale was developed by Gireesan & Sanandaraj (1988). The test measures five components they are Powerlessness, Meaninglessness, Normlessness, Isolation and Self-estrangement. The sum of subscale scores is taken as the Alien Inventory score. The split-half reliability coefficient of the subscales varied between 0.67 to 0.73. The validity coefficients using another similar scale varied between 0.58 to 0.83. All these coefficients are significant at 0.1 level.

C. Procedure

Permission to conduct the study was obtained from the concerned prison authorities, and administered individually to the subjects after establishing rapport and scored as per the manual. The data were analyzed using ANOVA.

Results and Discussion

| TABLE 1 – Means and SD’s of the Mental Health Status and Alienation for the three groups under study |
|-----------------------------------------------|-----------------------------------------------|-----------------------------------------------|-----------------------------------------------|
| Variables                                    | Criminal Women (N=100) | Normal women (N=100) | Criminal Men (N=100) |
|                                              | Mean   | SD    | Mean   | SD    | Mean   | SD    |
| Mental Health status                         | 230.96 | 19.70 | 253.33 | 21.24 | 253.72 | 21.77 |
| Alienation                                   | 177.39 | 14.64 | 154.57 | 17.22 | 158.75 | 17.66 |

| TABLE 2 - Univariate F-ratio with DF₁=2 and DF₂=297 |
|-----------------------------------------------|-----------------------------------------------|-----------------------------------------------|
| Variables                                    | Among Mean SQ | Within Mean SQ | F-ratio |
| Mental Health Status                         | 16968.95    | 437.69         | 38.77*  |
| Alienation                                   | 14761.24    | 274.25         | 53.82*  |

*Indicates significant difference at 0.01 level

In the comparison of the three groups for the variable mental health status the F-ratio obtained is 38.77, and it is significant at 0.01 level (vide table 2). This indicates that criminal women, Normal Women and Criminal men differ among themselves in mental health status.

Table 1 shows the means and standard deviations of the three groups for the variable. Though it is seen that criminal women’s mean value in the variable is lesser compared to normal women and criminal men, the significant of the difference is not evident. Hence, scheffe procedure is computed, which identifies the pairs of groups that show significant differences. The details are given in Table 3.
1. Mental Health Status

**TABLE 3 - Data and Results of Scheffe procedure for the Three Groups for Mental Health Status**

<table>
<thead>
<tr>
<th>Groups</th>
<th>Mean</th>
<th>Groups</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Criminal Women</td>
<td>230.96</td>
<td></td>
</tr>
<tr>
<td>Normal Women</td>
<td>253.33</td>
<td></td>
</tr>
<tr>
<td>Criminal Men</td>
<td>253.72</td>
<td></td>
</tr>
</tbody>
</table>

*Denotes pairs of groups significantly different at 0.05 level.

Table 3 indicates that criminal women differ significantly from normal women and criminal men in mental health status.

The data and results show that mental health status of criminal women is lower compared to normal women and criminal men. This means that criminal women are not self confident or self reliant. They do not have the capacity to evoke empathic, warm or compassionate response from others. They fail to show resistance to stressful situations. They lack the unifying philosophy of life, which guides their actions and feelings. They are not autonomous especially in decision making process. Further, the ways they perceive the world around them do not correspond to what is actually there, since their perception is not free from need-distortion. They do not consider the inner life of other people as a matter worthy of their concern and attention. They lack the ability to solve their problems, and to meet situational requirements. They do not enjoy recreation, either.

The data and results on the variable mental health status, discussed here support the hypothesis formulated in this regard.

2. Alienation

**TABLE 4 - Data and Results of Scheffe procedure for the Three Groups for Alienation**

<table>
<thead>
<tr>
<th>Groups</th>
<th>Mean</th>
<th>Groups</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Normal Women</td>
<td>154.57</td>
<td></td>
</tr>
<tr>
<td>Criminal Men</td>
<td>158.75</td>
<td></td>
</tr>
<tr>
<td>Criminal Women</td>
<td>177.39</td>
<td></td>
</tr>
</tbody>
</table>

*Denotes pairs of groups significantly different at 0.05 level.

The F-ratio of 53.82 shown in table 2 indicates that it is significant at 0.01 level, when comparing the three groups for the variable alienation. This shows that criminal women, normal women, and criminal women differ among themselves in the above variable.
Since the F-ratio is statistically significant, Multiple Range Test using scheffe Procedure is carried out, as before, in order to identify the pairs of groups that show significant differences. The results are given in Table 4.

The results shown in Table 4 indicate that criminal women differ significantly from both normal women and criminal men in Alienation. Criminal women have high Alienation compared to normal women and criminal men as indicated by the data and results given above. It shows that feelings of powerlessness, meaninglessness, normlessness, isolation, and self-estrangement are common in criminal women.

This means that criminal women have no control over the problems of their life in the protection of their legitimate rights, and privileges. They are unclear as to what they ought to believe in, and are unsure about the future outcome of their behavior. They have high expectation that socially unapproved behaviors are required to achieve their goals. They feel uneasiness in mingling with others, and have the feeling that they are purposefully deprived from interacting and integrating with others in social, economic, and religious life. Further, they feel that their engagement in activities are not intrinsically rewarding, and that their work is valued primarily as a means to nonwork ends.

The results of the present investigation support the hypothesis formulated in this regard.

**Conclusion**

The variable mental health status differentiates criminal women, significantly from both normal women and criminal men. The highest mean score is obtained by criminal men and the lowest by criminal women.

For the variable alienation, criminal women are found to differ significantly from both normal women and criminal men. The criminal women get highest mean score and the normal women get the lowest.

**References**


Discrimination and victimization of women on the workplace: Prevalence and characteristics

Vesna Nikolic-Ristanovic

The paper’s focus will be on the presentation of findings on prevalence and characteristics of discrimination and victimization of women on the workplace obtained within 2011 nation wide victimization survey of Victimology Society of Serbia. However, the paper starts with enlisting main international documents which call for elimination of all forms of discrimination of women, including work related violence (e.g. CEDOW, ILO discrimination (employment and occupation), and maternity protection convention, EU Equal treatment directive (2002), Council of Europe Convention on preventing and combating violence against women and domestic violence). When appropriate, survey findings are compared with similar findings in other countries.

The survey which findings will be presented is part of a larger study of discrimination against women in the labor market in Serbia, conducted by the Victimology Society of Serbia in 2011, in cooperation with the UN Women, within the project "Mapping the extent and characteristics of gender-based discrimination in the labor market and society responses to it". The result of the project is larger study co-authored by the author of this paper as well as by Sanja Copic and Bejan Saciri.

For the purpose of the research, discrimination against women at the labor market was defined as any unwarranted differentiation or unequal treatment, i.e. omission (exclusion, limitation or preferential treatment) with the aim to or the effect of hindering, impairing, disabling or nullifying a woman recognition, enjoyment or exercise of rights at the labor market, i.e. in the sphere of labor and employment, on the grounds of her sex or other personal characteristics. The research encompassed both discrimination against women in the process of gaining employment and discrimination at the workplace. Special attention was paid to sexual and psychological violence against women at the workplace.

The research covered a period of five years preceding the survey. The data were collected in the period from August to October 2011. In this survey a combination of victimization survey and feminist action research methods is used. The data was collected through face to face interviews. The study included a stratified random sample of 706 women aged 18 to 64 years, from six cities in Serbia. Data were analyzed by descriptive statistics, chi-square tests and Pearson correlations. In addition to quantitative, a qualitative analysis of respondents’ answers to open-ended.

The research had an action character, which refers to raising the level of women’s knowledge and awareness about different forms of gender based discrimination at the labor market, and providing them information about Victimology Society of Serbia, which they can approach in cases of discrimination. Finally, this research was policy oriented, which
Discrimination and victimization of Women in Workplace

means that research findings were used as a basis for proposing certain changes of both legislation and practices in the field of women’s labor rights.

More than half respondents (61.0%) said that they were exposed to some form of discrimination at the labor market. In addition, 72.2% (510) of respondents had knowledge that a woman they know (a friend, relative, colleague) was discriminated at the labor market - 464 (65.7%) women have indirect knowledge of other women being discriminated while gaining employment, and 372 (52.7%) had indirect knowledge on discrimination against other women at work.

242 (56.1%) women experienced discrimination in the process of gaining employment, while 342 (79.4%) experienced discrimination at workplace. Also, 22.1% of employed women in the sample were exposed to sexual violence. Women were subjected to sexual comments, unwanted physical contact, proposed sexual intercourse as a condition for promotion, exposed to pornographic material and raped. When it comes to psychological abuse at workplace (mobbing), the data shows that 22% of women suffered from this form of discrimination. When it comes to psychological violence, the obtained data suggest that it mostly consists from giving women too much work, talking to them with a frown and slander, which is followed by threats of dismissal, spread of false stories, insults and humiliation through derogatory words. In most cases psychological violence was perpetrated by the manager or supervisor (45%) the so-called vertical mobbing, while horizontal mobbing was less present.

The most common form of discrimination against women during the process of gaining employment is questioning a woman about her private life during the job interview, which was experienced by 217 (48%) respondents. The next most common form of discrimination during the process of gaining employment is commenting on the physical appearance of a woman, which was experienced by 44 (9.7%) female respondents. This is followed by other forms of less favorable treatment in comparison to male candidates - 30 (6.6%), pregnancy and motherhood as an obstacle to gaining employment - 23 (5.1%), and expectations regarding sexual relations with a supervisor or other person in the company as a condition for getting a job - 3 (0.7%).

More than half of 596 women who worked at any moment within the period covered by the research (342 or 57.7%) have experienced some form of discrimination at the workplace. Generally speaking, women who work in the private sector (64.8%) are more exposed to discrimination at the workplace than female respondents who work in the public sector (48.7%). The respondents who did not sign a contract with the employer have been increasingly discriminated at work (70.4%) in comparison to women who were working under an employment contract or other types of contracts (54.3%). Finally, it was found that women who are employed part-time are to a greater extent subject to discrimination at the workplace (57%) than women who are working full time (52.6%).

The data showed that female respondents most often face discrimination which is related to working conditions (256 or 43%): lack of premises, separated from men’s, where women can change their clothes; obliging a woman to do other duties outside of the job description, such as making coffee, cleaning, courier and administration jobs; mismatch of
the machinery or other equipment for women; exposure to other inconveniences on the grounds of sex (belittling woman's abilities based on prejudice and stereotypes, sexual harassment, commenting on the appearance and dress, insults, yelling, etc.) or for some other reason.

Particularly striking is considering a woman’s body as an object, which is visible in cases of sexual violence at the workplace, but also in cases of commenting woman’s appearance and sexually blackmailing her (quid pro quo) when gaining employment. At work, women are faced with inadequate working conditions, particularly in terms of un conformity of the working place and the obligation to conduct additional duties out of the job description. Women are obliged to perform jobs that are traditionally considered to be ‘women jobs’, which is also tightly linked to the gender roles imposed by the society. The data on gender wage gap and glass ceiling, i.e. week vertical mobility of women at the labor market also speaks in favor of discrimination against women at the labor market in Serbia. All these data point out to the need of more intensive work on patriarchal stereotypes of both men and women, as well as to conducting the research about them, because they significantly impact position of women at the labor market.

On the basis of all survey findings and their comparison to other surveys and international documents, recommendations that should contribute to changes of legislation and practice in order to ensure proper reaction and protection of women against discrimination and other violations of their rights at the labor market in Serbia are developed. These recommendations relate to the following: improvement of legislation; improvement of procedures and practices of relevant institutions/organizations in cases of discrimination and other forms of violation of women’s rights at the labor market; support and protection of women against discrimination at the labor market; prevention; improvement of data recording and research.
Law relating to Violence against Married Women in India: Whether unleashing Legal Terrorism?

B. Vijaya Laxmi

Introduction
India is a country where the women are treated with great respect right from Ancient times onwards. At the same time there are the victims right from Ancient times onwards. This study presents deals with the law relating to harassment, cruelty of husband and also enlighten that it is a known fact that harassment by husband is a common phenomena in almost all countries based upon the Law commission reports and the judgments of various High Courts and Supreme Court, it is said that it amounts to legal terrorism. Whether really there is harassment committed by the wife towards the husband. The focus is upon the harassment towards wife and harassment by wife towards husband.

Hypothesis
Cruelty of the wife against husband, husband against wife to be proved, based upon the judicial judgements and other statistics.

Method
Data is collected from the relevant text books, journals, Law commission reports and judgements of Supreme Court and lastly from NCRB and VAW statistics.

Historical Perspective
Women are the symbol of unascertainable depths of human sentiments, manifestation of unscalable heights of selfless affection and sacrifice. Women are the personification of such was the extolled position of women in the past (Ponnaian, 1992). Violence against women is not confined to a specific culture, region, country, or to particular group of women within a Society. The roots of violence against women lie in persistent discrimination against woman.

Every year millions of Woman Worldwide suffers violence. It may be in the form of Domestic Violence, Rape, Female Genital Mutilation, Dowry related Offences, Trafficking, sexual violence etc., Violence against woman takes many forms, physical, sexual, psychological. These forms of violence are inter-related and effect woman from before birth to old age. The word woman was derived from “Wifman” that is wife of the man (Otte, 1993).

In India, woman is compared with “sakti” means power and strength. During Pre-Vedic period women enjoyed equal rights with that of men. It was after the codification
of smritis. Woman were bracketed with shudras and denied the rights. She was only confined to marriage and domestic life. According to Manu, woman is not fit for freedom ("na stri svatantryam arthi") (Ramakrishna Mission Institute of Culture, vol. 2, P. 353). As a result, woman was treated as bonded labours. The basic rights of a woman are been deprived. The patriarchal jurisprudence proposed by Manu the law given had degraded the status of woman⁴ (Dr. B.R. Ambedkar, Prof. S.S.H. Azmi P. 191).

It was during 19th century the father of social revolution Mahatma Jyoti Bapule sacrificed his life for the upliftment of women. The other social reformists are Ranade, Chatrapati Sahu Maharaj, who was a descendent of Shivaji and Shri Narayan Guru in Kerala fought for the upliftment of woman’s position in India (Sreenivasulu, 33 & 34).

The most common form of violence against woman is harassment by the husband. Violence against woman is not a new wrong; it is prevalent right from Ramayana and Mahabharata’s reign, when Sita and Draupathi were harassed. Woman are ill treated, harassed, divorced or killed, still woman suffered in silence till date keeping in view the increasing violence against women especially young and newly married woman and growing incidents of bride-burning it became a matter of concern to everyone. The existing laws are not enough and stringent enough to deal with atrocities against woman. So the law makers intended to incorporate a new section 498-A. In the year 1983, under chapter XX-A, under the offenses against marriage. The main object of introducing his section was to prevent torture to a woman by the husband or by the relatives of the husband (Gandhi, 2008).

Section 498-A (Cruelty of Husband & Relatives of Husband)

According to section 498-A, “whoever, being the husband or the relatives of the husband of a woman, subjected such woman to cruelty shall be punishable with imprisonment for a term which any extend to 3 years and shall also be liable with fine. Cruelty had not been defined under Criminal Law, but in Russel v. Russel, (1897, Az 395), defined as conduct of such a character as to have caused danger to life, limb or health (bodily or mentally) or as to give rise to a reasonable apprehension of danger. There is no hard and fast rule for determining what constitute cruelty. It only depends upon the circumstances of each case.

Generally speaking, any intentional or malicious infliction of physical or mental suffering or wanton, malicious, pain upon body, or the feelings and emotions would amount to cruelty. Physical violence is not a necessary ingredient of cruelty. According to Law Lexicon, cruelty means the behavior that deliberately comes pain and distress to people or animals.

It is impossible to give a definite definition which includes all acts and conduct amounting to cruelty (Sukumar Mukarjee V. Tripathi Mukarjee, 1992). It depends upon the character, way of life of the parties, their social and economic condition, their status, custom and tradition, sensitivity of the individual victim, education, abnormal behavior, continues taunting or teasing amounts to cruelty apart from those acts drinking, abusing
and beating the wife constantly \(^9\) (Bammidi Rajamallu Vs. A.P. 2001, Crw 1319), impotency of husband amounts to cruelty on wife \(^{10}\) (AIR 1981 SC).

Apart from I.P.C., under the Evidence Act, Section 113-A was incorporated, which says that even if there is a presumption that the wife was harassed by the husband as a result the woman commits suicide, amounts to cruelty.

This section is applicable to even second wife also (Anisette Sivaprasada Rao v. State of A.P., 1994 Cri L J 1760).

**Constitutional Validity of Section 498-A**

Indian Constitution is in the favour of the women. The provisions which are in favour of woman in relation to 498-A are preamble, which says “the equality of status and opportunity” to all citizens which means to give equal rights to men and woman. This is the basis for legislation which give equal status and rights to woman and Article 15(3), which says that the state to make special provisions for woman and children (Jain, 2005), because in India woman are facing number of different types of harassment and inequalities within the family and outside the family from times immemorial.

**Section 498-A – Personal Laws in India**

Cruelty of the husband is a ground for Divorce (under section 13(1) of Hindu Marriage Act, 1955). A Hindu Wife can claim maintenance from her husband even while living separately, if he treats her with cruelty (under Adoption and maintenance Act, 1956, section 18). A Muslim woman can file for divorce if the husband treats her with cruelty (Dissolution of Muslim Marriages Act, 1939). It is a ground for Christian Woman if she is treated with cruelty, (Special Marriage Act, 1954, Section 27(d))

**Arguments Favouring Gender Specific Nature of Section: 498-A**

A Law can be made gender neutral only if the entire concerned people are on an equal footing. No one can argue that men and woman in India are on equal plane. Out of 100 cases that are ordered for investigation under section 498-A, only in 2 cases the accused get convicted. In most of the cases reconciliation takes place at every stage including at police station, Crime against woman cells and Courts.

Because the trial process is quite lengthy the pending cases are more in number. To decide a case it takes from 5 to 10 years, and more one it is very difficult to prove cruelty of a husband, which is committed within the 4 walls of a house, as a result the prosecutor fails to prove cruelty when the victim is still alive, Section 498-A alone cannot be proved unless and until combined along with section 304-B and 302.

According to NCRB for every 9\(^{th}\) minute one cruelty of husband and relatives of the husband is committed 85% of the females are the victim of 498-A and ½ of the females are physically injured and 52% of the total females commit suicide because of harassment.

According to statistics of 2011 the Crime rate against woman is 2,28,650 and out of which 4.3% of total Crime i.e., 99,135 are 498-A cases reported and only 20.2% is the
World Health Organisation

The most common form of violence experienced by woman globally is physical violence inflicted by an intimate partner, with woman beaters, coerced into sex or otherwise abused.

According to WHO study in 11 countries found that the percentage of woman who had been subjected to sexual violence by an intimate partner ranged from 6% in Japan to 59% in Ethiopia and 1/2 of the woman die from homicide are killed by their current or former husbands or partners.

Arguments against of Section 498-A

It is 6.5% of the total cases were false at the level of investigation. Many of the accused, police, judges and lawyers agree that educated and independent minded woman misuse this section (Section 498-A of the I.P.C.).

It is the opinion of the Court in (Preeti gupta Vs State of Jharkhand, 2010) the Supreme Court observed that serious relook of the entire provision is warranted by the legislature. It is a matter of a common knowledge that exaggerated version of the incident are reflected in a large number of complaints. It is not only the view of the Supreme Court, it is the view of various High court and earlier also the Law Commission recommended that this section had to be amended (the Law Commission of India, Report No. 243, 30th August, 2012) and also the view of Malimath Commission Report 2003, to amend the law relating to 498-A and make as bailable offences, in 237th report there was a recommendation that section 498-A should be made compoundable with the permission of the Court. It was not accepted because misuse was not established by empirical data and out of social interest it was not amended. In (Sushil Kumar Sharma Vs. Union Of India, 2005), the Supreme Court that in many, complaints under section 498-A were being filed with an oblique motive to wrick personal vendetta and Supreme Court observed that “by misuse of the provision, a new legal terrorism can be unleashed”.

In Saritha Vs. Ramachandra (DMC 37 (DB) 2003) the Supreme Court made an observation that “the Court would like to go on record that for nothing the educated woman are approaching the Courts for divorce and resorting to proceeding against in laws under section 498-A. Today there is a rapid demand for the amendment of section 498-A, and to rescue the husband and in-laws from the clutches of the daughter-in-laws. It is true that there are some people who misuse this section. There are very less people especially woman who know that there is a provision under Indian Penal Code which helps them. The literacy rate for the year 2009 is, men 76.9% and women 54.5% (Ramdas, 2009).

This cannot be justified because there are many literates who are educated as well as victim of 498-A, according to Hindu culture a married woman tolerates in silence, but never step out of the home. When it is unbearable then she files a criminal case against the husband, the married woman also think about the other aspects like the economic status of
the woman, children, future and families dignity and status in the society. For the sake of few people, the whole law cannot be treated as Legal Terrorism. This is one section under Indian Penal Code where the woman can file a criminal case for cruelty. There are many reasons why the conviction rate is less. It may be because of amicable settlement or death of the woman or committed suicide by the woman or lack of evidence because the offence is committed within the four walls of the home and most of the cases are not reported to the Court of Law (National Violence against Woman Survey Report).

So it is concluded that this section is to safeguard the rights of the married woman as guaranteed by the Indian Constitution. Though, Law Commission recommendations made under 243rd and 237th Report there is no adequate proof that this section is misuse. It is better not to amend the section 498-A. there are other means and ways if false cases are filed by the victim. Under Criminal procedure code the magistrate can weed out frivolous cases and he can also punish the victim for filing false cases.(section 200 of criminal procedure code, 1973).

It is suggested that strictly laws must be implemented, so that false cases may not be filed.

It is the duty of the police officer to investigate the matter as soon as possible because it is a family matter and it is highly sensitive issue, which may leads to death of the women members. Counselling centre’s are to be created by the state government, so that the families may not be broken which leads to juvenile delinquent.

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Dr. Ambedkar as pioneer for the upliftment of status of women by prof. S.S. H. Azmi, p. 191
Interpersonal crimes against Children and Youth
A womb unknown:  
The socio-legal complexities of surrogate child custody  

*Shubhangi Roy and Sankeerth Vittal*

A contract for surrogacy is basically between 3 people, the genetic parents and the surrogate mother, a contract to finally create a 4th person, the surrogate baby. The concept is though well researched medically; there is limited literature on its sociological effect. This paper tries to delve into the complexities of transnational surrogacy and the legal complexities that it involves and more importantly the possible victimisation and difficulties that a surrogate child might face.

This scope of child victimisation is trebled in cases of transnational surrogacy due to the added dimension of conflicting domestic personal laws of different countries. Countries like Australia prohibit surrogacy while U.S. has historically been the favourite destination to seek willing brokers (infertility clinics and lawyer that specialise in surrogacy cases) for facilitating successful surrogacy contracts.

However, over the last decade, outside of the United States, India is quickly becoming the top destination spot for fertility tourists due to a number of interrelated factors creating a “perfect storm” for a booming commercial surrogacy market. Beginning in the late 1980s, the United States stood virtually alone as the supplier of a wide array of reproductive techniques with little regulation. India now provides the same opportunities with the added attraction of lower costs. A couple looking for the option of surrogacy might save as much as U.S $ 70,000 if they opted for India. Added to this the incentive of relax legislation; it makes India the surrogacy haven.

Absence of such legislation may perhaps be a boon for parents seeking hassle free procedures but results in the possibility of many hazards for the surrogate mother and the child born. One child psychiatrist at Harvard Medical School recently stated that: "A child conceived and born for the purpose of providing a baby for the father would view itself as 'property.' . . . That child ... would perceive itself as 'different from the vast majority of humanity'”.

Another researcher explains how commodification of the child is a great concern in such medical procedures. A feeling of abandonment and insecurity is another likely experience for the new-born. Unlike the cases of egg donation, in case of a surrogacy, the

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foetus bonds throughout the nine months with the surrogate mother. “In most cases, such mother already has a family of her own. There are two reasons for this: First, having a child is considered proof of her fertility; second, by having had a child it is thought that it will be easier for her to give up the new baby because the surrogate has first-hand knowledge of what a child brings to a family.” In such cases, the foetus develops a relationship with the family of the surrogate itself. It might develop a deep sense of insecurity and fear of abandonment due to this experience of being forsaken at nascence.

Risk of lack of intimacy and absence of warmth in the crucial early years of the child will be greatly increased in cases of transnational surrogacy due to conflicting or ambiguous laws on citizenship and parentage of the country of origin of the contracting couple. In the renowned Baby Manji case, the child was permitted to go to Japan only after he had lived the first two years of his life in India. Absence of clear laws regarding the parentage and citizenship of surrogate children, unlike laws of adoption, create greater risk of alienation of such children.

Also, there exists a need to study the psychological impact of such surrogacy on the existing children of the surrogate mother. In a particular testimony published by the newspapers during the Baby M trials in the United States of America, a surrogate mother confessed that her children hated her for abandoning their “little brother”.

Ethnicity of the child is another problem that has to be contested. Those making the trip to India are not just people of Indian descent who want a baby who resembles them. Increasingly, they are white couples that have no problem with the idea of having brown babies through traditional surrogacy or gestational surrogacy but with the egg of an Indian donor.

Though India is an upcoming market with few children of an age to be suited for in-depth study, three decades of scrutiny of IVF techniques in Britain has resulted in recognition of the emotional maelstrom inherent in the creation of life. The result is that not only do British doctors consider the scientific possibilities of having a child, but also the impact of assisted reproduction on a child's emotional wellbeing, human rights and racial identity. Just because you can do something does not mean you should, is the maxim in Britain. The opposite appears to be the case in India.

Of even more concern, say critics of India's unregulated IVF industry, is the way that some doctors try to maximise profits by overdosing donors with hormones to stimulate them. "The amount of drugs pushed into them is way above the recommended dose," says Dr Puneet Bedi, a Delhi-based consultant obstetrician and gynaecologist specialising in foetal medicine. "If guidelines say to give 10 shots, they'll give 20 to increase the harvest

130 Supra n.1
131 Baby Manji Yamada v. Union of India, W.P (C) NO. 369 of 2008
rate and optimise their conception rates. Because IVF is a completely commercialised industry in India, it's all about delivering to whoever's paying, thus, even before a child is born, it is being subjected to harmful chemicals and hormones which at the end of the day lead to unimaginable consequences.\(^{134}\)

Further, in an adoption, the mother is able to give the child up to an agency who then finds parents who are best suited to take care of the child. With commercial surrogacy, the child is often given to the parents who are willing to pay the most money to the surrogate. Thus, in commercial surrogacy, there are no safe guards to see that a child gets the best home available for it, leading to courts equating commercial surrogacy with taking advantage of a woman’s financial distress in order to take her child\(^{135}\).

Yet amidst such great ambiguity, the trade of surrogacy flourishes. It further encourages infertility clinics to formulate their on procedural guidelines and even indulge in unscrupulous practices. The extent of this arbitrariness of these rules can be estimated from the anecdotal information that one of the leading surrogacy clinic of the world, located in Anand, extends the option of surrogacy to heterosexual couples with medical complications but not homosexual male couples who suffer from a similar biological handicap.

Thus, there exists an urgent need to regulate this mushrooming practise of commercial surrogacy. However legislating on the issue is a knotty problem since it involves possible tweaking and amalgamation of labour laws, Law of contracts, basic human right issues, Family law, law of adoption, Law of citizenship etc. The next hurdle is the conflict of personal laws of different countries.

The need of the hour is an international regulation in the form of a United Nation Convention providing a framework within which the laws of the signatory countries should be formulated. Indeed, the Special Commission on the Practical Operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption noted the increasing incidence of international surrogacy arrangements and “recommended that the Hague Conference should carry out further study of the legal, especially private international law, issues surrounding international surrogacy”\(^{136}\). A negotiation initiated at this time would perhaps be the most effective instrument as domestic surrogacy laws in most countries are mere seedlings that would eagerly absorb the international regulatory norms established. Even a mere negotiation, if promptly initiated, would provide the nations with the basic expectations and concerns that it needs to incorporate in their domestic laws.

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Child Victimization: 
Victimization to Criminality as an example of child labor

Abhay Awasthi

Introduction

Child labors are the children who lack the development due to sharing benefit to the other through his labor. There are situations when child labor comes in existence and these situations develop from the victimization of the children. Whenever any sort of social problem synchronizes with a child as social victim, it fabricates victimization of child that may be other serious criminal activity or crime related problem. Child labor is an example of this synchronization where multiple types of crime allied with it from early stage to the end. Theory of crime development talked about the two types of offenders and continuity of antisocial behavior across the age and situation. One type of offenders is who begin antisocial behavior in early childhood and continue in life and other type of offender begins in only adolescent age and discontinue in rest of life (Adler & et. all, 2000). Child faces victimization of these crimes at different stage and continuity of these victimizations turn a child labor in child conflict with crime. This process of developing criminal starts with drug addiction, petty crimes and concludes in a serious crime like rape, murder, violence etc. There are more chances of continue antisocial behavior in life if Children spend more time independently and live on their own earned resources with regular victimization. Mostly all missing and runaway children are child labors who are exempted from legal intervention of child labor. Poverty can be considered as single reason of child labor but not the main reason of whole problem.

It is very common thinking among the parents that if they have more children means they have more hands for earning. Although parents have not resources to bring up not even a single child, they produce more children. Parents want to spend life on earning of their children. These thinking of person are the main backup of increasing child labors and still problem stay alive.

Due to industrialization, urbanization people who have not any own resources to earn, start moving towards the cities in search of livelihood. Children of these families spend life whether by working with the parent to help them or working separately to support family or wandering on street till the parent could finish work. Some time, parent send children in other cities to work and some time they work outside to his main residence. In both cases the children moves towards the city where they become labors. At other hand, factories and Industries need cheap and plenty labor to increase profit. Due to many reasons like soft and small body part, long work time without complaining and can be handled easily to take any work at any time, children suit their requirements (Molankal, 2008).
Therefore this is the problem of children where we must have to stress on native situations along with the concentration of children. We must have to again look the problem from other side where child start or have to start labor. Punishment is the ultimate deterrent measures but dissolving the cause of the situations owing to that vulnerability has made, can be a total elimination of problem.

**Aim**

To find a better ultimate solution after feeling the gravity of these children’s experiences and mental status at different steps of victimization as child labor by interpretative understanding.

**Methodology**

The methods used are case study and case analysis as the primary and secondary source of data which includes child labor cases of boys, cases of CWC, unstructured interview of children and participatory unstructured interview of workers who are in touch with the ‘children’ from long time (‘Children’ who face early and regular victimization), Participatory and Non participatory observation of process of reintegration and rehabilitation of child labors and children in crisis on the street.

**Experience and analysis**

At early stage of a development after victimization child labor behave like Retreatism and by the time they indulge in criminal/antisocial activity with neutralization feeling. Neutralization not in the sense that what they are doing is correct but in sense that what else they can do this is their life (Dharmendra, 2008).

Child as labor is the child development after victimization either primary or secondary or as most serious abusive form of problem. Primary victimization is first time victimization or victim of any direct deeds which effect his normal development, protection, and survival’ like natural enormities, abuse, rape victim, trafficking, kidnapping, death of parents, etc. Secondary victimization is second time victim for same or direct victim of others’ victimization like domestic violence, alcoholism, corruption, communal violence, Rape, Prostitution (Sex related crime), honor crime etc. Third level victimization is where child is indirectly affected by the others’ decisions like restoration to the family, divorce case, separation, institutionalization under welfare system etc. These levels of victimization are not only due to how many time they victimizes while it is also the level of effect as victim. Child victimization can be continuous by the time is Regular victimization. And victimization come directly or through person is early victimization. Dynamic and reciprocal causal chain of events supports a developmental perspective of offending (Adler & et. all, 2000). Type of victimization, Time period and intensity of victimization decide persistence of behavior whether as deviant or normal. There are main two slabs of child labor. First when child work in knowledge of family on home or away from home and other when child work without knowledge of family. One more category where child works in knowledge of parent but get missed. The number of
second and last category is so much high than the first. The condition of child labor out of family knowledge is more serious and fatal. When child come out from family he had lot of stress and positive thinking due to many reason, he become a victim of situations created by parent or society. After that when he try to survive, he become the victim of other crime as benefit to the others due to vulnerability. When he comes in welfare system, he becomes the victim of implementation process and system created for the protection of him. When he realizes and wants to go back in the family, he becomes the part of punishment because till the time he does not get the compensation, he cannot go back to family. And if due to some reason child do not want to go back his family after coming in welfare system; the child has no option to be free. In last, child has to run away from the institution and work for food and life. If children run away from home due to dysfunction of family and social problem, they have no option to go in same atmosphere where one is his parent was the reason of his departure from home. There are more chances to leave home again and come in same life once again. Children never stay in home or go back to family if they have to leave home more than 3 or four times. At early stage of a life course they behave like ‘Retreatism’ and by the time they indulge in criminal activity in which they have feeling of neutralization. Neutralization not in the sense that what they are doing is correct but in sense that what other they can do, ‘this is their life’. It starts with drug, pick pocketing, and sexual abuse and goes in different path of crimes. They forms gangs for dominance in which they decide their own area, place of living, use of money, protection of member, ways of survival, financial and instrumental resource. This life concludes in two main ways whether they become criminal or facilitator of the process as the family of same children who have only one future, “future” of street children cum child labor.

Discussion and conclusion

Children as Child labor are just the start of failure of social and welfare system of any society in the world. During the pre-independence period first time child labor prohibited in law through Indian Factory Act 1881 and stress was on the age and time length of work while after independence, a long journey of amendments has been made to elimination of child labor problem and condition of work place was included in point of focus. After appointment of Factory Commission in 1884, Gurupadswamy committee in 1979 recommended that it would be better to improve working condition of areas and prohibited hazardous work instead of any attempt to eliminate child labor which is unpractical. In result child labor (prohibition and regulation) Act 1987 was enacted. And in 1987 The National Policy on child labor was adopted as action plan (Molankal, 2008). The policy talked about the NCLP centre which is unfortunately impractical implementation guideline. Since the policy adopted it couldn’t be implemented in proper way till the date. NCLP covers merely six lakh children in 266 districts of India. After 25 years now it is again on the table of amendment (NCCL Report, 2012).

Some organization claimed that in past few years the numbers of child labor have decreased. A child labor converts from labor to drug addict, street children, and beggar or
conflict children or trafficked or in other problem or crime is not meant that numbers of child labor are decreasing. It is occupying different extended form which is not considered yet. There would be a stratified implementation policies in which level of implementation must be assigned in different hands. The single point of intervention is not enough to work out any social problem. Elimination of roles and responsibilities of guardian/government from arraign would never strength the thinking of child friendly atmosphere.

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Reform of laws and institutions pertaining to sexual offences against children in India

Anupam Jha

Introduction

Children are the hope of every country and laws on protection of children’s rights are considered as fundamental to usher that hope forward. However, the data on sexual abuses of Indian children tells a different story of a dumb society not willing to respond to their needs. Sexual offences against children in India have been rising and the response of law and institutions to protect children’s rights has been evolving one step forward and two steps backward. As Indian Penal Code has become ineffective to protect children from sexual abuse, the Parliament enacted a new law in 2012, namely, The Protection of Children from Sexual Offences Act. This law is a hope for Indian children, substantial chunk of who are sexually abused within and outside the family. National and State Commissions for the Protection of Child Rights and Special Courts for Children are also created to protect children’s rights. However, there is a need to reexamine the impact of these laws and institutions on the aspirations of child rights advocacy groups and institutions working in India. This paper is an endeavor to address the strengths and weaknesses of the present law and institutions catering to the protection of child rights in India. This paper is divided into three main issues; (i) problem based on actual data at national and state levels; (ii) current laws and institutions; (iii) Socio-psychological issues related to sexual abuse.

I. Data on Child Sexual Abuse

Child abuse constitutes all forms of physical and/emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child’ health, survival, development or dignity in the context of a relationship of responsibility, trust or power. The subject of child sexual abuse is a social taboo in India and hence data collection on this issue is the most problematic one. Nevertheless, Indian Government conducted a rare official research and data collection on

137 W.H.O. adopts this definition, available on www.who.int/topics/child_abuse/en (last visited on 1 November 2012)
Child Abuse, which was published in 2007. According to this study, sexual abuse is defined as severe forms of sexual abuse, including assault, rape, sodomy, touching, fondling, forcing a child to exhibit his/her private body parts, photographing a child in nude, forcible kissing. Out of the total of 2211 respondents, 42% of the children faced at least one form of sexual abuse or the other. Dispelling the earlier myth that girl children are vulnerable to sexual abuse and such abuse is prevalent in joint family, this study comes out with a finding that 48% of boys and 39% of the girls faced sexual abuse and such abuse is prevalent not only in joint families but in nuclear families too. Majority of the abusers were people known to the child and strangers were a minority. Another data collection was conducted in the State of Goa in 2000 by a research team led by Vikram Patel of London School of Hygiene and Tropical Medicine. 811 Class XI students were made respondents comprising rural, urban, boys and girls. According to this report, a third of the respondents had experienced some form of sexual abuse. Differences in risks were found for urban and rural school students; while rural boys were more likely to have experienced coercive sexual intercourse than urban boys (10.3% v 2.5%), urban girls were more likely to have experienced any form of sexual abuse than rural girls (37.2% v 25.4%). A similar exercise was done by B.R. Sharma, and Manisha Gupta in the city of Chandigarh, where they found that in majority of the cases, child sexual abuse goes unnoticed and unreported on account of the innocence of the victim, stigma attached to the act, callousness and insensitivity of the investigating and law enforcement agencies. A child who is sexually abused is traumatized for life but it is only much later in life that such people seek medical help. According to latest National Crime Records Bureau data, rape against juveniles increased from 399 in 2001 to 858 in 2010. Molestation and sexual harassment increased from 380, 105 respectively in 2001 to 546, 174 in 2010.

II. Laws and Institutions to prevent Child Sexual Abuse

After the recent passage of a special law on child sexual abuse by Indian Parliament, namely, The Protection of Children from Sexual Offences Act, 2012, the laws and institutions in India have been given complete overhaul. Earlier, the Indian Penal Code, 1872 did not recognize sexual abuse of boys. Only offences against minors could be punishable. Sexual abuse not amounting to rape, for example, groping, harassment, fondling, touching, use of children for pornography were not punishable even against girls except ‘outraging the modesty of a woman’. The new Act defines a child as any person

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140 Ibid, p. 73
141 Ibid, p. 74
144 Annual Report of National Crime Records Bureau (2011), Table 10.2
145 Ibid
below the age of 18 years and it penalizes a broad range of sexual crimes such as non-penetrative sexual assault, sexual harassment etc. The legislation is also marked by the introduction of special procedures to prevent the re-victimization of children at the hands of an insensitive justice delivery system. These include measures for establishing special courts, recording a child’s evidence, for protecting his or her identity, and for providing children with assistance and expertise from professionals in the fields of psychology, social work, and so on. To provide for relief and rehabilitation of child, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or local police, these will make immediate arrangements to give the child, care and protection such as admitting the child into shelter home or to the nearest hospital within 24 hours of the report. The SJPU or the local police are also required to report the matter to Child Welfare Committee within 24 hours of recording the complaint, for long-term rehabilitation of the child. The National Commission for the Protection of Child Rights (NCPCR) and State Commissions for the Protection of Child Rights (SCPCR) have been made the designated authority to monitor the implementation of the Act.

III. Socio-Psychological Issues Related to Child Sexual Abuse

Despite a bold attempt in reforming laws and institutions by the Indian Parliament, its society considers child sexual abuse as a very private matter which should not be disclosed. According to one author, there is a conspiracy of silence. ‘Khandani Izzat’ (family honor) prevents the family members from breaking the silence, especially in the cases of girl sexual abuse.\(^{146}\) Parents in India tend to view their children as their property and not as human rights bearing individuals.\(^{147}\) Lack of child education also contributes to silence.\(^{148}\) Children cannot communicate their problems in front of police, court and investigation agencies. Second issue is related to the matter of rehabilitation and reintegration of the Child after sexual abuse. Often, the abused child finds himself/herself unable to reintegrate within the society unless either the accused is punished or he is relocated. Another issue is the child marriage before the age of 18. In India, many children are married before they attain the age of 18 and hence the new law seems anomalous as no marriage can be consummated without sexual intercourse. Consent for marriage before 18 is regarded as irregular and not void. But the new law has imposed blanket ban on sexual association with the persons below 18.\(^{149}\) These anomalies must be removed as the prevailing societal realities do not conform to the aspirations of the Indian Parliament.

\(^{146}\) Pinki Virani, Bitter Chocolate (2000) at p. 39
\(^{148}\) Ibid.
IV. Suggestions

- To establish national, state, district, talk helpline number for the target group of children has become very important,
- To enroll every child in the school and prevent drop outs,
- Age of consent should be lowered to sixteen years,
- Parents and the victim must be rewarded for reporting the abuse cases,
- Rehabilitation homes should be well equipped with basic amenities and educational facilities,
- Legal aid should be provided to the poor children, and
- Pedophiles should be given medical-psychiatric treatment.
The reasons why children and youth commit crimes

Aranee Vivatthanaporn

In the night of 27th December 2010, the defendant was a 16-year-old girl. She was a youth who drove car with a speed higher than one specified by law. The defendant acted in negligence, without precaution that people shall have up normal nature and conduct. While driving, the defendant changed lanes too frequently. As a result, her car collided with a public van. Losing its balance, the public van was whirled, bumped into edge of toll way and turned over. The van driver and passengers were bounced off from the van and fall on the ground. 9 persons were killed and some were seriously injured. Many qualified people were lost because of this accident. It was so difficult to remedy the loss.

From the above case is not really about the negative effects of bad parenting and global culture at all. Instead, your example is actually about privileged children getting off being punished or having to pay anything because their parents can use their advantaged positions, and their power and influence, to corrupt the judicial system to protect their children no matter how bad the behavior of their children. And such privileged children would likely have escaped punishment 50 years ago in Thailand too, just like in the ‘van’ example now. Whereas, unlike Thailand, privileged children in the EU, US or Australia – whom you should note are also influenced by global culture, just like privileged children in Thailand – are likely to be subject to same treatment by the justice system as children from less privileged backgrounds in the EU, US or Australia.

Of course, that claim is not exactly true either, because for example, black youth in the EU, US or Australia are often not treated the same by the judicial system as white Western youth. In summary, your ‘van’ example shows that socio-economic disadvantage and the gap between rich and poor families cause juvenile delinquency and this is made worse in Thailand by a corrupt judicial system which is open to influence and interference by powerful individuals. The same problems arise in Russia and India. It might be interesting to compare your case study of the ‘van’ with a possible parallel case study of accidents caused by underprivileged youths holding motorbike races on the motorways of Bangkok during the night. Nowadays, technology has many positive aspects but, in the wrong hands, it can become dangerous. Technology is a value tool but is somewhat misused by today’s teen. The two main forms of technology affecting teenager’s cell phones and the Internet have brought about major changes in our lifestyle. This technology has allowed teens to have inane communications and in doing so, contributes to the dumping down of society. We spend more time corresponding with our friends on cell phone and the internet than we do working or participating in activities which
The reasons why child and youth commit crimes

expand and challenge our minds. As a result, personal/social interaction and the related moral and family values have suffered a setback.

In a society which encourages both parents to work outside the home and too much, that means providing a better and more comfortable life. When both parents work too much, they usually have less time for their children. They forgot that what matters more to kids is when their parents show interest in them.

During the evolution of human species, it would have been the babies who stayed close to their mothers who would have survived to have children of their own and Bowlby hypothesized that both infants and mothers have evolved a biological need to stay in contact with each other. These attachment behaviors initially function like fixed action patterns and all share the same function. The infant produces innate “social releaser” behaviors such as crying and smiling that stimulate care giving from adults. The determinant of attachment is not food but care and responsiveness. Bowlby suggested that a child would initially form only one attachment and that the attachment figure acted as a secure base for exploring the world. The attachment relationship acts as a prototype for all future social relationships so disrupting it can have severe consequences.

**What are the Causes of Juvenile Delinquency?**

Understanding the causes of juvenile delinquency is an integral part of preventing a young person from involvement in inappropriate, harmful and illegal conduct. Four primary risk factors can identify young people inclined to delinquent activities: individual, family, mental health and substance abuse. Often, a juvenile is exposed to risk factors in more than one of these classifications. In this case delinquent activities are:

**Family**

*Effective Parenting Styles*

1. Child neglect less support and less control: neglected children expected less support and more conflict from mothers in response to displays of negative emotion and reported that they were more likely to attempt to inhibit the expression of negative emotion.

2. Authoritarian–traditional: This parent values obedience. Commanding the child what to do and what not to do, rules are clear and unbending. The parent pours the “right” information into the child who is considered an empty vessel. Misbehavior is strictly punished. This child is less self-confidence aggressive, less creative

3. Permissive–liberal: supportive but with less control. Children are encouraged to think for themselves, avoid inhibits, and not value conformity. Parents take a “hand-off” approach, allowing children to learn from the consequences of their actions.

4. Authoritative–democratic: more support combined with more control
Family factors which may have an influence on offending include: the level of parental supervision, the way parents discipline a child, particularly harsh punishment, parental conflict or separation, criminal parents or siblings, parental abuse or neglect, and the quality of the parent-child relationship.

Children brought up by lone parents are more likely to start offending than those who live with two natural parents. It is also more likely that children of single parents may live in poverty, which is strongly associated with juvenile delinquency. However once the attachment a child feels towards their parent(s) and the level of parental supervision are taken into account, children in single parent families are no more likely to offend than others. Conflict between a child’s parents is also much more closely linked to offending than being raised by a lone parent.

If a child has low parental supervision they are much more likely to offend. Many studies have found a strong correlation between a lack of supervision and offending, and it appears to be the most important family influence on offending. When parents commonly do not know where their children are, what their activities are, or who their friends are, children are more likely to truant from school and have delinquent friends, each of which are linked to offending. A lack of supervision is also connected to poor relationships between children and parents. Children who are often in conflict with their parents may be less willing to discuss their activities with them.

**Prevention**

- Therefore every parent must pay attention and take good care of descendant. They should be educated and learned all aspects including rules and regulations of society, right and duty they should have, disciplinary, living a quality life and focus on spiritual value more than material value.
- Qualities that parents can intentionally role model include: honesty, integrity, compassion, dependability, high standards and values.
- John Bowlby believed that the relationship between the infant and its mother during the first five years of life was most crucial to socialization. He believed that disruption of this primary relationship could lead to a higher incidence of juvenile delinquency, emotional difficulties and antisocial behavior.
Child sexual abuse: A malady that lacks alleviation

Argha Kumar Jena, Biswadeep Ghosh and Tanusree Kar

The advent of technology in that of the streetwise world is something that has often proved to be a menace. One of the instances is when Child Sexual abuse via the unstoppable force of “Internet” attains a titanic form. As it is said, when we see children playing near adults, we tend to worry less about the desirable result. This fear has been existent since children began playing stickball on urban streets or kickball on suburban playgrounds. But little is apprehended that how the blooming flowers of innocence acts as bait to the rat like pedophiles and online child sex offenders and letting the same fear now exist in an evolved form wherein it animates the discussion of children’s growing proximity towards the virtual world. Taking into consideration the present scenario of the society and its phase as per the domain of the referred menace, all that this “civilization” requires is a “Rattrap” for such reluctantly abhorrent rats.

The requirement of such “Rattraps” is what forms the objective of this presentation. There exists a multiplicity of forms of Child Sexual Abuse. As far as domain of the web-media is concerned the former along with its ironically updated operators, who reluctantly and pathetically use their developed skills to such a misuse which comply in toto with the Theme of this paper. There has always been a pedantically proven and practically witnessed fact that these kind of users including pornographers were always amongst the first to recognize and exploit the potential of each new wave of communication technology, which in this case in the “Internet”. As is the case that by the late 1980s,

150 See Robin Fretwell Wilson, Children at Risk: The Sexual Exploitation of Female Children After Divorce, 86 CORNELL L. REV. 251, 259-62 (2001) (noting the stereotypical image of child molesters as "strangers in trench coats" loitering near school yards despite the fact that such men could not account for the 1 to 3 million cases of child sexual abuse that occur each year). Two recent examples illustrate the visceral concern that arises when adults gravitate to children’s play areas. In 2007, a California court ordered Jack McClellan, a self-described pedophile, not to come within ten yards of any place where children congregate. Robert Jablon, Order Targets Self-Described Pedophile, ASSOCIATED PRESS, Aug. 24, 2007. McClellan raised suspicion after authorities discovered his website discussing his interest in young girls, replete with photos of children in public places. Id. In the second case, a twenty-nine-year-old convicted pedophile posed as a twelve-year-old and enrolled at a local middle school. Amanda Lee Myers, Sex Offender Pleads to 7 Criminal Charges, ASSOCIATED Press, Sep. 11, 2008. Authorities eventually arrested him for fraud and possession of child pornography. Id.


152 Johnson 1996
pedophiles and child pornography enthusiasts were among the most experienced and knowledgeable members of the computerized communication world, so they were well placed to benefit from the many technological leaps of the next few years.\footnote{Jenkins 2001, p.47}

Adult Pornography is a section wherein the adults (as ascertained by the prevailing Law of the land) consents to engaging themselves into sexual activity and at the same time consents the audio-visual recording of the same, which is later circulated often for commercial purpose. It is the matter of such “consent” wherein the question of “Sexual Abuse” in relation to “children” comes in the very forefront. In this context it is a mandate to convey that the Children as per their “natural conscience” which might also be a synonymy to “maturity” cannot consent to their abuse be it physical i.e. engaging them into sexual activity, as well as pictorial wherein they are photographed in occasions of nudity and in several sexual context. Therefore, undoubtedly child pornography by definition is abusive and coercive. Every depiction of sexual intercourse with real children is considered to be molestation, which is by far a criminal act. Liberal democracies take it upon themselves to protect third-vulnerable parties, and children are perceived as worthy of protection against adult abuse. Therefore the element of “consent” aids in ascertaining what is an “offense” in the aforementioned context.

Pertaining to what has been indicated above, the former triggers the discussion to the elephant in the room. The age of consent for engaging into sexual activity differs from one country to another. In the England, the age of consent is sixteen. In Canada, it is between sixteen and eighteen years of age. In Australia, the criminal code speaks in favour of young people under the age of sixteen. In some US states (i.e. Indiana, Iowa), the specified age is fourteen. Thus a universal age for consent to pornography in order to prohibit Child Sexual Abuse is visibly absent. This however proves to be another opportunity for the rats. These abusers and pedophiles reluctantly enough take advantage of circulating these pornographic pictures and videos across the globe, at the same time escaping from the so called “prohibitory laws” which suffer from unevenness as far as the international perspective is concerned.

The creators and the current operators of the Virtual world and its array of easy communication levels have responded to the acute possibility of child exploitation with a variety of approaches. Firstly, compartmentalizing the end users by the element of “age”. Secondly, by providing age restrictions on admission and also imposing restrictions on sexual act which involves a child-like avatar, known as “age play”.\footnote{See infra notes 41-52 and accompanying text (discussing the efforts of virtual worlds like Second Life and The Sims Online to restrict access to minors).} However, sadly enough not all of the websites use the all or any of the protective or rather restrictive measures but most of them take recourse to one or more.\footnote{See Fairfield, supra note 11, at 1233-39 (discussing the various filtering technologies employed by virtual world designers). Some virtual worlds screen for illicit content. For example, Dotsoul provides a PG-rated world that prohibits anything sexual on-world, as does their There, which minors can access if their parents register them.} For example, Linden Lab, the creator of Second Life, responds to the risks to children by using all three approaches.
The type of all other offences involving that of “virtual sex” over the webcam, and also its two types and their elaboration is abundantly dealt with in the main paper. The differences in various terminologies used in the circulation and usage of such illicit and sexually abusive material is aptly described and elaborated. For example, the difference between “child erotica” and “child exploitation material” has been incorporated along with several other terminologies that find relevance in such context. Also all other child sexual offences that are possible over the Internet is also aptly dealt with in the main paper.

Coming to what we’ve referred in this paper as ironically potential “Rattraps”, the previous campaigns that have been held in order to address the menacing issue referred hereto is elaborated. For example, Sisyphian struggle against the online child sex offenders. Apart from what steps have been taken and what steps according to the perspective of the students should be taken is put forward in the form of an empirical study in this paper. Therefore, having given a bird’s eye view on what the whole paper is going to explore and try to renovate the issues along with the potential remedies along with relevant suggestions is promised to be delivered in this very paper.

_Dotsoul_, http://www.dotsoul.net (last visited Sept. 29, 2009); _There_, http://www.there.com (last visited Sept. 29, 2009). Because this Article addresses the risks to children playing in spaces not intended for them, it does not consider this method of protection.
Rights of the children of armed conflict in Kashmir

Asma Jan

Introduction

When we talk of Kashmir conflict, we get entangled with many issues and every issue needs proper treatment and the will for resolution of its long standing sufferings and grievance. Kashmiris have been victims of the oppression for the sins which they have never committed. As Kashmiri population in general has been suffering in one or other way due to the on-going conflict from more than two decades now. From beginning of the Kashmir conflict, gross Human rights abuses were reported in different forms be in the form of innocent killings, enforced disappearance, detentions, torture, fake encounters, Half Widows, Widows, Orphans, Rapes, Molestations, etc., and more tragically there has hardly ever been any accountability from the state institutions against the perpetrators of abuse.

Although every section of Kashmiri society irrespective of gender, age, etc..., has been affected due to violence but here author specifically would like to bring in to the discussion, the Plight of Kashmiri Children who are also known as the “Children of Conflict”, as they are born and grown up under the shadow of fear and terror in the conflict ridden valley which people thought as the paradise on the Earth and now has become the world’s most beautiful Prison. Children of Kashmir have been always silent victims of oppression by different means and they do not grow up with good moments of childhood but with the memories of crying and wailing of people for their lost dear ones.

In Kashmir, Children are not the victims of orphan hood only but from last few years, minors of this region are being victimized by means of imprisonments and illegal detentions and the worst thing is that these children, mostly school going are also being slapped by the state draconian laws like the infamous Jammu and Kashmir Public Safety Act (PSA) of 1978. Moreover, these children are detained at different detention centers with adult Prisoners, as no juvenile homes are found in Kashmir and these Juveniles are tried in adult courts.

Statement of the problem

According to the different sources, right from the beginning of the insurgency in Kashmir in 1989 there have been many reports of gross human rights violations taking place with the Kashmiri detainees be the adult or minors in different state detention centers. There have been the reports of illegal detentions, Slow trials and even no trials, over-crowded jails, incidences of torture, lifelong Physical disabilities caused by the
Rights of Children of Armed conflict in Kashmir

beating, interrogation and inhumane treatment by the prison authorities, in humane living conditions, objections for family visits to prisoners, non implementation of legal aid, detentions on fabricated grounds, Prolonged detentions, detentions under draconian acts, custodial disappearance, custodial deaths and many more such issues.

One of the, a report issued by the Research Section of Kashmir Media Service, states that, “Indian troops and police personnel martyred 452 children from January 2000 till May 31, 2011 and the killing by the paramilitary forces have rendered 107,418 children orphaned since 1989” (Kashmir Media Service, 2011)

Above all there is neither any implementation nor any concept of international instruments like International human rights law, international humanitarian law and others with respect to Kashmiri detainees and as a result even both minors along with adults are languishing in jails under inhumane conditions.

Literature Review

As Kashmir witnessed to the massive uprisings from last few years in the form of Protests and demonstrations by the people of Valley and the human rights scenario got further aggravated. As per the reports in Greater Kashmir of 22 March 2011, According to the official statistics 5255 persons including 799 students were arrested across the state for allegedly resorting to stone pelting between January 1, 2010 and February 28, 2011 including 4,982 from Kashmir only.

The report also reveals the official press release that, 554 persons were detained under PSA in Jammu and Kashmir from January 2008 to August 2009 and 322 persons detained under PSA from January to September 2010.

In the words of a report by (International Human Rights Association of American Minorities, 1990) that says,

“Constant disturbances in the valley have changed the entire life pattern of inhabitants, especially children. The entire concept of childhood has undergone a radical change in the valley. The children do not go to kindergarten or learn nursery rhymes or play with the toys, as normal children would do. Neither are they brought up under the loving tender care of their parents in a free atmosphere. Instead their memories of childhood consist of an atmosphere surcharged with fear, terror, constant violence, unrest and constant insecurity”.

Although there are not many studies done on the Children of Kashmir with respect to the conflict but few of the studies that have been conducted in recent years shows the pathetic conditions of the Kashmiri Children. According to a study (Dabla, 2012), the conflict situation for 20 long years has played havoc with the past and endangered the future of children. They have suffered in all fields, especially education, health, economy, culture, family life and so on. The study further revealed that six prominent groups of children have emerged in Kashmir who can be called ‘prime victims of violence’. (i) Orphaned children [estimated number 97,800]; (ii) Disabled children [2,000 – 3,000]; (iii) Mentally deranged and Physically diseased children [about 3,000]; (iv) Children of
compromised-surrendered militants [6,000 – 10,000]; (v) Children of imprisoned-LOC youth [4,500 - 5,000]; (vi) Child victims of violence [in thousands].

Another Study done by the Asian Centre for Human Rights bought out a report Juveniles of Jammu and Kashmir: Unequal before the Law & Denied Justice in Custody. The report came up with stark revelation on the grim human rights situation in the state, the fact finding report says that the juvenile justice system is rotten and needs a complete overhaul. It states how young children, boys and girls are treated almost like adult criminals (Asian Centre for Human Rights, 2011).

A Case of Child Detention

Here, author will state only one case of Child detention without going into more details. The extent up to which the state can go may be understood by the following case of a minor, (Greater Kashmir, 2012) reports about the detention a minor. The 12-year old named Faizan Sofi, a 6th class student was arrested by Jammu and Kashmir Police for waging war against India?

Pointing towards the authorities, on the detention of Faizan, Director of Human Rights Law Network, Colin Gonsalvez said; “How can you book a 12-year old youth for waging war against India? How can you book him on such a severe charge when he is just holding a stone in hand? He cannot wage the war by pelting a stone. The maximum stone can do is that it can cause damage.” As Faizan was arrested and was subsequently booked under harsh sections of Ranbir Penal Code and Crpc: section 121 (waging war against the State), 307 (attempt to murder), 147 (rioting), 148 (rioting, armed with deadly weapon), 149 (member of unlawful assembly), 152 (assaulting or obstructing a public servant when suppressing riot), 427 (mischief causing damage) and 435 (mischief by fire or explosive substance with intent to cause damage).

State Draconian Acts

Jammu and Kashmir Public Safety Act (PSA) 1978

The Act promulgated in 1978 (Amended in 1987 and 1990) empowers the State government to detain a person without trial for two years under the pretext of maintenance of public order. The Act fell short of the recognized norms of justice, such as equality before law, the right of the accused of appearance before a Magistrate within 24 hours of arrest, fair trial in public, access to counsel, cross examination of the witnesses, appeal against conviction, protection from being tried under retrospective application of law, etc. Even the provisions of the Act, though already unsatisfactory, have been consistently violated. The detainees are not informed of the reasons of their arrest and they are kept in custody for a much longer period of time than stipulated in the Act.

Juvenile Justice Act 1997

Juvenile Justice Act was introduction in 1997 in the State of Jammu and Kashmir but this act has been very much criticized since its inception. This act apart from putting the
delinquent s on trial in normal courts but the J&K Juvenile Justice Act also recognizes the boys less than 16 years old as minors while under central law, the age of a juvenile is 18.

**Other Legal Instruments**

There are number of legal Instruments available for the Children both in the Indian Laws as well as in the International laws that guarantees rights of Children in General and in during the conditions of Armed Conflicts in Particular. Few of these instruments are:

- Indian Constitution
- International Humanitarian Laws
- International Human Rights Laws
- The United Nations Convention on the Rights of the Child

**References**


Representing Child Victims of Crime (in Criminal Court) – Giving the victim a voice

Dana Pugach

Introduction

The legal struggle against the sexual abuse of children, as well as other serious offences, is of international concern. The growing awareness has meant that more children are involved in criminal proceedings, often as witnesses for the prosecution. However, this involvement may come at a price and the problem of secondary victimization of child witnesses is particularly poignant, as is the problem of exercising their rights. *Listening to a child victim's wishes is a complicated and delicate area, often best served by a middleman - a specializing lawyer.*

Based on the assumption that a child victim's voice should be heard and that his interests should be taken into account throughout the legal proceedings, the presentation will introduce the benefits of an independent legal representation of child victims throughout the legal process, as the best way to serve these goals. The presentation will use comparative law (including international tools) and will refer to the vast knowledge gathered in the Noga center in eight years' experience in representing child victims of serious crimes.

The Presentation

Background:

Victims' Rights as independent rights and the Noga Center: Listening to the victims is a major concept of the ‘victims’ revolution’ which has taken place over the last 30 years, changing concepts of criminal law. The Noga Legal Center for Victims of Crime was established in order to offer legal advice and representation to victims of serious crimes, to educate professionals, to promote legislation and to raise awareness in Israel of the needs of the victims.

The special problem of child victims and witnesses, particularly victims of sexual offences/violence:

Child victims (especially those of severe crimes, i.e. sexual offences) suffer from particular difficulties, in the legal system as well as elsewhere. The child can’t exercise his own rights, more often than not he has been harmed by a relative/parent/friend of the family, which makes the situation complicated and the support of adults’ uncertain, and even the older child may need help in order to understand proceedings and their meaning (including the repercussions of closing the case).
Representing Child Victims of Crime

S. 4(a): Adapting rights of children: ‘…considering his age and his capacities, and in light of the CRC’s principles’

Key issues that exemplify the difficulties children face at every stage of the legal process
I. The right to be heard (which includes the right to be informed and considering children's views)
II. The right to safety and to be protected from harm
III. The right to privacy
IV. The right to compensation/restitution (VIS)

Key principles: Benefit of the child, right to participation, evolving capacities.
Guidelines on justice in matters involving child victims and witnesses of crime, 2005

The solution in Israel – special child interviewers and the children do not have to testify.
The Israeli experience with testimonies of children in criminal proceedings has been vast and unique, as the testimony is introduced to the court via a mediator, an expert who interviews the child and records the interview. The result of this advanced system is that many more cases of child victims are brought before the courts, and while not all victims have to testify in person (and hence be subjected to the possibility of a 'secondary victimization').
The benefit: most children do not testify in court.
The cost:
1. No cross examination.
2. A corroborative evidence is required when the child doesn’t testify.
3. If he is not allowed to testify, the case may be closed for lack of evidence.
4. This solution only helps during the trial itself but all the other problems of the child witness do not get solved.

The suggested solution in this presentation: (based on our experience at the Noga Center): independent legal representation: A. Legal representation. 2. Guardian Ad Litem. Overview, pros and cons.
The presentation will introduce the benefits of an independent legal representation of child witnesses throughout the legal process, as an answer to the unique problems the children are facing, using comparative law and examples from our experience in representing children and throughout the different stages of the criminal justice system:
- Pre-trial (during police investigation etc.)
• Trial (emphasizing issues that are related to testifying, plea agreements, disclosure of private materials etc.)
• Post-trial (restitution, restriction orders, protecting privacy, etc.)

The lawyer's role:
• Represent the child’s interest in pleas
• Insist on a thorough investigation
• Ask for special measures (including a delayed/early court appearance)
• Appeal against closure of cases
• (safety, privacy, compensation and restitution)

B. The difference between a lawyer and a Guardian Ad Litem

In those cases where a parent is the offender or the parent is incapable of making decisions, a lawyer may not be enough and there may be a need for making decisions for the benefit of the child, even if in conflict with his own wishes. Appointing a GAL is the solution as the GAL is responsible to the court and not to the child’s parents. However, it is a costly and complicated procedure that puts a lot of responsibility on the appointed lawyer.

C. A partial solution regarding compensation/restitution: appointing a lawyer to handle the money for the child, with the court’s supervision.

References
Violation of the rights of children living in a slum setting

Harshita Harshu

A child is a human between the stages of birth and puberty. The legal definition of "child" generally refers to a minor, otherwise known as a person younger than the age of majority. It is however defined as any person under the age of 18 years in the ‘Juvenile Justice (Care and Protection of Children) Act, 2000’.

According to UN Convention on the Rights of the Child, 1959 a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Children's rights are the human rights of children with particular attention to the rights of special protection and care afforded to the young, including their right to association with both biological parents, human identity as well as the basic needs for food, universal state-paid education, health care and criminal laws appropriate for the age and development of the child.

Statement of the Problem

On 29th April, 2010 the Municipal Corporation of Delhi accepted before the Supreme Court the fact that nearly half of million Delhilites live in slums, JJ clusters and unauthorized colonies. This acceptance by the MCD reveals the pathetic condition of people living in the slums of the city.

A slum in India is defined as ‘a cluster inside urban areas without having water and sanitation access'. Slum children are those who live in conditions far below human standards. Their stomachs are barely filled with food and they hardly get a healthy environment to live in. The children hardly go for school as they have to earn breads for their families. Nothing called hygiene shows existence in their lives and thus there is a clear difference among the slum and non slum dwellers and thus every second children are abused and deprived of their very basic rights of education, nutrition and hygiene. Thus the study was taken up to identify the rights of the children and thereby find out ways and means to help the children to be benefitted by the rights bestowed on them under the Constitution of India. The fundamental rights of education and protection of life and liberty are to be focused more in the study as these are the two basic rights required by the children. The children should be ensured that they get these rights. Now even The Right to Free and Compulsory Education has been enacted in the year 2009 but still the children of the slums remain uneducated and out of school indulged in all kinds of jobs they can find to earn themselves a living.
The study aims at answering the following research questions:
1. What is the present living condition of the children in the slums?
2. What are the rights denied to the children living in the slums?
3. Are the parents aware about their children’s rights?
4. What is the role played by the NGOs working for the upliftment of the children?
5. What measures can be taken up to improve the condition of the children in the slums?

Objectives
- To identify the rights denied to the children living in a slum setting.
- To study the attitude and awareness of the parents of children living in a slum setting.
- To study the role of NGOs in the upliftment of children living in a slum setting
- To suggest some measures to improve the condition of children in the slums.

Locale of the Study
The locale covers the ‘National Capital Territory of Delhi’.

Universe
The Universe of the study constitutes of the children, their parents residing in the slums and the NGO workers working in the slums located in different areas of Delhi.

Research Design
*Exploratory Research Design.*

Sampling
*Random Sampling* for the slums was done and from every slum children and the parents were selected using the convenience method. Expert opinion was taken from the experts in the field. They were selected on the basis of work done and the position held by them in their respective field.

Source of Data Collection
*Primary source* - Children of 6 to 14 years of age, parents of the children and NGO workers.

Research Tool for Data Collection
The tools for data collection are interview schedule and quasi participant observation.
Violations of the rights of Children living in slum setting

**Data Analysis**

The whole data was sorted out, tabulated into the tables according to the categories made and the code sheet and later analyzed with the help of various statistical techniques.

**Results and Findings**

*Rights denied to the children living in a slum setting:*
- The children are forced to use toilets in the open or in public toilets which were not clean enough.
- The water problems do exist in almost all the slums.
- Corporal punishment is a feature faced by most of the children.
- The pupil teacher ratio to be more than 1: 45.
- Thus the children are definitely denied their right to survival but their right to education cannot be said to be denied but is not realised by the children completely.

*Awareness and attitude of the parents of the children living in the slums:*
- The maximum parents were found unaware about their children’s rights accruing to them
- The parents hardly earn a very good income to help their own stomachs.
- The parents have the attitude that punishing the child has a deterrent effect on them.
- The parents perceive the environment of the locality not fit for their children’s proper growth.
- Most of the parents were not very enthusiastic regarding their children’s studies.
- Most of the parents have their plans for their children’s future but those plans are not for the child’s benefit in any manner.

*To suggest ways and measures to improve the condition of the children:*
- The ones violating the RTE Act or other rights of children should be punished very strictly and action should be taken against them immediately.
- The Act needs amendment and the Constitution needs to be monitored very strictly.
- The schools need to be oriented about their duties towards children.
- The health and sanitation facilities need to be improved and later maintained.

**Conclusion**

The children are not strong enough to understand the difference between the right or the wrong and nor will they able to fight for themselves. The children need people to stand for them and help them fight for their rights. The children have been denied the right of survival to a great extent. Even though the children are going to school it does not mean that the children’s right to education is fulfilled to them till they are realize all the entitlements made to them under the right to education.
Children in conflict with law at different stages within the justice system

Intezar Khan

Introduction

Any child who comes into conflict with law faces a continuous chain of problems which start even before his apprehension - the antecedence. It has a strong impact on his family and to a great extent on his entire future. Though the Juvenile justice (Care and Protection) Act, 2000 reiterates about the rehabilitative component for the child, in many occasions it is observed that children face dire consequences after their entry into the Juvenile Justice System. However, this depends to a great extent on the individual child, his/her personality and the support services available to his/her in the family and community. Unfortunately, many of the children belonging to this category do not have the adequate and appropriate support system that can play a remedial role in their future thus leading to the same vicious cycle of criminality. It can also have a long term psychological impact on the child after going through the judicial proceedings which leads to situations of stigma and discrimination in the society, having bitter consequences on the child and his future, demanding psychosocial intervention.

The post institutionalization period for the child is equally traumatic if he/she is stigmatized in the community. To add on to it, if they do not receive the adequate care and protection from their immediate family and friends during that stage, it can lead to a lot of hardships that the child needs to endure. It so happens that many a times, the child becomes lost to his/her surrounding and ends up falling into the same path Pursuing studies after the apprehension and detention in the institution is another major hustle the Child has to encounter. It so happens that the child feels ashamed to go to school, loses interest in studies or prefers to engage in some work. On the other hand, there can be hesitation from the school authorities to reinstate the child in school with the fear that it might lead to a negative impact on the other children.

How they enter in the Justice System?

Majority of the children in conflict with law come from the lower socio-economic background. Most of the parents are either illiterate or have a low education. They are often taken for ride by lawyers or other legal agents. They end up spending a large amount of money and time while going through the inquiry and trial. It is often observed that children entering the Juvenile Justice System and their parents have no clue whatsoever about the legal procedures their rights and entitlement.
According to Articles 37 and 40 of the Convention of the Rights of the Child (1989)

Children in conflict with the law have the right to treatment that promotes their sense of dignity and worth takes into account their age and aims at their reintegration into society.

International laws have long recognized that formal criminal justice systems should deal only with young people who have committed serious and violent crimes and who pose a real security risk to others. Detention should always be a measure of last resort and for the shortest possible time. Yet children continue to be criminalized inappropriately and exposed to a system that is often violent and frequently disapproving.

Most of bail cases often remain unattended in terms of counseling. All the children who commit offences face trauma of different kinds and they need some kind of intervention after being released on bail. The families also need to be worked with.

How are cases received by JJB/Procedures?

Child in conflict with law has the right to be treated in ways that promote the child’s reintegration in assuming a positive role in society. The arrest, detention or imprisonment of a child may be used as a last resort. It is therefore necessary as a part of comprehensive policy for juvenile justice to develop and implement a wide range of effective measures to ensure that children are dealt with in a manner appropriate to their well-being, and proportionate both to their circumstances and the offence. As far as child in conflict with law is concerned, JJ Act prescribes that while giving the verdict, it is important that the JJB considers the age of the child because their age determines their mental development. If a child of 3 years hits another child, then, the child cannot be punished for such an act. Moreover, punishment for a child should not be like that meted out to an adult.

If a child of seven years commits murder, the police can leave the child under section 82 of IPC. However, under section 83 of IPC, if a child of 7 to 12 years commits theft to fulfill his own interest and knows that it is an offence, then, he is punishable. However, it depends on the decision of Magistrate and most importantly, on the capability of the lawyers/police/probation officers etc of how they present the case and make the Magistrate understands the child in relation to the situation. The Board is responsible to take decision keeping in view the best interest of the child.

In the Pre-production stages of a child before the Board, the Police play a crucial role. With sensitivity and understanding of the child’s situation leading to his/her apprehension, they can assume the responsibility of resorting to non-judicial proceedings in restoration. But, due to their lack of awareness on these issues, the child is straightaway produced before the Board in a monotonous fashion. In dealing with CCL, the Police or the Juvenile/Child Welfare Officer from the nearest police station, shall not be required to register an FIR or file a charge-sheet, except where the offence alleged to have been committed by the child is of a serious nature such as rape, murder or when such offence is alleged to have been committed jointly with adults; instead, in matters involving simple offences, the Police or the Juvenile/Child Welfare Officer from the nearest police station shall record information regarding the offence alleged to have been committed by the
child in the general daily diary followed by a report containing social background of the juvenile and
Circumstances of apprehension and the alleged offence and forward it to the Board before the first hearing.

**Institutions for children in conflict with law**
An important provision for children in conflict with law in relation to their rehabilitation needs that make the entire judicial proceedings different from that of an adult is in the establishment of Observation Homes and Special Homes for their care and protection with the main focus on reformation and rehabilitation.

**(a) Observation Home**
When an order has been passed by the JJB, a child may be sent to an Observation Home or Special Home. An Observation Home is for the temporary reception of a child in conflict with the law, and a Special Home is for the reception and rehabilitation of a child in conflict with the law.
- Separate observation homes for girls and boys;
- Classification and segregation of juveniles according to their age group preferably 7-11 years, 12-16 years and 16-18 years, giving due consideration to physical and mental status and the nature of the offence committed.

**(b) Special Home**
Separate special homes for girls above the age of 10 years and boys in the age groups of 11 to 15 and 16 to 18 years; Classification and segregation of juveniles on the basis of age and nature of offences and their mental and physical status.

The Care and Development Plan for each child in the institution should be executed as per the child’s requirements and most importantly emphasis should be laid on reformation. The child should be provided with counseling support in order to deal with the past/present history and accordingly plan for the future. Behaviour modification should be one of the intervention methods for children of this category in order to prevent recidivism and also prepare the child to lead a different life with a positive attitude and outlook.

**Who is responsible to address the problems?**
In order to address the problems faced by the children, everyone in the society has to take part so as to prevent the juvenile from re-offending and falling into the same vicious cycle. Pathological family, deprivation of love and care, dire conditions of poverty having being identified as some of the contributing factors for children to come into conflict with law, it is imperative that they need to be addressed with a concerted effort of the entire community and the State to protect the children and provide them the best in life.
Rehabilitating the exploited children and the criminalized youth of India

Joel Devavaram, David Augustine Karunakaran and Arun Ji

In this paper, the authors would like to highlight the causes which go into the making of a youth offender and also suggest some solutions to it. When a youth under the age of 18 commits an offence, it is called juvenile delinquency. Instead of sending him/her to a regular jail, he/she will be sent to a Juvenile Justice Board which tries to reform the youth offender through observation and counseling.

Certain gruesome incidents that were perpetrated by youth offenders have shocked the nation. The following incidents that occurred in Tamil Nadu were also reported in the newspapers.

- A youth from an educated and affluent family studying I year medicine ran over a girl killing her on the spot. The girl was his former schoolmate and the reason attributed to it was ‘jilted love’. He was arrested and let on bail.
- In another bizarre incident, in Chennai a school kid pounced on his teacher and literally butchered her to death. The reason that could be attributed to this was psychological stress.

Many factors can be cited for the deviant behavior of these juvenile delinquents. The abnormality of their behaviour in their houses, in schools and in other respectable places are pointers to this. A lot of socio-psychological factors can influence a normal teenager. The following are some of them:

- Peer pressure
- The lure of easy money
- Alcohol and drugs

In *The Hindu* published at Visakhapatnam dt. Aug.6, 2012 an article on family problems leading to juvenile delinquency appeared. It was authored by B. Madhu Gopal. A 17 year old boy was arrested for stealing from ATMs. Once a customer entered his PIN in the ATM he used to tell him that the machine was not working. After the customer left absent mindedly without cancelling the transaction the boy would enter, complete the transaction and withdraw money from the customer’s account. As this boy hailed from a good family background, he was stricken with remorse when he appeared before the Juvenile Justice Board. Another case, a 17 year old hockey player accidentally stabbed his senior player to death on New Year-eve celebrations at Kailasapuram. The youth stabbed his senior accidentally over a trivial cause that is the cutting of a cake. The reason is excessive intake of alcohol. Mostly school children and college students land into trouble by initiating their peers who gradually initiate them into bad habits.
Teenage Girls Led Astray

Teenage girls from a poor background are easy prey to rich boy students hailing from a rich background as they ply these girls with costly gifts and money. This is the main reason for teenage pregnancy. The Observation Home in which they are kept, provide them with food and give them counseling till their release. Parents cannot advise them as they themselves are involved in extra-marital affairs resulting in a broken family. The girls are then blackmailed and made to pose for obscene photos. Eventually the lure of easy money leads them to imbibe alcohol and take drugs. In a fit of anger and self-hatred, these girls commit suicide.

Neighbourhood

The neighbourhood in which a teenager is brought up and the school in which he studies also plays an important part in shaping his/her character. When teachers cannot cope with the stress and frustration associated with working with these difficult students, they react to minor problems with instability, fear, counter aggression and negative thinking which escalates the frequency and severely of the child's aggressive behavior (Morrison & Skiba, 2001; Reinke & Herman, 2002).

Overcrowding in schools also pose a serious problem. Because they assemble together large numbers of at-risk youth, schools can become breeding grounds for the development of criminal offending, especially when there is little adult supervision (Cohen & Felson, 1979).

Drug Pedlars

Teenage youth are exploited by drug pedlars and forced to supply their clients with drugs. Even, if they are caught by the police they would not be exposed to that sort of treatment which would be given to an adult. Eventually the couriers themselves become junkies and turn into hardened criminals like hired killers.

Teenage Street Gangs

Now the scourge pervading corporation cities is teenage street gangs. They mark their territory and roam in it with deadly weapons. If a member from another gang enters their territory, he is treated as an intruder and severely thrashed-sometimes even killed.

Influence of Movies

Modern films set a bad example to the adolescent youth including teenage girls. Some pattern of deviant behaviour are defying authority—Police, teachers and parents, teenage romance involving sex, admiration for anti-heroes and trying to behave like one.

Usually juvenile delinquency is restricted to petty thefts like stealing vehicles (two wheelers and cars) eve-teasing, roaming the streets at odd hours during the night and being picked up by the police for questioning and shop-lifting. But now there is a shift from these petty crimes to serious crimes like murders.
Rehabilitating the exploited children and the criminalized youth of India

The Medical Angle
Now there is also a medical angle to the behavioural pattern of juvenile offenders. In an article published in Guardian dt. Fri. 19 Oct 2012, Dr. Dean Burnett, a doctor of neurosciences, Cardiff University opines that most of the young offenders have suffered traumatic brain injury (TBI). ‘Repairing shattered lives’ an article underscores this aspect. They are as follows,
- Head injury is a very serious matter.
- Contusion is serious enough, even if it does not cause lasting damage.
- Given the complexity of the brain and uncertain nature of brain injury, the eventual consequences of traumatic brain injury can vary considerably, potentially leading to serious disorders such as schizophrenia.

Legal View
The authors will point out an important code of criminal procedure of 1860. Even the penal laws such as the Indian Penal Code, 1860 exempts children under the age of 7 years from criminal responsibility (sec.82). It also exempts children between the age of 7 to 12 years, who have not attained sufficient maturity of understanding to judge the nature and consequences of their conduct, from criminal responsibility (sec. 83). The Act also provides some protection to the children from the evil designs of the adults (sec.363-A). Now the age for juvenile delinquents has been raised to 18.

Suggestions
- Rehabilitation for youth offenders have been set up all over India.
- The movements of the released juvenile offenders must be monitored carefully.
- Love, care and affection must be given to the juvenile offenders lodged in Juvenile Detention centers.
- Parental love is very important to prevent juvenile delinquency.
- Yoga and Meditation would also serve to ease the stress of the youth offenders.

References
A nurture perspective on Children in Conflict with Law: Homes sans role models

Jonathan Rodrigues

Introduction

Every child needs a home – a place to love and be loved. A home is a child’s primary social atmosphere from where he picks up those little virtues of life. These early experiences with parents and siblings help build his/her personality and develop an attitude towards different life situations. For many adolescents though, the family atmosphere isn’t as nurturing as it should be. These youngsters therefore leave home in search of love and understanding. He/she deviates from the course of normal social life and exhibits behaviour which may prove to be dangerous to society and / or to oneself. A Juvenile delinquent is thus, incorrigible or habitually disobedient.

Theories and Research

The “Interpersonal maturity level”, proposed by John Riggs, William Underwood and Marguerite Warren classifies delinquents as: Over-inhibited Child, Un-socialized aggressive child and Socialized Delinquent child.

An Over-inhibited Child suffers from an inferiority complex and is normally shy, apathetic, worried, sensitive and submissive. Meanwhile, an un-socialized aggressive child has an assaultive tendency, besides a cruel and malicious liking for mischief. An intolerable temperament and inadequate guilt feelings, probably due to parental rejection, makes him defy authority. Lastly, a Socialized Delinquent child is characterized by bad companions, gang activities, furtive stealing and has grown up being a truant from schooldays.

Anti-social environmental role models:

a) School Dissatisfaction - Some students get dissatisfied with school life. Parental irresponsibility, unmanageable student teacher ratio, lack of entertainment and sports facilities in school, indifference of the teachers may contribute to a child seeking fun and attention elsewhere. Such dissatisfied students become regular absentees in schools and start wandering on their own and become gamblers, eve-teasers, pick-pockets, drunkards, smokers and drug addicts.

b) Films and pornographic literature have also added to the magnitude of delinquency. Cinema, television and obscene literature may often provoke sexual and other impulses in adolescents. Hence, they start their adventure in satisfying these desire, in the process of which, commit crimes. According to psycho-analytical view, the delinquent is an individual who is governed by the pleasure principle- immediate pleasure and immediate satisfaction of needs – so he becomes a victim of his own impulses.
Family is the first socializing vehicle that shapes the expression of drives. A child has limited control over his/hers family’s emotional dynamics. Parents may be neurotic, schizophrenic or alcoholic. They may be physically abusive or rejecting. The child turns into the ‘scapegoat’ and this symptomatic carrier of a family pathology, stems not from personal inclinations, but from family’s structural problems.

Public behaviour is visible and to some extent controllable; but what goes on behind the closed doors of homes, is largely invisible and beyond control. Child is the inevitable reposition for the accumulated frustrations. Lacking retaliatory power, children have little choice but to suffer the consequences – produced at courts or send to rehab homes- of being diagnosed as emotionally disturbed children.

Quality of parental affection and love defines if a child will turn delinquent or not. Delinquents feel that mothers love them the most and also feel their fathers should love them more. They claim their parents feel embarrassed to openly express affection, also admitting that they are embarrassed to return the affection. They also complain of parental hostility, however identify and associate more with their mother’s ways and characteristics.

Differences in self-concept distinguishes delinquent from the non-delinquent. The pre-condition of law-abiding or delinquent behaviour is found in the concept of self and others acquired in primary group relationships. This concept of ‘self’ can work negatively. Attributing characteristics and tags can influence young boys and girls to accept the ascribed roles. Active, aggressive, impetuous, violent behaviour is not always delinquent. Equating healthy deviance to delinquency encourages the child to subscribe to the branding.

Present Study

A nurture perspective on Juvenile Delinquents, (aged 14-18 years) housed at Apna Ghar, Goa is a case study, aimed at obtaining an in-depth view, of the behaviour of individuals identified as the Juveniles. The project will uncover the unknown motives and desires that led them to break the law.

Tools used

An Interview guideline (developed by myself), consisting of various questions. It covers aspects such as: Family background, Previous Offending History, Academic Progress, Temperament & Lifestyle, Personal Life & Interests, and lastly, Social Life and Inter-personal relationships.

Findings & Inferences

• The study reveals a poor bonding between the inmates and their fathers. Boys normally tend to see their fathers as role models and the lack of love and support from their idols can lead them to get into bad peer company, leading to status offences, such as drinking and smoking and drugs, when they were still underage.

• Not all are dangerous, most are situational delinquents. Most of them simple people who in the process of satisfying their youthful desires (license less riding, drinking
and smoking.) have broken the law. The only difference is that they have no one
to bail them out, unlike the families of rich kids to get bail, within hours of arrest.

- These youngsters lived NORMAL lives like the rest, until they disobeyed the law.
  They shared stories about their childhood, schooling, the pranks and sports they
  played; and some even whispered about little crushes and intimate relationships.
- In case of one ‘Juvenile D’ (in the case study), who is basically a lost and found
  teen, who was later conspired into stolen goods trade; the biggest help by the law,
  would be to get him back on a train that leads to his hometown.

**Suggestions and Conclusion**

**Home and Society**

- *Equal attention, unconditional affection:* Kids hatch feelings of animosity and stunted
  self-worth, besides negative role model characteristics of biasness and nepotism.
  Even when scolded or corrected, the child should still feel loved.
- *Healthy recreational habits:* Encouraging kids to play sports, visit parks and beaches,
  dining as family, helps in socializing. Abstain from drinking, smoking and
  gambling, thus preventing addiction and incorrigibility.
- *Preliminary Encyclopedia:* Ignorance isn’t bliss, since a curious mind is never at peace.
  Children hear and see new things every day, it is essential that parents reply to the
  questions and opinions they have on love, war, sex, relationships etc.
- *Changing gears with Peers:* Growing up with peers is essential (even if they are
  deviant) for healthy mental development and emotional maturity. Not keeping the
  right pace (more time spent with adult youth and elders) could rob the child of his
  childhood innocence and fun.
- *No one is born ‘bad’:* The public attitude towards Juveniles must also change. We
  normally brand young criminals as disturbed and abnormal characters. Labeling is
  unhealthy and unfair. They deserve a chance to make amends and rebuild their
  lives.
- *Taught to teach:* a teacher’s ideas, virtues, opinions & remarks define a child’s future;
  positive or negative, a child behaves as he has been told or forced to believe.
- *It is a sacred career;* as delicate as a surgeon, a teacher should to learn to appreciate,
  attend, guide and correct every individual, both subjectively and impartially.

**Homes away from Home**

- *Quality guardians:* Police officers/counselors/matrons at Probation or Rehab homes
  should be well trained in basic Criminology and Psychology, hence equipped with
  skills and techniques to deal with mental and emotional needs of the young
  inmates. Characters with wrong intentions should not be employed or allowed to
  associate.
- *BAN solitary confinement:* The atmosphere should be that of a home – loving,
  hospitable and free. There should be ice-breaking sessions, games and group
activities that will induce them to re-socialize and connect with everything good. Treatment instead of punishment; mistake instead of crime (JJ Act 2000.)

- **Re-live Augustus dream**: Probation has strayed away from its original concept of nurturing and mentoring youngsters. Community service, educational rectification, counseling and ought to be compulsorily provided, supervised, analyzed and reported. For some, a suitable job will keep them employed and make them more responsible in their day to day lives. Here again, their progress has to be constantly evaluated.

- **Adopt hopeless s/orphaned**: Children without a home or family should be adopted by the State. Eradicating beggary and street children nuisance will curb most delinquent acts. The state should also take more control over misused and harassed kids. A special home where there can be taught civics, manners and vocational skills, would make them eligible for responsible jobs.

**References**


How restorative and solution-focused interventions can be used to address crime and offenses against and by youth

Lorenn Walker

Introduction

The Western criminal justice system (CJS) mainly focuses on offenders and uses a blaming and punishment model as its normative intervention. This is true even when over 90% of all felony defendants in the United States (US) plead guilty to offenses (Hall, 2009). Despite the US’s massive incarceration rates, the CJS generally fails at preventing wrongdoing and assisting victims. Without parental rehabilitation and reentry efforts, the children of incarcerated parents suffer (DHHS, 2007). CJS experts commonly believe that the CJS provides a “criminal process [that] has become notorious for ‘revictimization’ or ‘secondary victimization,’ for many child victims” (Gal, 2011, citations omitted). “Restorative justice emerged in the 1970s as an effort to correct some of the weaknesses of the western legal system while building on its strengths” (Zehr, 2013). Restorative justice is advocated for children and youth crime victims over the CJS (Gal, 2011).

Restorative Justice Practices

“Restorative justice is a broad term which encompasses a growing social movement to institutionalize peaceful approaches to harm, problem-solving and violations” (Suffolk University, 2012). RJ is “is victim-centered and looks at how ‘victims,’ very broadly defined, are affected and can be healed” (Boyes-Watson, 2003). RJ practices provide the opportunity for people affected by wrongdoing to consider and express what they personally need to heal. In an RJ process, each individual affected by a crime is respected, and usually offered equal participation opportunity, but no one is forced to participate.

Development of Hawai’i’s Restorative Practices for Children

Native Hawaiians have been using ho’oponopono, a restorative practice, for centuries to deal with interpersonal conflicts for families and children (Hosmanek, 2012). Modern restorative interventions for Hawai’i’s children and youth have been used since 1996, and include ‘Ohana Conferencing for child welfare cases. This model has proven cost effective and shown to bring healing for children and families (Walker, 2005).

Juvenile Justice Restorative Practices in Hawai’i

In 1999 a Hawai’i restorative pilot project was developed that diverted 102 juvenile offenders from the CJS. The project benefited many children even in a case where the juvenile offender denied accountability for his wrongdoing (Walker, 2002). The project is
Restorative solutions focused interventions

cited by the United Nations’ UNICEF organization as a resource for the restorative
diversion of youth from the CJS (UNICEF, 2012).

Restorative practices also address and prevent repeat violence for youth harmed in
bullying incidents with other youth. This author has personal experience in this regard. In
2000 her 13 year old son was assaulted at school by another student. A restorative
intervention was held with herself, her son, husband, the youthful offender, his father, and
the school principal participating with a facilitator. For six years following the incident the
two boys had no more conflicts and attended school together peacefully. Furthermore the
process helped build community by also increasing understanding and positive
relationships between the parents and the school (Walker, 2001, in van Wormer &
Walker, 2013).

Application of Solution-Focused Methodology to Restorative Practices

In 2002 solution-focused brief therapy (SF) methodology was first used and applied with a
restorative intervention in Hawai‘i. It was used for victims where the offender did not
participate, or offenders were unknown to the victims (Walker, 2004). Most criminal cases
go without anyone being identified or arrested in the US. The project helped victims find
healing despite not knowing who harmed them or not wanting to have personal contact
with them.

The solution-focused approach and public health learning principals are consistent with
restorative practices. RJ, SF, and public health practices are strength-based, goal oriented,
use positive motivation, and recognize that relationships with others are key to learning.
Since 2004 Hawai‘i has been using SF with RJ interventions developed for children and
youth (Walker, 2004) in a variety of pilot programs.

Hawai‘i’s Restorative Intervention for Homeless Youth

A restorative circle practice – the Waikiki Circle – was piloted for groups of homeless
youth who suffered serious social injustices and victimization, along with a few youthful
offenders. The project provided a number of circles over a four-month period with an
average 5 youth participating at each circle. Forty four percent (44%) of the youth succeed
in meeting goals they set for themselves at the circles including finding employment and
housing (Walker, 2008).

Hawaii’s Restorative Reentry Planning Processes

Incarcerated youth, and youth of incarcerated adults, in Hawai‘i have also benefited
from a reentry planning process. The Huikahi Restorative Circle has been provided for
youth in correctional institutions, and for youth whose parents are incarcerated. The circle
process addresses reconciliation and other needs necessary for a healthy life including
desisting from crime and substance abuse. The circles also address victimization the
children and family members have suffered and have been evaluated to show healing can
result (Walker & Greening, 2010).
Outcomes and Evaluations of Hawai‘i’s Restorative Practices

Hawai‘i’s interventions have been researched and show promise for healing children and youth and building individual resiliency out of incidents of wrongdoing and injustice. An unfortunate experience may be considered a trauma and a deficit to the personality, or it can be considered as a *stren* and something that strengthens the personality (Hollister, 1967). This idea can be narrated, and promoted in restorative practices for developing resiliency (Walker, 2000). Restorative practices have been shown to be more healing for people than the CRJ.

References


Review of Laws for Protection of Children from abuses in India

Ravishankar K. Mor

“No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment”\textsuperscript{156} this fundamental Right against exploitations of children given under Constitution of India have also been protected by many legislations in India such as “No child who has not completed his fourteenth year shall be required or allowed to work in any factory”\textsuperscript{157}, “No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on: Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government”\textsuperscript{158}. So also Hon’ble Supreme Court of India while interpreting these legal and Constitutional Rights have done utmost to protect the rights of children from exploitation at the hands of the employer as in case of M.C. Mehta v. State of Tamil Nadu\textsuperscript{159} declares “Children can be employed in the process of packing but packing should be done in an area away from the place of manufacture to avoid exposure to accident”. Also under Part-IV of the Constitution, Article 39 (e)and (f), Article 41 and 45, Directives are issued for Government to have the policy for protection of childhood and protection of children from exploitation, free and compulsory education etc. Newly added Article 21A have granted Fundamental Right to free and compulsory education for children up to 14 years of age. Beside Constitutional provisions there are many Central and State statutes like, The juvenile Justice (care and protection of Children) Act 2000, The women's and Children's (Licensing) Act 1956, The Child Labour (Prohibition and regulation) Act 1986, The Bonded Labour System (Abolition) Act 1976, Indian penal Code 1860, The Immoral Traffic (Prevention) Act 1956, and The Child Marriage Restraint Act 1929, they are enacted for the protection of Children from abuses.

But when it comes to protect from the crimes against them legislative measures taken in India till today are not even closer to any other civilised society in the world. Let us have a look at Constitutional Provisions No any specific provision can be identified which speaks of peculiar position of Children as victims of sexual or other crimes, nor any specific chapter is inserted under Indian Penal Code 1869, except an offence of

\textsuperscript{156} Article 24, Constitution of India 1950
\textsuperscript{157} Section 68, The Factories Act 1948
\textsuperscript{158} Section 3, The Child Labour (Prohibition and Regulation ) Act 1986
\textsuperscript{159} AIR 1991 SC 417
Kidnapping\textsuperscript{160}, hardly any difference is made in case of crimes committed against children, they are included within the meaning of “men” and “women”\textsuperscript{161}. In such circumstances crimes against children are treated on equal footing with any other victim in the society and not as a socially prone victim due physical and mental incapacity. In this regard work of Hon’ble Supreme Court of India is laudable as from time to time they issued guidelines through its various decisions for protection of children from abuses e.g. Krist Pereira Vs. State of Maharashtra and others (Cr. W. P. 1107 Bombay High Court, 1996), M. C. Mehata Vs. The State of T.N. (A.I.R. 1997, S.C. 699), Bandhua Mukti Morcha Vs. union of India (AIR 1984, S.C. 802).

Latest is the only legislative good work done by the government in this regard. The Protection of Children from Sexual Offences Act, 2012, has been passed by the Lok Sabha today, 22\textsuperscript{nd} May, 2012. The Bill was earlier passed by the Rajya Sabha on 10\textsuperscript{th} May, 2012.

The Protection of Children from Sexual Offences Act, 2012 has been drafted to strengthen the legal provisions for the protection of children from sexual abuse and exploitation. For the first time, a special law has been passed to address the issue of sexual offences against children. Sexual offences are currently covered under different sections of IPC. The IPC does not provide for all types of sexual offences against children and, more importantly, does not distinguish between adult and child victims.

The Protection of Children from Sexual Offences Act, 2012 defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. These offences have been clearly defined for the first time in law. The Act provides for stringent punishments, which have been graded as per the gravity of the offence. The punishments range from simple to rigorous imprisonment of varying periods. There is also provision for fine, which is to be decided by the Court.

An offence is treated as “aggravated” when committed by a person in a position of trust or authority of child such as a member of security forces, police officer, public servant, etc.

\textbf{Punishments for Offences covered in the Act are:}

1. Penetrative Sexual Assault (Section 3) – Not less than seven years which may extend to imprisonment for life, and fine (Section 4)
2. Aggravated Penetrative Sexual Assault (Section 5) – Not less than ten years which may extend to imprisonment for life, and fine (Section 6)
3. Sexual Assault (Section 7) – Not less than three years which may extend to five years, and fine (Section 8)
4. Aggravated Sexual Assault (Section 9) – Not less than five years which may extend to seven years, and fine (Section 10)

\textsuperscript{160} Section 359, Indian Penal Code 1860.

\textsuperscript{161} Section 10, Indian Penal Code 1860. The word "man" denotes a male human being of any age; the word "woman" denotes a female human being of any age.
5. Sexual Harassment of the Child (Section 11) – Three years and fine (Section 12)
6. Use of Child for Pornographic Purposes (Section 13) – Five years and fine and in the event of subsequent conviction, seven years and fine (Section 14 (1))

The Act provides for the establishment of Special Courts for trial of offences under the Act, keeping the best interest of the child as of paramount importance at every stage of the judicial process. The Act incorporates child friendly procedures for reporting, recording of evidence, investigation and trial of offences. These include:

- Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector
- No child to be detained in the police station in the night for any reason.
- Police officer to not be in uniform while recording the statement of the child
- The statement of the child to be recorded as spoken by the child
- Assistance of an interpreter or translator or an expert as per the need of the child
- Assistance of special educator or any person familiar with the manner of communication of the child in case child is disabled
- Medical examination of the child to be conducted in the presence of the parent of the child or any other person in whom the child has trust or confidence.
- In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.
- Frequent breaks for the child during trial
- Child not to be called repeatedly to testify
- No aggressive questioning or character assassination of the child
- In-camera trial of cases

The Act recognizes that the intent to commit an offence, even when unsuccessful for whatever reason, needs to be penalized. The attempt to commit an offence under the Act has been made liable for punishment for up to half the punishment prescribed for the commission of the offence. The Act also provides for punishment for abetment of the offence, which is the same as for the commission of the offence. This would cover trafficking of children for sexual purposes.

These are some of the salient features of the Act which has yet to receive the Assent of Hon’ble President of India and then to wait for publication in Official Gazette of Government of India. Sixty Five years have been passed of an Independent India, now a little wisdom is shown by the Indian legislature in Protecting Children from Abuses, hope much more wisdom shall prevail upon them and this Act will sooner see the light of a meaningful morning.
Influence of Media Violence on Youth and their tendency to commit Crime

Neethu Susan Cherian, E. Enanalap Periyar and Amit Gopal Thakre

Introduction
For most of human history, people have lived lives dominated by violence. From primitive hunters killing for food through centuries of society built around warfare, violence has never been less a part of the human experience than it is today. All forms of media like the video games, internet, television, movies, press (newspapers, magazines) books, radio etc, through which violence is depicted, have an impact on the youth. This project focuses on the youth who develop the tendency to commit crime due to the influence of media violence.

Violence in the media
Research into the media and violence examines whether links between consuming media violence and subsequent aggressive and violent behavior exists. Although some scholars had claimed media violence may increase aggression, this view is coming increasingly in doubt both in the scholarly community and was rejected by the US Supreme Court in the Brown v EMA case, as well as in a review of video game violence by the Australian Government (2010) which concluded evidence for harmful effects were inconclusive at best and the rhetoric of some scholars was not matched by good data.

The debate regarding the exposure of media violence of causing anti-social behaviour and tendency to perpetrate crime has been going on for a long time. There are arguments that media violence should be censored so as to avoid societal violence. Violence has always played a role in entertainment.

Effects of Media Violence
While it is difficult to determine which children who have experienced televised violence are at greatest risk, there appears to be a strong correlation between media violence and aggressive behaviour within vulnerable "at risk" segments of youth (Beresin, 2010). Media violence produces short-term increases by priming existing aggressive scripts and cognitions, increasing physiological arousal, and triggering an automatic tendency to imitate observed behaviours. Media violence produces long-term effects via several types of learning processes leading to the acquisition of lasting (and automatically accessible) aggressive scripts, interpretational schemas, and aggression-supporting beliefs about social behaviour, and by reducing individuals’ normal negative emotional responses to violence (i.e., desensitization).
There has been increasing violence in media such as televisions and films. The patterns of media violence depicted in American films are entering Indian films, apart from American films that are directly reaching the Indian public through media (Barak, 2000).

In this era of globalisation, swift technological advances have had significant bearings on our understanding of the social world. Internet services, satellite television, and the like are expanding at an unbelievable pace, creating both excitement and confusion in the minds of the youth and children (Misra, 2009).

There are reasons to believe that media violence causes tendency to commit crime as it first became available in the United States and Canada in the 1950s and violent crime increased dramatically in both countries between 1960s and 1990. Many people see this connection, (Freedman, 2012).

Methodology
The data collection is done in field by interviewing the respondents through detailed schedule of questionnaire. The questionnaire has close ended questions. They were all of multiple choices in nature. Personal Interviews were also used for data collections. The area of study is Kottayam district. The Sample Size is 100 students of Basilius College, BCM College and Marian School in Kottayam District. The type of sampling used by the researcher for the perform this project is Non-probability sampling. The Sampling Method used for the study by the student is “Purposive sampling”. Data is collected by 2 methods i.e., Primary Source of data and Secondary source of data. The primary source of data was collected directly from the students. The secondary source of data was collected through websites, books, journals and articles.

Major Findings
- Majority of the respondents agree that the students can resist the influence of media violence.
- 52% of the respondents feel that their friends don’t think they are prone to violence.
- Majority of the respondents watch violent movies either always or occasionally.
- Majority of the respondents never play pranks which has little violence in them.
- Majority of the respondents always gets disturbed by violent scenes.
- Majority of the respondents always read violent materials.
- Majority of the respondents always have prolonged effects of violent scenes.
- Majority of the respondents have never emulated violence.
- Majority of the respondents have never been a victim of violent prank.
- Majority of the respondents have never been a victim of violence.
- Majority of the respondents have never been tempted to act on violence in media.
- Majority of the respondents have never been influenced by media acts.
- Majority of the respondents have never been a volunteer in any campaign against violence.
Majority of the respondents have never attended awareness programmes on combat of violence.

Majority of the respondents have never been a victim of peer pressure to commit anti social acts

Majority of the respondents agree that media violence is exaggeration of real life.

Majority strongly agree that minor offences should be ignored by parents.

Majority of the respondents have always stood up against violence

Majority of the respondents are fully aware of the positive and negative sides of media violence

Majority of the respondents like watching violent movies at home.

Majority of the respondents agree with the fact that even adults can be swayed by media violence

Majority of the respondents like watching violent movies with friends.

Majority of the respondents agree to the fact that parents should monitor what their children watches.

Majority of the respondents agree that children should be given lenient punishment when they commit serious offences.

Majority of the respondents feel that movies insights their violent instincts more.

Majority of the respondents agrees to the fact that boys are more prone to aggressive behaviour than girls.

Majority of the respondents agree that violent video games have a relation with aggressive behaviour.

Majority of the respondents never think about killing the person they dislike.

Suggestions

From the findings the researchers suggests that the right age for children to be exposed to violence in media should be between the age of 16 to 21 years as it is often the time when one has the ability to distinguish between right and wrong. During this age youth tend to become both physically and mentally mature and capable of judging that violence in media has no or little connection with real life. Its better not to expose children below 13 years to media violence as it is during this age when things have a very strong impact on their minds and might affect them in the wrong way as they are not aware of the positive and negative acts of media violence. However, exposure at any age can have different impact on different individual depending on various other circumstances, moral values their environment and ones attitude towards life; for example, some may not be able to distinguish between reality and fantasy even after being an adult.

Children should be capable of distinguishing reality and fantasy. It’s the youth time when a person starts to go through ups and downs in life and improves interaction with others. The researchers recommends condensing the depiction of bloodshed in media as the findings show that it is through media that majority of the public gets prejudiced easily and as we cannot bring media violence to a complete end we should only try to reduce it.
This can be done by not amplifying facts of real life and by broadcasting in such a way that will not have a prolonged affect on the individual. Through this way less number of individual will get influenced and will indirectly reduce the tendency to commit crime.

The researchers suggest some ideas to imitate media violence in real life. We should try to improve the society in which one lives as this also place a very important role in developing tendency to commit crimes. Parents should sit with their children while watching movies. They should make them aware of the ill effects of violence. Understand what is reality and fiction. One should use good language and think before acting violently in front of children. Counselling in schools and at home is to be held basically on the value of one’s life. Censoring of violent scenes and banning violent video games. Proper guidance should be given to children in their childhood itself about the merits and demerits of media. Proper time regulation should be done by parents on their children watching TV. Media should not show violence alone but in fact show the pain it causes.

Awareness should be given, about the bad effects of violent acts and the truth of life. Reality about life should be understood.

Conclusion

This paper intended to glance into the influence of media on adolescence for their inclination to perpetrate crime. It has also attempted to study the awareness against violence through media on today’s youth. Most of the individuals keep track of a variety of issues and studies through media. No one can be at different places at one time, so to know about things going on within the world, people have a propensity to depend on media whether it be books, newspapers, journals, website etc.

This paper calculates the youth’s tendency to commit crime and by doing so the student tells about how the youth gets influenced by the media especially the violence shown by the media. We might not be a witness to violence but can see it or feel the pain of violence through media, (Potter, 1999). The student also attempts to analyse the change in behaviour of the youth influenced by the violence in media.

The researcher concludes that depiction of media violence is good to an extent as it helps us to recognize some realities in life. It is meant only for entertainment, leisure and a moment of joy or for gaining knowledge. One should understand the purpose and act accordingly. But these days media violence has become intense, so it is better if violence is controlled and not depicted to a large extent.

Finally, the tendency created also depends on oneself and how one takes media violence. We must develop self understanding about good and bad things in life. A person if has a strong willpower can resist the influence of media violence.

References
Influence of Media Violence on Children and Youth


Crime against children: Realising gaps in Criminology and legislation

Reshma Lesle and Jayachithira Bhaskar

Introduction

A child is defined as a person not having completed 18 years of age. Child abuse is a state of emotional, physical, economic and sexual maltreatment meted out to a person below the age of eighteen and is a globally prevalent phenomenon. According to WHO: "Child abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power.

Working Definition of Child Abuse

The following working definitions of child abuse have been adopted:

- Child abuse refers to the intended, unintended and perceived maltreatment of the child, whether habitual or not, including any of the following:
  - Psychological and physical abuse, neglect, cruelty, sexual and emotional maltreatment.
  - Any act, deed or word which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being. Unreasonable deprivation of his/her basic needs for survival such as food and shelter, or failure to give timely medical treatment to an injured child resulting in serious impairment of his/her growth and development or in his/her permanent incapacity or death.
  - Physical abuse is inflicting physical injury upon a child. This may include hitting, shaking, kicking, beating, or otherwise harming a child physically.
  - Emotional abuse (also known as verbal abuse, mental abuse, and psychological maltreatment) includes acts or the failure to act by parents, caretakers, peers and others that have caused or could cause serious behavioural, cognitive, emotional, or mental distress/trauma.
  - Sexual abuse is inappropriate sexual behaviour with a child. It includes fondling a child's genitals, making the child fondle an adult's genitals, sexual assault (intercourse, incest, rape and sodomy), exhibitionism and pornography.

To be considered child abuse, these acts have to be committed by a person responsible for the care of a child or related to the child (for example a baby-sitter, parent, neighbour, relatives, extended family member, peer, older child, friend, stranger, or a day-care provider). Child neglect is an act of omission or commission leading to the denial of a child's basic needs. Neglect can be physical, educational, emotional or psychological. Physical neglect entails denial of food, clothing, appropriate medical care or supervision. It may include abandonment.
Educational neglect includes failure to provide appropriate schooling or special educational needs. Psychological neglect includes lack of emotional support and love.

**The Specific Objectives of this Paper are**

- To assess the magnitude and forms of child abuse in India;
- To study the profile of the abused children and the social and economic circumstances leading to their Abuse;
- To facilitate analysis of the existing legal framework to deal with the problem of child abuse in the country; and
- To recommend strategies and programme interventions for preventing and addressing issues of child abuse.

These are the main objectives of the paper i.e., to assess which all forms of child abuse are seen in India and to know which all are the socio-economic circumstances that is leading to child abuse and to analyse the existing legal system dealing with child abuse in India and make necessary recommendations to prevent child abuse.

**Forms of Abuse Prevailing in India**

**Physical Abuse**

The Indian society, like most societies across the world, is patriarchal in structure where the chain of command is definite and inviolable. In such power structures parents, both fathers and mothers, consider their children as their property and assume a freedom to treat them as they like. Thus, not only do parents and teachers adopt harsh methods of disciplining children, there is also little opposition to this harshness. The underlying belief is that physical punishment encourages discipline in children and is for their betterment in the long-run. There is enough scientific proof to the contrary and evidence suggests that sometimes it is parent's inability to raise their children, and their frustrations find a manifestation in the form of beating them or causing other physical harm. Severe physical maltreatment also takes place outside family situations and the most common and known forms of it are corporal punishment in schools and physical abuse at work place. Working children have a high probability of being abused by their employer or supervisor. The reasons could be dependence of the child on the employer and the vulnerability of the child, who is a soft and available target for the anger and frustrations of the employer. The same goes with teachers in schools and every other person resorting to physical abuse of children.

In India there is a widespread belief that the family is ultimate and supremely capable of looking into the best interests of the child. In fact interference in anyone's family matters is perceived as infringement on the privacy of the family. As a result, a lot of abuse remains hidden within the family and remains unreported. Apart from family members, abuse in schools and work place, children are also abused in street by police and other adults. Thus, Children who have been repeatedly subjected to physical abuse carry the
effects of it all through their life and often also end up as perpetrators of violence themselves.

Sexual Abuse

The subject of child sexual abuse is still a taboo in India. There is a conspiracy of silence around the subject and a very large percentage of people feel that this is a largely western problem and that child sexual abuse does not happen in India. Part of the reason of course lies in a traditional conservative family and community structure that does not talk about sex and sexuality at all. Parents do not speak to children about sexuality as well as physical and emotional changes that take place during their growing years. As a result of this, all forms of sexual abuse that a child faces do not get reported to anyone. This silence encourages the abuser so that he is emboldened to continue the abuse and to press his advantage to subject the child to more severe forms of sexual abuse. Sexual abuse is defined as severe forms of sexual abuse and other forms of sexual abuse.

Severe forms of sexual abuse includes Assault, including rape and sodomy, Touching or Fondling a child, Exhibitionism- Forcing a child to exhibit his/her private body parts, Photographing a child in nude, and other forms of sexual abuse includes: Forcible kissing, Sexual advances towards a child during travel, Sexual advances, towards a child during marriage situations, Exhibitionism- exhibiting before a child and Exposing a child to pornographic materials.

Emotional Abuse and Girl Child Neglect

Emotional and psychological maltreatment of children is the most complex type of abuse - invisible and difficult to define. The following are indicators of emotional abuse:

Humiliation: Humilation of a child refers to the degradation of the self esteem of a child by parents, care-givers or any other persons, often in the presence of others. Instances of humiliation include treating harshly, shouting, belittling, name calling and using abusive language while addressing children. Comparison: Parents and other caregivers often compare one sibling with the other or one child with the other in terms of their physical appearance and other characteristics, thus affecting the social, emotional, and intellectual development of a child. Girl Child Neglect: Girl child neglect is the failure to provide for the all round development of the girl child including health, nutrition, education, shelter, protection and emotional development. This also includes aspects of gender discrimination.

The Existing Legal Framework to deal with the problem of Child Abuse in India

Nineteen percent of the world's children live in India. Harmful traditional practices like child marriage, caste system, discrimination against the girl child, child labour and Devadasi tradition impact negatively on children and increase their vulnerability to abuse and Neglect. Lack of adequate nutrition, poor access to medical and educational facilities, migration from rural to urban areas leading to raise in urban poverty, children on the
Crimes against Children

streets and child beggars, all result in breakdown of families. These increase the vulnerabilities of children and expose them to situations of abuse and exploitation. There are various legal frameworks for the protection of child. They include the following.

**Constitution of India**

The Constitution of India recognizes the vulnerable position of children and their right to protection. Following the doctrine of protective discrimination, it guarantees in Article 15 special attention to children through necessary and special laws and policies that safeguard their rights. The right to equality, protection of life and personal liberty and the right against exploitation are enshrined in Articles 14, 15, 15(3), 19(1) (a), 21, 21(A), 23, 24, 39(e) 39(f) and reiterate India's commitment to the protection, safety, security and well-being of all its people, including children. Even though these fundamental rights are available in the constitution still the children are abused in factories, street, no proper education is given etc. This means that they are not aware of their rights .so proper awareness must be given to the children.

**The Indian Penal Code.**

- Foeticide (Sections 315 and 316)
- Infanticide (Sec. 315)
- Abetment of Suicide: Abetment to commit suicide of minor (Sec. 305)
- Exposure and Abandonment: Crime against children by parents or others to expose or to leave them with the intention of abandonment (Sec. 317)
- Kidnapping and Abduction:
  - kidnapping for extortion (Sec. 360),
  - kidnapping from lawful guardianship (Sec. 361)
  - kidnapping for ransom (Sec. 363 read with Sec. 384),
  - kidnapping for camel racing etc. (Sec. 363)
  - Kidnapping for begging (Sec. 363-A)
  - kidnapping to compel for marriage (Sec. 366)
  - kidnapping for slavery etc. (Sec. 367)
  - kidnapping for stealing from its person: under 10 years of age only (Sec. 369)
- Procurement of minor girls by inducement or by force to seduce or have illicit intercourse (Sec. 366-A)
- Selling of girls for prostitution (Sec. 372)
- Buying of girls for prostitution (Sec. 373)
- Rape (Sec. 376)
- Unnatural Sex (Sec. 377).

Even though IPC provides punishment for these offences committed against children. A child doesn’t know these are offences committed against them. Therefore legal awareness must be given to them from lower classes onwards.
The Juvenile Justice (Care and Protection of Children) Act, 2000

This legislation provides proper care to children in conflict with law. It prescribes a uniform age of 18 years, below which both boys and girls are to be treated as children. A clear distinction has been made in this Act between the juvenile offender and the neglected child. It also aims to offer a juvenile or a child increased access to justice by establishing Juvenile Justice Boards and Child Welfare Committees. The Act has laid special emphasis on rehabilitation and social integration of the children and has provided for institutional and non-institutional measures for care and protection of children. The non-institutional alternatives include adoption, foster care, sponsorship, and after care. Important provision relating to child abuse is Section 23: Punishment for cruelty to juvenile or child: The Act provides for punishment, (Imprisonment up to six months), Section 24: Employment of Juvenile or Child for Begging: The Act provides for punishment (Imprisonment for a term which may extend to 3 years and fine), Section 26: Exploitation of Juvenile or Child Employee: The Act provides for punishment (Imprisonment for a term which may extend to 3 years and fine).

The Immoral Traffic (Prevention) Act, 1956

In 1986, the Government of India amended the erstwhile Suppression of Immoral Traffic in Women and Girls Act 1956 (SITA), and renamed it as the Immoral Traffic (Prevention) Act (ITPA) to widen the scope of the law to cover both the sexes exploited sexually for commercial purposes. "Child" under ITPA means a person who has not completed the age of sixteen years and "prostitution" means the sexual exploitation or abuse of persons for commercial purpose.

Child Labour (Prohibition and Regulation) Act, 1986

The Act was formulated to eliminate child labour and provides for punishments and penalties for employing children below the age of 14 years in from various hazardous occupations and processes. The Act provides power to State Governments to make Rules with reference to health and safety of children, wherever their employment is permitted. It provides for regulation of work conditions including fixing hours of work, weekly holidays, notice to inspectors, provision for resolving disputes as to age, maintenance of registers etc. Even though this Act is there, studies show that so many children are exploited in their work place. Many children come from rural areas and work in hotels and factories in urban area for their livelihood. This type of practise must be eliminated and proper measures must be implemented.

The Prohibition of Child Marriage Act, 2006

The Child Marriage Restraint Act, 1929 has been repealed and the major provisions of the new Act include:

Every child marriage shall be voidable at the option of the contracting party who was a child at the time of the marriage; The Court while granting a decree of nullity shall make an order directing the parties, parents and guardians to return the money, valuables,
The Commissions for the Protection of Child Rights Act, 2005

The Act provides for the Constitution of a National and State Commissions for protection of Child Rights in every State and Union Territory. Apart from these legislation, there are other legislations’ such as Guardian and Wards Act, 1890, Factories Act, 1954, Hindu Adoption and Maintenance Act, 1956, Probation of Offenders Act, 1958, Bombay Prevention of Begging Act, 1959 etc. there are also certain national policies such as National Policy for Children, 1974, National Policy on Education, 1986, National Policy on Child Labour, 1987, National Nutrition Policy, 1993 etc.

International Conventions and Declarations

India is signatory to a number of international instruments and declarations pertaining to the rights of children to protection, security and dignity. In 2005, the Government of India accepted the two Optional Protocols to the UN CRC, addressing the involvement of children in armed conflict and the sale of children, child prostitution and child pornography. India is also a signatory to the International Conventions on Civil and Political Rights, and on Economic, Social and Cultural Rights which apply to the human rights of children as much as adults. Three important International Instruments for the protection of Child Rights that India is signatory to, are: Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), SAARC Convention on Prevention and Combating Trafficking in Women and Children for Prostitution.

Conclusion and Recommendations

Child abuse is a problem to be studied in national basis. The purpose of this paper is to establish that child abuse exists and also to provide the information base that will help
Government to formulate, legislation, schemes and interventions to deal with the problem. The primary responsibility of protecting children from abuse and neglect lies with the families. However, communities and civil society are also responsible for the care and protection of environment and provide a safety net for children who fall into vulnerable children the overarching responsibility is that of the state and it is the state that has to create a protective environment and provide a safety net for children who fall in vulnerable and exploitative situation.

**General Recommendations**

**Policy and Legislation:** The present National Policy on Children 1974 needs revision and there is a clear and established need for a separate National Child Protection Policy. In addition, every state should set up a State Commission for the Protection of Rights of the Child and formulate Plans of Action for Child Protection at the district and state levels. There is also a clear and established need for a National Legislation to deal with child abuse. The proposed legislation should address all forms of sexual abuse including commercial sexual exploitation, child pornography and grooming for sexual purpose. It should also deal with physical abuse including corporal punishment and bullying, economic exploitation of children, trafficking of children and the sale and transfer of children. The legislation should also look at mechanisms of reporting and persons responsible for reporting.

**Protocols:** In order to enhance the standards of care and build a protective environment for children in the country, there is a need to develop standard protocols on child protection mechanisms at the district, block and village levels, defining roles and responsibilities of each individual and agency. Such protocols should also lay down standards and procedures for effective child protection service delivery including preventive, statutory, care and rehabilitation services for children.

**Scheme on Child Protection:** There is a need for national scheme. A scheme should identify vulnerable families and children, prevent vulnerabilities and provide services to those in need. The scheme should strengthen statutory support services provided under the Juvenile Justice (Care and Protection of Children) Act 2000 for children in need of care and protection and children in conflict with law.

**Outreach and Support Services:** The study has revealed that the majority of abuse cases take place within the family environment, the perpetrators being close family relatives.

**Tracking Missing Children:** Children go missing for a number of different reasons. Difficult and abuse situations at home often force children to run away; economic compulsions make them move to urban and semi-urban areas in search of a living; and sometimes they are trafficked for domestic work, other forms of labour or commercial sexual exploitation.

**Advocacy and Awareness:** The media should be used to spread awareness on child rights. Debates and discussions with participation of children can be a regular feature on
electronic media in order to enhance people's knowledge and sensitivity on child protection issues.

Specific Recommendations
Children in schools
Schools as compared to other situations are the safest place for children and therefore efforts should be made to increase the enrolment and retention of children in school by adopting innovative, child friendly methods of teaching. Children’s' participation in meetings held by village education committees on issues dealing with school functioning, governance and maintenance of facilities at school, should be encouraged.

Children in institutions
India continues to use institutionalization as a method of providing services to children in difficult circumstances. Although internationally it is now an established fact that institutionalization is not in the best interest of the child, yet, in countries like India, where the number of children in need of care and protection is very high and the non-institutional methods of care are not developed, the institutionalization of children will continue till alternatives are identified. In the light of this the following recommendations are made: a) Juvenile Justice Boards, Child Welfare Committees and Special Juvenile Police Units should be set up in each district and manned by sensitive and trained personnel, b) In existing institutions, standards of care should be established and maintained. Institutions under the Juvenile Justice (Care and Protection of Children) Act 2000 are corrective institutions. Children in conflict with the law in these institutions should be provided with all the opportunities to reform and develop into responsible citizens. The present state of the existing institutions leaves a lot to be desired, c) Every home should have a management committee whose members, along with members of the community and civil society, should be involved in the efficient running of these institutions and prevention of abuse. Children should also be encouraged to participate in the management of the institutions.
Child soldier phenomenon:
A challenge to international humanitarian and human rights law

Asha Verma and Ruchi Lal

They tied the boy’s hands behind his back and beat him unconscious. Then they propped him up in a chair and turned to Grace with the orders that ‘shoot him’ with the threat that “if you miss, you will replace him in the chair’. So Grace stood 20 feet away, took careful aim and pulled the trigger.

Grace was ten year old when she killed the boy in Sudan. She’s one of the 300,000 child soldier estimated to be present around the world today.

According to UNICEF, a child soldier is any person under 18 years of age who is part of any kind of regular or irregular armed forces, used either as combatants or as cooks, porters, messengers and spies. Children are preferred to be recruited as soldiers for the simple reason that they are easier command than adults, are highly motivated, and are dedicated. The countries with the highest number of child soldiers in the world in the governmental forces are Afghanistan, Colombia, Sri Lanka, Iraq, and Sudan, to mention a few. In situations of violence not amounting to armed conflict also children constitute a significant part of armed groups like those prevailing in cities of Brazil; Central America, South Africa, and Nigeria. In India also there are reports of children being recruited by Maoist and militant groups in the torn states of Andhra Pradesh, Chhattisgarh, Jharkhand Manipur, Nagaland, Assam and Jammu and Kashmir.

Reasons

There are numerous factors which can lead a child to become a combatant such as personal experiences of brutal acts leading to the wish for revenge; survival tactics such as the act of defending one’s family; social and political manipulations and adolescent ideologies. Some of these factors explain the recruitment of child soldiers in Sierra Leone.

Their recruitment can also be forced one as happened in northern Uganda where children are abducted and forced into soldiering with threats of death.

**International instruments for the Protection of Child Soldiers**

Though the children are entitled to the protection of Universal Declaration of Human Right 1948, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural rights, the child soldiers are also specifically protected by the various international instruments as listed below.


The convention defines child as “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.” Article 38 of the Convention provides that children under 15 years of age should not be recruited and that governments should prioritise the protection and care of children. Article 39 relates to the post conflict care of children, obligating States to assist the physical and psychological recovery and social reintegration of children who have been victims of armed conflict.

Though Article 38 endorses the language of Art. 77(2) of Additional Protocol I to the Geneva Convention 1949, it is not as emphatic as Article 4(3) of Additional Protocol II, governing non-international armed conflicts.

This implies that restrictions contained in CRC with regard to recruitment of child soldiers do not extend to internal conflicts or non-state armed groups.

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173 77(2) of Additional Protocol I to the Geneva Convention 1949 provides that the parties to the conflict shall take all feasible measures in order to ensure that the children who have not attained the age of 15 years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them in armed forces.

174 Article 4(3)(c) children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;

II. Optional protocol to the Convention on the Rights of the Child on the involvement of children in Armed Conflict 2000\textsuperscript{176}

With regard to a State’s armed forces, Article 1 of the Protocol requires States to “take all feasible measures” that any under 18 year old within its armed forces do not take a direct part in hostilities. This is a leap from Article 38 of the CRC, which prohibits those under the age of fifteen from taking a direct part in hostilities.\textsuperscript{177} Article 2 prohibits the compulsory recruitment of children below the age of 18 years into a State’s armed forces. This is also step ahead of CRC, which does not specifically mention compulsory recruitment restrictions. Article 4 refers to armed groups that are different from state armed forces, a category which was not specified in CRC.\textsuperscript{178}

III. International Humanitarian Law

Under IHL, the prohibition of the recruitment and use of child soldiers were undertaken with the adoption of the 1977 Additional Protocol I\textsuperscript{179} and Additional Protocol II \textsuperscript{180} to the 1949 Geneva Conventions. Article 77(2) of Additional Protocol I requires the parties to an international armed conflict to ‘take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces’. Article 4(3) (c) of Additional Protocol II, applicable in armed conflicts not of an international character, provides that ‘children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities’.

IV. Rome Statute of International Criminal Court, 1998,

The age of 15 years was once again used as the threshold for recruitment and deployment in the Rome Statute of the International Criminal Court, 1988, which lists the recruitment of children less than 15 years of age for the purpose of direct to participation in international conflicts, and in conflicts not of an international character, as a war crime.\textsuperscript{181}

Recent Decisions

On 14 March 2012, the International Criminal Court gave its decision in \textit{The Prosecutor v. Thomas Lubanga Dyilo} wherein Thomas Lubanga, a warlord who had operated in the Ituri region of the eastern Democratic Republic of the Congo, was convicted of the

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\textsuperscript{176} Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, entered into force 12 February 2002. As of 12 April 2012, the Optional Protocol had 14 ratifications.

\textsuperscript{177} Supra note 12

\textsuperscript{178} Ibid

\textsuperscript{179} Additional Protocol I deals with Protection of Victims of International Armed Conflicts

\textsuperscript{180} Additional Protocol II relates to the Protection of Victims of Non-International Armed Conflicts.

\textsuperscript{181} Article 8(2) (b) (xxvi) and Article 8(2)(e)(vii) of Rome Statute of International Criminal Court.
Child Soldier phenomenon

crimes of conscripting and enlisting children under the age of 15 years into his armed group.

On 26 April 2012, the Special Court for Sierra Leone (SCSL) found the former President of Liberia, Charles Taylor, guilty of planning, aiding and abetting war crimes and crimes against humanity including recruitment and use of child soldiers. ¹⁸²

These two decisions are of immense importance in this arena as they have been successful in sending a powerful signal to the international community at large that recruitment and use of children in armed conflict will not go unnoticed and unpunished.

Conclusion

Despite there being an elaborate protection mechanism in the form of provisions in IHL, human rights law, CRC, Optional Protocol etc., the fact remains that child soldiers are existent in the world today at a large scale. The ideal solution to the whole problem can be to take concerted efforts to end the ongoing conflicts which are destroying the lives of millions of children. But in the current international scenario this seems to be a farfetched dream. Till this dream is realised efforts should be made to enable the child soldiers to pick up the pieces of their shattered childhoods and to move on towards a brighter future, free from fear, threats, and violence. Also it is important that the protection of children in armed conflict and their subsequent rehabilitation and reintegration should remain high on the global humanitarian and human rights agenda.

When the child decides to marry:  
Some reflections on the legal issues with  
special reference to the criminal justice system in India

G. Sreeparvathy

The practice of children being forced to ‘marital bliss’ is one of the challenges faced by most South Asian countries, particularly India. The emotional and physical stress, a victim of such a marriage has to undergo and the impact of such early marriages on the emancipation and empowerment of women need not be over emphasised. The Child Marriage (Prohibition) Act, 2006, (Hereinafter PCMA) fixes the minimum age for marriage as eighteen and twenty one for girls and boys respectively.\(^{183}\) Despite legislative mandates and social interventions by activist groups including government agencies, a considerable percentage of marriages in India take place in violation of the statutory requirement as to age. However, another issue that is increasingly becoming a concern for the judiciary and social activists is that of children entering into marital ties voluntarily either with an adult or with another minor, without consent or against the wishes of their parents.

These unions are also child marriages as at least one of the parties would be below the age of marriage. But they raise different and even more complex issues, for the judiciary as well as the social workers. In addition to personal law issues like validity of such marriages, guardianship and custody of the married child, these cases involve matters of concern for criminal law as well. Referred to as ‘run away marriages’ or ‘rebellion marriages’, it is regarded as a challenge to the honour of the family or community, and are often dealt with through extra-legal mechanisms like KhapPanchayats and honour killings. It is pertinent to note here how the parents themselves, who are usually accused of contracting child marriages becomes complainants here making allegations of kidnapping and rape and seeking custody of the married child through *habeas corpus* petitions claiming to be the legal guardians.\(^{184}\) This, at times, involves a manipulation of the age of the girl to benefit from the provisions of PCMA. On the other hand the eloping couple seeks the protection

\(^{183}\) Sec. 3 of PCMA

\(^{184}\) Flavia Agnes makes the following observation in this regard- It is indeed ironical that the provisions of the seemingly progressive CMRA come to the aid of parents to tame “defiant” young women, prevent voluntary marriages and augment patriarchal power rather than to pose a challenge to it. When child marriages are performed by families and communities, the provisions of this statute are seldom invoked. Many a time a girl, who is restored to parental custody, is married off while still a minor against her wishes. The patriarchal bastions are too strong and well-fortified for a modernist feminist discourse to enter and change social mores through legal diktats. The only sphere in which these provisions come into play is during “elopement” marriages where patriarchal power colludes with the state power. See *Marriages of Choice: Articulation of Agency, State Interventions and Feminist Locations*, in Laws Locations: Textures of Legality in Developing and Transitional Societies, UW Law School, Madison
of the court through protection orders apprehending danger from the parents and community, particularly when the marriage is inter-caste.

The response of the judiciary to these issues, have been quite ambivalent frequently depending on the facts and circumstances and the social conditions prevailing. For instance, it may be seen that the High Courts of the states where the issue of honour killing is very rampant like the Punjab, Haryana and Delhi more often refuse to send the child with the parents whereas cases from southern and north eastern parts of the country takes a different approach. The observation of the High Court of Punjab & Haryana in *Ashok Kumar v State*, as to how the couples performing love marriage are chased by police and relatives, accompanied by musclemen candidly brings out how the decision of the court is influenced by the social realities of the times.

Judicial interventions giving validity to the marriage and allowing the minor girl to live with the husband are many. In such decisions the courts have also quashed criminal charges against the husband. These decision branded as progressive by many has been condemned as regressive even by women’s groups. The controversies which emerged in the context of the Delhi High Court decision in *Tahra Begum* is testimony to the diverse take of various stakeholders on the issue. But the courts, even while rejecting charges of kidnapping, has at times refused custody to the husband irrespective of the wishes of the minor. On the other hand are decisions where the judge has denied to sustain the validity of elopement child marriages and held that it amounts to kidnapping from legal guardianship punishable u/s 361 of IPC. The question whether a minor who has contracted marriage with another a ‘juvenile in conflict with law’ also came up and it has been answered in the negative by the Madras High Court.

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185 Meena Dhandain her study of runaway marriages in Punjab enunciates the factors affecting the grant of protection orders by the High Courts and illustrates the peculiar judicial process involved in such cases. Supra n. 1
186 See the decision in *Wajed Ali v. State of Assam*, 2012(3)GLT426
187 I (2009) DMC 120 P&H
188 There are a number of decisions in which the judiciary has upheld the validity of child marriage, disregarding the parental allegations of kidnapping, and permitted the minor girls to join their husbands. See the decisions in *Jiten Bouri v State of West Bengal*, [II (2003) DMC 774] Cal., *Manish Singh v. State, NCT Delhi*[I (2006) DMC 1], *Sunil Kumar v. State, NCT Delhi* [I (2007) DMC 786], *Kokkula Suresh v. State of Andhra Pradesh* [I (2009) DMC 646].
189 *Jitender Kumar Sharma v. State*, 171(2010)DLT543, the court while allowing the minor to reside with her husband quashed the criminal charges against him.
190 *Mrs. Tahra Begum v. State of Delhi &Ors.*, MANU/DE/2154/2012
191 For the views of those who argue in favour of the judgement see Flavia Agnes, Consent, Age and Agency: reflections on the recent Delhi High Court judgement on minors and marriage available at http://kafila.org/tag/delhi-high-court-judgement/. A contrary view has been expressed by many including the women’s groups. See also *Shazia Nigar* Courting Concerns: The Delhi High Court Judgment On Child Marriage, available at http://www.countercurrents.org/nigar030712.htm
192 For instance, *Mr. Avinsah v. State of Karnataka*, 2011(4)KarLJ560, the court while denying habeas corpus to the petitioner (who claimed to be the husband of the minor), held that he has committed the offence of kidnapping and directed the police to apprehend him.
193 *T. Sivakumar v. Inspector of Police*, AIR2012Mad62, the Madras High Court answered the question in the negative.
Another issue that has come before the courts is with respect to the kidnapping and rape charges that the parents file against the husband of the minor. According to PCMA, if the child is enticed or taken out of the keeping of the lawful guardian, such marriages would be null and void. This is in conformity with the existing personal laws which consider the child below the statutory age of discretion to be under the guardianship and custody of the parent or other lawful guardians. Now, when a girl elopes with a boy or man of her choice, the parents often file charges of kidnapping and even rape. Another concern is the application of the rape provisions in cases of elopement of marriages of minors. The Indian Penal Code doesn’t consider ‘consent’ of a child below sixteen relevant for the purposes of rape. Thus, in cases of child elopement where the marriage is rendered void by the courts, sexual intercourse, if proved would attract rape provisions. This has been criticised by feminists as augmenting ‘patriarchal parental power’ over minor girls. In addition, the application of the newly enacted the Protection of Children from Sexual Offences Act, 2012 may also become relevant.

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194 Sec. 12. Where a child, being a minor -(a) is taken or enticed out of the keeping of the lawful guardian; or (b) by force compelled, or by any deceitful means induced to go from any place; or (c) is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes, such marriage shall be null and void.

195 According to Section 375 IPC sexual intercourse with a child below 16 years with or without her consent is rape. But if the child is the wife of the man and is above the age of fifteen such intercourse would not be considered rape.

196 In this regard Flavia Agnes says “When we examine the agency which a young girl expresses in an elopement marriage, the legal provision becomes a weapon to control sexuality and curb marriages of choice. Even though the criminal provisions regarding kidnapping and statutory rape appear to be protecting minor girls, these provisions are aimed at augmenting the patriarchal parental power over the minor girl. There are no exceptions in the laws on abduction and kidnapping that allow a minor to opt out of guardianship, or to leave her parental home on grounds of domestic violence, child sexual abuse or abuse of parental authority. The use (and abuse) of police power, at the instance of parents with regard to marriages of choice, works in direct contrast to women’s autonomy, agency and free will. Supra 1.
What children say about violence, victimization and punishment?

Srisombat Chokprajakchat

This study explains concepts of violence, victimization, and punishment by examining the attitude and perception of juvenile in Nakhon Pathom province, Thailand. The study is aimed to identify juveniles’ violence, victimization, and punishment perspectives. The 1,873 samples were randomly selected from students in the seventh and tenth grades around Nakhon Pathom province in Thailand. A self-monitor survey is used. The researchers also seek ways to protect, prevent, and alleviate juvenile violent behaviors and victimization.

Research results

For violence, students have a negative attitude (disagree) towards items on possession of guns, beating up a person for bad mouthing, using violence to get what you want, using violence to get respect, and seeing myself committing a violent crime in the next five years. It’s very interesting that an item on possession of guns has the lowest mean presenting that most students against an ownership of guns. The two statements that students agree the most are “it’s okay to do whatever it takes to protect myself”, and “I try to stay away from places where violence is likely”. However, most students are unsure about the following statements “I think parents should tell children to use violence if necessary”, “carrying a gun or knife would help me feel safer”, “It’s okay to carry a gun or knife if you live in a rough neighborhood”, “If a person hits you, you should hit them back”, “I’m afraid of getting hurt by violence”, and “if someone tries to start a fight with you, then you should just walk away from them”. Therefore, we should revisit this issue and try to find a way to create a negative attitude toward violence among our juveniles.

For verbal peer-victimization, verbal peer-victimization is the most common occurrence in this study. When we compare between male and female, it is clearly presented that females were verbally victimized at a greater rate than a male counterpart. Name calling is the most incident occurring in this category. More than one in every three students was a victim in this act, which about 42.6% of female students identify that somebody calls them names, and around 33.4% among male students. Moreover, more than half of the participants indicate that such incidents occurred to them more than once in the past year. The second most common of verbal peer-victimization is “made fun of me because of my appearance.” Approximately 69% of students indicate that they were made fun of because of their appearance, which female represent roughly 42% and male represent around 27% of incidents. Lastly, it shows that around 68.4% of students were
also made fun of for other reasons. Almost 39% of female students go through these horrendous incidents. About one in every four female students has experienced these events more than once in the past year. Male students encounter such act in a lower rate than female students, which about 29% answer that they were faced with such events.

For physical peer-victimization, unsurprisingly shows that male participants experienced every items of physical peer-victimization more than a female counterpart. In a past year, almost 18% of male students were punched by their peer more than once, compared to only 7.7% among females. Overall participants were kicked approximately 26.6% among male participants and 21.2% among female participants. This act is the most common incident in a physical peer-victimization. Male students were hurt physically in some way roughly 18.6%, and 13.8% among a female counterpart. Both male and female are less likely to be beat up by their peer which occur about 8% and 2.1% respectively.

For peer-victimization on attacked on property by gender, it’s very interesting to find that female generally has a higher rate of victimization than their male counterpart in this category. The number one wrongdoing is “took something of mine without permission”, which presents about 76.5% of students (30.5% male and 45.9% female) were experienced in such incidents. Next, it’s “stole something from me”. Approximately 68.2% of students reported that they were a victim of larceny theft by their peer, which 40.2% of female, and 27.9% of male were a victim of such act. “Deliberately damaged some property of mine” is the next type of peer-victimization on attacked on property that students experienced showing around 34.9% of students encounter such incidents. Less than one fourth of students reported an occurrence that someone tried to break something of theirs, and these incidents closely occurred to both female and male, 11.8% and 11.1% respectively.

For social manipulation factors, it showed that female students experience more victimization than a male counterpart except the first factor, “tried to get me into trouble with my friends” which 20.7% of male students indicate that they experienced such as act compare to 18.3% of female students. But female students report that they experience such incident only once in a past year, more than male students. “Cruelly behaved against me” (24.2%) is an act that female participants experience the most and follows by “made other people not talk to me” act (23.2%). Both male and female participants almost identically indicate that they experienced someone tried to make their friends turn against them with a rate of 11.3% and 11.4% respectively.

It’s very interesting to find that generally female students were victimized in a majority of wrongdoing except physical victimization. We, therefore, need to re-examine this finding to better understanding this correlation. Gender specific theories and methods will alleviate an ambiguity of these results and will help us establish an optimal measure to prevent victimization among our juveniles, particularly in a female group.

For juvenile’s attitude on punishment, juveniles which disciplinary action (verbal warning, caning, deducting student behavioral score, probation by school officials, or referral to police) is most appropriate for each infraction type. Verbal warning is favored by more than half of juveniles (57%) for verbal abuse and is the preferred action for false
accusations against other students (40.0%) and, surprisingly, personal property theft from fellow students (31.0%). This figure differs meaningfully from school property theft (8.4%) where students strongly suggest that probation is the preferred disciplinary action. Historically, caning was quite common in the Thai school systems. The Ministry of Education Regulation on Student Punishment (2005) prohibited caning and other forms of corporal punishment in schools. Despite this, almost a quarter of the students recommend caning for physical fighting (24.7%), personal property theft (22.9%), and, interestingly, truancy (22.3%). Deducting from a student’s behavioral score is a common disciplinary action in Thailand. Approximately half of the sample suggests this is the most appropriate form of disciplinary action for students who cheat on examinations (50.8%), followed by truancy (37.7%) and physical fighting (32.5%). The most severe disciplinary action is referral to the police, and more than half of the sample chose this as the most appropriate action for weapon possession.

In summary, students indicate that verbal warning is the most appropriate for verbal fighting (57%), theft of personal property from fellow students (31%), and false accusations (40%). Deducting student behavioral scores is strongly preferred for physical fighting (32.5%), cheating (50.8%), and truancy (37.7%). Probation is the favored disciplinary action for theft of school property (30.8%) and damaging school property (35.4%). Finally, students appropriately believed that weapon possession is a matter to be handled by the police (51%). Caning is the only disciplinary action in this survey that is not the most recommended disciplinary action for any of the infractions.
Educating virtues in order to prevent crimes? Strategies to minimize interpersonal crimes among children and youth

C. S. John Christopher and Johan De Tavernier

Introduction

“Many people view contemporary world as verging on moral bankruptcy and view our institutions as failing to inculcate good character” (Kotva, 1996). But it is not a new phenomenon, since moral panics have occurred throughout recorded history. The immediate query would be whether human nature as such is more prone to narcissism and brutality than altruism and benevolence; or whether our society is interested more than ever before in pessimism rather than in positive human qualities and dispositions. And this envisages an essential question of our interest: What measures are to be implemented to ensure human behaviour or to dispose it to the common good and welfare of others? This paper is primarily focused on the kind of basic virtue education that should be given in schools to minimize interpersonal crime among children and youth. First of all, we present virtue ethics, virtue approach and virtue education as a theoretical perspective to preclude violence in schools. Secondly, we aim to propose three unique orientations that are attached to this solution: person-centered education, education focused on being rather than education centered on doing and education that transcends from information to the level of transformation.

Context

Indisputably, education has been proven to be a great catalyst for ‘change’. This change has had both positive and negative impacts. Positive since there is remarkable growth in economy, literacy, health, employment, science and technology, life expectancy etc. Negative because violence still exists around the world today, despite various attempts to eradicate it from our lives: we experience an increased number of crimes, wars, terrorist activities, human right violation, corruption, rapes and to be more specific the violent juvenile crime against peers, school staff, and property; teen pregnancy, suicides, and so on among children. Kofi Annan, the former Secretary General of UN, says “violence cuts short the lives of millions of people across the world each year, and damages the lives of millions more. It knows no boundaries of geography, race, age or income. It strikes at children, young people, women and the elderly. It finds its way into homes, schools and the workplace. Men and women everywhere have the right to live their lives and raise their children free from the fear of violence. We must help them enjoy that right by making it clearly understood that violence is preventable, and by working together to identify and address its underlying causes” (WHO, 2002).
SNAPSHOTS- 2011

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National Crime Records Bureau, Ministry of Home Affairs, India, 2012

In this precarious scenario, we situate a ‘taken for granted’ context namely; ‘school’ which has enormous potentiality as locus for crime prevention though the aforementioned incidents suggest otherwise. School is an abode where both criminality and victimization are simultaneously demonstrated. There are students with criminal temperament and there are children who are very often scapegoats to victimization in the same class room as well. Of course, children are the most vulnerable and potentially defenceless members of an increasingly globalised society (Gearon, 2001). However, as Marta Santos Pais, Special Representative of the UN Secretary General on violence against children articulates, “education has a unique potential to generate an environment where attitudes condoning violence can be changed and non-violent behaviour can be learned. From children’s early years, schools are well placed to break patterns of violence and provide skills to communicate, to negotiate and support peaceful solutions to conflicts” (WHO, 1998). Obviously, schools cannot control many factors that contribute to violence. Yet, they can address a broad range of behaviors, skills, communication patterns, and attitudes that support and perpetuate violence.

Virtue Ethics and Virtue Approach to Virtue Education

The concept of virtue has a long tradition in ethical theory. Virtue ethics is a theoretical perspective within ethics which holds that judgements about the inner lives of individuals (their traits, motives, dispositions, and character), are of great moral importance than the judgements about the rightness or wrongness of external acts and/or consequence of acts (Louden, 1998). According to Livio Melina, it is an “ethics of the first person” which is rooted within the perspective of the subject, who in her/his acting is called upon to realize acts that are excellent, that directs her/him to her/his own fulfillment and not “an ethics of the third person,” which is situated within the perspective of the observer, who evaluates the external act according to its conformity to the rule. David Carr defines
virtue ethics “as a systematic and coherent account of virtues” (Steutel & Carr, 1999). His primary concern seems to identify certain traits as desirable, by analyzing and classifying them with the exposition of their moral significance, in order to justify those traits as virtues. Concisely, virtue ethicists are not primarily interested in particular actions but simply interested in persons. Their point of discussion is not what s/he does but who should s/he become (Keenan, 1998).

The pertinent question which is of great importance with regard to virtue education is the following: how can virtues be inculcated through education? Aristotle believes that the inculcation of virtuous character is first acquired by first exercising them through vigorous practice: “we become builders by building and lyre-players by playing the lyre. So too we become just by doing just actions, temperate by temperate actions, and courageous by courageous action” (NE 1103b). In the process, role models often play a significant part. One can develop a virtuous character by imitating a virtuous person (Vanlaere & Gastmans, 2007). It is also equally true that virtues of character do not occur or flourish in a vacuum.

Nonetheless, virtues are acquired not with practice alone. Definitely, virtues can be learned, taught and practiced. Aristotle further states that virtuous mean is determined by reason as well, to put it more technically, “by reference to which the practically wise person would determine it” (NE 1107a). In fact, the acting agent must act first of all with knowledge; secondly, s/he must make a rational choice, and the choice of the action for her/his own sake, and thirdly, it must be from a firm and unshakeable character (NE 1105a). The different variables with regard to right mean is codetermined by practical reason (prudence).

One of the inexorable conclusions to be drawn is the fact that school is one of the contexts where virtues can be trained and developed. School is a community of persons. Or else, schools have to be developed as community: the teamwork or collaboration among all those who involved; the interaction of students with teachers and the school environment. School is the abode where the character, virtues, attitudes, dispositions, personality traits and so on are developed and practiced. Essentially teachers become the agents of transformation and they discharge not only their professional duties but personal character as well. In fact, the professional goodness of a teacher is not simply a question of acting according to the professional standards. A good teacher is the one who, through practice and hard work, has learned to put both heart and soul into the job, and to do as a matter of course what is expected of a good teacher: to be concerned about the wellbeing of the students; and to be expert, honest, fair, cordial, reliable and more, and all at the right time, towards the right person, and so forth (Gastmans, 2002). Thus teachers become game-changers. They help children to inculcate virtues through constant practice, with rational knowledge, critical thinking and practical wisdom. Moreover, the mutual and intimate relationship between teacher and student, which is always a dialogue rather than monologue, heals those children who are victimized and retrieves those children who engage in violent and aggressive activities. As Mar Ivanios (2006) exhorts “virtues flow only from the virtuous”. Teachers are the role model. They are the moral agents. They
must never forget that students need a companion and guide during their period of
growth. Good teachers can mould good citizens. Good citizens not only stop violence
they also prevent violence. They make good rapport with their neighbour and to the
society at large.

**Virtue Education**

Once virtue ethics is placed as the theoretical base for the conception of education and
virtue education in particular, the purpose of education also becomes similar to that of
virtue ethics, namely, the development of certain traits, along with the promotion of some
understanding of their moral value or significance through justification (Steutel & Carr,
1999). More precisely, as we indicated before, the virtue approach in education is
primarily focused on cultivation and promotion of virtues. This necessitates the
understanding of the characterization of virtues in different contexts. George Sher (1992)
distinguishes three ways of understanding virtues. In agreement with the Aristotelian
tradition he articulates that “virtues are traits that are conducive to their possessor’s
flourishing, or to a person’s living a life that is in his or her best interest”. The
fundamental question is whether those virtues are traits conducive to the flourishing of
their possessors or others. Meanwhile, on the other hand, the deontological tradition seeks
virtues as traits conducive to right conduct. The crucial question here is not whether a
trait contributes to anyone’s well-being, but whether it leads its possessor to fulfill his or
her moral duties. Similarly, in the perfectionist approach, a trait is a virtue whenever it, or
its possession, has intrinsic value or worth. This position explains virtue in terms of moral
good rather than right, and equates virtues not with character traits that are good for their
possessors, but rather with traits that are good in themselves. At this point, Sher exposes
the presence of profound differences among the three approaches, but, for him, the crucial
question is not what is meant by the term ‘virtue,’ though he identifies virtue as “character
trait that is for some reason desirable or worth having” (G. Sher, 1992, p. 94). On the
contrary, his primary interest is to know if there are any character traits that can be known
to be objectively valuable. In brief, his conclusion brings about the possibility of making a
clear distinction of two categories: there are human values which are not counted as
every virtue since they do not belong to the class of character traits; conversely, there are
character traits which are not treated as virtues since they are not seen as worthwhile or
desirable.

The idea of the good life can be classified as the one that is “led” and the one that is
“had”. According to William K. Frankena, when we say that one ‘led a good life’ it
implies that s/he led a morally good life, and we do not necessarily mean that s/he was a
happy woman or had a good life. Again, when we say that s/he had a good life, we mean
that s/he had a happy or desirable one; we do not necessarily mean that s/he was a morally
good wo/man. Therefore, we must distinguish the moral or morally good life from the
happy or non-morally good life (Frankena, 1970). In virtue ethics these two kinds of good
life are normally called the “virtuous life” and the “flourishing life” (Steutel, 1998). In
relation to education, Frankena (1970) distinguishes between two kinds or parts of
education: moral education or “educating the good man,” [for virtuous life] and non-moral education or “educating for the good life” [flourishing life]. So, there could be moral education in view of virtuous living on the one hand, and non-moral education in view of a flourishing life on the other. If leading a virtuous life is sufficient for a flourishing life, then educators will concentrate only in preparing children for virtuous living and the flourishing life will automatically follow. Conversely, if leading virtuous life is necessary for a flourishing life, then no one can flourish without leading a virtuous life either. Put succinctly, cultivating virtues is indispensable to preparing children for a flourishing life (Steutel, 1998). Indeed, this is a defining characteristic of an ethics of virtue and one of the criteria that distinguishes the virtue approach to education from other leading approaches, like Value clarification theory and Kohlberg’s cognitive developmental theory.

The basic difference between these two approaches lies in the justification of moral educational aims: the justification is not deontological but theological (Steutel, 1998). The argument of Sher also takes the same pattern of thought: several traits of character are considered as virtues not only because of their relevance to the flourishing of a community or society, but also because we cannot flourish in the absence of them (Sher, 1982). Hence, cultivation of virtues becomes an intuitive element of human flourishing. On the issue of human flourishing, Carr not only refers to the welfare of the community or society but also to the well-being of virtuous agent as such: “a sensible man regards it as in his own interest and therefore wants to be wise, courageous, just and temperate” (Carr, 1991). In this respect, Steutel observes that most virtue ethicists regard living virtuously not only as conducive to a flourishing life but constitutive of such a life. At the expense of the rest it can be argued, of course, “education for the morally virtuous life will be an indispensable part of education for the good life as such” (Steutel, 1998).

In conclusion, this study has sought to reaffirm virtues and virtue approach to education as the cornerstone to minimize the attitude of violence among children especially when they are in conflict with law. In the following section we propose three fundamental features or remedial strategies that could prevent crimes and violence among children.

**Person-centered Education**

Education can be defined as an ethical practice based on the ethical requirement to promote the well-being of the student by caring for her/him by a personal relationship. The teacher-student relationship is the heart of education. This is the goal-oriented character of education. Therefore, education especially in early childhood could be considered as equal to a nursing care that is discharged to patients. Teachers are caregivers (nurses) and students are care receivers (patients).

Generally the goal of education is described as the promotion of the well-being of the students by providing good care in the wider meaning of the word (i.e. on the physical as well as psychological, relational, social, moral and spiritual levels). Sometimes this is called holistic education which cannot be reduced to any single technique. It is the art of
Educating virtues in order to prevent crimes

cultivating meaningful human relationships; it is dialectic between teachers and learners within a caring community (Bosacki, 2001).

Teaching is an ethical practice. The ethical practice becomes concrete through personal relationship between the teacher and the student. The quality of teaching must always be seen in the light of the relationship between a unique teacher and a unique student. The student cannot be considered as a passive object to which an educational technology is to be applied. On the contrary, educational activities presuppose a reciprocal interaction between human persons who enter into relationships with each other based on their uniqueness (Gastmans, 2002). By indulging in teaching, and the attitude and skills associated with this activity, the teacher enters as a person into a relationship with the student. The fundamental reciprocity of a relationship of understanding and respect can be found in the dynamic interaction between these two. This serene environment enables children to inculcate virtues in addition to academic learning. They are not only given intellectual formation alone but emotional training as well. Indeed, every educational endeavour is overtly and covertly oriented towards the inculcation of virtues and character formation. It is both displaying the personal traits and exercising professional calibers of a teacher to educate children with character and virtues.

Therefore in a person-centered education the customary educational vocabulary has to be broadened. In addition to the frequently used rationalistic concepts like principles, judgements, methods of analysis, intellectual endeavours, etc; the terminologies such as virtues, character, intuition, vision, spirituality, personality, emotion, moral perception, and moral sensitivity must also be incorporated as a prominent feature of the educational package (Gastmans, 2002). Thus, education should never be compartmentalized; rather it should be oriented towards both intellectual and emotional development of students simultaneously. The emphasis on the person-centered education springs out new horizons in the life of the children: a sense of direction and meaning, positive and durable dispositions, optimistic and constructive attitudes, emotional and poignant maturity, practical and intellectual wisdom and prudence. On the whole, each student is prepared to face the complex and challenging realities of life with virtuous and brave face.

Education for Being versus Education for Doing

An American ethicist Richard M. Gula explicates morality in terms of “the sort of persons we ought to be” and “the sorts of actions we ought to perform.” The sort of person one is depends to a great extent upon the sorts of decisions and actions one has taken, and conversely, the sort of decisions and actions which one has taken depend in part upon the sort of person one is. As a result, “both being and doing or character and action, constitute independent concerns and must be taken together” (Gula, 1989). The point of his contention is that “moral goodness depends upon the quality of person that which is constituted not by rule-keeping behaviour alone, but by cultivating certain virtues, attitudes, and outlooks” (Gula, 1989). As a result, his emphasis is on what is happening to the person performing actions rather than on the actions the person performs. In the light of such points, the role of virtues becomes prominent since virtues
are those personal qualities that stimulate us to act in a certain ways in a particular situation. Similarly, the right action comes from a good person. Our interiority, dispositions, habits, intentions, virtues and character get expressed in our external behaviour. It is similar to the Biblical saying that the good tree bears good fruits and the bad tree bears bad fruits. “An ‘ethics of being’ focuses on the good person; an ‘ethics of doing’ focuses on right actions” (Gula, 1989). What sort of actions should we perform is the primary concern of ethics of doing. Our actions are the signs that express our interiority. The distinction between the ethics of being and the ethics of doing also helps us understand the distinction between “right” action (or judgment of moral rightness) and “good” action (or judgment of moral goodness). The term “right” answers “What should I do?” by pointing to actions, on the other hand, the term “good” answers the same question by pointing to what falls under the notion of virtue – such as motives, dispositions, and intentions. Morality in the strict sense pertains to the person, to character. Actions are moral only in a derived or secondary sense because the person expresses her/himself in actions. Strictly speaking “good” and “bad” properly refers to person; “right” and “wrong” refers to action.

In the context of increased violence among children, our educational system has to (re)focus more on training their being, character, dispositions, integrity and unfolding their potentialities. Education for being is similar to the views of Gula on ethics of being. The more the students are prepared to be good and virtuous; the better the fruits of their being would be. Children should be taught the relational dimensions of human persons. The emphasis on training in obligations or the imposition of prohibitions has to be reoriented towards the internalisation of virtuous character traits and positive internal motivation. Thus when students start acting they act as a totality, using both rational and emotional capacities.

To achieve this virtue approach perspective, educational process has to become a coordinated team work (teachers, parents, managements, government agencies, etc.) where teachers play a pivotal role. They must fulfill a number of necessary positive conditions like: attentiveness to the genuine needs of the children, the responsibility to be taken to meet their needs, and the competency to be acquired to accomplish the needs (Vanlaere & Gastmans, 2007). By this way the relationship between the teacher and the student is weighed. Moreover, the fact of the matter is that children take shape or given formation or even inculcate virtues only in and through relationship with other persons. This is not merely a process of transmitting information but a meticulous insistence on character formation for transformation.

**Transcending from Information to Transformation**

Education has had two great goals: to help people become smart and to help them to become good. While emphasising the academic excellence, the integral development of children which also involves their character is neglected in the present educational scenario. The focus shifted from character formation to professional and job-oriented education where acquiring information or knowledge has become the sole objective.
Acquired knowledge has neither been assimilated nor converted for personal development and human flourishing. On this backdrop, the role of virtue education becomes significant. According to Thomas Lickona (1992), “good character consists of knowing the good, desiring the good, and doing the good. Schools must help children understand the core values, adopt or commit to them, and then act upon them in their own lives,” which lead them to transformation. And the educational goals are: the holistic development of the students; proper orientation of her/his life; and the cultivation of virtuous attitudes and character or excellence in her/his activity (Gastmans, 2002).

Children should be transformed from passive, violent and cruel temperaments into motivated members of an oriented, proactive and meaningful school community. Cultivating good-conduct citizens, preparing well-cultured, educated persons and moulding persons with esteemed character are the characteristics of this transformative education. They are the greatest wealth of any nation and teachers play a vital role in forming them, thus through them the nation is built. The end of knowledge as Mahatma Gandhi exhorts, “must be the building up of character.”

Conclusion
The primary objective of this paper was to explore and investigate strategies to reduce violence among children. On the outset we situated school and education as catalysts for change. Realising the unique characteristics of virtue education, first of all, we presented virtue ethics, virtue approach and virtue education as a theoretical perspective to preclude violence in schools. Secondly we proposed person-centred education, education focusing on being rather than focusing on doing and transcending education from the level of information to the level of transformation as possible remedial solutions to not only minimise violence but also as a preventive measure. The efforts and energy put into education is not an expense but an investment. It is an investment in our children, young people and future of our nation. Undoubtedly, we can counter violence with virtue.

References


Men as Victims: Myths and Realities

“You should never have convinced her to take karate lessons in the first place, mate.”
Introduction

Kenya and India are based on the Common law system. Both the societies are patriarchal in structure. Due to social and traditional customs based on patriarchal structure, women of the world tend to be socially and economically underprivileged. The protective laws are necessitated to empower them and to eliminate the age old discriminative practices that have relegated them to a disadvantaged position so that they can enjoy equal status in all walks of life along with the men folks. However, there are instances where women due to economic affluence, social status of family or just vengeance, misuse the protective cloak thrown around them by law. Many a times men and his family have been at the receiving end i.e., have suffered unnecessary humiliation, pain and suffering due to false cases and complaints lodged against them by woman who may be a wife or an acquaintance. The consequences are so serious with some ending up committing suicide, losing their property, job, etc.

The paper addresses the issue of men as victims; identifying how men have been victimized in the present social milieu, matrimonial dispute leading to cruelty (S. 498 A of IPC), sexual abuse and gender neutral laws, and adultery S. 497 IPC.

Victimization of Men in the Present Social Milieu

It is a reality that some men suffer at the hands of women. Statistical data shows that due to constant harassment by spouses married men are committing more suicides in India than women, as substantiated by the National Crime Record Bureau (NCRB). In the year 2010, almost 61,453 married men committed suicide in India, which is twice the number of married women.\(^{197}\) This is partly attributed to Sections 498 A, 304 B of IPC (where the husband is liable if the wife dies within seven of years of marriage), as well as the Domestic Violence Act, 2005 which can put the husband and his relatives in jail. In an adulterous relation where a woman is married it is only the man who is blamed of committing an offence never the woman.\(^{198}\) The sections are non-bailable,\(^{199}\) which have caused untold suffering and mental turmoil.\(^{200}\) In Kenya it was noted that women beat up

\(^{197}\) Available at, ncrb.nic.in/ADSI2010/suicides-10.pdf, accessed on 19\(^{th}\) October 2012
\(^{198}\) S. 497 of IPC
\(^{199}\) S. 498A and 304 B IPC are non bailable
or emotionally abuse their husbands and spouses. The Maendeleo Ya Wanaume (Development for Men) organisation was set up to give men a platform to speak out about the excesses that women mete out to them. This was necessitated as the society would not accept that being men they were or could be victims of domestic violence. Almost 460,000 men in 2012 said they had been subjected to some sort of domestic abuse, from 160,000 in 2009.

**Cruelty to husbands**

The Law Commission of India in its 243rd Report, has noted the misuse of S. 498A of the IPC. In the case of *Preeti Gupta v State of Jharkhand*, the Supreme Court stated that S. 498A of IPC needed a serious relook by the Legislature, because of many cases where facts are exaggerated to punish and victimize men. In *Sushil Kumar Shamma v UOI (2005)*, it was noted that S. 498A, has been used by wives/women to punish/harass men and to settle scores with their husbands/spouses. Many cases are instituted with a motive to satisfy personal revenge, incidents are exaggerated with a tendency to implicate husband and all his immediate relations. The court stated there was need for the legislature to identify ways of curbing proliferation of this vice. It is also observed, that in many decided cases the husband’s implication later turns out to be unmerited. The harsh law, far from helping the genuine victimized women, has become a source of blackmail and harassment of husbands and others. The Indian Supreme Court has summarized the law regarding mental cruelty in a matrimonial relationship in *Samar Ghosh v Jaya Ghosh*.

**Gender Neutral Rape Laws**

The Ministry of Law (India) in 2012 has published a Bill, Criminal Law (Amendment) Bill, 2012, which seeks to pass gender neutral laws in relation to rape and other sexual crimes. This is because the present rape law in India is not gender neutral and has come under severe criticism. As per the present law, only a man can cause rape against a woman and does not include cases where man is victim either by other man (for non-vaginal sexual acts) or by a woman in situations wherein she can use her position and power to use a man for sexual gratifications. The proposed law seeks to make both the perpetrator

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202 This was due to reports of misuse of the section by means of false and exaggerated allegations and implication of several relatives of the husband. In the year 2011, 340,555 cases under Section 498-A IPC were pending for trial and as many as 938,809 accused were implicated in these cases. Conviction rate in S. 498A cases is 21.2%. Available at http://lawcommissionofindia.nic.in/reports/report243.pdf, accessed on 10th October 2012
203 S. 498 A, which addresses the issue of a husband/relative of a husband subjecting a woman to cruelty.
204 AIR 2010 SC 3363
205 AIR 2005 SC 3100
206 Available at http://lawcommissionofindia.nic.in/reports/report243.pdf, accessed on 10th October 2012
208 (2007)4 SCC 511
and the victim of sexual assault to be gender neutral.\textsuperscript{209} However, there is lots of criticism from women activists that perpetrators should be gender specific and victim gender neutral. There are many situations wherein the authors are of opinion, in exceptional circumstances, when there is strong evidence to prove that men in younger age and vulnerable and weaker positions either socially and or economically, are sometimes victims of sexual abuse at the hands of women. Hence, there is need for carefully drafted procedure when convicting women and the same should involve stringent procedure for proving guilt beyond reasonable doubt so that the provision is not used against innocent women. The Law Commission 172\textsuperscript{nd} Report, recommended inclusion of women within the ambit of rape.\textsuperscript{210} The law in Kenya relating to rape is Sexual Offences Act, 2006. The law is gender neutral and women fall within its ambit. As per the Sexual Offences Act, 2006, rape is defined in section 3.

**Adultery**

As per S. 497\textsuperscript{211} of IPC i.e. adultery, the same can only be instituted by the husband of a woman and no court can take cognizance of an offence of adultery except out of the complaint of the husband. To constitute adultery, sexual intercourse is a necessary ingredient. Indian adultery law does not regard women as being adulterous only a man is liable for adultery. The ingredient being that the woman should be married and have an affair with a man who is not her husband. Thus, even if the woman acted on her own free will or encouraged/initiated the affair, she is not liable under the act. As observed on the basis of facts and circumstances, cases under S. 497 IPC, the woman initiates the relationship and the man due to his emotional vulnerability falls prey, yet the law is insensitive to the man and punishes him whilst the woman goes scot free.

**Conclusion**

The paper outlines the main causes of males being abused by women and how law has addressed abuse, violence by women and the main reasons attributed for male being abused by women. The paper gives a comparative outlook of how the laws in Kenya and India have addressed the issue and if laws have curbed proliferation of the crime. It is time to realize vulnerability of certain sections of men so that the law is able to strike an appropriate balance between the need of law and the abuse of law.

\textsuperscript{209} Criminal Law (Amendment) Bill, 2012
\textsuperscript{210} The Law Commission Report wanted the definition of `rape' changed to the definition of `sexual assault' to make it gender neutral. Available at http://www.lawcommissionofindia.nic.in/rapelaws.htm, accessed on 17\textsuperscript{th} October 2012
\textsuperscript{211} Having sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man…
Men as victims of intimate partner violence - A global issue

Mukta Mane

Introduction

“Recently, the former Brady Bunch star Barry Williams sought a restraining order against his live-in girlfriend, who had hit him, stolen $29,000 from his bank account, attempted to kick and stab him and had repeatedly threatened his life. (Watson, 2010)”. Cheryl Cole was also convicted for domestic violence against her husband on 8th October 2012 (Kimble, 2012). These are not the only cases where women have accused of intimate partner violence. Men have been victims of intimate partner violence for decades together; the only difference is that the number is rapidly increasing. There are many evidences such as 13th century stone carving in an English church shows a hapless man, down on the ground, being held down by his hair, while his wife swings a cheese-skimming ladle (McLean, 2011).

Intimate partner violence is a crime which mostly takes place behind the four walls but its impact can be seen on the whole society. Intimate partner violence includes physical, sexual, economic and psychological maltreatment of one partner against another. It has been affecting hundreds of individuals and families a year socially and leading to health problems (Hines, 2011). There have been many surveys by various agencies all round the world to calculate the exact number of male victims of intimate partner violence. The number they got was small as compared to women victims but not negligible. The major reason for such unreal number is under reporting of the cases by the male victims.
The paper will focus on the following points:

- Myths and Reality relating to whether men can be victims of intimate partner violence.
- The reasons why women become abusers.
- Impact of intimate partner violence on men.
- Legal policy and other non-legal support to such men.
- Need of policy making keeping in mind gender equality.

Myths and reality about men as victims of intimate partner violence:

There are many myths revolving around as to whether men can be victims of intimate partner violence. Some of the common myths are (Domestic Abuse Helpline for Men and Women., 2008):

**Myth:** Real men “handle” their women. Only weak, wimpy men allow themselves to be abused by women.

**Fact:** This myth equates being a male victim of domestic abuse with being less than a man, however, not striking back a woman who is assaulting you takes a good deal of restraint and fortitude. The three most cited reasons why they chose not to defend themselves against their partner’s physical assaults are:

- As young boys their parents instilled in them that boys never hit girls and that idiom has stuck with them into their adulthood.
- They realize that they are, in general, larger and stronger than their partners and therefore they could cause serious physical harm to their partners should they fight back.
- If they defend or protect themselves and the police are called, due to mandatory and pro-arrest policies, they risk being arrested as the perpetrator/aggressor.

**Myth:** In a domestic dispute, the bigger, stronger person in the relationship is the abuser and the smaller, weaker person in the relationship is the victim.

**Fact:** Size, weight, and/or being muscular are not good indicators of whether or not someone will be a victim or an abuser. This myth focuses only on the physical aspects of domestic violence. An abusive partner does not need to be bigger or stronger to use intimidation and threats, rip a phone off the wall to prevent their victim from calling for help or to use a gun/wield a knife against their victim.

**Myth:** If it was that bad he would leave, men can easily leave abusive relationships.

**Fact:** This myth assumes that, unlike a battered woman who is financially dependent on her abuser and lacks the resources to escape the violence, a man who is in an abusive relationship has a job and the financial resources to just pick up and leave. However, male victims face many of the same hurdles that female victims face. According to the fact sheet, “A Closer Look at Men Who Sustain Intimate Partner Terrorism by Women,” men stay because:
Men as victims of intimate partner violence

- They are concerned about the children.
- When they get married, it was for life.
- They love their partners.
- They fear that they will never see their children again.
- They think their abusive partners will change.
- They don’t have enough money to leave.
- They are embarrassed.
- Their abusers have threatened to kill themselves.

The facts give us a fair idea as to how patriarchal system of ours has influenced our minds. Though we see things happening we deny seeing them just because of the preconceived notions relating to the traditional roles entrusted to men and women.

The reasons why women become abusers

Some of the reasons for women becoming abusers are (Intimate Partner Violence: Toward a fuller understanding of male and homosexual victims):

1. Childhood Abuse.
2. Witnessing Parental Violence.
3. Low Attachment.
4. Dominance.
5. Antisocial Personality.
6. Mental Disorder.
7. Less Accepting Attitude.
8. Low Self Esteem.
9. Communication Problem.
10. Poor Anger Management.
11. Dissatisfaction in Marital Life.

It is also somewhat concerning that many younger females indicate that along with motivations concerning anger expression, they also feel uninhibited to physically aggress against a partner since they feel it will not really hurt him and he will not retaliate. (Fiebert & Gonzalez, 1997)

Impact of intimate partner violence on men

Mainly the abuse is verbal, economic, physical, emotional and sexual. The men who are victims of intimate partner violence silently suffer for fear of being discredited or ridiculed by the society, which results in a lot of psychological trauma. According to National Crime Record Bureau (NCRB), the number of suicides in the country has increased by 40% during the decade 1996 – 2006 ((NCRB) National Crime Records Bureau, 2010). As in the chart we can see the rate of suicide in married men is more than that of married women.
Legal policy and other non legal support to such men

As we have seen above male victims suffer equally as female victims. There are no express provisions for the protection of male victims. Even if they try to register the case under criminal law prevailing in that country either they are ignored or threatened to be arrested. The Police agencies do not pay attention to such complaints due to the preconceived notion that a woman would have been forced defend herself from her partner. It has been seen that the female perpetrators threaten male victims with the fact that they will report them as having assaulted themselves. So this too affects the reporting of the intimate partner violence (Shuler, 2010).

There are various non governmental agencies in different countries who are working to support the male victims of intimate partner violence. Some of the support groups are:

- Men’s Advice Line and Enquires
- Victim Support’s Male Helpline
- Male Survivors
- Save Indian Family Foundation (SIFF)
- Right of Men etc.

These support groups provide legal, medical as well as other needed help to the male victims. These groups act as pressure groups and are trying to bring in reforms in the legislations as well as the thinking of the society.

Conclusion

Over the period of time the feminist have captured the minds of the legislators. When we talk about intimate partner violence it is presumed to be against women only. The male victims are totally ignored while making the laws. This thinking process has to be
changed. As we have seen the men are equally affected so while making the policy the notion of gender equality should be taken into consideration. Relationship between two individuals is a very delicate thread which joins them. It is very important to keep a balance of power and duties in order to keep it intact.

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Men - The dominant or excluded gender?

Nayantara Narayan and Rajshekhar Upadhyaya

Introduction

This paper will discuss the above mentioned patriarchal ethos of South Asian countries in the light of the Indian society. For an objective analysis of status of men in Indian society, their traditional duties should be understood. Manu, who was amongst the earliest law givers in Hinduism, through the ideologies provided in the Manusmriti, stated that, “Where women are honored, Gods are happy. Where women are not respected all efforts come to naught.” Therefore, it can be inferred that Indian society pays considerable honor to women but at the same time ties the duty of their care to the man in whose tutelage she resides. Thus, men are culturally professed to be the providers, care-takers and protectors of their communities and families who represent the virility and power of the community.

This brings us to the fundamental question; can the strong masculine traditional man ever be victimized? Like many other societies the concept of men as victims has been considered a matter of ridicule more than concern. Men, worldwide, have been handed down a straight jacket definition of masculinity according to which they are brought up and must abide by. This definition does not incorporate the prospect of victimization of men at the hands of women, men or society at large. A man is expected to stand up, by means of even violence, and not succumb to any other person. As a result of this stringent pre-conceived notion men are often left unprotected which makes them susceptible targets.

This paper will interpret the facts and observations and apply them to the Routine Activity Theory and then deal with the various social aspects which can be pivotal in the evaluation of male victimization. While other theories examine the causes of crimes and characteristics of criminals, the Routine Activity Theory focuses on the questions of how do routine activities of people affect their rates of victimization and what attracts offenders to engage in crimes. The theory propounds that for a crime to be committed the following three factors should be present:

- Motivated offender
- Suitable target
- Lack of Guardians

This paper will interpret in spirit these elements to elaborate how there is a high probability of victimization of men and further discuss remedies that should be sought.

Arnold et al., 2005:346
Men – Dominant or Excluded Gender

**Motivated offender and Suitable target**

The paper will provide a two-fold perspective of the terms offender and victim.

**Assumption of male connotation:**

The term offender in its colloquial usage has male connotation for the public at large. Crime in its barest form is considered to be violent, gruesome and vindictive. The requirement of “strength” associated with the aforementioned elements of crime are more compatible with the widespread deep rooted interpretation of masculinity than femininity. Therefore, for most crimes that catch the public eye, there is an inherent assumption of a male offender.

The growing sensitization during the 1960s and 1970s towards the existence of ‘vulnerability’ of women who experienced domestic violence at the hands of abusive partners has changed the perception of victims in general.

As a combination of the above mentioned two basic factors, the perception of men as offenders and women solely as victims manifested into society’s consciousness and has not been reviewed ever since despite the legal protection, which will be elucidated further, accorded to women on a golden platter by virtue of criminal ramifications that are to be borne even against the slightest disrespect towards them. To think that such laws would be required for men, let alone be enacted, would be foolhardy *in toto*.

**Inability of men being “wronged”:**

As stated above the sub-conscious notion of men as victims is often reduced to mere mockery or is overshadowed by the consuming concern for women empowerment. The skewed view prevalent in society fails to account for the men who are “wronged” and remain unprotected. At this juncture, it is important to pigeonhole that it is not merely crimes by women that men are victimized by. Male violence is also not frowned upon in society owing to glorification of gasconade virtues of masculinity. On one hand, men are increasingly finding themselves in precarious positions with the ever improving empowerment of women and on the other hand they remain victims of petty “playful” violence by men. Therefore, the need to re-evaluate the underlying assumption of men as offenders and women as victims is the need of the hour before it creates greater imbalance and disparity.

**Lack of guardians**

Under this factor, viability is of utmost importance. In essence, this factor accounts for the “feasibility” of committing a crime as a cost benefit analysis between the objective/personal interests sought and the hindrances present coupled with the lack of adequate preventive and deterrent mechanisms. This factor not only includes the lack of presence of a person or authority figure who could have prevented the commission of a crime but also takes into perspective the absence of laws to protect men or the presence of laws that exploit men. This leads to the misuse of such laws which ultimately brings about gender asymmetry.
To give an example which would be discussed in depth in the paper we have rape laws and the lack of gender symmetry that they emit. This gender bias is a result of both the vulnerable status of women when it comes to the menace of rape and the over protective society at large according to which rape is a crime which in its essence is a pathetic excuse only for a man to showcase his sexual might and greed. Both substantively and procedurally rape laws in India need to be revisited and should have gender neutrality in their core aspects.

Another example that must be stated is that of cruelty. Cruelty is available to men as a ground of divorce under the Hindu Marriage Act. However the same, if looked at from the point of view of an offence, is for the aid of a woman only. Under the Indian Penal Code a man cannot file a complaint under Section 498 A. Such laws give women a carte blanche to do as they please without any fear of reprisals. Imprisonment and the cognizability of the offence makes the husband an easy target for the estranged wife thereby leading to his victimization while fully well remaining within legal ambits. The same is ably supported through relevant statistic\(^\text{213}\).

Such shocking facts come to light because of asymmetry in laws on the grounds of gender. These and a few more legal provisions will be discussed at length in the paper to bring to the front prospective victimization of men at the hands of their spouse and other females as a consequence of the literal application of such laws.

**Intimate partner violence**

That it is mostly women who are significantly more likely than men to be victimized by an intimate partner is well known. But abandoning our search here itself for intimate partner violence would be totally unfair on those men who have been victimized by their intimate partners which also includes spouses. The term "intimate partner violence" describes physical, sexual, or psychological harm by a current or former partner or spouse. This type of violence can occur among heterosexual or same-sex couples and does not require sexual intimacy. IPV can vary in frequency and severity. It occurs on a continuum, ranging from one hit that may or may not impact the victim to chronic, severe battering\(^\text{214}\).

In a country as big as ours the possibility that all such cases of IPV might be reported is highly improbable. Such forms of violence against men are generally not reported as it would attract shame and ridicule to the complainant. This is due to the belief that such matters should not be disclosed to all and sundry thereby questioning his very masculinity. This coupled with the fact that the public is unable to comprehend the possibility of any

\(^{213}\) Data present with the NCRB show that more than 81% people prosecuted under Section 498-A has turned out to be innocent. The conviction rate was only 10% despite the best efforts made by the litigating wives. Every year 52,000 married men commit suicide in India as against 28,000 married women. The percentage of the married men committing suicides is thus 86% more than the married women.

such occurring and this inability has been given leverage and voice by our law makers who accord no protection to men in such matters. The Domestic Violence Act, 2005 which is an epitome of gender bias presumes that men are immune from the perils of domestic violence. Therefore the legislature has very conspicuously left out men as victims from the Act. According to the Act a man’s role is limited to that of an offender and therefore he cannot approach the authorities under the Act if an act of violence has been committed against him. This issue will be analyzed and substantiated with statistics in greater detail in the main paper.

**Man victimizing man**

This is perhaps the most common form of victimization that is witnessed against men. Even though such offences are punishable under various statutes and criminal codes what remains unrealized is the status of men as victims. Male victimization at the hands of another man is often seen in the light of the gravity, magnitude and seriousness of the offence and this leads to a loss of identity of the victim. A reverse phenomenon is seen in cases where women are victimized. Once a crime against a man is committed the police, investigating authorities and the courts all act in tandem to punish the criminal. Once this task is achieved the victim is left unacknowledged and the scar of the crime is only his to deal with. Instances of custodial violence and prison misdeeds are rampant all across the country. In essence, these offences stem from the knowledge of having total authority over the offender. Domination is the objective, victimization is the consequence. These cases are more common when it comes to men especially in correctional facilities and police custody. More light will be thrown on this inconspicuous evil in the main paper.

**Conclusion**

The wall of silence that surrounds this topic, owing to its unconventional nature, leads to the presence of scant literature that analyzes the presence of this problem. Through this paper it has been argued that there exists a routine in society that has left men exposed without any protective layer. In today’s unyielding and ever so demanding world what we witness is an anti apartheid kind of limbo that we project ourselves into. Society needs to project a balanced picture that does not paint men alone as vicious monsters. This paper seeks to propagate the presence of an imminent threat to men without creating an impediment for the worrisome situation of women. The answer to reducing women victimization is not to start victimizing men, be it intentionally or unintentionally.
Men of abuse: A legal standpoint

Probal Bose and Tanay Sarkar

Men have always been looked upon as the dominant sex. Evidently, physically and emotionally, men are supposed to be stronger. This gender stereotyping of men has put men at a not so equal footing with the other sex. Because of this, men have suffered over the years, enduring discreetly their discomorts and displeasures. It is a common notion that only women are victimized with social crimes like harassment and domestic violence. However, in the recent past it has come to light that men are just as prone to domestic violence and workplace harassment as women are. The sad truth is that these incidents are seldom reported let alone looked into. To add to the male gender’s dismay, there are no legal provisions to protect them against the same. At the outset, the paper would begin by assigning a proper meaning to domestic violence and abuse of men and what acts/actions amount to or can be considered as abuse of men. Such construction of abuse has to be made in reference to the Indian Society, where Male hegemony is considered to be the sole reason behind exploitation and oppression of women in the Indian society.

Women’s power in the society has been rising and rising over the past two to three decades now. Justifiably, countries provide separate constitutional provisions for the upliftment of women and their overall development. Similarly, Indian Constitution provides for sex to not be a ground of discrimination. Nonetheless, it does mean that men should also not be discriminated against, in order to provide sufficient safeguards for women. If men are being the victims of domestic and workplace abuses, there arises a need to provide them with sufficient relief. The proposed paper intends to establish the need for such mechanisms required to protect men from such harassment and violence.

The greatest obstacle in providing a sufficient solution for the male victims is that they rarely come out with such incidents in fear of being labelled as wimps. Society looks down upon men who revert to complaining about their wives or other female relatives in cases of domestic violence and as for workplace harassment, it is a common myth that men cannot be sexually harassed by the opposite gender. This paper would also explore this point of view highlighting this form of societal perception as an obstacle for insufficient reporting of abuse of men by women, in special, and would also analyse different reasons leading to such behaviour of the opposite sex like lack of reliable data, lack of sufficient redressal mechanism, the impact of such physical damage is perceived to be much lesser than that in the case of domestic violence against women. Moreover, the current paper would also evaluate the different characteristics of abusive women, namely, alcohol abuse, psychological disorders, unrealistic expectations and assumptions.

A relevant point here would be homosexuality. Even after homosexuality being decriminalised by one of the honourable High Courts, there remains no law to protect
Men of abuse: A legal standpoint

male victims of domestic abuse in homosexual relationships, thereby creating a grey area. Thus, the Paper would also address the need of enacting such a law protecting men from homosexual violence and abuse. The Protection of Women from Domestic Violence Act, 2005 and The Protection of Women against Sexual Harassment at Workplace Bill, 2010 are women specific legislations aimed at protecting women from domestic violence in domestic households and sexual harassment at workplaces, respectively. However, the same type of experience can be encountered by their male counterparts, both at home and outside. In today's world, sexual harassment of men at workplaces is not so uncommon. Thus, with changing times, the law should change as well. Therefore, the authors would be emphasizing where such grey areas prevail and suggest possible solutions to fill such a void.

The proposed Paper also uses the ‘Conflicts Tactics Scale (CTS)’, the usual device to ascertain the severity and frequency of any sort of abuse, to describe the abuse of men from available range of international data obtained from Canada and Alberta. Data obtained from Alberta suggests that almost 12% of men cohabiting in a relationship of marriage or other de-facto relationships suffer abuse from their spousal partners. While, the data obtained from Canada, suggests even a higher percentage of abuse, amounting to 23% of adult men surveyed for the same. In continuance of the same, the paper also throws light on abuse of teenage males co-existing in different teenage relationships. The results being not at all different. Though, all these data have been from other countries in Europe and American continent, the same shows the plausible threat to Indian men as well. Due to lack of enough research, data regarding abuse of men in India is not available, thus a reference to such outstation data is necessary.

Thereafter, the paper discusses in detail other risk factors responsible for abuse of men and the possible consequences of such abuse on mental and physical health of abused men. For example, younger men are more prone to abuse than elder ones, which can be supported by relevant empirical data. Similarly, common law relationships and role changing situations like change of a job or retirement offer more scope of violence against men than usual domestic relationships or marriages. It has been a common observation that men prefer to stay in domestic and violent relationships willing to undergo tremendous sufferings. The Paper inter alia would also examine the expected reasons for such behaviour, like, firstly, in order to protect their children and give them adequate care and parenting, secondly, assuming guilt or blame on account of their own behaviour, and lastly, the fact of dependency of men over women/ spouse. In addition to the same, the intended paper stresses on the consequences of emotional abuse rather than that of physical abuse as the former has a far-reaching and ever-lasting impact than the latter.

At the end, the Paper suggests the need for an exclusive law governing the abuse of men surviving in both homosexual and heterosexual relationships, which is the true need of the hour.
Female bias of matrimonial law in India

Raghav Talwar and Priya Bhatnagar

The Marriage Laws (Amendment) Act, 1976 makes the grounds of divorce common for a husband and a wife which are provided by Section 13(1) of the Hindu Marriage Act. Additionally, the wife has certain special grounds for divorce. In India there are numerous laws for the protection and welfare of a female. They were made keeping in view the then prevailing not so equal status of a woman in comparison with a man.

“While making special laws for women, the legislation must think of victimized sect of society in male line”. In India and elsewhere in the world, there are no special laws for male. There is Dowry Prohibition Act, section 498A in Indian Penal Code i.e. offence of cruelty by husband and relatives of husband; section 125 in Criminal Procedure Code i.e. maintenance for wife; Protection of women from Domestic Violence Act. Rather the specific laws for women are misused by errant women and police officers. The cry of victimized husbands and their relatives is not heard either in courts or in society. The practice says that the real purpose of the women related specify laws are misused and thereby their husbands suffer for no fault.

It is a general notion that in matrimonial disputes the perpetuator of cruelty is always to be husband being the stronger one and the subject is always the fairer sex i.e. wife. But it cannot be ruled out that wife can never perpetuate cruelty towards her husband. Today’s scenario is different. Women are treated at par with men. The concept of perpetuator always being the husband has gone under carpet and the concept of being equal in this field too came into existence. So many laws in favor of a woman and no safeguards against them give her reasons to misuse them against her husband. It is said that “Nothing can dishonor a knight like divorce”. In today’s society men are becoming victims too often but unfortunately there are no laws in their favor. Misuse of divorce laws is becoming very common which were provided to protect the interest of a female.

In Suman kapur v. Sudhir Kapur

The wife without the knowledge and consent of the husband got her pregnancy terminated twice. The husband was also not informed about a subsequent natural miscarriage. A finding was also recorded by the trial Court that the wife was not ready and willing to perform matrimonial obligations and she always attempted to stay away from her husband by depriving conjugal rights of the husband. For her, according to the trial Court, her career was the most important factor and not matrimonial obligations. The trial
Court, therefore, held that the case was covered by mental cruelty which was shown by the wife towards the husband and the husband was entitled to a decree of divorce on that ground.

There are numerous cases relating to section 497 of the Indian Penal Code i.e. adultery which states that only a male will be held liable for the offence of adultery and the wife will not be guilty even as an abettor. There are cases relating to section 4 of Dowry Prohibition Act and 304B of IPC in which the woman’s family harasses her husband and his family on false allegations of dowry death. Section 498A of the Indian Penal Code dealing with the cruelty caused by husband and his relatives is also widely misused, as is the Domestic Violence Act is also being misused. False allegations by a wife and her family are made and suits are filed just for the victimization of the husband.

The concept of cruelty has been dealt with in *Halsbury's Laws of England*\(^\text{216}\) as under; The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance.

**Lord Pearce also made similar observations;**

"It is impossible to give a comprehensive definition of cruelty, but when reprehensible conduct or departure from normal standards of conjugal kindness causes injury to health or an apprehension of it, is, I think, cruelty if a reasonable person, after taking due account of the temperament and all the other particular circumstances would considered that the conduct complained of is such that this spouse should not be called on to endure it."

Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or willful ill-treatment.

**Suman Kapur v. Sudhir Kapur**\(^\text{217}\) is an important example.

Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

**In T.Aruntperunjothi v. State**\(^\text{218}\), an attempt had been made to show that the accused had on an earlier occasion tried to murder the deceased but the same was found to be false by the trial court holding that there was no evidence that the "accused had already attempted to burn away his wife".

\(^{216}\) Vol.13, 4th Edition Para 1269

\(^{217}\) ibid

\(^{218}\) AIR 2006 SC 2475
In *Preeti Gupta v. State*\(^{219}\), the Court made certain important observations as to misuse of law by women to victimize their husbands. It is a matter of common experience that most of these complaints under Section 498A IPC are filed in the heat of the moment over trivial issues without proper deliberations. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties.

It was observed in Preeti Gupta’s case that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

The law today seems to be based on the myth that the society is male dominated. In today’s day and age, where women are not only at par with men, but enjoy an edge over them in many areas, Matrimonial Law is in desperate need of change.

The criminal trials (and divorce petitions) lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law.

\(^{219}\) AIR 2010 SC 3363
Men as victims: Myths and realities

V. Ramyakrishnan

Introduction

Research in the past few decades has resulted in increasing efforts aimed towards promoting prevention of violence in workplace as well as personal life has primarily revolved around women. The topic of man as a victim remains to be one of controversy and one which has been comparatively neglected in literature. The aim of this research article is to explore different scenarios where men are treated as victims with a specific focus on Indian laws and current views of Indian society.

Gender and male victims of rape

Feminists promote the popular ideology that blame for rape is found to firmly focus around societal hatred of women as well as the existence of a rape supportive, patriarchal culture (Burt, 1980). Myths of rape are directly related to blaming the victim (Krahe, 1988) as well as traditional view of the woman as a weaker partner in a heterosexual relationship (Lonsway & Fitzgerald, 1995; McMohan, 2009). However findings of male victims of rape does not fit into this explanation of rape which is found to present emphasis on negative gender stereotypes pertaining to women as being a source of blame attributions (Struckman-Johnson & Struckman-Johnson, 1992) and that are associated with victim blame for male rape (Davies & McCartney, 2003). Myths related to male rape which are often prejudicial as well as false related to sexual assault victims are not widely studied. It is observed that some of these views are found to stem from a traditional view of what exactly entails masculinity. This indicates that men should be strong, assertive as well as sexually dominant and most importantly heterosexual (Keane, 2012). There are also a number of opinions associated with promotion of the concept that "men cannot be raped" and the ideology that "sexual assault is not as severe for a man as it is for a woman". This view is still predominant today minimizes the impact of sexual assault on male victim by placing the blame on the victim itself (Magnin & Ruback, 2012) thereby reducing the number of reported cases. Keane (2012) notes that the best way to overcome this myth is to modify rape laws to become gender neutral. Such a growth has been observed in India. A draft bill passed by the Home Ministry in 2010 stuck to the traditional notion that men alone could commit sexual assault. However the same bill passed in 2012 was found to be gender neutral. The aim of this bill is to remove the notion that men alone can be aggressors while women are mostly victims (Lawyers Collective, 2012). It was observed that the criminal law (amendment) Bill 2012 defied years of gender stereotypic by changing the definition of rape in the Indian Penal Code. In the definition of rape the
words were changed to be gender neutral by replacing man and woman by offender and victim (TOI, 2012).

**Intimate partner violence and male sufferer**

Domestic violence is defined by the Home Office (n.d.) as “threatening behavior, violence or abuse between adults who are, or have been in a relationship, or between family members” and “can affect anybody, regardless of their gender or sexuality”. The Home Office also states that the abuse can be “psychological, physical, sexual or emotional”. When such a behaviour and violence is found to be between family members or current romantic relationships it can be classified as intimate partner violence (Finney, 2004). The dawn of the 21st century brought out the issue that for over thirty years intimate partner violence was found to be an issue which was focused exclusively for women with little to no focus on men (Dobash & Dobash, 2004). However there are growing evidences which suggest that men can also be victims of these acts of violence by both men and women as aggressors (Decker et al., 2009; Archer, 2000, Goldberg and Tomlanovich, 1984, Steinmetz, 1977; & Willis & Porche, 2003). Research evidences also support the view that women can be instigators of physical or verbal violence within an intimate relationship (Archer, 2000, Richardson, 2005; and Steen & Hunskaar, 2004). Other studies have reported higher rates of physical violence perpetrated by women than men (Rouse, Breen, & Howell, 1988), or equivalent rates across genders (Halpern, Oslak, Young, Martin, & Kupper, 2001).

There is changing views in the society that violence by women against men can only be for the purpose of self defense and maybe for reasons of anger and control (Follingstad et al., 1991; and Weizmann-Henelius et al., 2003). It is observed that the Indian Domestic Violence Act (DVA) of 2005 is a civil law which is found to primarily benefit only women and presents aggrieved women with measures to promote their civil rights while presenting them with measures by which they can get protection, home, monetary relief and temporary custody. However this system is aimed at providing benefits only for female victims of domestic abuse (Domestic Violence Act, 2005). This situation is changing in India with emergence of NGOs like the Swatantra Awaz Welfare Organization, a non-government organization, while lends a helping hand to more than 100 men (Indian Express, 2009). The aim of this organization is to bring forth the idea that men suffer in silence with respect to being discredited or ridiculed in the society resulting in increased psychological imbalance and irreparable damage to the abused male. Another survey conducted by the Save Family Foundation and My Nation Foundation identified that between April 2005 and March 2006 and found that over 35% of men faced severe domestic violence at the hands of their wives and in-laws in the form of verbal, physical, mental, emotional and financial abuse (Indian Express, 2009). In a decision presented by the High Court (2007) against a case of misrepresented IPV and dowry allegations it was observed that there is a need to modify the DMV to make it more general neutral.
Homophobia and fault of the victim

Dolan Soto (2005) identifies that “...88% of gay male victims in 2003 and 91% of victims in 2004 reported experiencing prior incidents of abuse, with the majority (45% and 47%, respectively) reporting having experienced more than 10 prior incidents” (p. 34). However it is to be acknowledged that due to cultural morale as well as marginalization of homosexual men there is lack of empirical evidences to support this concept. Apart from IPV among homosexual men it becomes important to look at concepts of homophobia which stems violence against men. Anderson (2004), Burt and DeMello (2002) and Mitchell et al., (1999) present evidences on the effect sexual orientation of the perpetrator of violence has on attitude towards male victims. It is observed that most of this research indicates that gay victims are found to be at blame when compared to heterosexual victims. There is also empirical evidence which supports the fact that society negatively evaluates gay victims. Assault has been found to be pleasurable for gay victims (Davis et al., 2001), less traumatic (Mitchel et al., 1999) and less painful (Doherty and Anderson, 2004). The number of reported number male victims of crime as a result homophobia is quite less (Boyce, 2007). This maybe attributed to reasons of a number of Indians considering homophobia as illegal (Telegraph, 2011). A number of gay men in India are today forcibly married off, trapped in a cycle of pretence and deception. Thus the reality with respect to violence against gay men in India is still not identified. From the decision made by the Delhi High Court (2009) it is identified that a landmark Indian case decided by a two-judge bench of the Delhi High Court, which held that treating consensual homosexual sex between adults as a crime is a violation of fundamental rights protected by India's Constitution.

Male victims at workplace

The definition of sexual harassment, as per the US Equal Employment Opportunity Commission (EEOC) is "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature" at the workplace. However the new Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2006 indicates that unwelcome sexually determined behaviour such as physical contact, advances, sexually colored remark against women is a crime with no specific clauses being identified for men. The bill proposed by the women and child development ministry identifies a conservative approach with respect to sexual harassment and is found to overlook the possibility of a male employee being sexually harassed. In a survey by the Economic Times–Synnovate it is observed that across different cities 38% of men report sexual harassment (Kapoor, 2012).

Conclusion

Based on this review, men are victimized at an equivalent or even higher rate when compared to women and that such victimization is often ignored due to discrimination bias involving gender. The research also identifies that there is increased victimization of men due to intimate partner violence, domestic violence as well misuse of marriage and
divorce laws to victimize men. Review of literature also indicates that workplace victimization of men is on the rise in the form of misrepresented sexual harassment claims, sexual abuse along with violence in homosexual relationships. From the above perspectives expressed in literature with respect to the prevalence of men as victims and the probable methodological and societal barriers in estimating the actual occurrence of such events, it is quite clear that men in a number of scenarios are victims and this is a problem which needs to be represented effectively. Applying knowledge gained from research on female victims will not suffice. Furthermore, comparisons between male and female victims in order to assert one's importance over the other is a useless and wasteful endeavor, when resources should be focused on the support of all victims of violence or harassment as equally important. This focus on male victims drives home the view that victimization of any individual is considered to be human issue and not a gender issue. The implication of this study identifies the need to acknowledge and treat all victims of crimes fairly to solve problems of victimization in India. The ultimate goal of this paper was to present the idea that the simplistic binary opposition of men as bad/villains and women as good/victims is not realistic.

References


A silent cry of men

Sarita Kumari and Debashree Singh

Introduction

In Indian society, increase of false matrimonial cases in which innocent family members go to jail and get harassed by the draconian laws. So that in this article, we will show that how these divorce laws which were earlier looked down as the savior for the fairer sex has been evolved as torturous to the male community. We are not dealing with cruelty and dowry laws in details because these laws are highly misused by the women. Many women misuse these divorce laws to get easy divorce and in this process they make the husband guilty of doing things that he and his family has never done.

In case of Adultery where women misuse laws and claim false allegation against her husband. A number of cases can be cited in this regard were the wife alleges the husband for adultery basing only on her belief not withstanding any substantial proof to it. This mainly happens in large joint family were the wife presumes that their husbands are indulged in some sexual relationship with any of the other female member of the family. In the case of “Smt. Ashima Sil v. Sri Subhas Chandra Sil” the wife filled a petition because she believed that her husband was attracted sexually to his brother’s wife. She alleged that once when she was suffering from fever she saw her husband and the woman inside a room being in intimate position. While it was proved that husband was inside the room of his brother but not to have any kind of sexual intimacy but to discuss about some family issues. The court rejected the petition of the wife because of lack of evidence.

The other case that can be cited here is the case of “Sm. Bijoli Choudhury vs Sukomal Choudhury” where the wife made false allegation on her husband that he was performing adultery with one of his student named Latika. The proof submitted by the appellant did not create probable circumstance for the court to believe in the possibility of such a crime. Hence the learned Additional District Judge gave the decision in favor of the husband and dismissed the petition of the wife regarding cruelty. The learned judge held that “The said allegations are absolutely a myth and that the wife with a view to damaging the reputation and character of her husband had cooked up the said story. The wife had made false allegations against her husband by writing letters, making representations and by circulating leaflets”. In such case mere rejection of plaint would serve for no good but the court should give some kind of compensation to the husband for all the paint he had been through during the court proceedings.

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220 Air 2008 Cal 519
221 Air 1979 Cal 87
222 Air 1979 Cal 87
In addition to this there are instances where the wife falsely alleges the husband to have indulged in adultery just to escape from her own liability. Suppose a husband not being able to condone any further act of cruelty of their wife files a petition in the court for divorce, the wife instead of defending herself. In this regard, immediately files a counter-case offending the husband of committing adultery. This can again come under the preview of “Misuse of the law of adultery”. A similar situation was evident in the case “Amarendranath Sanyal vs Krishna Sanyal”223 on where the appellant was, initially the husband who alleged his wife for exerting cruelty and desertion. But the wife in response to the said allegations filed a counter case on the husband accusing him of loving the girl at Konnagore to whom he was coaching. She also alleged that the husband had some illicit relationship with her. The court in this case referred to the case of “Harendranath Burman v. Suprova Burman”224, were the court held that unfounded or baseless allegation of adultery by one spouse against the other constitutes mental cruelty of the gravest character to warrant divorce. In the case of “Smt. Santana Banerjee v. Sachindra Nath Banerjee”225, the wife alleged illicit sexual relation of her husband with an office colleague and also indulged in making reckless, false and motivated allegation against her husband and his close relation not only in her written statement but also in her deposition. Such act of the wife does not only torture mentally and physically to the husband but also affects the reputation of the whole family. Indian society being so conservative and protective such allegation on any member of the family ruins the life, peace of the members and adversely affects the reputation of such family. And such damages caused to the family and its reputation is mostly irreparable and remains constant for a quiet longer period of time.

Moreover, in the case of Anti-Dowry and Cruelty where number of cases are filed by the women and this law is highly misused by the women. The WHO report says that daughter-in-laws routinely abuse elders using the stringent anti-dowry laws.

The torment to the men comes from draconian supplies and from presumptions of Indian law against the natural principles of justice, in pursuit of quick debatable justice for the woman, with predisposition against the husband and its family. The woman signals wrong cases to earn an interested purpose hidden that is to say, separation and to blackmail the husband for silver, the jewelry and ownership. The main reason of misuse behind this law is to accept easy and quick divorce. But there are lots of reasons also. Another reason is to accept more silver of service of the husband. In someplace the women make so to make the life of her husband a living hell, so that they topple over make anything and they will not be capable of leading a normal life.

Punjab and Haryana High court observed in Jasbir Kaur vs. State of Haryana226 case that “It is known that an estranged wife will go to any extent to rope in as many relatives of

223 (1993) 1 Cal Lt 301 HC
224 Air 1989 Cal 120
225 Air 1990 Cal 367
226 (1990)2 Rec Cri R 243
the husband as possible in a desperate effort to salvage whatever remains of an estranged marriage.”

In *Kanraj v. State of Punjab*[^227], the apex court observed that “for the fault of the husband and the in-laws or other relatives cannot in all cases be held to be involved. The acts attributed to such person have to be proved beyond reasonable doubt and they cannot be held responsible by mere conjectures and implications. The tendency to rope in relatives of the husband as accused has to be curbed”.

There are number of cases coming to light where Section 498A has been used mainly as an instrument of blackmail. It lends itself to easy misuse as a tool for wreaking revenge on entire families, because, under this section, it is available to the police to arrest anyone a married woman names as a tormentor in her complaint, as “cruelty” in marriage has been made a non-bailable offence. Thereafter, bail in such cases has been denied as a basic right. Several lawyers provided us with instances of the police using the threat of arrest to extort a lot of money from the husband’s family[^228].

Apart from above laws, desertion is also one of the main laws where women misuse the law and abuse her husband. In the case, *K.Narayanan v. K. Sree Devi*,[^229] the court said that there was no sufficient evidence that wife wanted to stop cohabitation permanently, the husband could not get a decree of divorce on the ground of wife’s desertion. Desertion is not a criminal offence, it is matrimonial offence. It may be very difficult for the spouse to prove this act of desertion as direct evidence to this regard is difficult to find.

Desertion is a matter of inference to be drawn from the facts and circumstances of each case[^230]. An amount to desertion in particular case depends upon the circumstances and mode of life of the parties which leads to their separate living. When the wife chooses to stay with her parents voluntarily and she continues to live with her parents for a number of years, the failure of the husband to institute proceedings for restitution of conjugal rights would not constitute desertion of the wife by the husband[^231].

In the following case, where wife living in England, wife wanted an order for the constitution of conjugal rights. Her husband lived in Calcutta and worked as a partner in the business. Wife extravagance and tendency not to pay her debts were such that other partners threatened to expel husband if he brought his wife to live in India. But the court that there is no desertion, said if the parties are separated for some good cause, and certainly includes the need to earn a living[^232]. In today’s life, this is not possible that husband and wife always live together. There are many circumstances when husband or wives have to go outside for their future earning or for carrier. Therefore, in those circumstances they did not claim for desertion because it is a good cause for their family.

[^227]: 2000 Cri.LJ 2993
[^229]: AIR 1990 Mad. 151
[^231]: *Shobha Dei v. Bhima*, AIR 1975 Ori 180
and children. So if they separate for a good cause for their family it does not mean that they break their relation. It should be understood by both the spouses.

There have been frequent cases where the woman left her matrimonial house within few days of marriage and filed a long list of “dowry, cruelty, adultery and desertion” in the complaint filed against the husband.” Wife filed a case of divorce and wanted to be free from all the responsibility she knew that after that she has the decree to divorce is passed she will be given maintenance by her husband. But the problem is for husband because they suffered from depression, legal and financial problems by paying maintenance and after case there is no reputation in the society. So it is good for both the spouses that law should be protected both the spouses equally. The equal rights should be given to both the spouses so nobody can suffer from these false allegations.

The Indian social and legal systems take for granted that most of cruelty, dowry, and desertion cases are done by husband and his family to wife, but there are no provisions for crime against husbands and his family members. The life styles of married couple have drastically changed in last few years. It is not fair to pre-establish that all the matrimonial crime happens to a wife only in the Indian family. In a typical situation, a wife could act cruel to her husband physically, mentally or by her anti-social behavior. The objective of any law should be to punish the guilty and to protect the innocent person whether culprit is men or women. So, there should be an amendment in the personal law and right should be given equally to both the spouses.

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Interpersonal crimes: 
A critical study of systematic bias against men

Sukdeo Ingale

Introduction
Throughout the world, including India, the socio-legal institutions take it granted that husband and his relatives harass his wife, and ignore the instances where it is the wife and her relatives who harass the husband. There are special laws that protect women who claim to be harassed but same is not the response for harassed men. Husband who seek to fight-back against such harassment find that they have also to struggle against the systematic bias of the government, the police and the courts.

Against this backdrop, the purpose of this study is not to set up a “Male against Female” scenario; or to take away from women, their position of being the “victim”. But it is to recognize all kinds of victims of Interpersonal crimes and to advocate for need of support and all types of facilities to women, men, lesbians and gays; irrespective of gender.

Changing Pattern of Interpersonal Violence
Interpersonal violence is essentially about power and control, irrespective of the label attached to describe the intimate relationship. Domestic (Interpersonal) violence, whether heterosexual or homosexual, is nothing less than the systematic exercise of illegitimate power and coercive control by one partner over another (Lundy, S. 1993, p.275). If compared, relationships in which an unmarried couples lives together, tends to have higher rates of intimate partner violence (Anderson, 1997).

The forms of Interpersonal violence are changing as per socio-economic and politico-legal condition of particular society. Traditionally it included physical violence, mental/psychological/emotional abuse and economic abuse. Recently the forms are changing to inexorable forms like mixture of traditional forms with sexual violence, social abuse and identity abuse, etc. Additionally, there are some forms of abuse which are unique to lesbian and gay relationships only (Island, D. & P. Letellier, 1991).

Limited Research on Victimization of Men
All history of mankind is the history of gender and hence gender is implicated in all aspects of human activities. Since immemorial times, gender relations are controlled by principles of inequality where privileges are for the “Male” over the “Female” gender (Chunn, D.E., & D. Lacombe, 2000). It is only after 1970, ‘feminist movements’ get support and recognition throughout world. It gave birth to countless governmental and non-governmental policies and programmes for protecting female victims against all types
of abuse and violence, including interpersonal violence. Hence, till recent days most of the researches throughout glob were found concentrating on victimization of female.

It resulted in exclusionary response to the research relating male victimization. For example, till recent years, the US Department of Justice (2005, p.8) declared, “What will not be funded,” as “Proposals for research on intimate partner violence against, or stalking of, males of any age or females under the age of 12.” Recently, the US Department of Justice agreed to cover this problem—as long as researchers give equal time to address violence against women (Bert H. Hoff, 2012).

Due to such change in the policy in USA there is extensive research as well as time and again review of such research (Straus, M.A. 2005) showing that women initiates and carry out physical assaults on their partners as often as do men. In 2011 an estimated 5,365,000 men and 4,741,000 women were victims of intimate partner violence (NISVS: 2010 Summary Report).

But in most of the other countries like India, or for that purpose in any other South Asian Countries, there is no substantive and verifiable research in this regards.

**Bias against Men**

One of the commonest biases of all legal systems about men is with respect to sexual abuse. The presumption is that men or boys are rarely victims of sexual abuse, especially with women as the sexual aggressor (Sarrel & Masters, 1982). But recent research has shown that substantial number of men is subjected to sexually aggressive behavior of female strangers, acquaintances and lovers (Fiebert, M. S. & Tucci, L.M. 1998). Recently more males than females are found victims of teenage dating violence (Centers for Disease Control, 2006).

As throughout the human race, the Police-Court-Legislature are heterosexist (and pro-feminist) institutions, the Justice Administating Systems have offered little assistance to male, lesbians and gay victims of interpersonal violence. In a country like USA, it is widely reported that gay men and lesbians are often subjected to outrageous treatment by many levels of the court system (Lundy, S. 1993, p.291). Similarly in some countries like India, sodomy (Section 377 of IPC, which prohibits carnal intercourse with any man, woman or animal) is still ‘Crime’ and such laws needs to be enforced till they are in force. Thus the real problem is biased laws against men, lesbian and gays.

In India many substantive and procedural laws like Protection of Women from Domestic Violence Act, 2005, Dowry Prohibition Act, 1961, Indian Evidence Act, 1872, Indian Penal Code, 1860 (Sec. 498 (A), Sec. 376 & 377, Sec. 509, and 304-B) etc presumes the culpability of the accused husband and his relatives. Hence women can rope-in each and every relative- including minors and even school going kids, nearer or distant relatives and in some cases against every person of the family of the husband whether living away or in other town or abroad. Data collected by National Crime Record Bureau of India (2001 to 2011) showing very low conviction rate as well as time and again variations in suicide of men is sufficient to prove the potential misuse of these provisions and explicative to show effect of biased laws on Men.
Interpersonal crimes: A critical study of systematic bias against men

Recommendations

The basic problem with the present laws dealing with domestic frictions and marital abuse is absence of providing effective remedies through civil laws and the whole matter has been regulated through the jurisdiction of criminal laws, with very draconian provisions.

Following are some recommendations for improvement:

1. Interpersonal violence should be categorized in two categories. First category of violence should be regulated through civil law jurisprudence and second category (the crimes) should be made bailable & compoundable.
2. Arrest warrant should be issued only in some types of violence and only against the accused spouse involved or likely to involve in such violence.
3. Stringent action should be taken against persons making false allegations.
4. Physical appearance of the accused on hearing should be waved or kept low, especially for NRIs.
5. The registration of marriages and the gifts exchanged during marriage should be made compulsory.
6. All the provisions relating to violence among intimate partners should be gender neutral.

References


Culture Conflict and Victimization of Groups
Penal Laws and Rights of Transgender:  
International Perspective with Special Reference to Section 377 of the Indian Penal Code, 1860  

Asha P. Soman  

Introduction  
Gender issue always addresses two sections - men and women and the third category are often forgotten and that is the ‘transgender’. Though they do not claim any 'special' or 'additional rights', they are ostracised by society and government. Social, religious backgrounds and negligence of authorities are making the life of transgender people pathetic. Legislations in many countries, especially penal laws are reluctant to accept them and give them full rights as normal human beings and the international initiatives in this respect is also minimal. Hence, there is the need to protect transgender people from exploitations and violations and to give them equal protection.

Religious and Societal Reflection of Transgender in India  
World over transgender people suffer from neglect and trauma. Term ‘transgender’ denotes broad range of identities and experiences that fall outside the traditional understanding of gender. India has more than 4,000 years of recorded history of ‘Hijras’. Britisher’s in India labelled them as “criminal Tribes”. Though they changed their attitude, India is still following their footsteps. Hinduism accept them, unfortunately Christianity is showing reluctance.

Accepting transgender was and is considered as against morality and public decency. In India, transgender earn their daily bread by begging, performing religious ceremonies and most painfully through sexual work and it is unfortunate that the Society is least bothered about the psychological situation of their fellow human beings to call them as a ‘number 9’. When society gets the information that a person is transgender, they face social ostracism within and outside family. So most of them will not be able to complete their studies and there is no employment opportunity for them. These all add to their vulnerability. State mechanisms of Police who are considered to be the protectors of rights are unfortunately becoming predators of their rights.

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234 Hijras (eunuch) are physiological males who have feminine gender identity. This term is considered derogatory in Urdu.  
235 Utkal Christian Council and Apostolic Churches Alliance opposed the Delhi High Court order legalising gay sex between consenting adults in private.
There are governmental schemes like ladies seat in public transport, separate wards in hospitals for vulnerable sections of the society like women, aged, children; but no such welfare measure is offered to transgender people. Official paper’s have only male and female columns to fill the gender, then what about transgender? Does the society have the right to segregate them? Can the State be justified here? Answer to all such questions is a big ‘NO’.

World has changed and is changing but still the attitude towards transgender people is not changing. Many instances of violence can be traced from all parts of the world against transgender. Unfortunately, government is doing nothing for them to come out from the stinking shell of flesh trade or for their welfare. They face social isolation, stigma, rejection, verbal abuse, harassment and threats of violence and brutality. Society is reluctant to speak about them. Why the society is forgetting they are also human beings with same flesh and blood?

Rights of Transgender: International Perspectives

Discrimination of sexual minorities has been given little attention by the international community. Violence against them starts at the concentration camps of Nazi’s. The UDHR and the UN has not recognised their rights still. Inclusion of ‘all people’ to UDHR will provide sexual minorities also the umbrella of human rights protection. In 2008, a Declaration was introduced in the UN General Assembly on the rights of homosexual, bisexual and transgender persons. This is the initial step for an international document in this respect. Rights ensured under Articles 16 and 20 of ICCPR are also denied to them. But, Committees on CRC, UN Human Rights Convention and Economic, Social and Cultural Rights mentions sexual orientation is included under the document as a ground of discrimination.

European Court of Human Rights, Constitution of the US, Colombia, South Africa and Ecuador and countries like Australia, Nepal and Pakistan has taken positive steps towards recognising the rights of transgender.

Penal Laws and the Rights of Transgender

Interpretation of Sharia Laws in the Middle East, Nigeria and parts of Asia criminalise transgender behaviour. In India, penal law is found in various statutes and they also neglect their rights. Section 10 of the Indian Penal Code defines ‘man’ and ‘women’ and Section 11 defines ‘person’, but both the definitions not include transgender. Section 12 defines public, here transgender finds a place as the word public includes ‘any class of the public’, ‘or any community’. Since, the Code is silent about the transgender; there is the need to amend it to include transgender.

Section 377 of IPC criminalised private consensual sex between adults of the same sex which violated Articles 14, 15, 19 and 21 of the Constitution. Under this provision, they were discriminated and threatened by Police and NGOs working with sexual minorities have also been harassed. After much hue and cry, the Delhi High Court in Naz Foundation
v. *Government of National Capital Territory of Delhi*[^236^], decriminalised Section 377 with respect to gays, but still the decision is criticised for decriminalising the section which negated the basic rights guaranteed by the Constitution to all the citizens.

It is not that India is blind towards the rights of transgender; Central Government has allowed the inclusion of ‘Other’ gender, in passports and voters’ identity cards and they were also included in the 2011 census. Amending clause (3) of the Criminal Laws (Amendment) Bill, 2012 approved by the Union Cabinet, proposes the widening of the definition of sexual assault and this is a welcome step, as the legislature has made both the perpetrator and the survivor of the acid attacks gender neutral.

**Rethinking of Societal Attitude towards Transgender**

Efforts of government, judiciary and NGOS like AIDS Bhedbhave Virodhi Andolan, NAZ are trying to bring change in the attitude towards transgender people in India. Social acceptance is the best possible way to give the transgender people their rights for this judicial sensitisation, political sensibility and social sensitivity is necessary. Delhi government has introduced pension scheme for transgender people. State of Tamil Nadu is taking progressive measures for ensuring them civil and political rights and in this respect other States can take Tamil Nadu as a model. Recently, National Legal Services Authority filed a Public Interest Litigation before the Supreme Court for declaring transgender people as citizens with a third category of gender and also demanded equal protection of their rights.

Initiatives like "Transrespect versus Transphobia Worldwide"[^237^] a research Project done by ‘Transgender Europe’ is giving new life to the neglected rights of transgender people. Main finding of this research team is that in majority of countries procedure for gender recognition is unclear or does not exist; and they have given many recommendations to improve the situation.

**Suggestions and Conclusion**

After analysing the situation of transgender people, the following suggestion have been came out to give them a better life internationally:

1. Help LGBTs to recognise themselves as part of the society and human community and inculcate in them self-respect.
2. There is the need for international attention towards the protection of the rights of LGBTs, especially transgender in the following matters:
   a. Amend the international documents like and the United Nations can play significant role in this.

[^236^](2009) 160 DLT 277.

b. Ensure them civil and political, social, economic and cultural rights, especially right to vote, property, education and protection from discrimination at schools, marriage, employment, health and sanitation facilities.

c. Decriminalise provisions which discriminate transgender people.

d. Extend International documents protecting the rights of men and women to LGBTs.

e. Make medical guidelines for conducting ‘sex change surgery’ and also make available general medical services and insurance facilities to them also.

3. State should issue documents like identity card, ration card, passport which are available to the ‘normal’ gender and make welfare schemes for them.

4. Religious leaders teach followers to respect every human being irrespective of the differences and help the transgender people to be a part of the religion which they wish to follow.

5. Media should bring into lime light violations on sexual minorities and help them to raise their voice and to get their rights established.

World is showing a change in the attitude towards LGBTs. Government and other organisations are taking various initiatives in this respect. In spite of these efforts it needs to be remembered that, still the road is too long to reach the destination of equal protection of rights and equal treatment to transgender people, who are also human beings are dreaming of a better tomorrow.
Demonological theory of crime:  
A study of witch accusation in Nepal  

*Binita Pandey*

**Introduction**

Demonological School or Pre-Scientific School is the most ancient school of criminology (Sharma, 2008), describing the causation of crime (Acharya, 2007). People who committed crimes were thought to be possessed by evil spirits, are often referred to as demons (Ball, Cullen & Lilly, 1995). Thus, the offenders were regarded as an innately depraved person who could be cured only by torture and pain (Paranjape, 2006) and in severe cases they were killed or exiled. There was belief on demonological theory of crime since the ancient Egyptians, Greeks, and Romans. In Europe, in the belief of this theory of crime since 14th century till 17th century almost 300000 people were killed. Likewise, in Massachusetts State of America the accused witches were given capital punishment (Tripathi, 2044). The persecution of accused witches continues today in communities around the globe (Schnoebelen, 2009).

Witchcraft accusations have represented the most visible manifestation of witchcraft belief (Cimpric, 2010). Encyclopedia Britannica defines witchcraft as the exercise or invocation of alleged supernatural powers to control people or events, practically typically sorcery or magic (Informal Sector Service Center [INSEC], 2012). It is used to describe different practices relating to the supernatural: evil witches; people with power to fight evil witches and people with powers to heal and seen as a force for good (HelpAge International, 2011). Certain ideas, such as evil spirits, sorcery, spell casting, magic, and harmful curses, are all synonymous with the idea of witches or witchcraft (Quarmyne, 2011). In Nepal the age old practice of persecuting women in the name of witch still persists (INSEC, 2012). This paper however, explores the demonological theory of crime in relation to crime of witchcraft accusation in Nepal, including the relationships between victims and offenders and the interactions between victims and the criminal justice system i.e., the police personnel.

**Method**

The 47 incidents of witchcraft accusation that occurred in during 13 April 2011 –12 April 2012 were studied through cluster sampling method. They were randomly collected through each day purposive observation of 10 different daily national newspapers of Nepal. In every incidence, the news published date, place (district), age and sex of victim, perpetrators relation with victim, allegation and violence against victim, it’s consequences
upon them and their approach to police for complaint were studied through tabulation method.

**Result**

*The number of victims, their age and sex*

The researcher found that, in Nepal, incidence of witchcraft accusation was reported throughout the year in 30 different districts while in 10 districts the incidences were repeated. There are altogether 57 victims in 47 incidents. There are 11 male and 46 female victims who are of either of age (i.e. child, adult or elderly). However, the number of women victim is considerably higher than male victim.

*Accusation and violence against the victims*

There is occurrence of witch accusation in society on the belief that the victims can do anything against the society, like enter someone’s body and force the individual to suffer symptoms of a certain disease or kill the people or animals, cause disaster, etc. In two cases, the accused person have to give ordeal to prove their innocence by either licking the feet or touching the fire, etc. but in all of the cases, the society inflicted violence against victims. They were beaten black and blue, their head is shaved off four sides, sooth painted on their face, attacked with sharp weapons (sickle, *khukuri* and axe), forcefully fed human excreta, defamed, branded or looted property and in extreme cases 10 victims were banished and three were beaten to death while one was burnt to death.

*Perpetrators*

The perpetrators in witchcraft accusation consists of family members, local villagers or neighbors, witch doctors (*Jhankris* and *matas*), local group and even the educated member of society such as teachers, politicians and in one case police too. The numbers of perpetrators were difficult to ascertain as it varies from single person to group of people consisting more than 100. It is thus harder to determine who are the main perpetrators, conspirators and accessories of crime. Besides, there are still large numbers of other people who passively observe it. In criminal law, criminal liability arises even through omission of duty. In *Muluki Ain 2020*, Chapter of Homicide number 19 states when someone plea for help to the persons present nearby and such persons who are between age of 17 and 65 years don’t go to rescue or for help they can be punished. On the contrary, it was found if the family members of victim tried to save them they are even assaulted, injured, defamed and in two cases even killed.

*Consequences on victim*

There are both direct and indirect victims of witch accusation. Firstly, the direct victim, accused witches themselves in its, immediate effect were admitted to the hospital, while some were abandoned from village and some were killed. Later, living victims were isolated from society, suffering from physical pain, psychological trauma and even attempted to suicide. Secondly, the family members are the indirect victim. They have
also gone through mental trauma and sometimes even displaced or banished along with victims.

Victim’s interaction with Criminal Justice System mechanism

In Muluki Ain, Adal Ko Mahal number 10b it states anyone alleging any person as witch or inflicting violence upon them are to be punished with two years imprisonment or Rs. 5000 fine or both. Accordingly, after the violence, 32 victims are found to have reported on nearby police station and 4 complaints were filed in CDO office. In 2 cases the police denied in filing the complaint and 1 person then approached to court for complaint. Police had released perpetrators in 1 case by admonishment while in other case police was forced to release perpetrators from local people pressure. Eventually, in many cases, perpetrators managed to flee away. The complaints were even settled through mediation by police in 4 cases and in 2 cases local communities interfered police on investigation. Nevertheless, in 20 cases the investigation and prosecution by police is going on.

Availability of remedy to victim

The victims who were hurt and admitted to hospital were not able to reimburse treatment expenses from perpetrators and they are not guaranteed of non-repetition of such incidence on future. Likewise, those who were ostracized from village couldn’t return home. Only in few cases, the victims got compensation from perpetrators or rehabilitated in society and in only one case government gave monetary compensation to victim’s family.

Conclusion

The result of the current study must be interpreted in the context of its limitations which may be addressed by future research on witchcraft accusation from different perspectives such as the perspective of human rights, women and child rights, comparative study on practice of witchcraft on different societies and alike.

Witchcraft accusation, in Nepal, is the reminiscence of demonological theory of crime. In influence of demonology, the society is found to delineate certain person as witch and consequently inflict violence upon them. However, the police personnel are found less proficient to prosecute perpetrators on the court and the cases are settled through informal process. Consequently, almost all of the perpetrators are unpunished or given nominal punishment while the victims are deserted without any remedial measures. In nutshell, there is failure of Criminal Justice System to control crime in society. The writer thus suggests, the government and NGOs/INGOs working in promotion and protection of human rights to perform awareness program in society. Further, the existing laws are not adequate and new law is yet to be enacted by Parliament. Thus, the state requires enacting a new legislation immediately to suppress the crime of witchcraft accusation in society.
Demonological theory of crime

References
Gender neutral or gender specific predictors of recidivism: Should risk assessment incorporate separate scales for boys and girls?

Brian Lovins, Myrinda Schweitzer and Carrie Sullivan

Introduction

As the juvenile justice system progresses in regards to assessment from relying solely on clinical intuition to empirical evidence, a question about actuarial assessments and the appropriateness of these assessments for sub-populations has surfaced. Traditionally, the juvenile justice system (as well as the adult criminal justice system) has been dominated by male-focused research. Some argue that women are often an afterthought in research and policy (Covington & Bloom, 2007; Hannah-Moffat, 2004; Ward & Brown, 2004). With this, comes an argument that risk assessment has been designed to assess male dominated traits and that the results are not applicable to female offenders.

There are three predominate schools of thought in regards to the utility of risk assessment for female offenders. First, the gender neutral school posits that risk factors (predominately dynamic/criminogenic needs) are similar across males and females and that the need for additional measures does not provide much utility. This school is often referred to as the Canadian model—although has expanded well beyond the Canadians in recent years. While there are numerous studies that have demonstrated the validity of 3rd generation risk assessments for women, Smith, Cullen, and Latessa (2009) summarized the research on the Level of Service Inventory-Revised (LSI-R) using meta-analytic techniques. They examined 27 distinct effect sizes for females totaling 14,737 women offenders. They found the average effect size was .35 for female offenders and concluded that the LSI-R was appropriate to assess female offenders as well as male offenders.

The second, the gender responsive school posits that 3rd and 4th generation risk assessments have utility for female offenders given the broad array of criminogenic needs that are included but should be enhanced by gender responsive factors. Van-Voorhis, Wright, Salisbury, and Bauman (2010) recommend that gender responsive items should be added to the traditional gender neutral measures to better understand the needs of female offenders. They found that adding measures around parental stress, self-esteem and self-efficacy, family support, and educational assets increased the predictive power of risk assessment. Specifically, VanVoorhis et al (2010) found that when gender responsive predictors were included with gender neutral models for females that the AUC increased from .71 to .74 in one sample and .69 to .74 in a second sample.
A third school regarding assessment, often tied to Stephanie Covington and Barbara Bloom is one that suggests that the current methodology tied to actuarial risk assessment is flawed and that the field should re-examine the use of the current risk assessments for female offenders. They argue, along with several other criminologists, that women present with broader issues other than criminogenic factors that impact their risk including histories of sexual abuse and assault, domestic violence, the marginalization of women by male dominated culture. These other factors culminate in what Covington (2002) refers to as “level of burden”. The level of burden is a combination of internal and external pressures that are measured at the individual level by the number of problems and the severity of those problems a woman faces. Ultimately, suggesting that women should be assessed on the individual level for the number and severity of burdens that they present with and that actuarial models are not appropriate to truly measure the needs of female offenders.

Given the different schools of thought regarding risk assessment, this study will answer the following research questions:

1) Are the predictors of recidivism the same for boys and girls?
2) Are the strengths of these predictors similar for boys and girls?
3) Are there specific areas or patterns of predictors that demonstrate greater predictive validity for girls than boys?
4) Can actuarial models of risk predict as well for girls as it does for boys.

Methods
Participants
This study examines the predictors of risk for adolescents who are serving a probation sentence in the community in a Midwest state in the United States.

Table 1 provides the demographic characteristics of the youth included in the study. While there are significantly fewer females on probation in the state than males, females were oversampled for this study to obtain a relatively representative sample across gender.

<table>
<thead>
<tr>
<th>Gender</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Males</td>
<td>318</td>
<td>64.6</td>
</tr>
<tr>
<td>Females</td>
<td>174</td>
<td>35.4</td>
</tr>
<tr>
<td>Race</td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>256</td>
<td>52.0</td>
</tr>
<tr>
<td>Youth of Color</td>
<td>236</td>
<td>48.0</td>
</tr>
<tr>
<td>Age</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8 to 11 years old</td>
<td>64</td>
<td>13.0</td>
</tr>
</tbody>
</table>
### Analysis

The purpose of this study was to examine the significance of common predictors of re-arrest as well as the strength of those measures. To start, the combined sample was used to identify those items that were predictive irrespective of gender.\(^\text{238}\) Once the predictors were identified, chi-square was conducted on the relationship between each unique factor and re-arrest, as well as a measure of strength calculated by Cramer’s V for each factor by gender. Once the individual predictors were analyzed, the scores were combined into 6 unique domains or scales and were examined again using chi-square and bivariate correlations to determine the likelihood of recidivism for both girls and boys by domain. In addition, the overall scores and levels of risk were examined by gender to determine if the composite risk score was valid for both boys and girls. A Receiver Operating Characteristics (ROC) analysis was conducted and an area under curve (AUC) was calculated for the final levels of risk by gender to determine the ability of the combined predictors to predict future recidivism.

### Results

Table 2 provides the results based on domain. As noted, all 6 domains or scales provided a statistically significant relationship with re-arrest for boys and 4 of the six domains for girls. The delinquency scale for girls demonstrated a slightly stronger relationship than for boys, while the family domain provided a much stronger relationship for boys than girls. In contrast, the family domain demonstrated a significant relationship for both boys and girls but the strength of the relationship was much greater for boys.

The education domain was not predictive for girls. For boys, the relationship between re-arrest and education was significant and demonstrated a moderate relationship. As for the impact that peers have on re-arrest, both boys and girls that have riskier peers were re-arrested at higher rates, but the strength of the relationship was much stronger for girls than boys. Similar results were found for the substance abuse domain. It appears that the combination of substance abuse, mental health, and personality factors have a stronger

\(^{238}\) The bivariate relationships and additional analyses for determining the predictors are available from the lead author.
relationship for boys than girls. The attitudes domain was significant with re-arrest for boys but not for girls. Moreover, the strength of the relationship between attitudes and re-arrest for boys was moderate to high.

| Table 2 |
| **Re-arrest rates by overall domain/scale by gender** |
| | Male | | Female | |
| | N | % | N | % |
| **Delinquency** | | | | |
| Low | 43 | 31.9 | 24 | 27.6 |
| Moderate | 52 | 46.0 | 17 | 29.3 |
| High | 40 | 57.1 | 16 | 55.2 |
| $X^2$ (Cramer’s V) | 12.981** | .202 | 7.984* | .214 |
| Family | | | | |
| Low | 23 | 31.1 | 8 | 22.9 |
| Moderate | 67 | 38.5 | 30 | 30.9 |
| High | 45 | 64.3 | 19 | 45.2 |
| $X^2$ (Cramer’s V) | 18.685*** | .242 | 4.675* | .164 |
| Education | | | | |
| Low | 27 | 31.4 | 16 | 27.6 |
| Moderate | 46 | 39.7 | 18 | 28.1 |
| High | 62 | 53.4 | 23 | 44.2 |
| $X^2$ (Cramer’s V) | 10.416** | .181 | 4.435 | .160 |
| Peers | | | | |
| Low | 18 | 34.0 | 12 | 23.1 |
| Moderate | 56 | 38.9 | 27 | 30.7 |
| High | 61 | 50.4 | 18 | 52.9 |
| $X^2$ (Cramer’s V) | 5.451* | .131 | 8.672* | .223 |
| Substance Abuse | | | | |
| Low | 30 | 28.8 | 13 | 28.3 |
| Moderate | 81 | 47.6 | 30 | 27.8 |
| High | 24 | 54.5 | 14 | 70.0 |
| $X^2$ (Cramer’s V) | 12.393** | .197 | 14.232** | .286 |
| Attitudes | | | | |
| Low | 24 | 32.0 | 5 | 16.1 |
| Moderate | 70 | 39.5 | 37 | 36.6 |
| High | 41 | 62.1 | 15 | 35.7 |
| $X^2$ (Cramer’s V) | 14.416*** | .213 | 4.747 | .165 |

Figure 1 provides a review of the overall model for boys and girls. As noted, both models demonstrate a significant (and positive) relationship with risk levels and re-arrest. For boys, 20.3 percent of the boys who scored low risk on the totality of the items
reoffended while 44.0 percent of the moderate risk boys and 59.6 percent of the high risk boys. In comparison, 15.9 percent of the low risk girls were re-arrested; with 34.5 percent of the moderate risk and 66.7 percent of the high risk girls were re-arrested. The Pearson’s correlation for boys was .287 with an AUC of .655 while the model for the girls had a Pearson’s correlation of .352 and an AUC of .693.

**Figure 1**
Re-arrest rates by risk level for boys and girls

![Bar chart showing re-arrest rates by risk level for boys and girls.](image)

**Discussion**

First, and foremost, the overall findings of this study suggest that it is possible to identify and measure factors associated with recidivism for both boys and girls. The overall model was predictive for both boys and girls while the correlations of the final model actually provided a slightly better model for girls than for boys. As for individual items for boys and girls, the findings were mixed. While majority of items were predictive for both or at least in the right direction, there were several items that were not predictive for girls but were for boys. Specifically, whether girls followed the rules, had positive relationships with adults in the community, and had a very strong connection with friends were not predictive of new arrests.

While boys and girls differed on which items provided stronger correlations to reoffending, it is apparent from the results that the greater model was slightly more predictive for girls than boys. Based on the results of this study, it is recommended that juvenile justice programs could create 3rd and 4th generation tools that can provide a valid measure of risk for both boys and girls. It should be noted, that while the predictors were similar for boys and girls, the final cutoffs for the composite levels of risk were normed specifically for boys and girls.
Gender neutral or gender specific indicators of recidivism

References


Under-aged commercial sex:  
Who really are the victims? A Singapore perspective  

S. Chandramohan

Introduction
Prostitution itself is not an offence in Singapore and the age of consent for consensual sex remains at 16. Section 367B, inserted in the Penal Code in 2007, created an offence of obtaining for consideration the sexual services of a person under 18 years of age, an offence punishable with imprisonment of up to 7 years, or with fine, or with both. This is an offence of strict liability, with the defence of a reasonable mistake as to the age of the minor being available only to a person below the age of 21, provided he is charged with such or similar offence for the first time. However, similar laws in the United Kingdom (Sexual Offences Act, 2003), Australia (Crimes (Sexual Offences) Act, 2003) and Canada (Violent Crime Act, 2008) allow an honest and reasonable belief in respect of the age of the victim to be raised as a defence to the charge.

Rationale of the New Law
The new law was an obvious response to criticism in the US Trafficking in Persons Report 2007 (TIP, 2007) which singled out Singapore as “a destination country for women and girls trafficked for the purpose of sexual exploitation” (p. 6). Singapore was placed in Tier 2, an indication that she had not fully complied with the minimum standards under the US Trafficking Victims’ Protection Act (TVPA, 2003). The US Department of State had consequently recommended that the Singapore Parliament approve amendments to the Penal Code that would criminalise prostitution involving a minor under the age of 18, extend extra-territorial jurisdiction over Singaporean citizens and permanent residents who purchase or solicit sexual services from minors overseas, and make organizing or promoting child sex tours a criminal offence. That was what was done in 2007 (Penal Code Amendment, 2007).

The purpose of the new law prohibiting commercial sex with an under aged girl below 18 years, according to a Ministerial statement in Parliament, was to prevent “immature and vulnerable” young persons from being exploited into providing sexual services (Hansard, 2007). However, the Minister assured Parliament that there was no evidence that 16 and 17 year olds were into prostitution, but setting the maximum age at 18 would protect a greater proportion of minors. In doing so, Singapore has followed countries such as the United Kingdom and Australia which have adopted the approach of criminalising commercial sexual activities with persons under 18 years of age, in line with
under-aged commercial sex


What is the wrong of the commercial sex with an underaged person under the law? Not the sex act which is consensual; not the nature of the transaction for profit as prostitution per se is not an offence; not even the having of a sexual relationship with a much younger female. It is that the prostitute has not yet reached 18 and hence is not considered mature enough to engage in commercial sex and ought not to be encouraged to offer such services

Setting the Age of Maturity for the Crime Victim

Setting the age of maturity for prostitution at 18 in Singapore seems at odds with the age for consensual sex remaining at 16. Would a girl consenting to sex at 16 be more mature than one who is older but who consents to it for a reward? There does not seem to be a universal agreement at fixing the age of a child at below 18. An Australian Parliamentary paper (The Age of Consent, 1997) has acknowledged that there can be no objective standard for determining when a person can consent to sexual intercourse because of individual differences in the rate and level of development and maturity, and hence no universal age of consent can logically be set. This is significant when we consider cases where the underaged girl has not been compelled or exploited but has been active in making an informed decision to conclude what she regards as a commercial transaction. Is the law, with all its attendant publicity and punishment, always an adequate response for victim protection or does it itself create unintended victims in certain circumstances?

The Prosecution Blitz

Whilst there were occasional prosecutions under the new law (Tan, 2009), matters came to a head in December 2011. In that year, 51 men were charged with having paid sex with a single female prostitute aged 17, in a massive prosecution exercise (Alvin, 2011). The men, aged between 20 and 70, mostly married with children, come from varied backgrounds and include a school principal, banker, a navy officer, senior police officer, businessmen and a lawyer. Since the beginning of this year, 16 of these have pleaded guilty and have all received “deterrent” imprisonment sentences of between 9 and 24 weeks, amidst great media publicity.

Punishing the offenders

In a society that favours crime control over due process (Chan, 2000) the dominant principle of sentencing has been “deterrence”. Various mitigation pleas therefore have had little effect on sentences of imprisonment imposed on the 16 offenders. In most of the cases these were not men out to exploit young girls or support forced prostitution. They were unknowingly involved at different times with the same underaged prostitute for a substantial fee and were themselves fooled by the girl or her pimp that she was above 18 years of age.
Should imprisonment be imposed on those who had not sought an underaged girl, nor were indifferent about her age but had found themselves in breach of the law due to negligence, inadvertence or deception by the prostitute herself or her agent. Should the courts impose prison sentences on luckless victims or those who are morally innocent? And should they disregard the many other unintended victims of the prosecution in respect of a one-off act of indiscretion? There has been a gag order to prevent the press identifying the girl but the offenders have all been named and shamed in the local media. Initial reports suggest that consequently, there has been considerable disruption to the lives of the offenders and their families. The publicity in a small city state such as Singapore, the loss of reputations, jobs and careers following the conviction, the disruption to family life due to separations and divorces and the effect on children appear not to have been taken into account by the courts in determining sentence.

Victims and Victimology

This case raises interesting questions on true victim identification. Certainly, as the UNCRC and the Stockholm declaration seek to do, young children ought to be protected from sexual exploitation and trafficking in humans. But a broad definition of ‘victims’ means “persons who have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights.” (UN Declaration of Basic Principles of Justice for Victims of Crime, 1985). Who then really are the victims in the case at hand? It is obvious that in this scenario a number of things associated with victimology, such as the need to have restorative justice, are absent. Where the underaged female has done this purely for financial greed and not need and out of her own volition, how does restorative justice even function and for whom?

Conclusion

As the 51 prosecutions demonstrate, classifying victims as innocent and offenders as always bad and evil can at times be a simplistic classification. Where the innocence of the “victim” is questionable, sympathy for her and for even justice could diminish. (Meloy & Miller, 2011). The prosecution and imprisonment of the 51 offenders under the new law may not necessarily represent just desserts for perpetrators of sexual exploitation. On the other hand, this may be an example of the overreach of a harsh law, resulting in unnecessary incarceration and the destruction of reputations, careers and families, thus creating perhaps multiple victims of the law.
Labeling of “de-notified” tribes: 
Revisiting the ramoshis in Maharashtra

Dattatary Bhandalkar

Introduction

Culture conflicts arising out of caste, religion, class, ethnicity etc are among the significant fault lines that hinder development and result into victimization of vulnerable and marginalized groups of our country. The de-notified tribes of our country are one such vulnerable and marginalized groups of our country. A significant number of marginalized tribal communities in India were once classified and declared as criminals with the declaration of Criminal Tribes Act in 1871. All members of the declared tribal communities were registered and notified as criminals. The ‘De-notified Tribes’ were notified under several versions of Criminal Tribes Acts enforced during the British Rule in between 1871 and 1947 throughout the Indian territory. They were 'De-notified' by the Indian government post independence with the repeal of these Acts in 1952. The classification and criminalization as “Criminal Tribes” occurred with 198 tribes in our country. With the repeal of the Act in 1952, 2,300,000 tribal were decriminalized but further re-classified as 'Habitual Offenders' with the enactment of 'Habitual Offenders Act' in 1959.2 Significant populations of 60 million in India with 6 million in Maharashtra are still classified as De-notified tribes. They are deprived and denied of many of their basic rights even today. They are subject to stigma and discrimination not only in the hands of polity, society, state machinery but also in the hands of other dominant sections of the society. They are referred as “born criminals”. There is an immense need to explore and understand the issues of the denotified population in India and address them to ensure justice to these ethnic groups. 2 Criminal Tribes’ Act, 1871: Act XXVII. British Library, Oriental and India Office Collections, shelfmark V/8/42.

The Labeling Theory

Labeling theory is one of the most important theories in criminology. In 1938, Tannenbaum proposed that individuals who were identified, stigmatized, or labeled in any special way would eventually behave as the label suggested. Tannenbaum called this process the dramatization of evil.

Lemert (1951) developed this idea further with the distinction between primary deviance, which is the initial act leading to the label, and secondary deviance, which occurs after an individual accepts the label and acts on it. Approaches to deviance as argued by Lemert (1951) assumed that deviance could be understood as consisting of behavior that violates social norms. Labeling theory rejected this approach and claimed
that deviance is not a way of behaving, but is a name put on something as a label. Labeled individuals may eventually come to view themselves as criminals and act in accord with this self-concept. It controls the way they are identified in public. As Becker (1963) argues that social groups create rules in society whose violation constitutes deviance. These are rules of sanctions put by dominant others in society on particular groups. Labeling theory highlights social responses to crime and deviance. It emphasizes upon what happens to criminals after they are labeled and suggests that crime may be heightened by criminal sanctions stigmatizing them and leading to other severe consequences. A label can be applied formally or informally. Formal labeling would come from institutions such as police, courts, corrections, etc. Informal labeling would come from parents, peers, etc. Application of a formal label through sanctioning magnifies the effect of labeling (Adler & Laufer 1993).

The present study was a sincere attempt to bring to the forefront, the views and experiences of Ramoshi Tribes about being labeled as criminals in society, understand the origin of the process of construction of labeling, the process of continued labeling over years and the effects on the community. It investigated how continued labeling has affected the population in context of reintegration in society, social and economical impact at individual levels. The researcher adopted a Qualitative Research Process, with an exploratory research design and case study methodology.

Labeling of Ramoshis

The Labeling theory was used as a conceptual tool for the purpose of the research. As the theory suggests that the process of tagging, identifying, segregating and describing a person with a specific behavior instigates the person to perform the same behavior. It emphasizes upon what happens to criminals after they are labeled. The study connects and analyzes how the Ramoshis after getting labeled were stigmatized and how labeling lead to severe consequences. As Labeling theory argues that a label can be applied formally or informally, the study exhibits that Formal Labeling had occurred from institutions such as police, courts, corrections, etc. the Ramoshis were informally labelled from peers and other dominant sections in the society. As Adler and Laufer (1993) argue, the act of being formally labeled through sanctioning magnified the effects of labeling among the Ramoshis. Ancestral Labeling has a significant role in the continued labeling process of the tribe. The key themes identified from responses of the participants were Historical background of the community Force criminalization and occupational patterns, Involvement in crime, Stigma and discrimination-incidences and experiences, Exclusion from representation in local self governance, Treatment by local police officials and Impact of Labeling on present status of the community. The findings of the study strongly exhibit that the process of labeling continued due to repeated failure in integrating them with the mainstream society.
Labelling of denotified tribes

Discussion and Conclusion

The study narrates the experiences of Ramoshis about the origin of process of labeling, the process of continued labeling and its effect on the tribe. The process of labeling started with the denotified tribes with the declaration of Criminal Tribes Act 1871 in British India. The Ramoshis along with other denotified tribal communities were notified and declared criminals during the colonial period; however in later years as well the tribe continued being subjected to stigma and discrimination. Culture conflicts based on the context of caste system, the occupation based nature of it affected the community significantly failing to reintegrate them in the mainstream. The denotified tribes were wandering and hunting communities. The Ramoshis were warrior tribes. As situations changed during the colonial period, the Ramoshis being actively involved in the uprising against the British were classified as criminals. The tribe suffered in the hands of state, polity and other dominant sections in society. It is evident from the responses of the participants of this study that the process of formal as well as informal labeling still continues. The state, society, polity everyone has a distinct role to play. A lot of collective factors played a very significant role in criminalization of the Ramoshi tribe. They were labeled as 'Criminals' in British India, 'Habitual Offenders' in independent India and now as 'Ex-Criminal' or 'Denotified' in 'shining' India.

References

Victimization of slum dwellers due to displacement and relocation: A study of Delhi metropolis

Divya Priyadarshini

Introduction

Today, the population of Delhi has risen from 2 million in the year 1947 to over 14 million. According to the Municipal Corporation of Delhi in 2010, 49% of the city’s population lived in slums and non-regularised settlements, and only 5% lived in planned areas. According to Delhi Urban Shelter Improvement Board, a substantial proportion of the population of Delhi, around 3 million, live in approximately 600,000 jhujjis.

According to Social and Human sciences website, displacement of people refers to forced movement of people from their locality or environment and occupational activities. It has been well documented that the process of relocation and displacement has led to problems of sustained access to livelihood, education, basic services and health care. In particular there is not only the violation of right to livelihood but a plethora of rights are violated, of the children, women and entire community.

Statement of the Problem

Since the 1970s, the poor living in the slums of Delhi have been regularly relocated and displaced to the periphery of the city by the government. From 1975 to 1977 city planners forcibly moved out 150,000 squatter families into these resettlement colonies in the periphery (Jagori, 2005). Through various researches and studies it has been estimated that since 2004, at least 200,000 people in Delhi have been forcibly evicted and only a scarce percentage of that population has been rehabilitated and resettled at different locations. The sites of relocation are in the outskirts of the city and are a large area of barren land with no hint of habitation prior to the resettlements done in those areas (Fact Finding Mission 14, 2010).

The relocation schemes and policies have been modified from time to time- the initial beneficiaries (3560 households) received two-room residences. The scheme was later modified and partially developed plots of 80 sq. metres were given to squatters, which was further reduced to 40 sq metres and then to 25 sq. metres. Comparing this to the present scenario, some squatters relocated to Madanpur Khadar were allotted as little as 12 sq metres of undeveloped land when the colony was developed in 2002 as revealed in a study.
Victimization of slum dwellers

Locating the study in the present literature

It has been argued that since the city of Delhi has reached the saturation point in terms of population and space residing here has become costly. The migrants into the city have come to occupy the remaining lands of Delhi. The work of the clearance and improvement of slums is done under The Slum Areas (Improvement and clearance) Act, 1956 which came into force in Delhi in 1957 and the Act was amended in 1965 after which no amendment took place (Bahri, 1979).

Bhatia and Puri (2010) in their study on the Commonwealth Games have tried to depict the paradox between the rapid development that took place in Delhi and simultaneously the uprooting of settlements for such developmental work. In the name of development itself, thousands of families residing in slum clusters were dislocated and resettled (at, mostly, not very convenient locations) (Bhatia, 2010).

A study on the Delhi’s one of the biggest resettlement colony Bawana has brought before us the scenario of displacement and the plight of the people even after 3 years of resettlements. The evictions and forced relocation to Bawana have shattered people’s lives and destroyed their livelihood (Bhan, 2008).

Some legal judgements by Indian courts have been path breaking. They have tried to address the issues of eviction, relocation and displacement and how these phenomena victimises the community as well individuals. Some judgements are as given below:

In 1985, in its landmark judgement in Olga Tellis versus Bombay Municipal Corporation, the Supreme Court recognised that the “Right to Livelihood is an important facet to the Right to Life” and stated that the eviction of the pavement dwellers will lead to derivation of their livelihood and consequently to the deprivation of life. In K. Chandru versus State of Tamil Nadu (1985), the Court ruled out that alternative accommodation is to be provided to slum dwellers before they are evicted.

The present study

The study focuses on the displaced and relocated slums and its dwellers who may have been victims of displacement. The study tries to investigate the human rights violation which may take place due to the phenomena of displacement and the causes that might have led to their displacement. It also tries to observe the slum and the people who have been displaced in the recent years and relocated in the area far away from the city of Delhi and how even though they have been rehabilitated there victimisation continues.

Methodology adopted

The study has adopted the Exploratory Research Design. The locale covers the whole of National Capital Territory of Delhi. As regards the sampling design, Simple Random Sampling was used.
Sampling

The sample consisted of both males and females. It consisted of respondents from Lal Quarters (Community 1), a resettled colony in the year 99-2000, Sector 24, Rohini (Community 2) again selected randomly displaced during the same time period from Bawana JJ Cluster (Community 3) resettled in 2004 and from the Rajiv Ratan Awas Yojana Flats, Bawana (Community 4), resettled in 2010.

Research Tool for Data Collection

A semi structured interview schedule was used as a tool for data collection. The interview schedule consisted of questions relating to the socio economic factors of the slum inhabitants and also questions that would help in delineating the human rights violation that may have taken place due to displacement. Also the internet, various books, journals, reports and articles related to the topic directly or indirectly were taken help for the study.

Results and Discussion

For the purpose of the study, the data collected from the different communities were analysed separately on similar parameters. This has helped in studying each community and sees the extent of victimisation the communities must have faced. The parameters to study victimisation were the change in socio economic profile of the slum dwellers, notification and displacement, compensation received, livelihood issues, access to basic services, sense of security etc.

The socio economic profile of the communities’ mostly remained unchanged. All the above mentioned communities belong to low income group and also scale low on education grounds. Only 27% of the respondents have received education till higher secondary for community 1 whereas for community 3 and 4 the percentage is as low as 10% and 20% respectively. As argued by Desai, slums and the conditions prevailing in slums are deploratory (Desai, 1970) and its culture have revealed that the social life is unique one and the dwellers live in extended families (Venkaterayappa, 1968) in small given space and also face uncertainty in income (Noor, 1983).

Though belonging to a marginalised group, the slum dwellers make their own abode and have a different social organisation (Venkaterayappa, 1968) which they form over a long time span. Respondents of all the four communities claimed of having been settled in their prior location for more than 25 years. Almost 60% of the respondents from all the four communities claimed that no proper information was provided to them regarding demolition and displacement. Also, force was applied on the dwellers to get them evicted from the location thus posing a threat to their Right to Life (Article 21, Constitution of India). In the name of compensation all the four communities have been addressed to differently. Community 1 received constructed flats of 18 yards in Rohini whereas Community 2 displaced almost during the same period received land of 22 yards. Community 3 received lands of 12.5 yards and Community 4 relocated 2 kms away from
Community 3 has received constructed flats of 22 yards. The Delhi Government’s policy for rehabilitation of the evicted slum dwellers is varying and there is no uniformity in this. As a consequence of displacement, livelihood issues have developed and also there has been a shift in the access to basic services in the new location as compared to the previous location. 64% of respondent from Community 1, 38% from Community 2, 76% from Community 3 and 83% from Community 4 accepted that they either changed their occupation or left their work completely after displacement and relocation. Their income has decreased substantially and also there are less of job opportunities in the new location.

Access to basic services like water, sanitation, electricity, education, health care services constitute the bare necessities for the survival of any community. On account of displacement and relocation, the above communities which were considered under slum colonies have gained the status of resettlement colonies as per the policy of the Government of Delhi. As Banerjee points resettlement colonies, as the name suggests, comprise of JJ cluster households that have been resettled from their original settlements (Banerjee, 2005).

The results of a NCAER (2002) survey suggest that resettlement colonies as opposed to slums have better access to essential amenities. The legal recognition given to resettlement colonies makes it mandatory for the government to ensure the provision of basic infrastructure in these settlements. But the findings of the study suggest a different trend. Though the basic services like water and electricity have been provided to the communities but no proper measures have been ensured for their continuous supply. All have to depend on water tankers for supply. Also, there are no proper drainage facilities in the colonies. Also health care facilities are only of preliminary treatments. For major ailments the community members have to visit the government hospitals situated 20-25 kms away from the relocation site on an average. Education of children has also been hampered and the literacy rate in these colonies still remains less. The sense of security is low among all the communities. The communities live in the fear of being displaced again in the future depending on the policy and need of the government.

**Conclusion**

All the societies have been consisting of units which may be good for some and may not be as good for the other. Through the study the reason behind displacement and the human rights aspects have been tried to be focussed upon. Displacement process may have affected the communities at various levels at not only their household level but also at mental and physical level. The effects of displacement spill over to generations in many ways, such as loss of traditional means of employment, change of environment, disrupted community life and relationships, marginalization, a profound psychological trauma and more. Such consequences lead to the requirement of legislations that address not only the issue of compensation, but also of resettlement, rehabilitation and participation in negotiation. The communities must be indulged in policy framing committees and their consultation is important for understanding the scenario in a better way.
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High Court ban Slum Relocation, The Times of India, 8th January (2003)
Policing domestic violence in South Africa

Doraval Govender

Introduction
In South Africa domestic violence is prevalent because of its deep seated patriarchal system. In patriarchal households domestic violence is committed predominantly by men against women and children (Tyska & Fennely, 1999; Manamela, Smit & Ngantweni, 2010; Chibba, 2012). There are many causes and contributing factors for domestic violence (Kloppers, Fourie, Roets & Van-Deemt, 2002; Manamela, Smit & Ngantweni, 2010). The victims are subjected to various forms of abuse by their partners, which include physical, economic, emotional and sexual abuse (Shepard, 1991; Masimanyane, 2012). Domestic violence is not always effectively and efficiently addressed by the police (Independent Police Investigative Directorate: Domestic Violence Report, 2010). This study makes recommendations on innovations for policing domestic violence.

Background
In responding to the high rate of reported incidents of domestic violence, South Africa has introduced the Domestic Violence Act 116 of 1998. Section 18 of the Domestic Violence Act 116 of 1998 makes it a violation if a member of the Police Service fails to comply with the Act (Independent Police Investigative Directorate, Domestic Violence Report, 2010).

Domestic violence crimes in South Africa are registered by the police as Murder, Malicious damage to property, Robbery, Rape, Assault and other forms of crimes and not placed into their own category. Specific incident reports (SAP508a) and a domestic violence register (SAP508b) is kept by each police station to maintain statistics (Domestic Violence Act implementation, Department of policing briefing, 2011).

Methodological orientation
A qualitative case study design was used to evaluate the policing of domestic violence in South Africa. The North West Province was demarcated for this study based on the nature and extent of domestic violence in this Province. Literature study, interviews, documentary study and the experience of the author as a former Assistant Commissioner in the South African Police Service was used in this study.

Random sampling (lottery technique) was used to select two hundred victims of domestic violence. The two hundred victims were sampled from 36 police station areas (rural and urban areas) to conduct semi-structured interviews. Documentary study was carried out with two hundred domestic violence cases (dockets) reported by these victims.
An interview guide was formulated to guide the semi-structured interviews, literature study and the documentary study. The respondents and the case dockets were chosen from the incident report register (SAP508b) using the lottery technique. The Data Analysis Spiral was used to analyse the collected data to make findings and recommendations (Leedy & Omrod, 2001). Since only victims of domestic violence were sampled for interviews, the findings may be generalised to similar victims.

**Main findings**

*Causes and contributing factors of domestic violence*

Twenty eight percent (28%) of the respondents indicated the causes of domestic violence to be related to patriarchy. Twenty five percent (25%) of the respondents indicated alcohol and substance abuse as a contributing factor to domestic violence. Fifteen percent (15%) of the respondents had provoked abuse through nagging or making unreasonable demands to their partners. Fourteen percent (14%) of the respondents indicated unemployment as a contributing factor to domestic violence. Twelve percent (12%) of the respondents indicated poverty as a contributing factor to domestic violence. Four percent (4%) of the respondents indicated culture as a contributing factor to domestic violence. Two percent (2%) of the respondents indicated religion as a contributing factor to domestic violence (licence to beat wife and claim religious right or duty to do so).

*Types of abuse experienced by domestic violence victims*

- **Physical abuse:** Sixty five percent (65%) of the respondents experienced physical abuse which included hitting with fists, kicking and slapping.
- **Economic abuse:** Twenty three percent (23%) of the respondents indicated that money caused strained relationships between partners. In most cases wives were made to work and hand their earnings over to their partners.
- **Emotional abuse:** Ten percent (10%) of the respondents indicated that they suffered emotional abuse which included being lied to, being cheated and having affairs with girlfriends.
- **Sexual abuse:** Two percent (2%) of the respondents suffered sexual abuse by being raped, sexually assaulted or forced to commit indecent acts.

*Handling victims of domestic violence by the police (multiple responses)*

Eighty three percent (83%) of the respondents are not satisfied with the way in which the police enforce the Domestic Violence Act. Seventy five percent (75%) of the respondents feel that victims of domestic violence are not all treated in a consistent manner. Sixty seven percent (67%) of the respondents have experienced bad attitude by the police. Fifty four percent (54%) of the respondents believed that the police do not effectively implement the Domestic Violence Act in their areas. Fifty two percent (52%) of the respondents consider female police officials to be just as bad as their male counterparts.
Policing domestic violence in South Africa

Recommendations

• **Putting Domestic Violence into context:** In order to provide a more responsive and effective approach to domestic violence, it is essential that all police officers involved in the mediation, facilitation and the investigation of domestic violence have a clear understanding of the impact and consequences of the failure to respond appropriately (Richards, Letchford & Stratton, 2008).

• **Changing the policing of domestic violence:** Research in the USA by Daniel J. Bell argued that police response based on the use of arrest was the most appropriate in cases of domestic violence (Sheptycki, 1993).

• **Domestic violence units:** Domestic Violence units established in London proved very successful. These units provided consistent service to victims of domestic violence. There was an increased involvement of police officials and other social services (Sheptycki, 1993).

• **Content analysis of case dockets regarding Domestic Violence:** Content analysis of cases (dockets) regarding domestic violence will tell the reader about the nature and extent of domestic violence. It will also provide the reader with the trends and frequencies of domestic violence in a specific policing area (Sheptycki, 1993).

• **Re-situating the discourse:** This innovation looks at the production of knowledge about the policing of domestic violence and the part it plays in the efforts to reform the policing of interpersonal violence (Sheptycki, 1993).

• **An intelligence led approach:** In the United Kingdom the National Intelligence Model (NIM) is being promoted as a tool for improving the collection and use of intelligence in domestic violence cases. Analysis is crucial for intelligence led policing of domestic violence (Richards et al., 2008).

• **Effective investigation:** In theory, domestic violence should be one of the easiest crimes to investigate as both the victim and the offender are known to each other and the scene of the crime is easily identifiable. This is not the case in practice (Richards et al., 2008).

• **Risk Management:** Risk management in domestic violence cases should include a multi agency approach which is based on appropriate information-sharing and the development and implementation of interventions and action plans to manage the risks (Richards et al., 2008).

• **Information sharing:** To hold offenders accountable, identify and manage risks, protect victims and their families, the police will have to gather and share information within the service, with other agencies and the general public (Richards et al., 2008).

Conclusion

Police response to allegations of domestic violence is said to be insensitive, ineffective and unprofessional. Complaints against the police on their failure to act according to the
Domestic Violence Act are on the increase. This may have resulted in the under reporting of incidents of domestic violence.

References


Victimization of parolees and its effects on prisoner wellbeing

S. T. Janetius & T. C. Mini

Introduction

The International Centre for Prison Studies estimates that more than 10.1 million people are held in penal institutions throughout the world and in India, the NCRB estimates 3,84,753 prisoners which accounts for 32 per 100,000 (Walmsley, 2011). Life inside the prison is stressful and a lot of psychological problems are observed among prisoners (Tosh, 1982). The regular episode of suicides inside the prison substantiates the fact that prison life is very traumatic and stressful (Bartol & Bartol, 1994). A temporary relief from this stressful situation for many long-term prisoners is parole, which permits them to meet the family, dear and near ones.

Parole is a legal sanction that allows a long-term prisoner to leave the penal complex for a short period of days, on the condition that they report daily in the nearby police station during the discharged period and return back to the confinement at the end of the period. The practice of releasing prisoners on parole has Anglo-French origins (Jayakumar, 2011) and the rules and regulations vary from country to country. In India the interpretations of prison rules regarding parole, leave and suspension of sentence are often unclear and disputed in the courts (Basha, 2011; Sangameswaran, 2011). As per the current practice in Tamil Nadu prisons, a convicted lifetime prisoner, after certain years of imprisonment can enjoy a leave of 15 days in a year at four spells (three spells of three days each and one six day spell) in specific emergency situations. However, the parole granted to prisoners in India is misused by many as a convenient time to get out of prison for a limited period, or escape route for absconding (Thakur, 2009).

Although the parole seems to be a relief and relaxing to the prisoners, this period could be a time of trauma and pain as they are victimized on various counts. This study explores the perception of prisoners before they leave for parole and the actual experience of victimization from various sources and forms and, the consequences of victimization in the wellbeing and future life orientation of prisoners.

Methodology

This qualitative study used a mixture of survey and focus group discussion methods to collect data from 48 male prisoners aged 38 to 62 who were in parole more than one time. Seven focus group discussions in the months of August-September 2012 (each group consists of six to eight prisoners) which had self directed discussions. A theoretical editing analysis protocol was used to analyze the data (Strauss & Corbin, 1990). From the data, meaningful segments and patterns were derived. The themes and categories were re-examined jointly by the authors and results were categorized.
Results and Discussion

The study results show that 80% of parolee’s perception and actual experience varied to a greater extent especially in their first visit. The prime perception of parolee before they leave is one of fear to face the people outside. But surprisingly the major problem they faced was going through the process of getting permission. The process has become harder and under the mental agony, the prisoners regret for applying parole. This rigid procedure is followed because of the widespread misuse of parole and absconding of parolees.

As against the perception of consolation from relatives, sympathy from family members and support from friends, what they have experienced is aversion, avoidance and neglect. Majority of the prisoners underwent an unceremonious welcome ritual at home in which they were not allowed to enter the house because of impurity; they were asked to take a shower outside the house, and allowed to enter wearing a new dress. This unceremonious welcome was humiliating. Only a very few families accept them and the relatives ignore them. In some cases they are abused by their own family members and their wealth is swindled and, wife and children neglected. None of the parolees faced any threatening situations from the victims of their crime, although the parolees feared in the first few outings.

Mr. K. lamented about his experience with close friends in the following way: “I was on a three day leave and on the first day afternoon I went to the local temple grounds where I used to play cards under a big neem tree with my friends. I saw from afar, my old buddies smoking and chatting. I often daydreamed this scenario while in the prison and expected my friends to be compassionate and give some moral support to ventilate my emotional stress. I approached them with a big smile and I was dumbfounded to see them running literally hither and thither as if I went on a killing spree”.

Mr. R. who was a party leader before his imprisonment narrated the ordeal in the street by the village people. “I was on my sixth visit to my home and on the second day went to a nearby meat shop. While walking on the street I saw two men on motorcycle, having a verbal fight over who had to give way to the other. A small group of bystanders gathered there as spectators. As I saw the verbal abuse between the two and no one took any initiative to put an end to the fight, went to the hostile people to stop their street fight. One of the fighting men recognized me, abused loudly saying that he did not need any advice from a convicted criminal. At once the fight came to an end and the crowd gathered dispersed instantly, while a few more people went on cursing me loudly’.

Few prisoners narrated that on seeing them in the street ladies would run away abruptly halting the chores. As against their perception, the police officers in the police station where they have to give attendance everyday were extremely polite and treated them kindly.

The victimization has made them avoidant in their interpersonal outlook and a sense of guilt is created in their personality. Some of them feel that they have become mature in their thinking and have adapted a new worldview and philosophy of life.
Table 1 - Showing the perception, real experience of victimizations of parolees and prisoner wellbeing

<table>
<thead>
<tr>
<th>Perception before parole</th>
<th>Actual experience</th>
<th>Sources of victimization</th>
<th>Forms of victimization</th>
<th>Future life orientation and wellbeing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prison officials will be friendly in facilitating the parole</td>
<td>Prison officials inhumane attitude towards parole</td>
<td><strong>Prison officials</strong></td>
<td>Verbal Psychological</td>
<td>Avoid native place during parole</td>
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<td>Avoid public appearance</td>
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<td>Guilt &amp; Shame</td>
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<td>Aggressive and indifferent</td>
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<td>Avoid public disputes, opinion sharing in common</td>
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<td>Depressed and think of not to take parole</td>
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<td></td>
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<td>New attitude and worldview towards friendship, life</td>
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<td></td>
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<td></td>
<td></td>
<td>More mature in thinking</td>
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<tr>
<td>Fear of police in the local police station where they will report daily</td>
<td>Policemen are friendly</td>
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<td></td>
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</tbody>
</table>

307
<table>
<thead>
<tr>
<th>Acceptance and sympathy from family members</th>
<th>Consider them untouchable and impure Some family members sympathize</th>
<th><strong>Family members</strong></th>
<th>Emotional Psychological Ritualistic Financial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relatives will be considerate</td>
<td>Show aversion Isolate</td>
<td><strong>Relatives</strong></td>
<td>Emotional Psychological</td>
</tr>
<tr>
<td>Friends and Associates will help to relax and reduce the mental agony and trauma</td>
<td>Avoid them or talk for name sake No relaxation but only pain of non-attending</td>
<td><strong>Friends</strong></td>
<td>Emotional Psychological</td>
</tr>
<tr>
<td>Neighbours will be friendly</td>
<td>Ignore, gossip and condemn, labeling, minimizing</td>
<td><strong>Neighbours and village people Ladies</strong></td>
<td>Verbal Psychological Psychological</td>
</tr>
<tr>
<td>Fear of enemies</td>
<td>None</td>
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</tbody>
</table>

**Conclusion and Recommendations**

The study results bring out the various victimizations that the parolees face. The prisoners who expect some relief while in parole become victims wherever they go; whether they are friends, family members or neighbours. It is recommended that the findings of this study could be used by NGOs and other concerned bodies to create awareness in the midst of public on the consequences of victimizing humans on the basis of past crimes. Further, a variety of preparations and orientation services to the incarcerated individuals could be planned before release, thereby reducing the impact of stereotyped victimizations.
Victimization of Parolees

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Revisiting the constitutionality of the crime of adultery

Joel Jose

Introduction

An offence of adultery under Section 497 of the Indian Penal Code (IPC) is committed by a male when he has consensual sexual intercourse with a woman whom he knows to be married but without the consent or connivance of her husband.\(^{239}\) The Criminal Procedure Code postulates that the husband of the woman is the only person who is deemed to be the person aggrieved by an offence of adultery.\(^{240}\) However, a husband can only prosecute his wife’s paramour and cannot prosecute his wife as principal or abettor.\(^{241}\) It may be noted that a wife cannot prosecute her husband’s paramour and consequently a husband continues to enjoy unrestrained sexual freedom despite the marriage.\(^{242}\) This article argues that this constitutes an unconstitutional distinction between the two individuals bound in matrimony based only on their sex as the wife has every right to be aggrieved by an offence of adultery as much as her husband.

Wives and Adultery: A raw deal

The constitutionality of Section 497 has been upheld by the Supreme Court in the past\(^{243}\) but the prevailing socio-economic realities warrant that the issue be considered afresh. The issue came up recently before the Hon’ble Supreme Court in the case of \textit{W. Kalyani}, wherein it was acknowledged that the provision is currently under criticism from certain quarters for showing a strong gender bias for it makes the position of a married woman almost as a property of her husband.\(^{244}\) The Committee on Reforms of the Criminal Justice System chaired by Justice Malimath recommended that Section 497 I.P.C should be suitably amended to the effect that “whosoever has sexual intercourse with the spouse of any other person is guilty of adultery…”\(^{245}\) The Ministry of Home affairs has also made a detailed presentation on decriminalizing adultery before the Members of

\(^{239}\) S.497,IPC(Act.45 of 1860)
\(^{240}\) S.198(2),Cr.P.C.(Act.2 of 1973)
\(^{241}\) V.Revathi v.Union of India, 1988Cr.LJ921; AIR1988SC835; Ratanlal & Dhirajlal, \textit{The Indian Penal Code}, p.2305 (29thEd.)
\(^{242}\) \textit{W.Kalyani v. State tr.Inspector of Police &Anr.}(2012)1 SCC358
\(^{243}\) Ratanlal & Dhirajlal, \textit{The Indian Penal Code}, p.2305 (29thEd.)
\(^{244}\) \textit{Infra},Heading-4
\(^{245}\) \textit{W.Kalyani v. State tr.Inspector of Police &Ors.}(2012)1SCC358,para.10
\(^{246}\) Committee on Reforms of the Criminal Justice System (\textit{Malimath Committee Report}), (dated March, 2003) submitted to the Ministry of Home Affairs. \textit{Available at} http://indialawyers.files.wordpress.com/2009/12/criminal_justice_system.pdf(last visited on 13.06.2012)
Parliament. The National Commission for Women also recommended a suitable amendment so as to enable the wife to file a complaint against her husband’s paramour.

A substantial amount of the debate around the constitutionality of Section 497 has revolved around the dubious argument that since the wife cannot be prosecuted along with her paramour as an abettor because of an exemption in Section 497, it is an ‘unequal and unconstitutional’ favour to women. The argument is a non-starter in as much as neither the wife nor the husband can be prosecuted by each other as an abettor and accordingly, both the parties to the matrimonial tie are treated at par. Although this exemption clause does not cause damage to the basic idea of the wife being the property of the husband, but if the same were to be removed it would merely restate the idea and add a new dimension to it by making not only the trespasser but the property also liable to punishment.

**Adultery-An antiquated crime**

Although the current situation of women in our country leaves a lot to be desired, it has come a long way from the dark days of British occupation. Lord Macaulay noted the pathetic condition of women in 1837 and accordingly refused ‘to make laws for punishing the inconstancy of the wife while the law admits the privilege of the husband to fill his zenana with women’. However, the Law commissioners, in their second report on the draft Penal Code, included the offence of adultery in the Code but exempted a wife from adultery while relying on Macaulay’s remarks with regard to disadvantaged women. The raison d’être behind the offence of adultery in its present form has been criticized by various persons from time to time and having been already noted hereinabove are not being repeated.

In addition to the above, it may be that with the recent decriminalization of homosexual relations, a bisexual/homosexual wife can now freely enter into extramarital...
sexual relations with other women.\textsuperscript{257} It can be taken as a given that any reasonable person would hold that if heterosexual relations outside the marriage are reprehensible then homosexual relations outside a heterosexual marriage are equally reprehensible, if not more.

Revisiting the Constitutionality of S.497

Article 14 of the constitution mandates that equals should not be treated unlike and unlikes should not be treated alike\textsuperscript{258}. Accordingly, to apply the principle of equality in a practical manner, the courts have evolved the principle that if the law in question is based on a rational classification it is not regarded as discriminatory.\textsuperscript{259} Section 497 makes an artificial and unconstitutional distinction/classification between the two individuals bound in matrimony. While the husband can prosecute his wife’s paramour, a wife cannot prosecute her husband’s paramour. If seen from the point of view of the wife’s male paramour (accused) and the recent decriminalization of homosexuality\textsuperscript{260}, we can observe yet another artificial and unreasonable classification being made on the ground of sex in as much as a paramour/accused is liable to prosecution only if he is male and not when the paramour is female.

\textit{Yusuf Abdul v. State of Bombay}

The judgment rendered by the Hon’ble Supreme court in the year 1954\textsuperscript{261} upholds the constitutionality of Section 497. The judgment examines the constitutionality of Section 497 based on a limited and feeble challenge of the accused on the ground that the wife being protected from punishment as an abettor vides Section 497 itself makes the section ultra vires of Article 14 of the constitution.\textsuperscript{262} It has already been clarified hereinabove that not punishing the delinquent wife for abetment has not been agitated as a ground to challenge the constitutionality of Section 497 in this article.\textsuperscript{263} The grounds that have been agitated as a challenge to the constitutionality to Section 497 in this article have not been taken up before the Hon’ble Supreme Court in this case and the question needs to be considered afresh.

\begin{itemize}
\item \textsuperscript{258} Gauri Shankar v.Union of India,AIR1995SC55
\item \textsuperscript{260} Ram Prakash v.State of Haryana,AIR1986SC859;Deepak Sibal v.Punjab University,AIR1989SC903
\item \textsuperscript{261} AIR1954SC321
\item \textsuperscript{262} MANU/SC/0124/1954,para.3,4
\item \textsuperscript{263} Supra,Heading-2
\end{itemize}
Revisiting the constitutionality of the crime of adultery

*Sowmithri Vishnu v. Union of India*

The case delves upon the constitutionality of Section 497 to a large extent and ultimately comes to the conclusion that the section is constitutional. However, the observations are merely *obiter dicta* and they have no legal binding value as *ratio decidendi*. While rejecting the right of an aggrieved wife to prosecute her husband's paramour, the Hon’ble Supreme Court suo moto invented a rationale behind Section 497 while declaring that ‘it is commonly accepted that it is the man who is the seducer and not the woman’. This was not even a consideration while Macaulay or the Law Commissioners enacted the offence in its present form. The judgment could even be turned on its head if it had been held that ‘it is the woman who is the seducer and not the man’! It may be said that the views expressed by the Hon’ble Court find resonance with the egocentric nature of a patriarchal society that celebrates the charms of the male and considers women as inane enough to be appropriated by them at will.

**Conclusion**

Contrary to popular belief, the antiquated crime of adultery under Section 497 of the Indian Penal Code is positively skewed against women. While the husband can prosecute his wife’s paramour, a wife is not allowed to prosecute one of her husband. The offence has also become otiose in view of the recent decriminalization of homosexual relations which implies that a wife’s homosexual extramarital escapades are legal but the heterosexual ones remain illegal. Time is now ripe to either set the record straight between the sexes or scrap the archaic crime of adultery all together.

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*Sowmithri Vishnu v. Union of India* 264

264 MANU/SC/0199/1985; AIR 1985 SC 1618
Criminal situations in Bangkok and the social control theories

Jomdet Trimek

There are continuous changes in every society to meet people’s need such as need for cultural improvement, need for natural resources, need for development of knowledge and technology. Rapid, slow, organized, or disorganized changes depend on several factors such as education of people in the society, culture of people in the society, changes of natural resources, or discovery of new inventions which will accelerate or decelerate social changes.

The social changes are always mentioned in two aspects: social progress and social deterioration. According to Evolutionary Theorists, social changes are systematic changes with more development. The simple society is changed as more complicated one with continuous progress leading to the perfect society. According to Conflict Theorists, social changes cause negative impact. And social behaviors can be understood through conflicts among various groups and various people caused by competition to own rare and valuable resources. Various conflicts of social groups will lead to social deterioration.

Positive or negative social changes impact on people’s way of life such as changes in food, dressing, relationship of people in the society, building dwellings. The social changes cause positive and negative impacts. As for positive impact, discovery of new inventions such as road, electricity, planes, computer brings about better changes and development. In the meantime, social changes are able to negatively impact on the society. For example, rapid progress on technology and industry causes difference between urban society and rural society and a lot of social problems such as social inequality, poverty, unemployment, and crime.

Bangkok, a capital of Thailand, is a city in the world which is able to clearly indicate rapid change from rural society to urban society. People in various provinces have continuously migrated to work in Bangkok for several years, causing changes in the society of people in Bangkok. A lot of problems occur such as crowded community, cultural conflict, mistrust, and fear of crimes. The problem which specifically interested the researcher is the problem of street crime which means individual-to-individual criminal offence in the society such as robbery, rape, physical abuse, or murder.

According to the Royal Thai Police, there are five criminal categories as follows;
1. Serious crime
2. Physical and sexual assault cases
3. Property crime cases
4. Interesting cases
5. The cases with the government as a victim

*Criminal statistics are collected in various regions as follows;*
- As for the north, there are 9 provinces.
- As for the northeast, there are 20 provinces.
- As for the east, there are 7 provinces.
- As for the west, there are 5 provinces.
- As for the south, there are 14 provinces.
- As for the central region, there are 21 provinces and a special administrative zone which is Bangkok Metropolis.

According to The Royal Thai Police's statistics of criminal cases in Bangkok compared with other regions during 2009, there were 18,214 reports on property crime in Bangkok exceeding other regions 2-3 folds. In the meantime, there were only 5,000 reports on property crime per region. According to the study of number of three-year criminal cases in Bangkok compared with number of criminal cases throughout the country (2008-2010), the researcher found that there were sexual and physical offences in Bangkok by 1/6 of number of crimes throughout the country. And there were offences on property in Bangkok by 1/3 of number of offences on property occurring in Thailand. Those problems are caused by several factors as follows; as there is high competition in Bangkok which is a capital of the country, people have considerable conflicts. A lot of people living in Bangkok have different occupations, cultures, and traditions and come from different places so each social group is not able to easily unite when compared with other regions.

Due to importance of abovementioned problems, the researcher did documentary research by comparing the Thai Royal Police's statistics of criminal cases occurring throughout Thailand during 2008-2010 with statistics of criminal case in Bangkok. After that, the research explained the mentioned criminal situations applying Criminological Theories of Social Control Theories.

According to Social Control theorists, people do not commit offence due to mechanism consisting of various social institutes such as family, school, religion which prevents people from committing offences. Therefore, Social Control Theories study criminal problem-solving guidelines focusing on social relationship capable to prevent people from committing criminal offences rather than factors or influence of government mechanism. These Social Control Theorists do not explain perspective of law enforcement or justice process but consider awareness of public benefits which is an important element bringing peace to the society.

According to analysis results, the problems are caused by the followings; as Bangkok is a big city, people do not have mutual relationship and there is high unemployment. People in Bangkok do not have any social regulations to make them be good people and prevent them from committing any criminal offences. As Bangkok rapidly becomes an urban society, people living in Bangkok have less belief and less good traditions, weakening social norm and making these people tend to increasingly violate social
regulations and commit criminal offences. As for the family problem of people in Bangkok where parents have to work outside to have enough incomes, children are less controlled by their family so they tend to increasingly commit offences in the future.

As for problem-solving guidelines, the researcher had proposed Community Relations Approach linking with Social Control Theories. The Community Relations Approach aims to solve criminal problems by creating interpersonal relationship to enable community members to know each other and mutually help keep a close watch on crimes. Moreover, community members are encouraged to participate in preventing themselves from facing crimes on their body and property. However, police’s roles related to criminal problems are not ignored. It was suggested that local police should adjust their roles according to Community Relations Approach. Police have to plan, support, and give advice on criminal prevention to the community. Police under this approach are not the main responsible for criminal prevention.

Use of Social Control Theories to explain criminal situations in Bangkok including criminal problem-solving guidelines indicates that problem situations and problem-solving guidelines completely link with Control Theories. Social Control Theories can completely explain causes of criminal problems in Bangkok and can be applied for solving criminal problems in Bangkok. All problem-solving guidelines proposed by the researcher aim to solve criminal problems, especially Street Crime in Bangkok and enable people with authority or people concerned to determine policy to solve the mentioned problems.
Arguments for decriminalizing the attempt to suicide in India

Kshitiz Karjee

Introduction

“Death is our friend, the trust of friends. He delivers us from agony. I do not want to die of a creeping paralysis of my faculties – a defeated man.”\(^{265}\). Since the word ‘suicide’ has not been defined in the Indian Penal Code, 1860 (“IPC”), there is a need to look at the dictionary meaning of the word. The 7\(^{th}\) edition of the Oxford Advanced Learner’s Dictionary defines suicide at page 1480 as “the act of killing yourself deliberately”.

While dealing with the definition and scope of suicide, the Supreme Court in M. Mohan v. State\(^{266}\) stated that though the word ‘suicide’ in itself is nowhere defined in IPC, its meaning and import is well known. “Sui” means “self” and “cide” means “killing”, thus implying an act of self-killing. In short, a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.

In India, IPC not only criminalizes the abetment to commit suicide\(^{267}\), but also makes the attempt to commit suicide an offence under Section 309 which reads as follows:

> “Attempt to commit suicide. – Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.”

Growth in Suicide Rate over the Years

As per the latest report\(^{268}\) of the National Crime Records Bureau (“NCRB”), during the year 2011 almost 16 suicides took place every hour in the country i.e. 1, 35,585 lives were lost due to suicides. This translates to 369 suicides per day in 2011. The table below records the total number of suicides since the year 2001. It can be clearly seen that the number has gone up with each passing year. Though it may be argued that the population is also increasing day by day, even then the growth rate of suicide is almost at par with the population growth rate.


\(^{266}\) 2011 (3) SCC 626.

\(^{267}\) Section 306, IPC.

Year | Total number of suicides
---|---
2011 | 1,35,585
2010 | 1,34,599
2009 | 1,27,151
2008 | 1,25,017
2007 | 1,22,637
2006 | 1,18,112
2005 | 1,13,914
2004 | 1,13,697
2003 | 1,10,851
2002 | 1,10,417
2001 | 1,08,506

Judicial Response to Section 309, IPC

In *P. Rathinam v. Union of India*²⁶⁹, a Division Bench of the Supreme Court held that Section 309, IPC violated Article 21²⁷⁰ of the Constitution of India, and hence declared it to be void. However, a Constitutional Bench of five judges of the Supreme Court in *Gian Kaur v. State of Punjab*²⁷¹ overruled the law laid down in *P. Rathinam*²⁷² and held that the right to life guaranteed as a fundamental right under Article 21 of the Constitution does not entail within itself a right to die. Further, it was held that the right to life was a natural right but suicide was an unnatural termination hence inconsistent with the right to life.

However, at this point, it is highly pertinent to mention that in *Gian Kaur*²⁷³, the Supreme Court did not go into the question as to whether or not Section 309 deserves a place in the IPC; it merely decided on the constitutional validity of the section.

Recommendations of the Law Commission of India

In its 42nd Report on the Indian Penal Code in June 1971, the Law Commission of India (“LCI”) recommended for the repealing of Section 309, IPC by terming the punishment for attempt to commit suicide as monstrous and degradation of human life. Pursuant to this recommendation, the Indian Penal Code (Amendment) Bill, 1972 was introduced in the Rajya Sabha on December 11, 1972, Clause 126 whereof provided for the omission of Section 309, IPC. However, even though the Rajya Sabha passed the Bill, the Bill could not get through Lok Sabha as the same was dissolved in 1979.

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²⁶⁹ 1994 Cri.LJ 1605 (SC).
²⁷⁰ Article 21 of the Constitution of India reads as follows: “21. Protection of life and personal liberty.– No person shall be deprived of his life or personal liberty except according to procedure established by law.”
²⁷¹ AIR 1996 SC 946.
²⁷² Supra note 5.
²⁷³ Supra note 7.
Arguments for decriminalizing the attempt to suicide in India's

Shockingly, retracting from its earlier recommendation in the 42nd Report, the LCI in its 156th Report submitted in August 1997 recommended for continuing with Section 309, IPC as an offence, in line with the judgment of the Supreme Court in Gian Kaur.274

However, in a comprehensive report focused solely on the attempt to commit suicide, the 18th LCI in its 210th Report submitted in October 2008, titled “Humanization and Decriminalization of Attempt to Suicide” has very strongly recommended for decriminalizing the attempt to commit suicide and thereby omit Section 309 from the IPC.

Conclusion

To treat attempt to suicide as an offence is both irrational and insensate since it acts as an added punishment on a person who has already suffered pain and anguish in his failure to successfully commit suicide. It is only certain amount of suffering that forces a person to attempt to commit suicide; no person who is in perfect state of mind would consider committing suicide.

Section 309, IPC also acts as a stumbling block in the prevention of suicides and improving the access of medical care to those who have unsuccessfully attempted to commit suicide. The law needs to take into account the mental trauma which forces a person to attempt a bid at suicide and thus seek to rectify such mental trauma rather than inflict more traumas by punishing a person who is already suffering so much so that he had decided to even take the most extreme step of killing himself.

The law should be amended to decriminalize the attempt to commit suicide. At the same time, specialized counseling and rehabilitation centres need to be made operational to help curb the suicidal tendencies among people.

274 Id.
Death, Disappearance and Deprivation:
A Human Rights Perspective

M. K. Sharafudheen

Introduction
This paper is going to facilitate various circumstances of death, disappearance and deprivation which have become burning national issues especially in tribal areas and districts with minority concentration or provinces where sub-national aspirations are strong.

Framed, Damned, Acquitted
This is not a charge of bleeding heart liberals and human rights aspects alone, but a fact corroborated by judgment after judgment of different courts. The incidences which has become a behaviour of law into itself, a marauding force, ‘encountering’ and detaining ‘suspects’ almost at will.

An RTI (Right to Information) enquiry has revealed that Delhi Police Special Cell’s conviction rate is a paltry 30 per cent (Nearly 70 per cent of the accused has charge-sheeted over the past five years were acquitted for want of credible evidence. Also between 1992 and 2012 a large number of those arrested were acquitted of all charges by the courts. The evidence that the report presents shows clearly that the acquittals were not simply for want of evidence. In India, fabrication of evidence is a serious offence under the Indian Penal Code (Section 195 IPC). Delhi Additional Sessions Judge has ordered a CBI probe against the Special Cell, as well as directing the filing of FIR and the initiation of departmental enquiries against them.

Encounter death
Here encounter death is generally defined as “The action intended to safeguard the laws of the land in which law enforcement agencies deliver summary justice to suspected “criminals” for the safety of the people at large.

As per the available Central Government records Uttar Pradesh stands first in encounter deaths. Near 1000 civilian deaths took place in the state like Assam, Delhi, Gujarat, Haryana, Karnataka, Maharashtra, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu, Uttarakhand and West Bengal etc. Encounter deaths are also meant to create a sense of security among the people. However it also has a negative impact on people’s faith in law and the civil society groups question the authenticity of the incidences. In the Dhaula Kuan - New Delhi fake encounter case, the city session Court was of the opinion that, “there cannot be any more serious or grave crime than a police officer framing an
innocent citizen in a false criminal case. Such a tendency among the officers should not be viewed or dealt with lightly but needs to be curbed with a stern hand.”

Except a certain nominal case, not a single officer in any of the operations has suffered criminal proceedings for the framing of innocents. Even after the National Human Rights Commission (NHRC) indicated an officer who will surface regularly in these pages – for staged an encounter in Sonia Vihar–New Delhi in 2006, he continues to head probes as crucial and sensitive attack on the Israeli diplomat in Delhi. Here the interesting reality is that the public and independent witnesses are rarely joined in the actual operation, even when the accused are apprehended in public places with people present. Private vehicles are used in the operation doing away with the need of logs thereby making it difficult to verify any such operation did really take place.

**Anti-terror laws and its prospect of misuse**

“The real test to the adherence of human rights principles by any state happens at the time of terror or emergency, not during the times of normalcy”, Human right is not luxury or privilege but a fundamental right of every Indian citizen. “The anti-terror laws are being widely criticized by civil rights group using against various sections of marginalised communities and religious minorities. Practically The Unlawful Activities Prevention Act, 1967(UAPA) is more restriction than the scrapped Prevention of Terrorism Act, It safeguards against the possible misuse, which used to be there in laws like TADA and POTA, were quietly dropped in the amended UAPA.

**Torture and custody death syndrome**

Torture in India, the latest status says that a total of 14,231 persons i.e. more than four persons per day died in police and judicial custody in India from 2001 to 2010. This includes 1,504 deaths in police custody and 12,727 deaths in judicial custody from 2001-2002 to 2009-2010 as per the cases submitted to the National Human Rights Commission (NHRC).

As per the official report, Maharashtra recorded the highest number of deaths in police custody with 250 deaths; followed by Uttar Pradesh (174), Gujarat (134) and Andhra Pradesh (109). Members of the Parliament who had earlier raised this specific issue before the parliament. A large majority of these deaths are a direct consequence of torture in custody. These deaths reflect only a fraction of the problem with torture and custodial deaths in India as not all the cases of deaths in police and prison custody are reported to the NHRC. Further, the NHRC does not have jurisdiction over the armed forces and the NHRC also does not record statistics of torture not resulting into death.

Denial of justice to adivasis (scheduled tribes) continues even today despite the official policies and declarations to protect them. It also noted that the “adivasis are handicapped by poverty, illiteracy, economic dependence and ignorance of the law. Innocence among the tribal groups are regularly victimised by the eviction and extermination campaign of central and eastern part of India in the name of ‘Operation Green Hunt’.
On the night of 28 June 2012 when the adivasi peasants of Sarkeguda, Kottaguda and Rajpenta (Bijapur district of south Chhattisgarh) gathered to plan the performance of the traditional festival Beej Pandum (seed festival), they were surrounded by hundreds of Police and Para-military forces. The armed forces resorted to indiscriminate firing killing 17 adivasis (including 6 minors) were injured seriously.

**Custodial Rape**

Custodial rape remains one of the worst forms of torture perpetrated against women by law enforcement personnel. Number of custodial rapes of women has take place at regular intervals. The NHRC recorded 39 cases of rape from judicial and police custody from 2006 to 28 February 2010. This situation is reinstating the women officers’ role in law order troubled regions. As per the law women officers only have the right to deal with the women prisoners during their official duty hours for cross-examination.

**Jail to community re-entry**

A Study of the Socio Economic Profile and Rehabilitation Needs of a particular Community in Prisons in Maharashtra, 2011, by Vijay Raghavan and Roshni Nair of the Centre for Criminology and Justice School of Social Work, Tata Institute of Social Sciences (TISS), states that 96 per cent of the respondents have not been held under preventive detention charges thus indicating that they are not viewed as a threat to law and order.

Tribal communities especially adivasi people are languishing in different jails due to their poor intervention. They are unaware of the bail procedure. Result! The ‘children’s of the soil’ are feeble to be a hand to their blood relatives. Acquittals were by no means the end of their tragedy for they returned from their experience to a different world: Businesses were destroyed; family members were broken having suffered the humiliation and trauma of being associated with “terrorists”; children had to abandon their studies and the normality of everyday life, while parents passed away in grief and despair. The prosecution had virtually no leg to stand on; hence the victim got drawn out long years. More over except a few national media, both print and visual are tampering the reality.

It shows innocents are being targeted by the authorities because of the political compulsions or a desire to keep people in fear and the resultant passivity. The prison statistics of the sub continental states reflect not only poverty of the people behind the bars but also their under-representation and demonization. Correctional authorities fail in their mission to return the prisoners back to the community for the same reason.

**Conclusion**

Human rights and police function is nothing but balancing between liberties of individual. States responsibility to enforce law and order administration should be in a coin-coin situation to respect human rights. We can anticipate that this conference will undoubtedly generate a significant initiative on victim’s perception
Recommendation

- Government of India has to enact the Prevention of Torture Bill, 2010 drafted by the Parliamentary Select Committee, without any dilution into a law.
- All the deterrent laws which violate the basic rights of the citizens should be repealed.
- Officers should be accountable to the society and judiciary.
- The redress of grievances is to be given to the acquitted victims without any delay. In addition they should be repatriated with the help of govt schemes with the help of NGO’s or the concerned state itself to sustain the victim’s livelihood.
- Step up the officer’s co-operation and dispassionate involvement with society to maintain peaceful environment.
- Press council of India should regulate Media agencies, which are spreading lie without any authenticity.
Forensic Investigation of Sexual Crime against Women and Children in India

Mukesh Kumar Thakar

Introduction

Sexual offences are the most heinous crimes against women and children and have shown a noticeable increase over the past few decades. This crime is spreading very fast in Indian society too; the women and the children remain the most vulnerable group. Despite its being common, still it remains an underreported crime, since many victims cannot or do not press charges against their attackers.

According to one report by American Medical Association, sexual crimes, and rape in particular was considered to be the most under-reported violent crime. The most common reasons given by victims for not reporting rapes are the belief that it is a personal or private matter, and that they fear reprisal from the assailant. Another government report in England (2007) estimates that 75 to 95 percent of rape crimes are never reported to the police. Contrary to the above reports there are FBI reports consistently putting the number of "unfounded" rape accusations around 8%. However, "unfounded" may not be synonymous with "false" allegation. The largest study, published in 2005, was based on around 2500 sexual assault cases and found 3% of false reports.

Among the sexual assaults Rape is one of the major heinous crime, which desperately in need of stringent laws to punish the perpetrators of this crime. However, the Judiciary is actively laying down guidelines and regulations in certain cases to award compensation to the victims (albeit hardly any comfort and consolation to the victim, after such a disastrous crime being committed) from imprisonment to awarding death penalties to offenders.

Article 21, of the Indian Constitution, which ensures to every individual, a right to life and personal liberty, has been subject to wide interpretation. The word ‘life’ has been expanded enough to include the modesty and honour of a woman within its gamut. Thus, any act in contravention of this implication is to be met with penal consequences.

Laws Relating to Offence of Rape in India

Section - 375 of the Indian Penal Code, 1860, defines rape by a man who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: Against her will, without her consent, With her consent obtained in fear of death or of hurt any person in whom she is interested, with her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married, with her consent, unsoundness of mind or
intoxication or the administration by him personally or through another of any stupefying
or unwholesome substance, she is unable to understand the nature and consequences of
that to which she gives consent or with or without her consent, when she is under sixteen
years of age.

This section also explains this offence and provides exceptions to rape. However the
anal or oral penetration and penetration with objects do not fall within the ambit of
section 375 IPC.

Section 376 of IPC is related to the punishment for rape. The punishment can go up
to Life imprisonment along with fine. It also prescribes punishment for custodial rape. The
law concerning this offence was amended by Criminal Law Amendment Act, 1983.

Section 377 of the Code defines and punishes the Unnatural offences.

Section 228 IPC prohibits disclosure of the identity of the Rape victim. Under
section 327 of CrPC, the inquiry into and trial of Rape or an offence under section 376
IPC shall be conducted in Camera and it is not lawful for any person to print or publish
any matter in relation to such proceedings except with the permission of Court.

Section 114 Indian Evidence Act lays down that in a prosecution for Rape under
section 376 IPC where intercourse by the accused is proved and the question is whether it
was without the consent of woman alleged to have been raped and she states in her
evidence before the court that she did not consent. This applies to cases of custodial rape
and gang rape.

Present Study

The main thrust of this paper is to understand the phenomenon of sex related offences,
their magnitude and prevalence. Substantial contributions have been made to advance the
state of knowledge for law enforcement agencies, health professionals and criminal justice
system.

In the present study, an attempt has been made to study and analyze the recent data
Collected and published by NCRB to estimates the percentage of sexual offences
happened in different states of India and compared with Punjab. Further attempt has also
been made to suggest effective protocols for the Forensic Examination of such victims,
crime scene and suspects. Such information has potential to impact substantially on the
effectiveness of the investigative interview, the recognition, collection and packaging of
forensic evidence, and finally the prosecution of cases.

Punjab data have been collected from the following 19 districts of Punjab and used to
calculate the number and percentage of sexual offences like rape, sodomy and bestiality
among the different age groups.

It is evident from the results of the NCRB, 2011 among the 35 states of India Madhya Pradesh state (15.5%) has reported maximum sexual crime (Rape) cases which is followed by Andhra Pradesh (11.3%) while Sikkim state has minimum number of reported cases related to sexual crime. Among the Union Territories, Delhi topped the list of reported sexual crime (Rape). If still we talk about the major 88 cities of India, NCRB data shows that the Delhi and Mumbai (10.1%) have maximum reported rape cases and surprisingly lowest reported cases in Varanasi (0.1%).

After comparative analysis of Punjab data, it was observed that 353, 373, 354, 368 and 506 sexual offence cases were registered in Punjab during five years. Out of total 1954 cases, 1784 were of rape, 168 of sodomy and remaining 2 of Bestiality. The percentage of rape cases was very high i.e. 91.29% in comparison to sodomy cases i.e. 8.59% whereas occurrence of bestiality cases was insignificant i.e. 0.10% only. It was also observed that girls belonging to age group 11–20 are more vulnerable to rape crime.

Relevance of Physical Evidences

Physical evidences are considered to be the most powerful tool in linking the victim with the suspect and with the scene of crime. In a sexual assault cases, however, the victim’s body is the most important source of physical evidences. A Forensic professional collect the physical evidences in a sexual assault case, both because of the intimate nature of these evidence and because a great deal of special expertise is required to conduct a thorough, meaningful examination. So there is a need to improve skill for careful collection; preservation and analysis of biological evidence which can yield vital information will give ‘impetus’ to the investigation and shorten the process of delivering justice in criminal investigations.

In general, however, evidence collected in the forensic examination can be used for primarily:

- To identify the suspect
- To confirm recent sexual contact
- To establish if any force has been used or there is any threat
- To corroborate the victim’s story

Most of the evidence collected in a forensic examination serves to identify the assailant. For example, DNA evidence collected from blood, saliva, semen, and other biological samples will identify the suspect with a great deal of certainty. In addition, other associative evidence such as hair or fibers can serve to assist in the identification of a suspect.

It will also include questions about the assault, such as:

- When and where the assault took place
- Prior sexual experience
- The type of sexual acts perpetrated by the suspect(s)
- Whether ejaculation occurred or not and where
- Whether a condom or any lubricant was used or not
The position of the victim and suspect at the time of the assault
• Ingestion of any drugs or alcohol within the previous 12 hours
• A description of the type of force used

The forensic examiner must also ask the victim whether she had consensual sex with a partner within the previous 72 hours. If so, many of the same questions will need to be asked about the prior consensual activity.

Types of Forensic Evidence

There is a need to have standardized more effective scientific protocol for the Forensic Examination of both the victim and suspect to collect evidences. The following evidences (including swabs from Suspect’s penis, finger and tongue) are required to be collected with a specific purpose such as identifying the assailant, confirming recent sexual contact, establishing force or threat, and corroborating with the victim’s version:

- DNA evidence
- Hair evidence
- Seminal fluid evidence
- Clothing evidence
- Saliva evidence
- Blood evidence
- Urine analysis
- Non-biological evidence
- Physical injuries are the best proof of force
- Electrophoresis techniques (including DNA) can be applied successfully to distinguish number of Criminals involved in the Gang Rape.

Prominent cases related to Rape

The most important cases, with a brief version of the facts and decisions are herein elaborated:

Dhananjay Chatterjee’s case

This was probably the ONLY case in India, where a death sentence was awarded for rape. On March 5, 1990, Dhananjay Chatterjee brutally rapes Hetal Parekh, a schoolgirl from Kolkata, and was sentenced to Death by the Alipore Sessions Court in 1991. [Only a sessions court has the authority to award a death sentence, all other courts can either affirm or negate it, but NOT award it on its own]. Dhananjay’s challenge of the order in the High Court failed, as his plea was dismissed. The Supreme Court also dismissed his petition, and awarded the Death Penalty, which was later affirmed by the President.

Vishaka v. State of Rajasthan

In Vishaka Vs. State of Rajasthan and others(1997) that for the first time sexual harassment had been explicitly- legally defined as an unwelcome sexual gesture or behavior whether directly or indirectly as

- Sexually coloured remarks
- Physical contact and advances
- Showing pornography
- A demand or request for sexual favours
• Any other unwelcome physical, verbal/non-verbal conduct being sexual in nature. It was in this landmark case that the sexual harassment was identified as a separate illegal behaviour. The critical factor in sexual harassment is the unwelcome nature of the behaviour. Thereby making the impact of such actions on the recipient more relevant rather than intent of the perpetrator- which is to be considered.

Vishaka was a non Governmental organization working for gender equality. The immediate cause for filing the petition was the alleged brutal gang rape of a social worker of Rajasthan. The Supreme Court in the absence of any enacted law (which still remains absent- save the Supreme Court guidelines as stated hereunder) to provide for effective enforcement of basic human rights of gender equality and guarantee against sexual harassment, laid down the guidelines.

Limitations usually associated with the forensic examination include:
• Lack of Proper legislations concerning the scientific techniques
• Some time the examiners are insensitive or improperly trained or non availability of Expert
• Failure of examiners to properly recognize, collect, or preserve the evidences
• Failure of examiners to recognize and document subtle physical findings
• Lack of appropriate equipment to conduct a thorough examination (e.g., colposcope)

Conclusions and Suggestions
• Training and sensitization to police
• Frequent Availability of
  - Forensic Experts
  - Mobile vans
  - Spot testing Kits
• All the cases of rape should be presented in the court of Law should accompanied with Forensic Report
• Judiciary should also attend Short training and orientation courses to get first hand information to the scientific techniques appreciate scientific reports more effectively.
• Clear cut guidelines to police officials to take assistance of Forensic Experts
• Govt. should immediately enact comprehensive legislation Concerning Forensic Science and DNA
• There is a need to amend seriously the laws related to the sexual offences and should provide deterrence.
• Further the time taken by the courts needs to be reduced i.e. Trials should not only under the camera but also on the Fast Track.
Live in relationship in India: The need for a special legislation

S. Murugesan and C. Loganathan

Introduction

Prima societas in ipso conjugioest: proxima in liberis; deinde una domus, communia omnia (Latin Maxim) means the first bond of society is marriage; the next, our children; then the whole family and all things in common. Individuals constitute and influence the society. Relation between individual and society is an intimate and close.

Thomas Hobbes, in his book ‘Leviathan’ stated that society was conceived to protect man from his irresponsible and animal as well as egoistic tendencies.

According to John Locke, in nature all men were born free and equal. Individual precedes society. He has some right even outside society. Individuals made a mutual agreement and created society giving it certain rights and authority.

Society is a web of social relationships. Social relationships include social processes and social interactions. In the words of Jones, ‘Social change is a term used to describe variations or modifications of any aspect of social processes, social patterns, social interactions, or social organization. Whatever apparent alteration in the mutual behavior between individuals takes place is a sign of social change. A living arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage it exists as a social change. The legal definition of live in relationship is “an arrangement of living under which the couples which are unmarried live together to conduct a long-going relationship similarly as in marriage.”

Live in Relationships in India

Live in relationship is a new concept in India. With changing times and attitude of the people these relations have come to the main stream of the society. The number of such relations is increasing gradually. India is a country where Marriage is treated as a sacramental bonding between two people. The concept of husband, wife and family is still given utmost importance in many communities of the country. Live-in relationships in India are not illegal but the society is not accepting and it is considered as immoral.

"When two adult people want to live together what is the offence? Does it amount to an offence? Living together is not an offence," a three judge bench of Hon’ble Supreme court of India comprising Chief Justice K G Balakrishnan, Deepak Verma and B S Chauhan in S. Khushboo vs. Kanniammal & Another. (2010) 5 SCC 600. At present there is no special law in India to deal with the concept of live-in relationships and its legality. But the Indian courts through various decisions, have laid down the law in respect of such relationships in certain aspects.
Existing Legal provisions and consequences of Live in relationship

The law traditionally has been biased in favour of marriage. Public policy supports marriage as necessary to the stability of the family, the basic societal unit. To preserve and encourage marriage, the law reserves many rights and privileges to married persons. Cohabitation carries none of those rights and privileges. The Privy Council in *A Dinohamy v. W L Blahamy* laid down the principle that “Where a man and a woman are proved to have lived together as a man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage”.


The status of the female partner remains vulnerable in a live-in relationship given the fact she is exploited emotionally and physically during the relationship.

Domestic Violence

The Prevention of women from domestic violence Act of 2005 provides protection to the woman if the relationship is “in the nature of marriage”. The Supreme Court in the case of *D. Velusamy v. D. Patchaiammal [(2010) 10 SCC 469]* held that, a ‘relationship in the nature of marriage’ under the Act must also fulfil some basic criteria not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act.

Maintenance

Section 125 Criminal Procedure Code provides for giving maintenance to the wife and some other relatives. The word ‘wife’ has been defined in Explanation (b) to Section 125(1) of the code as; Wife includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

In *Vimala vs. Veeraswamy (1991) 2 SCC 375* the Supreme Court held that Section 125 is meant to achieve a social purpose and the object is to prevent vagrancy and destitution. The term ‘wife' in Section 125 of the Code of Criminal Procedure, includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. Under the law a second wife whose marriage is void on account of the survival of the first marriage is not entitled to maintenance under this provision.

In *Savitaben Somabhat Bhatiya vs. State of Gujarat and others [AIR 2005 SC 1809]*, held that however desirable it may be to take note of the plight of an unfortunate woman, who unwittingly enters into wedlock with a married man, there is no scope to include a woman not lawfully married within the expression of ‘wife'. The Bench held that this inadequacy in law can be amended only by the Legislature.
Live-in relationship in India

In *Abhijit Bhikaseth Auti v. State Of Maharashtra and Others* (AIR 2009 SC) held that it is not necessary for woman to strictly establish the marriage to claim maintenance under sec. 125 of Cr.PC. A woman living in relationship may also claim maintenance under Sec.125 CrPC.

**Legitimacy of the child**

In *Radhika v. State of Madhya Pradesh* Supreme Court held that a man and woman are involved in live in relationship for a long period, they will treat as a married couple and their child would be called legitimate.

**Inheritance**

In *Bharatha Matha & Anr. v. R.Vijaya Renganathan & Others* the Supreme Court held that a child born out of a live-in relationship is not entitled to claim inheritance in Hindu ancestral coparcenary property and can only claim a share in the parents’ self-acquired property. It is further clarified that ‘live in relationship’ is permissible in unmarried heterosexuals in case, one of the said persons is married, the man may be guilty of adultery and it would amount to an offence under Section 497 of the Indian Penal Code.

**Penal Offence and victimization**

Section 375 of the Indian Penal Code lays down six circumstances to qualify for a rape. Of this, three are about consent; two about 'misconception' and one is about the statutory age limit. Police invoke Section 417 along with Section 376 while a man is arrested for rape. Section 417 deals with punishment for cheating and it prescribe a maximum imprisonment of one year with or without fine. If the alleged rape continued for days or together weeks or months at most it could be a case of cheating or breach of trust. At the same time the above complaints out of live in relationship leads to complaint on false grounds sometime when the relationship gone sour, break-ups and failed live-in relationships are being taken to police by women, who charge their ex-companions with rape.

**Necessity for a special legislation**

In Indian context there is a need to recognize such relationship through legislation which would empower both the parties with rights and create obligations with duties thereby confining the ambit of such relationship. The newly developed societal change needs special legislation as the present legislations provide a loop hole due the absence concept of Husband and wife. Irrespective of Religion, tradition and culture the ultimate sufferers are women and children, as there is no specific law on maintenance, succession, rights of child and custody. There is no legal provision to secure the future of a child born from relationship which has not been the shape of marriage. The sour relationship ends in victimisation as the rights, responsibilities and obligations of parties are not defined.
Conclusion
The Fundamental right under Article 21 of the Constitution of India grants to all its citizens “right to life and personal liberty” which means that one is free to live the way one wants with infringing others right. No law at present deal with the concept of live-in-relationships and their legality. Still even in the absence of a specific legislation the court has recognised it. The various legal hassles on issues like division of property, violence, cases of desertion by death of a partner and handling of custody and other issues when it comes to children resulting from such relationships can be settled by the legislature through a special legislation. As stated by Aristotle “Man perfected by society is the best of all animals; he is the most terrible of all when he lives without law, and without justice.”

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Vimala vs. Veeraswamy (1991) 2 SCC 375
How can victimology become positive?

Natti Ronel

While victimization is usually a traumatic, negative experience for direct and indirect victims at any level (Herman, 1992), the reaction to such an event or chain of events may cover a wide range of possibilities (Lindgren & Nikolic-Ristanovic, 2011). Within these different reactions, positive victimology is a newly defined perspective and field, which is based on both positive psychology (Seligman & Csikszentmihalyi, 2000; Sheldon & King, 2001) and positive criminology (Ronel & Elisha, 2011; Ronel & Toren, 2012), by emphasizing the need for a positively experienced social reaction to victimization. Positive victimology also incorporates the approach defined by Ben-David (2000) as "victims' victimology," which focuses on victims' needs, wishes, and well-being from the standpoint of victims themselves.

Positive victimology is a new concept that incorporates models, approaches, and theories in victimology that existed previously but until now had not been connected by a comprehensive concept (Ronel & Toren, 2012). Positive victimology covers different models and theories about the reaction to victimization that shares a common perspective:

a. They indicate a positively experienced reaction. In general, victimologists aspire to bring justice to victims at every level and stage and to promote their well-being as much as possible. However, many other people whom victims might meet unfortunately do not share this approach (Levy & Ben-David, 2008; van Dijk, 2006). This is especially true of members of the criminal justice system, who often play a major role in the experience of victims (Hulsmann, 2006). Therefore the importance of a positive reaction should be emphasized repeatedly – victims deserve social reactions that attempt to provide them with positive experiences as much as possible under the circumstances, such as acceptance and acknowledgement of the injustice they suffered, unconditional support, protection of their rights, assisting and supporting their struggle for survival, and the like. The underlying assumption is that positive experiences can have as much influence on individuals, families, and community as negative ones do, and sometimes "the good" can overcome "the bad" (Fredrickson, 2001; Ronel, 2006, in press; Ward, Mann, & Gannon, 2007).

b. These positively experienced social or personal reactions to victimization have healing potential for direct and indirect victims. That is, positive victimology is aimed at healing the wounds caused by the victimization event (or events) at all levels (Ronel, 2009): individual, family, and community. It also aimed at promoting a process of recovery that might continue beyond healing the direct
wounds of victimization (Brende, 1993; Brende & McDonald, 1989). Although some wounds of victimization cannot be completely healed, the direction of healing can improve existing circumstances and might initiate a journey of recovery. Positive victimology emphasizes healing as a basic right of victims and a social duty of any reaction, and also indicates that recovery is an enduring possibility (Herman, 1992).

c. The positively experienced, healing-oriented reaction is aimed at increasing the experience of integration at any stage after victimization (Ronel, Frid, & Timor, 2011). A common experience of most victims is a sense of separation, even to the degree of feeling isolated. This sense of separation may be experienced during the victimizing event, when encountering a non-accepting reaction, and as a result of the victim's tendency to keep the victimization a secret. Therefore this sense of separation has a major impact on the victim's identity (Ronel, 2009). Consequently, the integration reaction is a necessary attempt to heal the separating and isolating nature of victimization and progress in the direction of recovery.

Based on experience in practicing positive criminology (Elisha, Idisis, & Ronel, 2012), Ronel and Toren (2012) suggested that it involves a three-leveled reaction of integration. On the social level, positive victimology calls for social actions of inclusion that can prevent or decrease a sense of isolation. While it is sometimes inevitable to experience a certain degree of social separation following victimization, a well-planned social reaction might minimize such an experience. Regrettably, more often than not, social reactions after victimization increase the experience of separation, thus exacerbating the suffering of direct and indirect victims (see, e.g., Dancig-Rosenberg, 2008; Lindgren & Nikolic-Ristanovic, 2011). Positive victimology attempts to increase the awareness of the strong need for social inclusion following victimization, to develop means of such inclusion and to establish theoretical, research-based, and practical knowledge regarding social inclusion.

On the level of the individual, positive victimology calls for knowledge and practice aimed at integration of the victimized self. Unfortunately, the experience of being victimized often generates a process of forming a victim identity, which typically includes some experience of powerlessness (Ronel, 2009). Furthermore within this identity, there is an experience of a chaotic self. This chaotic self can be reorganized in a struggle that attempts to avoid future victimization by minimizing any perceived risk. Consequently, the individual might become self-centered in a self-protective, unhealthy manner. A process of reintegration of the self is an essential integral part of the recovery process suggested by positive victimology.

In addition, positive victimology is guided by a spiritual vision of a directed process of exploration and unification with a power greater than oneself (Brende, 1993). Previous research has confirmed the assertion of positive victimology that traumatic events and negative experiences can lead to positive changes, despite the inevitable pain involved. Such change is associated with positive psychological adaptation, and may lead to a spiritual transformation (Balk, 1999; Marrone, 1999). Many times recovering victims who experience powerlessness are facing an existential crisis; such a crisis may open new
How can Victimology become positive?

directions, including spiritual development. It is a process of growth beyond the boundaries of the everyday struggle of recovery into new possibilities for the self. An experience of greater spiritual unification provides individuals with new meaning and vision, sometimes never experienced before (Ronel, 2009). Positive victimology perceives this vision as a potential opportunity.

Different models of practice are based on the perspective defined as positive victimology. In the field of criminal justice, positive victimology calls for a victim-oriented system. Such a system, for example, may expand the concept of "due process," traditionally directed towards offenders only, to include victims as well, that is, due process for victims during any criminal justice intervention and in court (Luria, 2012). In addition, positive victimology embraces victim-oriented law-enforcement procedures that might enhance positive experiences for recovering victims, such as an appropriate restitution (Aharoni-Goldenberg & Wilchek-Aviad, 2008), a victim empowering procedure (Bitton, 2008), or a therapeutic jurisprudence model (Dancig-Rosenberg, 2008). A prominent example is the practice of different restorative justice methods (Braithwaite, Ahmed, & Braithwaite, 2006; Shachaf-Friedman & Timor, 2008; Timor, 2008). Restorative justice is aimed at providing a positive healing experience of social integration that may lead to integration of self and also has the potential to bring about spiritual transformation; thus it represents all aspects of positive victimology. Additional examples of positive victimology models of practice are those of support groups for recovering victims (Brende, 1993), and, in some cases, individual therapy for recovering victims (Ronel, 2009).

Although positive victimology has been defined here mainly as a perspective involving a reaction to victimization, it also targets the prevention of victimization. Since the subject of prevention is mostly related to the potential offenders (e.g., Hawkins, Arthur, & Olson, 1997), prevention of victimization or further victimization calls for a shift of focus towards that of the potential or former victim. Positive victimology prevention might be based on the communitarian approaches discussed in many models for the prevention of offending (e.g., Etzioni, 1988, 1997; Hawkins & Catalano, 1992), but with a different level of sensitivity to the current or potential needs of the victims.

To sum up, positive victimology is an innovative term for known theoretical models and practices in victimology. Victimization is by no means a positive experience, but the reaction to former victimization should be aimed at increasing positive components as much as possible. While former studies have supported the major assertions of positive victimology, there is a need to conduct further studies from this standpoint, in order to expand its knowledge base.

References


Violence against women is one of the deeply rooted realities of each and every society since the evolution of human beings. Natural vulnerability of women has made them suffer unnaturally since the beginning. Every Constitution and all international documents on human rights of the world speaks about equality of men and women but due to some social, economical and natural and unnatural ego issues it has not become a reality for any country so far. Women are victim of several atrocities, inhuman treatments, inequalities and harassments in developing and developed countries. There is no criminal law in this world which has got no provision about crimes against women. One of the ancient, traditional and newly increased crimes against women at large is honour killing.

Honour killing is one of the highly discussed common issues in Asian countries including India in last decade or so. Thousands of women are been killed in every year due to the traditional faith and aspiration of honour of family. On one side we are moving with tremendous technological and scientific developments and on the other side the gravity of the offence of honour killing is growing tremendously. The traditional practices in India say that women are property of men in a sense they are the owners because the women are not only their life partner but also part and parcel of their life. Women are the honour and pride of their families and past and future generations. They are like diamond for their parents they constitute the pride not only of their parents but also of their family for many pre and past generations of them because of which it is always expected that the women should follow the traditional practice of obeying the elders in their family.

What is honour killing?

Honour killing is a common, highly charged, emotive and a notorious issue in these days. It is believed and portrayed as a sheer violence against women only; as it mischievously ignores the killings of paramours who are also murdered under this rage. In this context, such killings relate to a practice in which women are murdered by their male relative to restore the honour they lose when their women defile it. Women may injure men’s honour in a myriad of ways since it is their honour and their understating of honour men enjoys the right of declaring any of act as dishonourable. 275 Honour killing is killing of women for the pride and honour of family.

Amnesty International has dealt with this topic for some time, and defines honour killing as usually committed by male family members against a female relative, when they believe she has brought shame on the family. In Muslim traditions, family honour is defined as an entire social behavioral code imposed on women for the purpose of enforcing their inferiority and preserving male supremacy.  

Honour killings have been practiced in order to clean shame, which the woman may have carried for her family by adultery or injuring the family reputation and traditional cultures. Men control within private sphere is critical and women, who wish to confront such cultural tradition, are often murdered. In honour killing the women is killed generally by her parents or brothers for preserving their societal or traditional status.

**Why honour killing?**

Today world has changed to next extent from its traditions but still the traditions are prevalent in some traditional developing countries. Our life is changing but we don’t want to change our traditions. Previously we cherished marriage as one of the basic element of society but today we see we our self are ready for modern or urban practice of live-in relationships but still we are strictly following some traditions like honour of family. If any girl of this modern e-generation makes a boyfriend and then decides to marry with him she is killed in the name of her families’ honour which is totally inhuman.

There are many reasons behind honour killing some are traditional faith based some are social, economical and largely cultural. People are blind in religious faiths, caste system and many traditional honours which are resulting in honour killings. People are going brutal and lethal to kill their own children only because they used their personal liberty or freedom. Since the pride is traditional many people had devoted their entire life to preserve and promote them. For traditional pride people are crossing humanity boundaries and are killing their own human behavior because of which honour killing are inhuman in all times and at every place. Parents are safeguarding their own interest over the life and liberty of their own children’s.

Article 1 of Universal Declaration of Human Rights of 1948 states that we all are born free but in practice it seems that we are not born free but we have born with our own traditional restrictions. The parents are strictly expecting their children’s to obey and show respect to their family honour and if they will show any disrespect they will be killed under the name of family honour. This has raised an issue as to whether the today’s modern generation has to permit to take the decision of their marriage or we still need to continue the old pattern of parents choosing the life partner for their children’s.

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276 Honour Killings-URSULA SMARTT. JP, MA, M, Phil is Magistrate in Ealing, West London. She is a Senior Lecturer at Law and Criminology at Thames Valley University, London. Amnesty International. 1998.” Pakistan: No Progress on Women’s

277 Honour killings in Pakistan under Theoretical, Legal and Religious Perspectives An Analytical Study of Honour killings Abuse and Disconnecting Islam from This Ancient Brutal Tradition Author MUHAMMAD ZIA ULLAH
With the old pattern there are issues like dowry, dowry death, cruelty practices, divorce, maintenance and many more against the bride by the in laws and husband at the same time if we go with the self choice of life partner may not lead to these traditional anti women practices but traditions are traditions they will not see the change in society or changed society. In some of the states in India such as Uttar Pradesh, Delhi, Haryana and others honour killing is a daily incidence.

**What is the solution?**

Society is changing but the mindset of the society is not changing at all. Of course pride is important but we cannot substitute it with killing. India is a one of the traditional and multi religious country with more traditions than any other country in this whole world because of which we see the ratio of honour killing is constant rather increasing day after day. We should not stick to traditions but we should improve our traditions to that level by which we will not take steps of killing in the name of honour.

We need to change our thinking of our own traditional practices and should act as more responsible and practical human beings. No religion, no caste, no epics on religion do ever permit killing of human beings. Law making and law enforcing against such anti social elements need to be strict and honour killing should be made a murder and should get punishment likewise. Honour, religion or traditional practices should not be heard as defense in all the cases of honour killing. Women should be given more honour than they be killed for honour.
Problems of elderly people: Remedy lies somewhere else

Superna Venaik and Geetika Garg

Laws, literatures, films and television serials very often show the bitter reality of society and attempt to seek remedies. From Premchand’s “Budhi Kaki” to a tale serial “Balika Vadhu” – (Kalyani) society is witnessing some bitter realities of life. Budhi Kaki remains in the picture when problems of elderly people are considered to be eliminated and the role of kalyani is not taken into account.

Today the society is witnessing a gradual but definite withering of the joint family system, as a result of which a large number of elderly people are not being maintained by their children, contrary to the normal social practice earlier. There are number of factors responsible for this change such as unhealthy inter personal interaction, dithering social and moral values, to name a few. All this had resulted in exposure of elders to physical and financial insecurity, emotional neglect often leading to depression, even drug and alcohol abuse in extreme cases.

Older people face very specific threats to their rights in relation to age discrimination, for example, in access to health care, in employment, in property and inheritance rights, in access to information and education and in humanitarian responses. Older people also face particular forms of violence and abuse.

Demographic ageing is creating new challenges such as protecting the rights of people living with dementia, of older detainees, and the equitable allocation of resources in health care. Older people’s rights to access to justice, equality before the law and the rights to housing, privacy and a private life all require greater attention.

To add to the woes of elderly there is absence of adequate social security system in India due to which often they have to live as a destitute and die a lonely death. There are numerous legislative enactments in India which ensure that the moral obligation of children towards their parents is supported by legal obligation like Constitution of India–its Directive Principles, Code of Criminal Procedure, Hindu Adoption and Maintenance Act, 1956 along with Maintenance and Welfare of Parents and Senior Citizens Act, 2007, but the problem is with the implementation aspect of these enactments.

The Universal Declaration of Human Rights applies to people of all ages. Both the International Covenant on Civil and Political Rights (ICCPR 1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966) apply to every person regardless of their age.

The Constitution of India– its Directive principle under Article 41 of the Indian Constitution states that, the State, shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other
cases of undeserved want. It is clear from Article 37 that the provisions contained in Part IV shall not be enforceable by any court but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

Criminal Procedure Code- Sections 125-128 of is enacted to provide maintenance against those persons who neglect or refuse to maintain their dependents wives, children and parents who are unable to maintain himself or herself. The purpose of these provisions was to provide speedy, effective and inexpensive remedy but these provisions could not provide speedier relief to parents.

Hindu Adoption and Maintenance Act 1955 - Under section 20 (3) which is applicable for Hindus only, maintenance is provided to aged or infirm parents. Both male and female children are under legal obligation to maintain their aged and infirm parents.

The Maintenance And Welfare Of Parents And Senior Citizens Act 2007- The objective of Act is to provide more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution and for matters connected therewith or incidental thereto.

Income Tax Act, 1961- Sec.88-B, 88-D and 88-DDB are discount in tax for the elderly persons.

National Policy for Older Persons 2011- To accelerate welfare measures and empowering the elderly in ways beneficial for them.


It clearly demarcates that despite the provisions stated in numerous legislations be it national or international law, the enforcement of same lacks. The adjudicating factor – Legal Duty Versus Moral Duty is still going on and it has to be arrived at final decision with respect to the elderly people’s concern, care and dignified living.
Spatial distribution of crime in Coimbatore rural area: A GIS Analysis

A. Thangavelu, S. R. Sathyaraj and S. Balasubramanian

Introduction

Crime mapping is the use of geographic information to identify and analyze crime and police data. In 1990s, “crime mapping” referred to geographic analysis, even those that involved pushpins, colored dots, and paper maps. Now, however, “crime mapping” usually means the specific use of computerized GIS. Criminal investigative analysis is smaller in use which determines the aspect of crime analysis that includes activities such as geographic profile (Canter, & et al., 2000; Rossmo, 2000; Santtila, & et al., 2003) and specific case support for crime investigations. The history of crime mapping enhanced from the supportive result (Weisburd & McEwen, 1997; Harries, 1999).

Crime distribution can be identified on the maps like choropleth maps which use colour pattern, shading to indicate the magnitude of a numeric variable. Isopleth map lines are the geographic distribution of a value category. Isoplethor contour maps are used to create continuous areas that connect the points which are having the same value. The contour lines are superimposed on a layer that displays the geographic boundaries. A cartogram is a variant of the choropleth map in which the two dimensional boundaries of geographic units are distorted so that the surface area of each geographic unit is proportional to the amount of the value being measured.

Criminal geographic targeting is based on study of Brantingham and Brantingham (1981) model for crime site selection and recurrence of such activities (Felson, 1986). Geographic analysis of crime is strongly supported (Buck et al., 1973; Chang et al., 1979) and the practical applications of this analysis have been demonstrated (Harries 1974; Pyle, 1974; Brantingham and Brantingham, 1981; LeBeau, 1987). Some areas are more prone to criminal activities than the others (Roncek & Maier, 1991; Coomb et al., 1994) and majority of crimes are not random events, nor are they randomly distributed in terms of where they occur (Rossmo, 1995). Spatial variability is a result of the spatially non-random distribution of people who will be motivated to be responsible for a crime and the spatially non-random distribution of causative factors that increase the chances that a person or property will be victimized (Hakim & Rengert, 1981).

Automated crime mapping applications (Pauly et al., 1967; Carnaghi & McEwen, 1970) shows the potential results for visual representations of the crime patterns through the spatial maps by the computer. The crime setting or place, the “where and when” of the criminal act, (Brantingham and Brantingham, 1981) describe the fourth dimension of crime, which is the primary concern of environmental criminology.
Criminological theory has two control factors for analysis,
(i) Individual
(ii) Community
The two major questions for this theory are
(i) Why this person and not that one committed a crime?
(ii) Why is there more increased of crime in society now than before?

Brantingham and Brantingham (1994) successively proved how house breaks induced crimes having the multiple effects in the neighbourhoods at which they are located, raising the robbery and theft levels in the surrounding area. Crime analysis may help in the determination of multiple effects of crime and to improve the efficiency of police activity (Harries, 1999; Goldsmith, et al., 2000). The incidence of crime is affected by the presence and effectiveness of the police (Ehrlich, 1996; Levitt 1997 & 1998).

The computer crime maps revolution and the availability of the commercial software begun to emerge as a significant tool in crime and justice that assists police departments in strategic planning, operations and crime analysis. They may display information about the relationships between geographic areas, crime and a number of risk factors. As crime and delinquency are known to be localized processes, criminological maps have proved useful in assisting police operations and in supporting crime prevention initiatives (Weisburd & McEwen, 1997). Maps also assist in the assessment of the regional distribution of crime.

The crime density maps/analysis was used (Nicolau, 1994; Harries, 2006) for investigating the associates of crime through statistical models. Furthermore, it is also possible to employ GIS to calculate density of crime in a more accurate way under certain circumstances.

Objectives
(i) To prepare the thematic map of crime distribution incidences
(ii) To measure the crime data in statistical analysis crime rate
(iii) To summarise the temporal incidences in the particular areas in Coimbatore rural police jurisdiction.

Study Area
Coimbatore is popularly known as ‘The Manchester of South India’. Coimbatore district of Tamil Nadu has geographic area of 105.60 Square Kilometer. Coimbatore rural division is situated between 10° 68” and 11° 16” Northern latitude and 76.68° and 77.15° Southern longitude in the extreme west of Tamil Nadu near Kerala. The study area for this expression is India, in the State of Tamil Nadu; Coimbatore coordinates rural zones which have been identified by the Development of Police as an area with the high number of crime hits. Coimbatore rural police jurisdiction area has been divided into two sub-division namely Perur and Periyanaickenpalayam. Totally, fourteen police jurisdictions namely Sirumugai, Mettupalayam, Pillur, Karamadai, Periyanaickenpalayam, Thudiyalur, Vadavalli, Thondamuthur, Alandurai, Karunya, Perur, Madukarai, Podanur and Kinathukadavu.
Data Preparation and Methodology

The Crime incidence data is collected from the Superintendent of Police Office (SPO) and the Population data from Census of India for the preparation of the spatial crime map for the present two subdivisions and fourteen police stations in the Coimbatore rural jurisdictions with the help of software ArcGIS 9.3.

The methodology includes the use of the digitized map of the rural jurisdictions in Coimbatore. The attribute data table of this area consisted of SPO name, jurisdiction to which it belongs, crime incidence data, the population size of the area under the SPO, the number of police stations and the number of subdivisions in each constituency. The population density of each SPO area was calculated based on population / area in Sq.kms. This value was used as a factor to prepare crime map of the population level for crime incidence in Coimbatore rural division. Maps are prepared thematically to identify the crime areas based on the data available for the population and natural breaks. The population based on the were identified three classes namely highly populated, moderately populated and lowly populated.

Thematic Map of Crime Incidences in Rural Police Jurisdiction

Thematic mapping is the process of representing the geographical database on the attribute data available and the value, size, colour, represents the data on the map. Thematic maps can be used to highlight individual features or illustrate a series of features. Thematic mapping involves data classification methods, which is known as the most common method for map manipulation. Generally, five data classification methods are available: equal interval, frequency levels, mean and standard deviation, natural breaks and a user defined. Equal interval uses a constant class interval in classification. Equal
frequency, also called quantile, divides the total number of data values by the number of class and ensures that each class contain the equal proportion of area. Mean and standard deviation sets the class breaks at the units of standard deviation above or below the mean. The method of natural breaks uses a computing algorithm to minimize differences between data values in the same class and to maximize differences between classes. For the present study, natural break classification methods were chosen to prepare maps.

**Distribution of Crime Incidences**

The study area boundary is digitized and used for creating the distribution of mean crime incidences in Coimbatore rural police jurisdiction. There are fourteen police stations (B-1 to B-14) present in Coimbatore rural jurisdiction limits and under the Superintendent of Police (SOP). The mean criminal incidences (2003-2006) of Coimbatore rural police jurisdiction were used for the preparation of thematic maps. Thematic map was prepared for different crime types from the presented as Map 1. From the Map 1, it was observed that mean crime incidences were high in (B6) Thudiyalur, moderate in (B2) Mettupalayam (B2), (B4) Karamadai, (B5) Periyanaickenpalayam, (B7) Vadavalli, and (B13) Podanur. The low incidence in (B1) Sirumugai, (B3) Pillur, (B8) Thondamuthur, (B10) Karunya and (B11) Perur. The very low incidences in, (B9) Alandurai (B12) Madukarai and (B14) Kinathukadavu.

![Map 1. The mean Crime incidences for the year 2003-2006 in Coimbatore rural police division](image)

**Summary Statistics**

A statistics attempts to provide statistical measures of the crime in a society. Crime is usually secretive by nature; measurements are likely to be inaccurate. Crime statistics are gathered and reported by many large states, groups of small states, countries and are interest of several international organizations, including Interpol and the United Nations Organization. Law enforcement agencies in some countries, such as the Federal Bureau of Investigation (FBI) in the United States and the Home Office in England & Wales, publish crime data, which are compilations of statistics for various types of crime.
Mapping of Crime Rate

The crime map presents the mean crime incidence of Coimbatore rural police jurisdiction, but the rate of crime depends on the population in that particular area. Therefore crime rate was calculated and the Crime rate Map 2 is prepared and presently for Coimbatore rural police jurisdiction. From the map, it is observed that the maximum crime rate in (B7) Vadavalli, moderate in (B3) Pillur, (B10) Karunya, (B13) Podanur and low in (B2) Mettupalayam, (B4) Karamadai, (B5) Periyanaiickenpalayam, (B6) Thudiyalur, (B8) Thondamuthur and (B11) Perur. The remaining four police jurisdictions namely, (B1) Sirumugai, (B9) Alandurai, (B12) Madukarai and (B14) Kinathukadavu as very low crime rate areas.

Based on the population density of the SPO area, a characteristic was introduced in the following equation to establish a relationship between population and crime incidence.

![Crime Rate Map](image)

Temporal Crime Incidences

To understand the successive temporal changes over time (year), temporal information is integrated with the changing spatial data. The thematic maps for the recorded mean crime incidences for each year during the study period were prepared and presented as to understand the significant variation with respect to the temporal changes on crime incidences in the study area. The natural break classification was adopted to classify the areas as high, moderate, low and very low incidences of crime.
For the year 2003–2006, auto vehicle crime thematic map was prepared and presented as Map 3 by using Natural breaks classification. The thematic map was classified into very low, low, moderate and high incidence areas. The very low incidence jurisdictions are Pillur, Thondamuthur, Karunya, Thondamuthur and Kinathukadavu. The low incidences were observed in Perur and Madukarai. The moderate incidence was observed in Sirumugai, Karamadai, Periyanaiickenpakyam, Vadavalli and Podanur and the remaining high incidence was observed in Mettupalayam and Thudiyalur of the Coimbatore rural jurisdiction. Subsequently, the other maps also produce for the House breaking day, House breaking night, Murder, Murder for gain, Robbery, Pocket Picking and Snatching. These are all the other crime categories in this research paper. Distributions of crime in different station (Space) vary with time (Temporal). Hence, spatial factors might affect the occurrences of the crime incidences during the study period and this will be dealt in the crime areas.

Conclusion
The resultant map clearly indicates the major crime prone areas in Coimbatore rural police jurisdiction. The crime incidence map clearly visualized the regions where efforts are to be maintained for crime control. These areas require necessary funds and suitable measures. Effective suggestions, put forward are

- However, this research is necessary to evaluate the above mentioned techniques for executing the map with a particular interval because accurate population data is critical for the assessment of human population density on crime rate and attribution of risk to crime incidences.
- The statistical methods will also increasingly influence not only analytical aspects of research but also decision making and problem solving.

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Spatial distribution of crime

- The data obtained from the primary and secondary sources one could find that the high crime rate as well as different kinds of crime that occur more frequently in the different sections of the society like slum prone areas, areas lacking street lights and other adequate facilities for daily living and areas having low literacy rates.
- In-depth study of these areas has been taken by integrating the population wise data, heavy forces of crime controlled in the surrounding areas.
- The new technology that features mapping representations would be helpful to police, especially in the study of crime patterns in large buildings and underground structures.
- In general, geographic presentation is an area with vast potential for developing new types of maps and charts that can aid police authorities.
- Crime data consisting of spatial patterns, suspect information and method of operation characteristics can be combined with arrest locations to provide investigators a tool to identify potential suspects.
- The map also serves as a guide for crime affairs/surveyors/officers in identifying the proper study for environment international trials and also as assistance for the population who would be benefitted from the new interventions.
- From the above observations, the criminal broadcast in Coimbatore rural division is mixed, which is influenced by the local environment. Control measures of the respective jurisdictions or stations are rather than a uniform outbreak as the observations carried out in other crime countries as in Iceland, Sweden, and other. Therefore, the conceptual study is required for effective measures to control criminal incidences at regional level in Coimbatore rural jurisdiction.

References
Application of domestic violence legislation and gender

Vesna Nikolic-Ristanovic and Ljiljana Stevkovic

Introduction

In general, although less often than men, women are also prosecuted and convicted for domestic violence. The surveys carried out worldwide suggest that, compared to women, men were more likely to be charged or cautioned, convicted and sentenced to imprisonment. Offenders are arrested/placed under pre-trial detention or sentenced to prison more often if they had seriously injured the victim physically, used drug, alcohol or weapon or had previous criminal history, including particularly earlier convictions for domestic violence and protective orders. On the other hand, use of alcohol or drug by the victim decreases the likelihood of prosecuting domestic violence case, while victim support for prosecution increases it. Mutual violence leads to less probability of prosecution, due to difficulties in determining the primary aggressor. Mutual violence more likely results in dual arrest, those arrested are more likely to be charged with misdemeanours than felonys and less likely to be convicted than singly arrested. However, higher proportion of dually arrested women are prosecuted and convicted than dually arrested men, although majority of women that used violence were acting in self-defence or fighting back. Also, judges overlook the history of violence, power and control in relationships, and fail to understand the distinctive nature of domestic violence.

In Serbia, since recently this aspect of application of domestic violence laws has been completely ignored and under-researched, which made it impossible determine how domestic violence laws are applied to women as perpetrators, i.e. the impact of gender on their application. However, statistical data for Serbia suggest that the number of women convicted for domestic violence in 2009 (111) is almost two times higher than in 2007 (58), while in the same period, the number of convicted men also increased, but to a much smaller extent (27%).

In the research carried out in Serbia in 2010 and 2011, the author piloted the use of some of the indicators for measuring the effectiveness of legislation on violence against women (VAW) that were suggested during a regional meeting held by UNIFEM (now UN Women) (Sarajevo, 23–24 November 2009). These indicators were further developed and implemented by an international consultant, Dr. Lori Sudderth, and adjusted to the focus of the study by the author, the local consultant for UN Women.

The focus of the monitoring was the implementation of legal provisions that regulate domestic violence as a criminal offence in cases where both the man and the woman are prosecuted, including dual conviction cases, i.e. where the man and the woman are both the victim and the perpetrator. The main focus of research was on how courts deal with
domestic violence cases, although some data were also collected on the application of laws by the police and prosecutors. The survey was conducted using both quantitative and qualitative methods. The quantitative part included the collection of data from court files and their analyses using descriptive statistics and the Pearson chi-square test.

The main dependent variables included: The types of domestic violence according to Article 194 of the Criminal Code, arrest/pre-trial detention, duration of criminal procedure, court decisions and criminal sanctions (indicators of the application of laws by courts). The main independent variable is gender, whereas data on the offender, the victim, the criminal offence, protection orders, victim support for prosecution, etc. are examined as control variables (indicators of potential other factors that influence the application of laws and decision making of prosecutors and judges).

The sample included all available court files on women sentenced for the criminal offence of domestic violence (Art. 194 of the Serbian Criminal Court) from selected basic courts, i.e. former municipality courts, as well as a relatively random sample of available court files where offenders of the same offence were men. Data obtained from the Serbian Statistics Bureau served as the basis for determining the sample.

Since the author largely depended on the court administration and the availability of court files, it was not possible to create a random sample of male defendants according to the planned criteria by selecting every four male cases. Thus, the sample of male defendants was generally created by randomly choosing from available cases while ensuring that all forms of domestic violence were included.

Thus, a stratified random sample of men and women who were convicted during 2007, 2008 and 2009 (for a total of 1,317, of which 79 were women) was created, including a total of 219. The sample consists of 166 men (75.8%) and 53 women (24.2%).

An oversampling of women was necessary in order to obtain enough relevant information on the application of laws to women as perpetrators of domestic violence, as well as to ensure that cases where women were convicted, although they were the secondary aggressors, are included. It should be also noted that the sample included 67 percent of all women convicted in Serbia in the 2007–2009 period according to official statistics.

Also, it is important to mention that the sample consists of both partner and non-partner violence, including child abuse. As will be seen from the findings, this is important

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278 Although not required by law, it is a widespread practice that prosecutors and judges ask victims whether they support prosecution.

279 “[T]he primary aggressor is better described as the dominant or most significant aggressor at the scene of a domestic violence crime when both parties have committed some sort of violence toward the other” (California Alliance against Domestic Violence, 2000).

280 The cases included in the sample were processed by the municipality courts, which in 2010 were incorporated into the basic courts. According to the recently adopted Law on the Organization of the Courts (2008), “Judicial power in the Republic of Serbia is vested in courts of general and special jurisdiction. Courts of general jurisdiction are basic courts, higher courts, appellate courts and the Supreme Court of Cassation” (Art. 11).
Application of domestic violence legislation and gender

for the overall assessment of the application of domestic violence law as well as for the comparison of its application in cases of partner and non-partner abuse.

Survey findings suggest that there is an impact of both gender and other factors on the application of law on domestic violence by the criminal courts in Serbia. It is obvious that, as in other countries, men are more often arrested and placed under pre-trial detention, as well as sentenced to imprisonment and fine. However, there is no significant correlation between gender and imprisonment, which suggests that other factors, such as the seriousness of the violence, established continuity of violence and recidivism, have a more decisive influence on these decisions. This is confirmed by data on the influence of other factors. Courts imposed prison sentences more often in the cases where they treated the offence of domestic violence as the part of a wider context of long-term violence. Survey findings show a significant correlation between the type of violence and decisions on arrest/pre-trial detention and sanction. Also, similarly as in other countries, the chances that the perpetrator is arrested/placed under pre-trial detention and sentenced to prison increase with the increase in the severity of the violence. Moreover, the fact that other members of the family were abused (both adults and minors) in addition to the partner has a strong impact on decisions on arrest/custody and sanctions. Research findings also suggest, as in other countries, that alcoholism has a significant impact on the police decision on arrest and the court’s decision on pre-trial detention, but not on decisions on penalties or conditional sentences. Security measures aimed to provide medical treatment of the perpetrator are not imposed on all those who committed violence in connection with alcoholism. In contrast to the above-mentioned findings are findings that unlike in other countries, suggest the lack of a significant connection between the use of weapons and arrest, pre-trial detention and sanctions.

Similarly as in other countries, earlier convictions and reports of domestic violence have the strongest impact on decisions on arrest/pre-trial detention and sentence. This may indicate that the police and the judges believed that this constituted proof that the domestic violence had a longer history, i.e. that it was more dangerous. Also, the impact of earlier convictions for other violent crimes is identified. However, survey findings suggest that the court mostly took into consideration legal recidivism of the offender.

The survey discovered some examples of good practice, particularly in taking into consideration the history of violence and the non-conviction of women who were reported by their abusers. These examples may be used for training the police, prosecutors and judges; the judges who applied these good practices can be involved in this training.

Moreover, this survey shows important gender implications in the application of domestic violence law in Serbia rather than direct discrimination against women. These implications are generally related to the inappropriate treatment of cases where there is continuous violence (usually male violence against women), as well as cases of mutual violence where the victim (usually male) is the primary aggressor yet the woman is convicted although the primary victim. It is clear that the police, prosecutors and judges, similarly as in some other countries, do not understand the history of violence, power and
control in male-female relationships, which has serious negative consequences on how they apply domestic violence laws.

The survey also exposed the lack of some highly important information in the court files, but also in the public prosecutor’s and police files, and how this may have negative consequences for monitoring the application of domestic violence laws. This lack is partly explained by the lack of or underdeveloped inter-sector cooperation and exchange of information, particularly between the civil and the criminal courts, and partly due the fact that the police, public prosecutors and judges are not obliged to keep records of important information.

Missing information includes, in particular, the following: detailed information about the victim, including any previous abuse by the offender (if the primary aggressor) and the impact that the domestic violence had on victim; information on the protection order; information on related parental right/child custody procedures initiated or measures taken, as well as other child protection measures taken; and information on the presence of a representative of a victim support organization. Also, information about victim/witness protection measures initiated and/or applied was available only in several court files and mostly relates to the protection of minor victims. However, since the courts are not obliged to keep records of this important information, it is difficult to assess whether or not these measures failed to be applied or whether the information was missing.

Since in Serbia, it is not obligatory to notify the victim about the release of the perpetrator, it is not unusual that this information was unavailable in the court files. The identification of this missing information is very important, not only for notification, but also for future (court) monitoring activities. It is particularly important as the basis for advocacy for the advancement of a Serbian criminal justice data-recording system in general and in particular in relation to domestic violence.
Consequences of domestic violence

G. S. Venumadhava and Ravikanth B. Lamani

Introduction

Domestic violence is a world phenomenon. It is a fact of life in all societies and across all cultures, irrespective of economic status and training. In a developed country like America also Women are six times more likely to get violated by intimate partners than men. However reports generated by some surveys are highly controversial as they are directly related with the way queries are worded in survey forms, the way they are conducted and other such factors. It has been found that in America twenty percent of all crimes which happen with women are cases of intimate partner violence, while only three percent of men get affected by the same.

Domestic violence during pregnancy can be very non-specific and thus not easily diagnosed by medical practitioners. But it is relatively common in all societies. Violence at this age manifests in various ways like late booking in hospitals, delay in providing medical aid for injuries, non-attendance at appointments, aggressive partners, vaginal tears, bleeding, STDs, miscarriages, pain and tenderness. Domestic violence can also damage the fetus and lead to psychological damage, premature births and ruptures and have far reaching effects like life time ill health etc. in India there is a crime against women in every three minutes, one rape every twenty nine minutes and one recorded It can also damage the minds of existing children. Illegal pregnancies and adoption issues are also a facet of abuse and violence.

In India, dowry death occurs every seventy seven minutes. Cases of cruelty meted out by husbands and in laws are seen in every nine minutes. Patriarchal terrorism where one partner uses economic and social power to maintain control over another human is very common in India and other Asian countries due to the subservient status of women. On an average at least three women are found killed or murdered by their partners every year in all countries. Instances of physical abuse are also found more in women compared to men.

Consequences against Women

Battered women have tendency to remain quiet, agonized and emotionally disturbed after the occurrence of the torment. A psychological set back and trauma because of domestic violence affects women’s productivity in all forms of life. The suicide case of such victimized women is also a deadly consequence and the number of such cases is increasing. A working Indian woman may drop out from work place because of the ill-treatment at home or office, she may lose her inefficiency in work. Her health may deteriorate if she is not well physically and mentally. Some women leave their home
immediately after first few atrocious attacks and try to become self-dependent. Their survival becomes difficult and painful when they have to work hard for earning two meals a day. Many such women come under rescue of women welfare organizations like Women Welfare Association of India (WWAI), Affus Woman Welfare Association (AWWA) and Woman’s Emancipation and Development Trust (WEDT). Some of them who leave their homes are forcefully involved in women trafficking and pornography. This results in acquiring a higher risk of becoming a drug addict and suffering from HIV/AIDS. Some of course do it by their choice.

One of the severe effects of domestic violence against women is its effect on her children. It is nature’s phenomenon that a child generally has a greater attachment towards the mother for she is the one who gives birth. As long as the violence subjected to the mother is hidden from the child, he/she may behave normally at home. The day when mother’s grief and suffering is revealed, a child may become upset about the happening deeply. Children may not even comprehend the severity of the problem. They may turn silent, reserved and express solace to the mother. When the violence against women is openly done in front of them since their childhood, it may have a deeper and gruesome impact in their mindset. They get used to such happenings at home, and have a tendency to reciprocate the same in their lives. It’s common in especially in rural homes in India which are victimized by the evil of domestic violence. In cases of Intimate Partner Violence (IPV), violence against women leads them to maintain a distance from their partner. Their sexual life is affected adversely. Many of them file for divorce and seek separation which again affects the life of children. Some continue to be exploited in lack of proper awareness of human rights and laws of the constitution.

**Consequences of Violence against Men**

The consequences against violence against men in India, is largely emotional and psychological in nature. The physical harassment resulting from domestic violence, also affects their lives and productivity but it is still more inclined towards the emotional problems which men face in India. It is largely because many such cases go unreported, as compared to cases of physical assault of women. An emotionally harassed and depressed man may lose interest in the occupation he is associated with. If he is the only bread-earning person in the family, the family may find it difficult to survive. There has been a spate of farmers’ suicide in recent years in Karnataka. Several farmers have committed suicide not only because of indebtedness but also because of discord in family and depression resulting out of it. According to statistics of Save India Family Foundation (an NGO), around 1.2 lakh harassed husbands have committed suicide in the country in the last four years.

Girls also develop a feeling of insecurity in their homes when they are sexually exploited. They lose their self-confidence and desire for living. A girl child from violent home can withdraw from society and become completely depressed. Children from violent homes become disobedient and violent – and start using aggression to solve their problems. Adolescents may succumb to drugs and alcohol when treated harshly. Some
helpless and abandoned children are picked up gangs who sell their organs for making huge amount of money. In most of the cities, the groups of beggars at traffic lights or railway platforms are the abandoned children who are physically deformed forcefully for begging. The children who escape being a part of this vicious circle are looked after by children welfare organizations like, Indian Child Welfare Association (ICWA), Child Relief and You (CRY) and Child Line etc.

Consequences of Violence against Older persons

The elderly abuse is one of the most unfortunate happening for the elderly class in their lives. They would rather like to be more at ease and calm in this phase of their life than being prone to such kind of shameful treatment by the family or society. Ironically elderly class itself also indulges in harming each other. Many of the elderly men continue to beat and harass their wives throughout their lives. Some of the olds are ousted from home by their children, some are beaten until death and some are exploited socially. A sense of insecurity dodges them all the time. They are isolated and cut off from society in some cases where son and daughter-in-law do not let them interact and move around freely in the society. The old people are not looked after properly and their health problems are neglected. Due to the abuse and mental trauma they suffer, some of them leave home and stay in old age homes like Help Age India, Senior Citizen Home Complex Welfare Society (SCHCWS) and many others.

Effect of Domestic Violence on the Society

All the different forms of violence discussed in this essay adversely affect the society. Violence against women may keep them locked in homes succumbing to the torture they face. If they come out in open and reveal the wrong done to them for help and rescue, it influences the society both positively and negatively. At one hand where it acts as an inspiration and ray of hope for other suffering women, on the other hand it also spoils the atmosphere of the society. When something of this kind happens in the society, few families may witness the evil of domestic violence knocking their door steps. Some families try to imitate what others indulge in irrespective of it being good or bad for the family.

Effect on the Productivity

As mentioned earlier, domestic violence affects the productivity level of the victim negatively. Men and women lose interest in household activities. If they are employed they fail to work with full capabilities in workplace. Children are found to concentrate less on studies. They drop out of school and do not get the education which otherwise they might have got if they were not tormented and thus the country loses a productive asset. Therefore, the nation’s productivity altogether gets affected because of domestic violence in homes. When old people are tortured and physically abused, they separate themselves from family members and their daily activities are restricted to themselves. The guardianship they can provide out of their experience, the moral values which they can
instill in the grandchildren are all not done as they are unwanted in their own homes. People need to spend their part of income for medication when they are met with worse forms of domestic violence which again leads to loss in productive use of a family’s income. The cumulative effect of the domestic violence at all levels and across all regions is the country’s hindered development and slow economic growth.

**Domestic Violence**

Twenty years ago, little empirical knowledge about intimate partner violence existed, conceptual explanations for relationship violence were not well thought out, and social workers were ill trained for dealing with the problem. Domestic violence, at that time, was private and seen as a family problem and personal issue. Today, students and social workers can benefit from research findings and years of practice experience that were not available two decades ago. The implications of domestic violence for social workers are significant; many of the individuals we work with will be or have been affected as primary and secondary victims. Many of our male clients have battered their partners. Many of us have felt the impact of violence in our own families. Criminologist must have insight into the problem of domestic violence to effectively work toward ending relationship violence. Interventions that might alleviate domestic violence should be applied at all levels: micro, mezzo, and macro.

**Criminologists should be aware of the following points**

- Domestic violence is a common crime.
- Domestic violence is usually gender based.
- It’s about power and control, not just conflict or anger.
- Domestic violence harms children.
- Not all battered women are helpless and weak, and they are not crazy.
- Battered women are often blamed for the violence.
- People with disabilities may be at very high risk for domestic violence.
- Economics matter leads domestic violence.
- Batterers are not all alcoholic, they can usually control their anger, and they are often charming and manipulative.
- Social change must be a key component in ending domestic violence.

**Intervention can end Domestic Violence and Protect Lives**

Domestic violence is the use of power and control by one partner over another in an intimate relationship. The dominant partner uses physical, sexual, emotional, psychological abuse and economic control as means to manipulate the subordinate partner. According to the Bureau of Justice Statistics, women are the majority of victims in domestic violence. In 2008, 4.3 female victims per 1,000, as opposed to 0.8 male victims per 1,000, were reported. Social workers have a significant role to play, intervening in domestic violence situations.
Screening for Intimate Partner Violence

Social workers screen men and women who enter treatment facilities for abuse, alcohol and drug related problems to determine signs of domestic violence. They address questions concerning alcohol consumption, illegal drug use, gun ownership in the home, emotional and physical abuse, control, and the treatment of children. The questions asked also draw the attention of the patient to potential and imminent danger in such an environment. Social workers assess the situation and implement intervention.

Assessment of Victim's Case

If the evidence indicates domestic violence, the caseworker analyzes the situation in an attempt to prevent further abuse—necessary to protect the victim's life and well-being. The caseworker assesses the victim's situation: pattern and frequency of abuse, exigent needs, the effect of abuse on emotional and physical health, future endangerment to life, access to support organizations for the abused. The social worker does not resolve the issues, but rather provides support, counseling and therapy for the victim.

Intervention for the Victim

The social worker initiates a prevention and safety plan for the abused victim. The caseworker educates the victim about emergency shelters, domestic violence hotlines, protection orders and financial independence. The safety plan includes the following: finding a safe exit in the home in case of immediate danger, coordinating coded messages with trusted friends or relatives to call 911, preparing ahead and taking along identification documents in urgent situations, relocating with the children to an emergency refuge.

Treatment and Consequence for Abusers

The social worker can assign the abusive partner to a rehabilitation program either through court mandated orders or voluntary participation. The program attempts to rehabilitate the perpetrator's attitude and behavior, eradicating violent reactions. Facilitators teach social problem-solving skills and communication techniques. At other times, the consequence for the abuser is incarceration. Assault, harassment, coercion, rape are criminal acts, and each state warrants punishment according to its laws.

Intervention for Children who Witness Domestic Violence

Children who witness violence in the home may suffer emotional, social and psychological setbacks. Social workers screen children who enter emergency shelters with their mothers for trauma. Identifying the child, assessing the situation and providing therapy are actions for intervention. Social workers attempt to make children understand that the violence is not their fault. They work with the children to achieve effective social and coping skills and to maintain a healthy, stable relationship with the non-abusive parent.
Prevention and Management of Domestic Violence

The injuries, trauma, stigma, and psychological frustration associated with domestic violence (e.g. spousal sexual abuse, child sexual abuse, wife battering, rape, etc.) call for social work interventions. These interventions also help in reducing the incidence or future occurrence of domestic violence. They include: (J. K. Mojoyinolaj. Soc. Sci., 13(2): 97-99 (2006)).

Crisis Intervention
Battered, raped, or sexually abused women or girls need urgent attention or immediate care. Therefore, the social workers have the responsibility of assisting such women get over their shock as quickly as possible. They should assist such victims to get prompt medical treatments in the hospitals for their trauma or injuries sustained during the violence.

Counseling
The social workers have the responsibility of working with both the abuser and the victim (spouse or child). Through counseling, the social worker could determine the cause of the abuse. They should help in counseling the victim and the abuser and try to work through their problems. They should assist in building up the victims’ self-esteem and allow them to decide what measures they want to take. Legal redress should be the last option.

Safety and Protection of the Victims
Victims of domestic violence undergo emotional turmoil and fear as a result of violence inflicted upon them. Hence, their feelings and potential for further harm should always be of utmost consideration. Since they may not be able to protect themselves, the social workers must give extra attention to their safety and protection. To this end, they should help in making alternative arrangement for their living. As the victims may be constantly afraid of where the violence takes place, such individuals may be helped to get a new house or location where they will experience fewer tensions.

Psychotherapy
This is a form of psychological means for treating emotional problems associated with domestic violence. As victims of domestic violence (e.g. sexually abused or raped women/girl) may be stigmatized or feel ashamed, their wounded ego needs to be boosted. To this end, the social workers have the responsibilities of reducing their emotional problems (e.g. anxiety, fear, worry, depression, guilt, shame etc) through psychological means such as reassurance, words of encouragement, advice and emotional support.

Psycho-education
Women need to understand the severity of domestic violence. Hence, social work programmes need to be responsive to the abused women’s emotional state. Women need
to be taught to re-evaluate their situations, to develop self-esteem and decide a resolution for their problems. The social workers have to educate the victims to understand that though, they were abused, they still need to relate with their spouse. They should be properly educated on legal interventions. While doing this, the social workers should be less judgmental. In other words, they should allow the victims to take their own course of actions.

**Role of Non-Government Organization (NGOs) in controlling the domestic violence**

The role of non-governmental organizations in controlling the domestic violence and curbing its worse consequences is crucial. Sakshi – a violence intervention agency for women and children in Delhi works on cases of sexual assault, sexual harassment, child sexual abuse and domestic abuse and focuses on equality education for judges and implementation of the 1997 Supreme Court’s sexual harassment guidelines. Women’s Rights Initiative – another organization in the same city runs a legal aid cell for cases of domestic abuse and works in collaboration with law enforcers in the area of domestic violence. In Mumbai, bodies like Majlis and Swaadhar are doing meaningful works in this field. Sneha in Chennai and Vimochana in Bangalore are working on many women’s issues arising from domestic abuse. They are also doing active work in issues related to labour. Services ranging from counseling, education and outreach, giving provisions, and mobilizing them for gaining self-confidence are provided to them. Anweshi is a women’s counseling centre in Kozhikode providing meditation, resource and counseling for battered women. All the above bodies have their own registered offices, contact numbers and websites for those who want to seek help. There are at present only few NGOs for welfare of men like Social Welfare Association for Men (SWAM) in Chennai. Few more such organizations need to be opened for the help of abused men.

**Conclusion**

Domestic violence may occur at the micro level, affecting one family at a time, but it is also a macro problem, calling for interventions at all levels of social work practice. Yes, social workers are involved in providing services to those directly involved in violent families, but we also must be working at the community level and on policies that will create a society that is less tolerant of domestic violence. The prevalence of domestic violence mandates that social workers must develop adequate knowledge and skills to respond to domestic violence, regardless of practice setting, in order to respond appropriately to situations related to domestic violence.
Victims of human trafficking in Thailand: A study of women and children

Viraphong Boonyobhas

Introduction

Thailand, a democratic country in Southeast Asia with population of 67 million, once she was the strongest economy in the region but now it changes because of political problems and military coup déta. Moreover, for well economy and well-being of her citizen she also faces with various serious problems which effect to the public peace of the society that are crimes such as homicide, robbery, extortion, terrorist, trade of war weapons, sexual offenses, drugs, economic crimes, human trafficking and money laundering.

Among these serious crimes, human trafficking is the most serious one for suppression because a lot of problems come across it such as HIV/AIDS, human rights, trade of women and children, money laundering, organized crime, corruption, and illegal immigration. It is still continue to expand to the detriment of both the exploited individuals and integrity of the society as a whole.

It is generally accepted that not only Thailand but also all countries in Southeast Asia are facing with a growing problems of illegal labour movement and in particular the most pernicious form of these movement is trafficking in women and children.

As the matter of facts trafficking that causes problems for Thailand and neighboring countries can be separated into two categories based on the final purposes of exploitation. The first one is the trafficking for labour and the other is for sexual exploitation.

1. Trafficking for Labour Exploitation in Thailand

Thailand has been both the sending and receiving state in trafficking of labour. During these two decades the exploitation of labour to Middle East, Japan Taiwan, Hong Kong, Singapore, Brunei and other countries has been one of important national income sectors, the amount of money sent back to Thailand by Thai workers abroad in year 2000 approximately US $2,000 million. Some were legally sent, while many were deceived and exploited. The living conditions of those workers were poor and sub-standards. Many were exploited by their employers. In many reported case, their wages were fraudulently cheated either by the exporting agent or the employers. The worst were those who had mortgaged or sold their land to pay for the trafficking fee and were sent to be stranded in a foreign countries without jobs and means of living.

Men are trafficked to work abroad for higher salaries than they get at home. In the initial state, agent legally sent them and received profit from employers. When the supply inundated demand the exploitation by trafficker began. The notion of “plenty money”
Awaiting overseas was the tempting bait for women to follow men to work overseas. They were recruited to work as domestic servants or service girls in the sex industry.

The women who worked as domestic servants were under the risk of being sexually abused or harassed. Furthermore, the women working in brothels or entertainment places in foreign countries, such as Japan, Germany, United States, etc., faced a lot of difficulties. Many of them were obtained and forced to work as prostitutes against their will without being paid. Many of them had to sleep with a specific number of customers to pay back the trafficking cost at a very exorbitant rate set by the traffickers before they were released from detention. The worst was the situation when the women had nearly paid all debt to the traffickers, then they were sold to another trafficker or brothel owner and the process of paying back the debt had to restart again.

At the same time, the economic development in Thailand had been more advanced than some neighboring countries. This economic gap had created infuse of labour into Thailand. Some migrant workers, particularly those from Bangladesh and Myanmar, were trafficked through Thailand to Malaysia and Singapore and most of the migrant workers were illegally brought into Thailand.

Another form of labour exploitation of which women and children were trafficked and exploited was the begging business. Most of children who were exploited as beggars in Thailand by organized crime syndicates were trafficked from Cambodia. They were lured, promised or willing to be brought into Thailand to work as beggars. Some had to make a payment to traffickers for trafficking management. When they were in Thailand they could not work on their own but had to work under the control of some agents who provide them with shelters and protection.

2. Trafficking for Sexual Exploitation of Women and Children in Thailand

Sexual industry in Thailand is rampant and become the biggest illegal business. Although it is impossible to assess the exact size and the true value in fiscal term this business has generated for the exploiters, the well-known fact is that this is the most lucrative illegal business that hundred thousand of women and children. Even the number of prostitutes (including males and children) is not exactly known. The numbers given by several sources are vary ranging from 66,190 to 2,000,000 in the year 2000.

Trafficking women and children into the commercial sex industry is a very profitable business with minimum risk. Many of victims of trafficking gave consent to the trafficked in order to get better paid in another country. These women knew that what kind of work they had to do and most of them agreed to pay back the inflated cost set by the traffickers. Some paid back the debt by sleeping 400-500 customers. What most of them did not know in advance was that they had to be detained against their will in brothels or other places until their debt had been fully paid. In case of working in foreign country their passports were taken away and kept by the traffickers. Without travel documents in addition to ignorance of foreign language and location made them vulnerable and obedient preys of the traffickers. Some were even cheated although they had with the agreed number of customers and they were not free because the traffickers or the
“owners” cited the untold cost during the time they had worked in the brothels. And many were resold to another brothel. The benefit that traffickers gained for each woman was about ten times the cost which the traffickers had interested.

However, many of them did not consent to work as prostitutes but believed the words of the traffickers that they would have a good jobs and also chances to travel abroad. The women believed they were illegal labour immigrations with tourist visa. After they realized they were to work as prostitutes, it was too late to turn back. However the ratio had been vary according to time and situation. Take Japan for example, in the last decade the ratio of women deceived and force to work as the prostitutes in Japan to the women consent to be prostitutes there was roughly estimated as 90/10. Considering to the situation of Thai children. The Thai children are difficult to be recruited on the matter, due to the efforts of both government and NGOs on education and social programmes so the traffickers turn to recruit foreign children for substitution. All the facts and data received from victims of trafficking both women and children clearly indicated that organized criminal syndicate played the major role in trafficking in women and children in every part of the world.

**Restitution of Victims of Crime in Thailand**

All victims of crime including victims of human trafficking in Thailand are under these laws. In Thailand, when someone talks about “victims of crime” in legal terms he usually refers to them as “injured persons” because the Thai Criminal Procedure Code provides in section 2(4) that: An “injured person” means a person who has received injury through the commission in any offense. This includes any other person who has the power to act on this behalf as provided in section 4, 5 and 6.

**Section 4 of the Criminal Procedure Code provides:**

In a criminal case where the injured person is a married woman, such woman has the right to prefer a criminal charge without the permission of the husband.

Subject to the provision of section 5(2) the husband is entitled to bring a criminal charge on behalf of his wife only with her express permission.

**Section 5 of the Criminal Procedure Code provides:**

The following persons may act on behalf of the injured person:

- The legal representative or custodian, in respect only offences committed against the minor or incompetent person under his charge;
- The ascendant or descendant, the husband or wife, in respect only of criminal offences in which the injured person is so injured that he dies or is unable to act by himself;
- The manager or other representative of a juristic person, in respect of any offence committed against such juristic person.
Section 6 of the Criminal Procedure Code provides:

In a criminal case where the injured person is a minor having no legal representative, or is a person of unsound mind or an incompetent person having no custodian, or where the legal representative or custodian is unable to discharge his duty for any reason, including conflict of interest with the minor or incompetent person, a relative of such an injured person or an interested person many apply to the court to appoint himself as a representative and litem.

Section 6 of the Criminal Procedure Code provides:

Person specified in Section 4, 5 and 6 have the power to act on behalf of the injured person according to the conditions provided in those sections as follow:

1. To lodge a complaint;
2. To institute a criminal prosecution or join with the Public Prosecutor in a criminal prosecution;
3. To enter a civil claim in connection with an offence;
4. To withdraw a criminal charge or a civil claim in connection with an offence;
5. To compound a compoundable offence

The Thai Criminal Procedure Code defines the ‘injured person’ as a ‘victim’. Thus, criminal justice plays a role in protecting the victim in a criminal case.

3. The Role of the Criminal Justice System in Protecting Victims in Thailand

The Thai legal system and criminal justice agencies and victims of crime in Thailand were discussed above. Both parts explain the scope of Thai Law, how criminal justice agencies work and describe who the injured persons or victims are. Before discussing the role of criminal justice system in protecting victims in Thailand, it is necessary to remember that Thailand has many legal provisions concerned with the protection of victims, especially victims’ rights, such as right to take legal steps provided for in sections 3, 4, 5, 6 of the Criminal Procedure Code, and the right to receive compensation and restitution, which is provided in Act for the Granting of Compensation to Aggrieved Parties and the Accused in a Criminal Case 2001.

- In a criminal case, an injured person has the right to protection, proper treatment and necessary and appropriate remuneration from the State, as provided by law.
- In the case where any person suffers an injury to the life, body or mind on account of the commission of a criminal offence by other persons without the injured person participating in such commission, and the injury cannot be remedies by other means, such person, or his or her heir, has the right to receive aid from the State, upon the conditions and in the manner provided by law.

In considering the role of the Thai criminal justice system in protecting victims mention can be made of two kinds of victims’ rights: the right to be informed and to participate in criminal justice proceedings; and the right to restitution and compensation for injury.
3.1 The Right to be informed and to participate in Criminal Justice Proceedings

It was mentioned above that Thailand is a civil law country, following the accusatorial system of proceedings, and the right of crime victims to be informed is the most fundamental right, without which the other rights and services available to them, seem to be meaningless. However, there has been an increasing consensus among various countries that it is necessary to change the current practices, which do not provide basic information to crime victims about the status of their cases. To some critics, the underlying thinking behind these changes, as a matter of fact, may not have resulted directly from the recognition of the significance of the rights of victims of crime, as much as the fact that the criminal justice system would benefit by treating the victims well. Results obtained from much research have pointed out that the reason why victims of crime did not report crime to the police was that they were apprehensive about how they would be treated, and whether they would be believed. Moreover, the major reason why victims and witnesses did not cooperate with the authorities was not because they did not want to cooperate, but because they were intimidated by the criminal justice system, and being uniformed as to what they were expected to do. As a result, they have been notable improvements in the criminal justice system of many countries, with regard to new developments designed to address victims’ needs for better treatment and more information, as well as to address the need of the State to have cooperative witnesses.

However, even though such developments are very much welcomed, it should be noted that crime victims do not just want to be treated more kindly, but to be able to participate in the criminal justice system. In this aspect, there has been heated debate on whether or not, and to what extent, this should be allowed. Advocates of the right of victims to participate in the criminal justice process present a host of arguments in their favor, ranging from the moral to penological. There is some argument that sentencing will be more accurate if victims convey their feelings, and that the criminal justice process will be more democratic and better reflect the community’s response to crime. The participant of victims will also remind judges and Prosecutors that there is a real person with an interest in how the case is resolved. It may also lead to increased victim satisfaction and cooperation with the criminal justice system, thereby enhancing the system efficiency. Moreover, when the court hears from the offenders’ family and friends, fairness dictates that the people who were actually injured should be allowed to speak. Some researchers have also suggested that participation also promotes the psychological healing of victims, as well as the rehabilitation of offenders, as they confront the reality of the harm they caused their victims.

On the other hand, opponents of the movement have also pointed out many reasons for their disagreement. For instance, some have suggested that victim participation might disrupt court proceedings, exposing the court to public pressure from which it should be insulated. Moreover, critics are afraid the court may be prejudiced by the presence of
victims; and thus diminish the quality of justice. Prosecutors and judges may be wary of victim participations, since it means that their control over cases will be eroded.

3.2 The Victim’s Right to information

As a matter of fact, the right of victims to be informed has not been legally guaranteed in Thailand yet. In practice, however, victims are given some type of information, according to the internal policy or directives of each criminal justice agency. In the writer’s opinion, there would be no strong objection to the enhancement of the right of crime victims to be informed of status of their cases; however, there has been inadequate attention to its improvement by the relevant authorities. This may be because of the lack of understanding on crime victims on the part of Thai criminal justice officials. As far as notification of the termination of investigation proceedings and decisions of the Prosecution whether or not to prosecute the suspect are concerned, crime victims are not automatically entitled to be notified by the police of the termination of proceedings, not do they automatically receive any notification from the Prosecution on whether or not the cases will be prosecuted. Practices vary from office to office on this matter. With regard to the right to know the reasons for non-prosecution of a case, section 146 of the Criminal Procedure Code provides the injured person (victim) the following right: The final non-prosecution order shall be notified to the alleged offender and the injured person; if the alleged offender is kept in custody or detained, measures shall be taken to set him at liberty, or application be made to the court to release him, as the case may be. The aim of this provision is to make the Prosecutor’s decision not to prosecute more transparent, as it may be checked by the injured party. Moreover, this may allow the injured party to decide whether or not he will start his own private prosecution. Apart from the above right to information, the writer believes that it is also necessary to keep victim of crime informed of the outcome of the court proceedings and the release of the offenders from custody.

3.3 The Victim’s Right to Participation in Criminal Proceedings

There is a heated debate in various countries regarding whether or not victims of crime should be allowed to participate in judicial proceedings. In Thailand, where the concept of a private prosecution still exists, as stipulated in the Criminal Procedure Code, victims of crime have the full right to bring their cases to the court themselves as joint Public Prosecutor. Although the criminal procedure laws of Thailand were modeled after civil law system, many elements of the common law were present in the laws as well as in its practices, including the concept of private prosecution.

With reference to Thai criminal procedure, the victims of crime have the full right to bring case to court by themselves without having to initiate a complaint to the police. In Thailand, criminal offenses have been classified in to two types: compoundable and non-compoundable offenses. Compoundable offenses are non-serious crime, while non-compoundable offenses are more serious crimes which have a more adverse impact on society. For compoundable offenses, the decision on whether or not to initiate criminal
proceedings remains fully in the hands of the injured party. The injured party may either request the police to proceed with criminal investigations by submitting a complaint to the police, or he or she may prosecute the case directly in the Criminal Court on his or her own. Without a complaint from the injured party, neither the Police nor the Prosecutor can start investigations or a prosecution. In addition, if the injured party decides to withdraw the complaint during any stage of the criminal proceedings, the case will be dismissed.

With regard to non-compoundable offenses, however, the main responsibilities of criminal prosecution remain with the State throughout the proceedings. The injured party, however, can still play a role in the criminal proceedings. For instance, apart from being able to file a complaint to the police or file a separate suit directly to the court, the injured party can also submit a request to the court for permission to join in the Prosecution’s case as a ‘joint Prosecutor’. The Prosecutor, however, is in charge of the case, and can make a request to the court to withdraw the status of joint Prosecutor from the injured party. If he or she thinks that the injured party may jeopardize the case.

In reality, not many cases are brought to the court through the channel of private prosecution. This is because of the high costs of litigation, and the lack of investigative facilities and capabilities on the part of the injured party.

3.4 The Right to Restitution and Compensation for injury

It is generally accepted that victims suffer damage from crimes in terms of bodily injury or death, or loss of property and mental suffering. Such suffering definitely causes some damage and financial costs to the victims. It is only fair to say that such damages and financial costs should be left unaddressed, but where appropriate, offenders should make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, and reimbursement of expenses incurred as a result of the victimization. To obtain such restitution, many jurisdictions allow the consideration of civil claim in criminal proceedings or by the issuing of a restitution order directly from the court. Apart from claiming directly from the offenders, who are unable to pay their dues, crime victims may generally be entitled to compensation from the State for monetary relief, separate from the apprehension and conviction of the offender.

3.5 Restitution and Compensation be Civil Action in Criminal Procedure

The injured party in Thailand is now allowed to enter into the so-called ‘parties civile’, a procedure whereby the victim can pursue a civil claim against the offender at the same time, and in the same proceedings as the criminal trial. However, Thai criminal procedure allows the Prosecution, in some types of offenses, such as in the case of theft, robbery, gang-robbery, piracy, extortion, cheating and fraud, criminal misappropriation and receiving stolen property, to apply for restitution of the property or the value thereof, on behalf of the injured party. A civil case can also be instituted by the injured party in connection with the criminal case. In reality, however, it is too difficult to use such an
avenue to obtain restitution, since the injured party would need to have assistance from a lawyer, and the lengthy civil proceedings would deter such practices.

3.6 The Injured Party and Restitution

A restitution order, issued directly by the criminal court, which states that the offender should compensate the victim, is another method that, if available, would directly assist the victim of crime in obtaining restitution. Before the enactment of a new law in 2011, there were no statutory provisions in Thailand allowing the courts to issue such an order. In some countries, in order to assist victims of crime, the court may, on their own initiative and discretion, issue a compensation order. Restitution, in the writer’s opinion, is an effective measure if appropriately used. It may serve rehabilitative and punitive purposes. It is a good way to alleviate harm done to the victim, and may provide a constructive way for the offender to be held accountable for his actions.

3.7 Act for the Granting of Compensation to Aggrieved Parties and Accused in Criminal Cases 2001

Although crime victims are entitled to the choice of ‘partie civile’ or applying for a restitution order as mentioned above, in reality, it would be difficult for them to receive restitution or any compensation at all. This is because in many criminal cases offenders cannot be identified and brought to justice. Moreover, offenders may lack enough money to pay for the damage done to their victims. The victims themselves also may not be able to collect enough evidence to sustain a civil action, or hire a lawyer. For those reason, state compensation is a necessary means of providing financial relief for victims of crime. As the result of the section 245 of the Thai Constitution 1997, a new law was enacted, entitled Act for the Granting of Compensation to Aggrieved Parties and Accused in Criminal Cases 2001. The main features of this new Act are summarized below.

Act for the Granting of Compensation to Aggrieved Parties and Accused in Criminal Cases 2001, applied to two kinds of victim of crime: “injured persons” (victim of crime) in a criminal case; and an accused who is a victim of the criminal justice system (a scapegoat). An “injured person” is defined to mean a person who was injured by the offense of homicide, bodily harm, sexual assault, and does not participate in committing the said crime. The kinds of restitution that can be granted to injured persons are as follows:

- Restitution for medical treatment to cure the bodily harm suffered by the injured person;
- Restitution for death;
- Restitution for inability to work;
- Other kinds of restitution which the injured person can prove.

An “accused who is a victim of the criminal justice system” is defined to mean a person who is prosecute by the Public Prosecutor, but some evidence later arises showing that he is innocent.

The compensation and expenses granted to the accused are as follows:

- Compensation and expenses for time spent in custody of 200 Bht. Per day;
• Compensation and expenses for treatment and mental rehabilitation for injuries directly caused from being a victim of the criminal justice system;
• Compensation and expenses for the death of an accused who is a victim of the criminal justice system for an amount not exceeding what is provided for in Ministerial Regulations;
• Compensation and expenses for inability to work while staying in custody;
• Compensation and expenses for the costs of undergoing legal proceedings.


His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that: Whereas it is expedient to have a law on the damages for the injured person and compensation and expense for the accused in criminal case; This Act contains certain provisions in relation to the restriction of right and liberty of person, in respect of which Section 29 in conjunction with Section 31, Section 34, Section 37 and Section 39 of the Constitution of the Kingdom of Thailand so permit by virtue of law; Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1: This Act is called the “Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act, B.E. 2544 (2001)”.

Section 2: This Act shall come into force as from the date following its publication in the Government Gazette.

Section 3: In this Act, a) “Injured person” means a person whom his or her life, body or mind has been injured by the criminal offense committed by other persons whereby such person is not involved in committing such offense; b) “Accused” means a person who has been sued to the Court that he or she had committed a criminal offense; c) “Damages” means money, property or other benefit which the injured person is entitled to receive in order to compensate damage caused by, or due to, a criminal offense committed by other persons; d) “Compensation” means money, property or other benefit which the accused is entitled to receive because he or she has been being the accused in the criminal case and has been taken into custody during trial, but the final judgment to such case stating that he or she did not commit such offense or an act done by the accused is not an offense; e) “Office” means the Office of Financial Assistance for the Injured Person and the Accused in the Criminal Case; f) “Committee” means the Committee Determining Damages for the Injured Person and Compensation and Expense for the Accused in the Criminal Case; g) “Member” means a member of the Committee Determining Damages for the Injured Person and Compensation and Expense for the Accused in the Criminal Case; h) “Public prosecutor” means the public prosecutor under the law on public prosecutor and the

military prosecutor under the law on constitution of the military court; i) “Competent official” means a person appointed by the Minister for the execution of this Act; j) “Minister” means the Minister having charge and control for the execution of this Act.

**Section 4:** The Minister of Justice and the Minister of Finance shall have charge and control for the execution of this Act and shall have power to issue the Ministerial Regulation, regulation and notification and to appoint the competent official for the execution of this Act.

Such Ministerial Regulation, rule and notification shall come into force upon their publication in the Government Gazette.

**Chapter I - General Provisions**

**Section 5:** Any request or entitlement to right or benefit under this Act shall not affect any right or benefit of the injured person or the accused under other laws.

**Section 6:** In the case where the injured person or the accused has died before receiving damages, compensation or expense, as the case may be, the right to request for, and receiving of, damages, compensation or expense shall devolve on their heirs in accordance with the regulation determined by the Committee.

**Chapter II - Committee Determining Damages for the Injured Person and Compensation and Expense for the Accused in the Criminal Case**

**Section 7:** There shall be a committee called the “Committee Determining Damages for the Injured Person and Compensation and Expense for the Accused in the Criminal Case”, consisting of the Permanent Secretary of the Ministry of Justice as Chairperson, a representative of the Royal Thai Police, a representative of the Office of the Judiciary, a representative of the Office of the Attorney-General, a representative of the Ministry of Finance, a representative of the Department of Provincial Administration, a representative of the Department of Probation, a representative of the Judge Advocate General’s Department, a representative of the Department of Corrections, a representative of the Department of Labor Welfare and Protection, a representative of the Lawyers Council of Thailand, and not more than five qualified members as appointed by the Council of Ministers upon the advice of the Minister. A person of apparent experience in the field of medicine, social welfare and protection of right and liberty of people shall be appointed as a qualified member at least one from each field.

The Chairperson shall appoint the government official attached to the Ministry of Justice as secretary to the Committee and may appoint not more than two other persons as assistant secretaries to the Committee.

**Section 8:** The Committee shall have the powers and duties as follows:

- to determine damages, compensation or expenses under this Act;
- to recommend the Minister related to the measure in protecting right of the injured person in the criminal case and the issuance of the Ministerial Regulation, regulation and notification for the execution of this Act;
• to make written inquiry or summon any person to testify or submit relevant document or evidence or data or otherwise as necessary for its consideration;
• to carry out any performance in order to serve the purpose of this Act. The Committee may entrust the Office to carry out any duty under this Section on its behalf.

Section 9: A qualified member holds office for a term of two years. A qualified member who vacates from office may be reappointed.

Section 10: Apart from vacating office under Section 9, a qualified member vacates office upon: (1) death; (2) resignation; (3) being removed from the office by the Council of Ministers upon the advice of the Minister due to negligent or dishonest in the discharge of duty, disgrace behavior or incapability; (4) being a bankrupt; (5) being an incompetent or a quasi-incompetent person; (6) having been sentenced by a final judgment of the Court to a term of imprisonment, except for an offence committed through negligence or a pretty offence.

Section 11: If there is the appointment of the qualified member while the appointed qualified members remain in office, such person shall hold office for the remaining term of the appointed qualified member.

Section 12: At the expiration of term of office, if the newly qualified members have not been appointed, the qualified members who vacate office shall remain in office to continue their duties until the newly qualified members have been appointed

Section 13: At a meeting of the Committee, the presence of not less than one-half of the total number of the members shall constitute a quorum. If the Chairperson is unable to attend the meeting, or is unable to perform his or her duty, the members shall select one among themselves to preside over at the meeting. A decision shall be made by a majority of votes. In casting vote, each member shall have one vote. In case of an equality of votes, the person who presides over at the meeting shall cast an additional vote as a casting vote.

Section 14: The Committee may appoint a sub-committee for the consideration or execution any matter as may be entrusted by the Committee.

The provisions of Section 13 shall be applied mutatis mutandis to the meeting of the subcommittee.

Chapter III - Office of Financial Assistance for the Injured Person and the Accused in the Criminal Case

Section 15: There shall establish the Office of Financial Assistance for the Injured Person and the Accused in the Criminal Case in the Ministry of Justice having the powers and
Victims of human trafficking in Thailand
duties as follows: (1) to perform secretariat work for the Committee and sub-committee under this Act; (2) to receive the request for damages, compensation and expense and make recommendation thereon to the Committee and sub-committee; (3) to coordinate with other government agencies or other person so as to acquire fact or opinion on the request for damages, compensation and expense; (4) to keep, collect and analyze data related to the payment of damages, compensation and expense; (5) to perform other duties as entrusted by the Minister, the Committee or the subcommittee.

Section 16: If the Office is of opinion that there is necessary to enter the proceedings under this Act, the Ministry of Justice may appoint its official with not lower than bachelor degree in law to precede the case or related performance as entrusted by the Ministry of Justice. Such appointment shall be informed to the Court. To enter the proceedings under this Section, the Court fee is gratis.

Chapter IV - Payment of Damages for the Injured Person in the Criminal Case

Section 17: The offence which entitles the injured person to request for damages shall be the offense as prescribed in the list attached to this Act.

Section 18: The damages under Section 17 are as follows: (1) the expense as necessary for medical treatment, including expense for physical and mental rehabilitation; (2) the compensation for the death of the injured person not exceeding the amount as prescribed by the Ministerial Regulation; (3) the compensation for the lost earning during the period the injured person is unable to conduct his or her earning power as usual; (4) other compensations as the Committee thinks fit; under the rule, procedure and rate as prescribed by the Ministerial Regulation.

After having considered the circumstance and gravity of the offense and injury of the injured person as well as the chance in which such injury shall be alleviated by other means, the Committee shall determine whether the damages may be granted to the injured person or not and the amount to be paid.

Section 19: If it appears later that the act claimed by the injured person for damages is not the criminal offense or there is no such act, the Committee shall notify the injured person, in writing, to return the received compensation to the Ministry of Justice within thirty days as from the date of receiving such notification.

Chapter V - Payment of Compensation and Expense to the Accused in the Criminal Case

Section 20: The accused who is entitled to compensation and expense under this Act shall: (1) be the accused prosecuted by the public prosecutor; (2) being in custody during trial; and (3) not being the person who committed the offense upon clear evidence and the charge has been withdrawn during trial or the final judgment of such case stating that the
fact to the case is conclusive that the accused is not the person who committed the offense or such act is not an offense.

If, in the case where there are many accused person and any of such person has died before the final judgment has been made, the Committee has determined the compensation and expense to be paid for the accused that still alive and such circumstance related to the nature of the offense, the death accused shall entitle to the compensation and expense under this Act.

Section 21: The compensation and expense under Section 20 are as follows: (1) the compensation in lieu of custody which shall be calculated upon the number of custody days at the same rate as prescribed for the confinement in lieu of fine under the Penal Code; (2) the expense which is necessary for medical treatment, including expense for physical and mental rehabilitation if the illness of the accused is the immediate effect of the proceedings; (3) the compensation in the case where the accused is dead and the death is the immediate effect of the proceedings. In this case, the compensation shall not exceed the amount as prescribed in the Ministerial Regulation; (4) the expense for the lost earning during the proceedings; (5) other expenses as necessary for the proceedings; under the rule, procedure and rate as prescribed by the Ministerial Regulation; provided that otherwise prescribed by law.

In the case where there is a request to recover the lost right which is the immediate effect of the judgment, the Committee shall determine the compensation in lieu of such right as appropriate if it is not possible to recover such right as requested.

After having considered the circumstance of the case, grievance of the accused and the chance in which the accused shall be alleviated by other means, the Committee shall determine whether the damages may be granted to the accused or not and the amount to be paid.

Chapter VI - Submitting a Request, Request Consideration and Appeal

Section 22: The injured person, the accused or their heir who sustain injury is entitled to request for damages, compensation or expense under this Act. The request to be made in the form specified by the Office shall be submitted to the Committee via the Office within one year as from the date the committed offense has known to the injured person or the date the Court has permitted to withdraw the case upon clear evidence that the accused is not the offender or the date the final judgment which stating either the accused is not the offender or the act of the accused is not an offense has been given, as the case may be.

Section 23: In the case where the injured person, the accused or their heir who sustain injury is incompetent and unable to submit the request personally, the legal representative or guardian, ascendant, descendant, husband or wife or other persons appointed in writing by the injured person, the accused or their heir who sustain injury, as the case may be,
may submit a request for damages, compensation or expense on behalf thereof in accordance with the regulation determined by the Committee.

Section 24: The rule and procedure on submitting and considering a request shall be in accordance with the regulation determined by the Committee which is approved by the Minister.

Section 25: If the person who makes a request does not agree with the decision of the Committee, such person is entitled to appeal to the Court of Appeal within thirty days as from the date such person has been informed the decision. The decision of the Court of Appeal shall be final.

The appellant may, in submitting the appeal under paragraph one, submit the appeal to the Office or the Changwat Court having jurisdiction over the domicile of the appellant in order to submit the appeal to the Court of Appeal. Such submission shall be deemed as the submission of appeal to the Court of Appeal under paragraph one.

In adjudicating the appeal under paragraph one, the Court of Appeal shall have the power to make an inquiry for additional evidence by taking evidence on its own or appointing the Court of the First Instance in so doing on its behalf as it thinks fit.

Chapter VII - Competent Official

Section 26: The competent official shall, in the performance of duty under this Act, have power as follows: (1) to take statement from any person who make a request for the fact related thereof; (2) to inquire in writing or summon any person to testify or send relevant document or evidence or information or other things necessary for consideration.

Section 27: The competent official shall, in the performance of duty under this Act, be the competent official under the Penal Code.

Chapter VIII - Penalties

Section 28: Any person who submits a request for damages, compensation or expenses with fault statement shall be liable to imprisonment for a term of not exceeding three years or to a fine of not exceeding sixty thousand Baht, or to both.

Section 29: Any person who gives or expresses fault statement or evidence related to the request for damages, compensation or expense under this Act to the Committee, sub-committee or competent official shall be liable to imprisonment for a term of not exceeding three years or to a fine of not exceeding sixty thousand Baht, or to both.

Section 30: Any person who fails to give statement or fails to send a letter in response of the inquiry, document, evidence or information or other necessary things in accordance with the order of the Committee, sub-committee or competent official without
reasonable excuse shall be liable to imprisonment for a term of not exceeding six months or to a fine of not exceeding ten thousand Baht, or to both.

Transitory Provision

Section 31: At the outset, the Ministry of Justice shall entrust any agency attached thereto to perform the powers and duties of the Office until the completion of the establishment of the Office which shall complete within one year as from the date this Act come into force.

List attached to the Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act, B.E. 2544

The offense committed against the injured person which entitles the injured person to request for compensation under Section 17, viz. the offense under the Penal Code, Book II, Specific Offenses:

Title IX Offense relating to Sexuality, Section 276 to Section 287;
Title X Offense against Life and Body;
Chapter 1 Offense causing Death, Section 288 to Section 294;
Chapter 2 Bodily Harm, Section 295 to Section 300;
Chapter 3 Abortion, Section 301 to Section 305;
Chapter 4 Abandonment of Children, Sick or Aged Persons, Section 306 to Section 308.
Panel V

Interpersonal Cyber Crimes: Problems of Social Networking

NAME
AGE
GENDER
HEIGHT
WEIGHT
SSN
NET WORTH
MARITAL STATUS
PET PEEVES
WORST FEARS
SEXUAL FANTASIES
MEDICAL HISTORY

OF COURSE, I EXPECT ALL OF THIS TO REMAIN STRICTLY PRIVATE!

Mike Keef, The Denver Post 5-26-10

www.eagleoutions.com
Linking Cyber Crime to the Social Media:  
A Case Study of Victims in Kolkata

Amrita Sen

Introduction

Cyber stalking may be defined as an online act of deviance in which an individual is deliberately stalked or harassed and it involves activities such as theft, surveillance, monitoring and false accusations. In recent days the increasing use of the social networking sites has helped to widen this problem through leaps and bounds. Despite enormous attention of mass media to stalking, there has not been much research on this topic and our limited knowledge about stalking is slowly advancing. The available literature on stalking suggests that although nothing can be concluded, 80% of the stalkers are male, in their 30s and are unemployed. Albers Miller (1966) has noted that the lack of fear of punishment in a society engages a person in inappropriate behavior and internet nowadays has paved the way to such form of open aberrant behavior. Our place of study being India, or to be more precise Kolkata, the results of the study shows that most often the stalkers have the opportunity to get away with their crimes due to lack of punishment. As compared to cities like Mumbai, Delhi etc, cyber crimes are found to be more recent in case of Kolkata. Herein we can find that victims of the stalking sometimes find it difficult to deter their pursuers, whether or not they report their crime to the police. The prevalence of stalking among the college students indicate that it is not an unusual problem for this population to contend with. Research has shown that most of the social networking site users use that site to make online connections and to maintain or rekindle established relationships. SNS or social networking sites allow anyone to join and provides a place for establishing multiple connections and networking opportunities to flourish. In this network it is also possible to invite others or to join and to become “friends”. This acts as a major pathway of obtaining personal information about the folks and uses them illegally. The perpetrators might obtain the contact number of the people and hamper their peace by constantly disturbing them or by circulating their numbers to the others just for the sake of having fun. In course of this paper, it is also found that the psychological state of mind of the people indulging in these types of crimes is not very sound. Often they hail from poorly developed social backgrounds, broken families, and immense poverty. They can also be seen to be intimacy seekers, incompetent and predatory.

282 Kolkata is the capital of the Indian State of West Bengal. It is situated at the banks of the Hoogly River, and is the principle cultural centre of Eastern India. Job Charnock, an administrator, who worked for the English East India Company, was the founder of this city.
Thus stalking on the whole can be defined as a “constellation of behaviors involving repeated and persistent attempts to impose on another person unwanted communication or contact.” It mainly occurs in a range of phenomenon like phone calls, letters, faxes, unwanted gifts, ordering goods or services on victim’s behalf etc. Roddel (1998) opines that cyber stalking is as real, menacing and threatening as stalking. They can have a variety of disguises such as threatening or harassing email, online verbal abuse (flaming), anonymous mass unsolicited email (spam) from your email address, identity theft, improper messages at the forums, pedophile and predatory activities etc. the book also advances some methods by which to counter the problem of cyber stalking. Since we live in an information age, internet has become an indispensible part of our lives. In course of these activities, individuals are naturally lured by the newly developed social networking sites, which afford a wide range of possibilities to stay in touch with the relatives and friends and even “to create new friends”. Until recently, the term stalking has been associated with big game hunting and predatory behavior in the animal kingdom rather than predatory behavior among the humans. Cyber stalking is a problem that increased in lengths and depths as electronic communication technologies became more complex and widespread. The federal laws should target the interstate cyber stalking and considerations must be given to how nations can work together the target cases of international stalking. In this paper an attempt has been made to reveal the possible cases of cyber stalking among some young college folks of Kolkata and the extent of their usage of the social networking sites.

In case of Kolkata, the grand opening of Eastern India’s first cyber at Lalbazaar by telecom minister Partha Mukherjee to facilitate cyber crime investigation training among the police did not prove to be much helpful, according to the complaints of the youngsters. Its inauguration was done by the ex chief minister of West Bengal, Buddhadeb Bhattacharjee, with technological assistance from the giant Infosys technologies. It was set up in the detective department building at the headquarters here people can directly lodge their complaints, instead of going to the local police stations. The Cyber Crime Cell of Kolkata receives about 30 mails per day, of which four to five could actually be followed up as real cases of cyber crime. (Kolkata Police, 2008). In this paper, an attempt has been made to explore the different dimensions of cyber stalking. To begin with, it is important to set out with the objectives of this paper. Firstly, the paper will focus on the target population, i.e. the people who are the main victims of cyber stalking and highlight the possible reasons of their vulnerability. Secondly, it attempts to draw a sociological portrait (viz. age, sex, ethnic class, education and other factors) of both victims and the perpetrators taking into account the conditions and strategies cyber stalkers employ in their predatory moves. Thirdly, the paper logically explores the issue of privacy in the electronic space and enquires into the role of the social networking sites, along with other regulatory agencies (especially government) in preventing cyber stalking. Fourthly and finally, the study finds out how the member of these sites gets connected and hence seeks

insight into the virtual community relationships and their features in relation to cyber stalking.

**Methodology**

This is primarily a qualitative study. Primary data has been collected by both online and offline means of interviewing, communicating, observing and conversing with the sample population. The method of the study is semi structured interview schedule as well as focused group interviews. Questionnaire is not used because of the reason that it may hamper the free flow of conversation hindering the informality in case of sensitive discussions. The sampling method is a purposive one that intends to probe into the above issues. The size of the sample is twenty two and the unit of analysis is twenty two purposively selected high school, graduate and postgraduate students of Jadavpur University, Kolkata 700032. They are enquired about their online activities in the context of usage of social networking sites and text messaging. This has been supplemented by secondary sources such as books, journals etc. General frequencies of the information found are also provided. Most of the respondents are unmarried and are in the age group of 16 to 22. The duration of the study was from the middle of November to the first week of December’2010.

**Analysis of the Study**

Most of the respondents interviewed were college students. They were primarily engineering students from departments of Civil, Mechanical, and Electrical. Some students from the department of History and Philosophy were also interviewed. They can be categorized as young adults having a well knit circle of friends. All of them were members of the social networking sites like Orkut, Face Book, My Space, Twitter etc where they frequently chat and interact with their friends. They come online almost every day, although all of them don’t have a stipulated time of coming online. They have created their profiles in the sites, so that people can recognize them easily. Face book and Orkut are the most frequently used sites by them. Their activities include making friends, creating communities and chat groups, uploading pictures, videos, creating wall posts and scraps. The purpose of joining these sites for them is making friends and regaining contacts with old friends. Although a significant no of people don’t add unknown people to their friend lists, many students have unknown friend also with whom they have interacted both on a personal and impersonal basis. Some of them have also on occasions, engaged in a relationship which is more than friendship of which they have admitted and thus have also exchanged many personal details of themselves with each other.

Some of the respondents had been victims of cyber stalking and harassment also owing to the anonymity of the stalkers and the display of personal information in their profiles. 284

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284 Internet is emerging at a rapid pace and it’s already been an integral part in the field of business, economy, entertainment, social groups all over the globe. The rise of Internet usage all over the world unlocked various new businesses, products, services. Internet has changed the way the world shops. Every business related to any niche knows the importance of Internet and creating a website to show their products to potential consumers (Bocij, 2004).
The extent of the stalking was such that they were forced to close their existing profiles and open a new one. Cases have been reported where the perpetrators kept on sending unwanted messages to the respondents regardless of the fact that they were not a part of the friend list of the respondent. Repeated cases of reporting the abuse only resulting to the fact that the stalker created another profile, deleting the previous one and kept on disturbing the respondent. Apart from that, repeated friend requests from unwanted people, indecent remarks and attempts to make forced interaction were also made. It had serious implications on the private life of the students. Moreover, as can be concluded from their opinions, the psychological effects of cyber stalking can be disastrous, producing verifiable psychological disaster and damage, regardless of whether the victim ever actually meets the harasser. This kind of fears ended up causing anxiety within the victim, especially with the women, who began to fear physical injury.

According to the respondents, such perpetrators come from families with disturbances and stormy relationships between the parents and others. Their mental states of mind are not sound and many of them suffer from acute mental illness. As a result they resort to activities such as drug addiction, hacking, pornography etc to seek relief from their home atmospheres. They gain satisfaction from the annoyance and distraction caused to these young girls. However unhealthy family atmosphere is not the only cause and many respondents are also of the opinion that these people come from affluent backgrounds also where they have enough money to waste and indulge in cyber crime. The analysis in general has proved that the respondent’s reliance on the government initiated measures to resist cyber crime is also not very forth coming. Although there are several cyber crime laws, many of them are dysfunctional and are hardly properly implemented. The police hardly get to do anything in the event of a reported cyber stalking. Orkut, although having an option to report abuse against a stalker, is hardly capable of resisting the stalkers from their detrimental activities. Multiple profiles can be created in these sites from which the perpetrator may access the victim. According to the respondents, the incident of cyber stalking is increasing in leaps and bounds nowadays because there are not sufficient measures to combat the problem. Several cases has been reported from the students whereby the perpetrators with malafide intentions had created fake profiles with the telephone number of the victim’s in Orkut and the victim was consiste ntly harassed with indecent proposals over the phone from unknown numbers.

Finally, although these sites hold a major significance in today’s busy life for reconnecting with the people, many respondents also feel that because of these sites, the relationship between people are becoming more formalized day to day. People rarely meet friends and relatives face to face. In addition, they have added to the criminal activities associated with the cyber space, a major reason for this being anonymity and deceptive appearance of the criminals. As a result, the social networking sites have both positive and harmful effects. The idea is that cyberspace exists as a separate realm to the physical world, and may have developed an ethical culture of its own. The object of this paper was mainly to establish a link between the social networking sites and the kinds of their usages, and the kinds of malicious activities associated with the use of them. Indian Information
Technology Act 2008 (amended) has never addressed the problem of stalking directly. The main problem which lies with Kolkata, or as a whole with India is that, if cyber stalking through the social networking sites is done to annoy the victims only, it is not treated as a punishable offense and is treated as bail able. A clear message from the study shows that many victims have felt that they are frustrated by the lack of help and support that has been given by both the service providers as well as the police. Although several laws have been passed and are in place, the implementation agencies are still weak. Teens reported that social networks were the most likely places where their age group would encounter cyber stalking. On the whole, however, victims could not pinpoint where or how their cyber stalkers found them. The Cyber Crime Cell of Kolkata Police holds that they have all the necessary provisions to track the stalkers and arrange for digital forensic tests whenever required. But such claims are hardly met with reality. The Kolkata Police has recently collaborated with the Public Relation Society of India and Centre for Cyber Victim Counselling to work for the benefit of cyber crime victims (Mukherjee, 2011).

21st century has brought major advances in communication technologies. Even the poorest of poor has benefited from this rapid advancement of technology. But many of the features of these new technologies – low cost, ease of use and anonymous nature – make them attractive media for fraudulent scams, transmission of pornography, child sexual exploitation and “cyber stalking”. Terrorists have made wide use of cyber media facilities these days. One of the biggest threats to National Security is the ability of some of the foreign powers to enter into our networks and steal or destroy data and incapacitate our systems. Recognizing the seriousness of cyber threats, CID West Bengal has developed a Cyber Crime Unit under the Special Operation Group (SOG). For Scientific Analysis of such threats a Computer Crime Analysis Lab (CCAB) has also been set up. This Lab will have the provision to handle cases pertaining to hacking, spread of virus, pornography, manipulation of accounts, alteration of data, software piracy, creation of false websites, printing of counterfeit currency, forged visas, theft of intellectual property, email spamming, denial of access, password theft, crimes with cell phones and palmtops, cyber terrorism and the transmission of secret codes concealed in pictures. However this battle against cyber crime requires a high level of expertise. Since the incidences of internet crime have increased exponentially all over the world, provisions need to be in place and are required to be properly implemented. The problem which we need to focus on further in future is that very few people are aware about the legal aspect of cyber stalking. Very few people even know that something called cyber stalking even exists. Folks need to get education regarding online abuse. It is one of the major steps by which an end can be availed to this heinous crime. The media, as well as the government and civil society, should take an active step forward to combat the problem of cyber crime related to the social networking sites. The legal aspects are of no use if laws are not properly implemented, one does not know what is cyber stalking and what to do, when one becomes the prey of it.
Social NOT working:
Examining the ‘personal’ in interpersonal dating cyber crimes

Aunshul Rege

Introduction

Online dating sites are increasingly being accepted as an avenue for forming romantic relationships. This industry serves approximately 40 million users and generates $1.9 billion in revenue annually, which is not surprising given that the online dating sector offers its customers several benefits, such as ease of access, anonymity, new forms of interaction, and quick scientifically generated matches (Rege, 2009).

This successful industry, however, is a frequent venue of cyber crime, which poses serious problems for matchmaking services and daters worldwide. Online dating crimes are global in scope and it is impossible to determine the amount of victimization given that there is no centralized database tracking these crimes. Further compounding the problem is the underreporting of victims, either because they are embarrassed or are unaware that they have been victimized (Rege, 2009).

Rather surprisingly there has been little research on cyber crime and online dating even though it has a high toll on victims' finances and emotions. Pizzato et al (2012) examine dating site matchmaking algorithms to determine whether scammer profiles are favored over legitimate dater profiles. Schmitz et al. (2012) employ classification models to categorize daters into bots (artificial intelligence programs) vs. non-bots (human beings). Fogel and Shlivko (2010) examine romantic spam emails and their impact on college students. Pan et al (2010) employ descriptive data mining to identify fraudulent profiles on dating websites. While each of these studies enhances our understanding of online dating cyber crimes, they utilize a technical approach.

Given that cyberspace provides offenders with benefits such as anonymity and spatial-temporal liberty, the notion of 'personal' in interpersonal dating cyber crimes needs to be reexamined. This study has two objectives. First, it examines an assortment of online dating crimes to identify the organizational dynamics of cyber criminals, their modus operandi and motivations. Second, this study explores the nature of offender-victim relationships in dating site cyber crimes.

Theoretical Framework

Criminal Organization

Best and Luckenbill (1982) offer this intermediate level of analysis that dovetails with Deleuze and Guattari’s (1987) rhizomatic approach and fits nicely with my research project. They suggest that criminals organize themselves along three dimensions: (i)
complexity – criminal organizations have a division of labour and members have different specialized skills, (ii) Coordination – crime groups vary with regard to their roles and the rules their members follow, and (iii) purposiveness – criminal organizations vary with respect to their determination in achieving goals (Best & Luckenbill 1982). The levels of complexity, coordination, and purposiveness, collectively determine the sophistication of criminal organizations, ranging from loners, colleagues, and peers to mobs and formal organizations.

Lemieux (2003) identifies as the nine roles inherent in most criminal networks of any size: organizers, executors, money movers, insulators, communicators, guardians, monitors, extenders, and crossovers. Both these criminal organization theories offer the necessary foundations for exploring cyber criminal organizational dynamics.

Cyberspace

Cyberspace is open-ended, informal, and amorphous. These characteristics allow cyberspace to harbor nomadic and unbounded movement. Cyberspace can be viewed as a rhizomatic structure, which has no center of origin, and what exists is only the in between (Lort 2000). Deleuze and Guattari (1987) offer six principles of the rhizomatic model: connectivity, heterogeneity, multiplicity, regeneration, decalcomania, and cartography. This theoretical approach helps identify the properties of digital environments that permit cyber criminal movement, organization, and communication.

Hyperpersonal Theory

Walther’s (1996) hyper personal theory argues that text-based media can facilitate social affinity. However, this affinity takes longer to develop than it does via in-person interaction where conversation is rapid and facial/body cues are present. In online communications over longer time periods, however, individuals have the opportunity to construct idealized perceptions of others and photographs (for instance) provided by a romantic partner may further build that perception. This theory is thus useful to understand the interpersonal nature of online dating crimes.

Methods

The methodological approach is qualitative in nature and uses document analysis, which fits nicely with the exploratory theme of this research, permits the re-analysis of preexisting texts to address the research goals of this study, and overcomes the difficulties in finding research subjects (victims, criminals, law enforcement) to interview (Rege 2009). This research examines 200 articles drawn from dating sites, news and media sites, academic sources, and anti-scam databases, from 2000 to 2012. Documents are sampled until ‘thematic saturation’ is attained. Saturation occurs when no new themes emerge from the data.
Data/Case Studies

This study examines seven dating site cyber crimes: romance scams, identity theft, hacking, insider crimes, phony dating sites, fraudulent dating sites, and ‘dating bots’ or artificial intelligence programs. Using these cases, a two-fold analysis is offered on the (i) organizational components of crime and criminality at dating sites, and (ii) impact of these crimes on the notion of ‘personal’ in interpersonal crimes.

**Case 1: Romance Scams**: Patrick Giblin (individual), husband-wife (Lazarevs) and mother-daughter (Vasseurs) teams (peers), and Nigerian scammers (crime networks).

**Case 2: Identity Theft**: Robert Frost and Facebook.

**Case 3: Hacking and Extortion**: eHarmony.com and PlentyOfFish.com

**Case 4: Insider Crimes**: BeautifulPeople.com

**Case 5: Phony Dating Sites**: Lovely-Faces.com and Barrie Turner

**Case 6: Fraudulent Dating Sites**: Great Expectations, Platinum Personals, Match.com and Yahoo Personals

**Case 7: Dating Bots**: ‘Cyber Lover’ bot

Analysis

**Analysis 1: Anatomy of Cybercrimes at Dating Sites**

These crimes vary along the organization of crime and criminality, the rationales and motivations of cybercriminals, and the ability of cybercriminals to manage security systems and law enforcement.

- Organization: loners, peers, networks
- Skills: social, technical
- Motivation & rationalization: financial, thrill, neutralization tactics
- Managing security/policing: few measures & easily bypassed; jurisdiction

**Analysis 2: Examining the ‘Personal’ in Interpersonal**

These cyber crimes demonstrate that cyberspace alters the notion of 'personal' in interpersonal dating cyber crimes. We can already argue that victims and offenders may not know each other, given the anonymous nature of cyber crimes. However, we can move beyond this general observation and argue that ‘personal’ varies along three dimensions: type; intensity; and offender-victim ratio. The ‘type’ of personal could be between individuals, businesses, and bots. This type can therefore be viewed as human (interpersonal), organization (impersonal), and artificial intelligence (hyper personal), which suggests that the ‘personal’ in interpersonal dating crimes does not necessarily occur between individuals.

The intensity dimension is indicative of the level of personal impact (emotional, financial) in online dating cyber crimes. Romance scams tend to have a high intensity because of both the emotional and financial personal impact factor. The long-term (deceptive) relationship takes a large toll on the victim’s emotive and monetary resources. On the other hand, the case of BeautifulPeople.com has low intensity as it did not lure
customers or engage them in a scam. Here the virus merely altered the entry criteria for new members. Thus, intensity can vary from high intensity (large emotional and financial impact) to low intensity.

The **offender-victim ratio** varies based on the type of crime in consideration. Interpersonal here could be one-to-one (Beautiful People), one-to-many (Giblin, Lazarevs, Vasseurs, Facebook, Turner, Cyber Lover bot, Match.com, Yahoo Personals, Lovely-faces.com), many-to-one (Frost, eHarmony, PlentyOfFish, Platinum Personals), or many-to-many (Nigerian scammers). In the context of this paper, ‘one’ represents an individual, a team, and a dating website. This raises the question: what does ‘personal’ mean with regards to victim-offender relationships?

Thus, the notion of ‘personal’ in interpersonal dating crimes takes on several, overlapping meanings. Given the above case studies, can we call these interpersonal dating crimes ‘interpersonal’? If interpersonal crime is crime between persons, what can be said when the **offender** is not only an individual, but also a dating service provider or a bot? And what can be said about the **victim** who can be either an individual or a dating service provider? These issues are not exclusive to online dating crimes (online gambling) or to cyber crimes (corporate crime) themselves. The 'personal' dimensions developed in this paper should therefore be further applied to (i) account for the impersonal, interpersonal, and 'hyper personal aspects of other interpersonal cyber crimes, (ii) determine the validity of the three dimensions: type, intensity, and offender-victim ratio and (iii) identify any other dimensions that have not been captured here.

**References**

Social networking sites social or anti-social?

Dataraj Patwe and Jyoti Bhakare

Introduction

Since the last decade or so there is a tremendous increase in the commercial and personal use and exploitation of Internet. Our life today is much more developed compared to past generations and has gone e. Thus development in Science and Technology has changed our human status from citizen to netizen. Internet as a technology used in the whole world as a powerful tool for socialization, learning, communication and engaging public and private life. It has entered in every aspect of our human life. Internet has generated different activities on www i.e. World Wide Web. One of the interesting, desirable and famous additions through www is social networking sites.

Whatever may be the form of the use of social networking sites they have definitely influenced human mind. It has changed our human nature and life as now through social networking sites we are more cautious about our relations as ever. There may not be traditional face to face interaction in social networking sites but they are defiantly providing a social platform for social and personal communications. Now with the increase in communication through digital media like mobile and social networks a new voice is raised of excessive communication leading towards formation of bad culture which is increasingly resulting into social evils and crimes. Social networking sites had contributed somewhat in increasing the crimes and social evils and also challenges before the existing traditional laws and legal systems throughout the whole world to which fortunately or unfortunately India is again not an exception.

What is Social Networking

Social networking sites are those online communities who allows its users to share and communicate information through multimedia aspects to one another, i.e. one can post his wishes, one can post his photos, videos and get connected and stay connected with his friends, relatives, or known or unknown ones in his or her life. Social networking sites are like open public forum for all the netizens who are willing to share their personal and public life with their friends, relatives and the close ones. Social networking sites are a new mean of creating, establishing and maintaining friendships and online relationships. They are web based virtual social communities created through generation of profile with account user name and own password and they can go beyond boundaries in a second or so.

The reason behind the tremendous growth of social networking sites is not only the technology of social networking is easy, fast, and cheap but also it satisfies one of the
paramount needs of human being i.e. to interact and communicate. As said by many greats of sociology man are a social animal and social networking sites are helping human beings to go and stay social. Some say it is a virtual world as anyone can see others profile once he or she registers his profile or creates account on such social networking site. Facebook says they are a technology company and they provide a social utility to communicate and share information within the liked ones.

**Social networking sites why social?**

Any media when used for public at large by public at large turns into social or public media. There are several forms of social media i.e. print media and digital media or so on but the emergence of social networking sites had made it the most preferable, popular, desirable and interesting social media tool. There are many reasons why we need to brand social networking sites as social media. To cite some reasons we can see now we are better citizens as we are now more cautious about our relations and friendships as ever, further some say they are getting a useful tool in the form of social networking sites for getting job through LinkedIn, some say that they are using social networking sites for welfare of society, for business organization it is a easy, cheap, fast and powerful business tool, for social reformers such as Anna Hajare and his team social networking sites are powerful tool to gather public opinion. What our father of nation Mahatma Gandhi did for public support for freedom movement in thirty years was done by Anna Hajare and his team in a period one year through social networking sites in their anti corruption movement.

Social networking sites are emerging as a powerful tool for expression of freedom of speech in this modern e-governments democracy. Social networking sites such as Facebook, LinkedIn has got the ability to connect and bring people together even beyond boundaries for any social cause and for many political and social acts. Social networking sites are powerful and effective tool for creating social awareness about social problems. It is one of the preferred mean of expressing our fundamental freedom of speech and expression now a day. Social networking sites are modern mean of creating and maintaining relationships and thus help netizens to go and remain social and because of which social networking sites are social.

**Social Networking sites why anti-social?**

Since the evolution of Social Networking sites there is a constant interaction of use of social networking sites and the legal implications arising out of use social networking sites. Initially social networking sites were developed and maintained for maintaining group communications later it resulted into a global mean for social communications, later it resulted into one of the powerful e-weapon to express our Freedom of Speech and Expression but the evil doers made it an e-weapon to use it against the society at large.

The social networking sites are providing some basic information like the name, age, address and location, gender, hobbies, workplace and so on. The web criminals are easily taking the advantage or disadvantage of this available personal information of the users. Many a times we can see that the users are too much excited about posting their and their
family photos on social networking sites which gives rise to online defamation, sexual abuse, sexting, cyber morphing, identity theft, Phishing, spamming, cyber stalking, cyber harassment, cyber frauds, hacking, impersonation i.e. by creating two or more profiles by using different names and same photos and by establishing fake profiles, cyber obscenity, cyber bullying, domestic harassments, blackmailing and many more emerging cyber crimes are been made easy by these social networking sites. Social networking sites are generally been used by the evildoers to kill the privacy of other users and they are a constant threat for the privacy of individuals. Apart from privacy the issue of data protection on these online networks is also one of the critical issues behind allowing or disallowing the use of these networking sites.

There is an increase in the number of social networking sites and their users this gives a great platform as well an easy, cheap and powerful mean or tool to the evil minds in each and every society. Though the recent developments in the social networking sites provides for the privacy settings but the active users are either not aware or not afraid of what the evil doers or the web-criminals can do with their accounts. Social networking sites are an easy way of harassing the women users and majority of the victims of social networking sites are women. Once there is a breakup in the relationship the individuals are using social networking sites for their anger to explore against one another in public. In recent times there are many cases registered in Maharashtra in which the husbands were defaming their wife’s online by using social networking sites such as Facebook. Social networking sites are used for expressing our anger against corruption by creating several slogans, by creating some pictures against government and the leading political parties and their leaders which may be somewhat right for our anger but for the political leaders their personality is defamed in public at large. These and many other things done through social networking sites are raising questions as are social networking sites are social or anti-social. The answer to the above question will be given in future by either its misusers or by its users.

**Conclusion**

Internet has definitely got the ability to play with current population and make the population play and use it against one other. It depends upon the population whether they use it for their good or bad. The current technological developments is the beginning the future is so bright that any more preferred technological development in communication system is merely expected and will not be shocking. Social networking sites are a great platform for one of the most basic human activity i.e. communication or interaction with one another. The facilities and privileges provided by the social networking sites are useful for socialization at a great pace and made the concept of one world virtually real.
Introduction

In ancient Indian culture, teachers were given prime space in a student’s life. The tradition is still alive, however, with a gross difference that in many occasions teachers are violently targeted by students from the age group of 12–24 and more. The students have taken to cyber space, especially the social networking sites to bully, defame and spread hate messages against the teachers for various interpersonal differences. This particular behaviour is not restricted in young school students only. There are few cases where university students have taken to social networking sites to target their teachers. In this paper we claim that such victimisation of teachers by the students which could be initiated due to malicious attitude of the students towards their teachers, including unreasonable personal demands etc, grow more intense due to the nonchalant attitude of the social networking site. In this paper, we attempt to analyse the issue of victimisation of teachers by the school, college and university students from the age group of 12–25, in the social networking sites like Facebook, Twitter and Google plus in India.

Methodology

This paper would follow mixed methodology, heavily depending upon doctrinal methodology and also embracing empirical methodology to a certain extent to understand the nature of the problem. For the purpose of this paper, we have also taken up one case study of a faculty member of a university who had been intimated, harassed and defamed by a student in the social media.

Student versus teacher in a new medium

Analysing the recent trend of victimising in the cyber space, it can be seen that oftener than not, teachers are targeted by the students in the social media. Cyber bullying teachers by the school students has received momentum due to easy access to the social media by minor children (Jaishankar & Halder, 2009). The policy guidelines of the social networking sites like the Facebook or Google owned Google plus or Twitter would show that any individual who is 13 and over can have their profiles in the said social media. Once the individual creates the account he/she gets privilege to express his speech and expression in the broadest sense of the freedom of speech and expression as guaranteed by the First Amendment guarantees of the US constitution. Analysing the case studies of cyber bullying of teachers provided by Jaishankar & Halder (pg.590.2009), it can be seen that mostly students take to social media to create defamatory posts about the teacher. The
following case study would help us to create a pattern for victimisation of teachers in the social media by the students:

In this case, the student –perpetrator was a university graduate student aged about 25 years. Angered by the charges of misbehaviour, he targeted some of the university faculties with sharp verbal abuses. When he found that his victims, the faculties were nonchalant, he took to circulating SMSs with extremely derogatory remarks. To increase his audience, he finally took to Google hosted social media. He started posting extremely derogatory remarks about the faculties, often calling them names and threatening with dire consequences. Even though his ‘posts’ were repeatedly reported by the victims and their acquaintances, the social media neither recognised such posts as ‘hate messages’, nor took any action against the perpetrator for posting inappropriate contents. When the perpetrator finally copied a picture of one his victims from a website which spoke about his (the victim’s) scholarly achievements, and posted the same along with further derogatory remarks about him, the victim lodged a strong complaint with the social media. Even though the social media further refused to take down the post on the ground that it does not recognise the mischievous activity as an offensive post, the perpetrator finally took down the post after he was informally warned by the police, who was alerted by other faculty members. However, the other derogatory posts are still displayed in his profile wall of the social media. The victim however, refused to lodge a separate private police complaint against the perpetrator thinking that this would finally destroy the perpetrator’s life and future job opportunities.

This case study along with the case studies on cyber bullying the teachers by the school students from the news reports presented by Jaishankar & Halder (2009) earlier may establish a typical pattern of cyber victimisation of the teachers by the students. This pattern can be explained by the diagram below:

From the above analysis it can be seen that student perpetrators are motivated by two main factors to victimise the victim teachers; (i) they pose themselves as fictitious truth seeker rebels who use the cyber space to reveal the supposedly true faces of the teachers;
(ii) the social media supports them indirectly by not responding to the reports lodged against such derogatory posts privately by the victim or the acquaintances of the victims.

**Conclusion**

The problem of victimisation of these kinds are increasing essentially because the social media refuses to accept offensive post as ‘offensive content’ as per their own rules and regulations. The perpetrator finds not only wide platform but also an undisturbed platform by the platform provider, namely the service provider. The perpetrator vents out his anger, frustration over the victim in most abusive words. He also creates his train of sympathisers by portraying himself as the one who dares to revolt against the traditional systems and authorities. The victimisation increases when the victim refuses to seek police or legal help after he is refused any help from the service provider. We suggest that the situation can be changed when the service provider is nailed for neglecting its own promises and refusing to abide by the domestic laws of the land, apart from booking the perpetrator for charges of abusive speech, defamation, intimation etc.
A critical study of impact of hate crimes in cyber space

Deeksha Gulati and Suma Barua

Introduction

“From ancient grudge break to new mutiny, where civil blood makes civil hands unclean.”

As reminded in Romeo and Juliet (Prologue 3-4), hate, as love, is as ancient as man can be, and it fuelled crime in the yester days as it does now.

Hate crimes can be defined as any felony or crime of violence that manifests prejudice based on “race, colour, religion, or national origin”. These crimes cannot be simply termed as biases, they are in fact dangerous actions motivated by such biases resulting in a criminal act. (e.g., cross burnings, physical assault). The most crucial difference between a hate crime and a similar non-hate crime is the underlying motivation. While a conventional crime might be motivated by a desire to expropriate resources from the victim for the personal gain of the offender, in the case of hate crimes, there is a deliberate intention to victimize an individual because of his membership or belonging in a certain social group, their beliefs or their value system (Sharma, 2012).

Hate crime have existed throughout history in one form or the other and is a part of our history. Hate motivated crimes have shaped and sometimes defined world history. One of the most notable and the darkest period in the World history is the Nazi's persecution of the Jewish people by Hitler which called for the total annihilation of the Jews. It led to death camps and resulted in the mass murder of millions of people.

Europe has been plagued by pogroms as much as by witch-hunting and other forms of prejudices; the United States have not escaped either this violence with its share of lynching of African Americans; Indian society still suffers from strong bias of Atrocities committed against Scheduled Caste and Scheduled Tribes, heinous crime Honour killing and the litany could go on (Guinchard, 2009).

Though with the advent of internet, the world has been revolutionised in the way people do their business and live their lives, yet it has come with a price, the possibility of using this medium for unlawful activities has grown as well. The internet has become a new medium of spreading hate. Hate, which has been able to survive and trickle down from generation to generation has now taken a magnanimous form. Where once a person could only propagate his hateful ideas to a few passerby’s or to the neighbourhood, can now from the safety of his house can easily create a website propelling their messages to the entire world.

Due to this, the Internet generation, unfortunately, is seriously at risk of getting plagued by hate. Not only is hate present on the Internet today; it is being spread around the globe with a mere click of a mouse. It allows extremists easier and faster access than
they have ever had before to a potential audience of millions, a high percentage of who are young and gullible. It also allows haters to find and communicate cheaply and easily with like-minded bigots across borders and oceans, to promote and recruit for their cause while preserving their anonymity, and even to share instructions for those seeking to act out their intolerance in violent ways (Combatting Extremism in Cyberspace, 2000).

Victims of such crimes tend to be innocent members of the targeted groups and generally have no previous relationship with the offenders. This unpredictability causes not only the victims but also the entire community to be in fear or state of anxiety. Hate crimes have an effect on both the immediate target and the communities of which the individuals are a member, which differentiate them from other crimes. With internet as the medium, the reach of such hate material has immensely increased. Recently, we saw the impact of internet in propagating hate crimes, in India in the first of its kind case where there was mass Assam exodus on account of a systematic and sinister campaign on the internet that the Muslim community in various cities like Bangalore and Pune had served quit notices to residents from the North East. The supposed reason for this was the doctored images and videos uploaded on Facebook and other networking sites showing attacks on Bangladeshi Muslim immigrants by Bodos in Assam and Muslim Rohingyas in Myanmar's Rakhine (Arakan) state. More than 245 websites and blogs were identified carrying hate messages, pictures and videos. Such was the effect of the photos and videos that it led to crimes against North Eastern forcing them to flee.

Technology is an intimate part of today’s youth, where taking pictures and posting videos on Facebook and other social networking sites is done on a daily basis. The speed offered by technology does not help us think twice about the consequences of our actions. While violent crime victimization carries risk for psychological distress, victims of violent hate crimes may suffer from more psychological distress (e.g., depression, stress, anxiety, anger) than victims of other comparable violent crimes (Garcia L., 2000). Survivors of violent crimes, including hate crimes, are also at risk for developing a variety of mental health problems including depression, anxiety and posttraumatic stress disorder (PTSD). PTSD emerges in response to an event that involves death, injury, or a threat of harm to a person. Depression, anxiety, and PTSD may interfere with an individual’s ability to work or to maintain healthy relationships, can lead to other problems such as substance abuse or violent behaviour.

Hate crimes are different from other crimes in that the offender—whether purposefully or not—is sending a message to members of a given group that they are unwelcome and unsafe. Thus, the crime simultaneously victimizes a specific individual and members of the group at large. Hate crimes are often intended to threaten entire communities and do so and it decreases the feeling of safety and security (Boeckmann & Turpin-Petrosino, 2002). Being a member of a victimized group may also lead to mental health problems. Research suggests that witnessing discrimination against one’s group can lead to depressed emotion and lower self-esteem (McCoy & Major, 2003).

“Conception of the Internet as a regulation-free medium is appealing in principle.” The Internet retains a number of unique characteristics: “[it] offers a [whole] range of
communicative options: person-to-person, some-to-some, one-to-many, or many-to-many;” it provides “globalism, anonymity and speed for any on-line activity;” and it does not have such inherent restrictions as scarcity of resources or limited accessibility. (TIMOFEEV, 1999). However, the reality is that the Internet is being regulated to the extent that each nation considers possible and appropriate.

The increase in the rate of hate crimes committed has increased substantially and the laws related to such crimes are substantially new and not well equipped to deal with the new developments.

At present, there is no effective mechanism for inspection against racist ideas, hate or abusive speech in the name of freedom of surfing the Web. Impact of Hate crimes on cyberspace is the direct result of unregulated speech on internet which can be termed as Hate speech. The laws of individual countries do regulate internet content and have laws regulating and prohibiting hate speech but their effectiveness is questionable. As regards to India there are lacunas in the current legal system. No proper legislation has been made till date to effectively combat hate speech over internet. The laws under the Information Technology Act, 2000, are drafted too vaguely and are often misused. Therefore, there is an urgent need to demarcate what constitutes a valid opinion under law and what constitutes statements of hate and to have a balance between an effective legislation imposing reasonable restrictions on the right to speech and expression at the social network front without unduly curbing it.

From Human rights perspective, if human rights are to be protected, there must be protection for freedom of expression in the Internet. Ironically, however, if human rights are to be protected, there also must be protection from hate speech on the Internet.

References
Sexual exploitation of children over the Internet –
International perspectives

Jyoti Bhakare

Introduction

In September of 1998, police forces across the world banded together to bring down the Wonderland Club, an online child pornography ring spanning twelve countries. The Club membership was contingent on possession of a digital library containing no less than 10,000 indecent images of minors. The members would circulate these photographs throughout the network by sending them from computer to computer as encrypted image files. The network eventually collapsed as a result of a worldwide criminal investigation, code-named Operation Cathedral, when over a hundred men suspected of being members were arrested (Gabrielle, 2008).

The misuse of new information technologies is resulting to crimes such (a) child exploitation; (b) production, distribution, and possession of child pornography; (c) exposure to harmful content; (d) grooming, harassment, and sexual abuse; and (e) cyber bullying (Keith, 2011). In recent years, there have been numerous reports of women and children receiving unsolicited emails containing obscene language and amounts to harassment. Minors who post their contact details become especially vulnerable since the sex-offenders can use this information to target potential victims (H.J., 2007). In 2000, there were an estimated 280,000 sex industry sites on the Internet (Hughes, 2001).

This paper explores a number of issues from domestic and international perspectives.

These issues include

- What is the impact of new technology, the potential dangers for children from engagement with cyberspace and what are the various kinds of perpetrators involved in this?
- How to make a cyberspace safer for youth by taking preventive and corrective measures?
- What are some of the present and emerging policy issues on these matters?
- What are the efforts done at national/international level to tackle the problem?

Sexual Abuse of children via new technology

Children are harmed physically, sexually and emotionally in the making of pornography (Liz & Dianne, 1999). They are vulnerable to the exploitation of online predators because they rely heavily on networking websites for social interaction. Offenders use false identities in chat rooms to lure victims into physical meetings. When
this happens, virtual crime often leads to traditional forms of child abuse and exploitation such as trafficking and sex tourism.

Many children are abused and photographed within domestic environments. These images become a form of currency as, within the online community; they buy status and act as a commodity for exchange. Once circulating on the Internet they may end up on a pay–to–view site, where money does change hands. This may be the case where a child has been exploited through someone’s adventitiously taken photographs, for example on a beach or at a swimming pool. The child may never know that the images have been used commercially (Donna, 2003). The issue of ‘virtual child pornography’ is left largely unaddressed within the international framework.

**Issues and challenges**

- **Theoretical level**– statutory provisions dealing with ‘obscenity’, ‘defamation’ and sexual offences are sufficient.
- **practical hurdles**
  - Identifying the perpetrators– fake identities, proxy server location
  - Criminal laws – operate over a defined territorial jurisdiction but the contents of websites can be created and uploaded anywhere in the world. Problems of conflicting jurisdictions arise.
  - Web service providers and subscribers– not aware of posting, viewing the offensive material.
  - Social networking websites– law still underdeveloped (BalaKrishnan K.G, 2009).
  - Pimps and traffickers can remain relatively anonymous by simply posting ads online, while people who pay for sex have 24-hour access to browse through hundreds of ads.
  - Perpetrators of abuse– not possible to describe as ‘typical’ child molester”. –can be younger/ older/ woman / child/ cartoon character.
  - Sex offenders tend to share similar distorted assumptions about their victims; the nature of the offences committed and are often not cognizant of their wrongdoing.
  - Women may be involved as offenders in online child sexual abuse, as instigators, facilitators, and participants. Online child sexual abuse by female offenders constitutes a clearly significant, but surprisingly underdeveloped field of research (2010; Elena, Daniel, & Helen, 2010).
  - Through financial and technological interdependence, the sex industry and the Internet industry have become partners in the globalization of sexual exploitation.
Legal Measures for protection of children

*Indian legislation*

- Section 67 and 67A –IT Act and Section 292, 293 IPC can also be invoked.
- Section 66 A of IT Act - invoked whenever any offensive, annoying or pornographic material by email, SMS or MMS etc. are received by children victims of cyber bullying or stalking.
- Section 67 B of IT Act- when the electronically published or transmitted material contain child pornographic material. Also prohibits grooming of children for sexual abuse.
- Section 66 A of IT Act - invoked when ever email or social networking accounts of a child are hacked by misusing passwords or his/her photographs, name and other unique identification feature are misused

*International sphere*

- India is also a signatory to ICCPR, ICESC,CRC, CEDAW,

Since the Second World Congress we have seen the development of four policy documents:

- European Union’s Framework Decision on combating the sexual exploitation of children and child pornography (2004);
- Council of Europe’s Cybercrime Convention (2001);
- Council of Europe Convention on the Protection of children against sexual exploitation and sexual abuse, which is yet to come into force.

*Shortcomings and next action plan*

- Intentional viewing of Internet child pornography- not considered as criminal worldwide; definition of child- not uniform.
- International Conference on Combating Child Pornography on the Internet- a declaration and an action plan -calling for an international task force on child pornography and pedophilia on the Internet.
- The action plan -Universal ethics and self-regulation standards for Internet service providers and the creation of national hot lines and "electronic watchtowers". (Steven & Edward, 2001)
Law enforcement agencies, prosecutors, and the judiciary of U.N. member states should collaborate in collecting evidence, arresting perpetrators and bringing them to justice.

Prevention and education – Need of tackling the problems requires a multi-agency, multi-sector approach.

Pro active role of web service providers– in publishing advertisements by proper screening and reporting to police about offensive material; not allowing users to change posts but requiring them to remove the same. E.g. Sweden

Education– about the inherent risks, the safety measures especially to children

Co-operation– States, inter-agency cooperation in domestic systems, public and private sector collaboration, and the inclusion of civil society.

Alliances between Psychologists, police. Working together to encourage care for victims, protection of evidence and rapid access to electronic data during criminal investigation.

Conclusion

- Children are vulnerable to the exploitation of online predators
- Prevention, education can work well with the co-operation between parents, psychologists, teachers, police etc.
- Training to investigating agencies, need for strict law and effective enforcement.
- Pro active role of web service provider and reporting accountability needs to be ensured.
- Don’t keep abuse a secret, Speak up, reveal it!
Identity theft crime in India – Suggestions for clarity under IT Act

Kruthi Kalaga

Introduction

Identity Theft and Identity Assumption have been a growing phenomenon world over, and are considered a major crime in the Developed world; but, are underrated crimes in India due to low reporting and visibility. With a deeper internet penetration and engagement, there is a growing awareness of the ill effects of this crime in India. According to Norton Cybercrime Report 2012(1), “More than 42 million people in India were victim to cyber crime in the past 12 months, suffering approximately USD 8 Billion in direct financial losses. According to the report, 66% of Indian online adults have been victims of cyber crime in their lifetime. In the past 12 months, 56% of online adults in India have experienced cyber crime – more than 115,000 victims of cyber crime everyday”.

Identity Theft, a prevalent form of Cybercrime, is usually described as stealing an individual’s identity by illegally accessing unique identifiers like passwords, digital signatures etc., with the intention to perpetrate a crime through the use of computers, communication devices over the internet. According to Norton Cybercrime Report 2011(2), India is fast emerging as a soft target for organized cyber crime with 4 in 5 online adults having been victims of Identity Theft in 2011. This paper examines various types of Identity Theft with special emphasis on Identity Theft in the form of Identity Assumption and impersonation in the cyberspace, especially in the Indian context. While Identity Theft seems very innocuous, this paper examines the disastrous impact it could have on the victims of this crime, leading to irreparable loss to personal and family life, damage to reputation, destruction of careers and in some cases leading to loss of life due to extreme stress caused by the consequences of this crime.

Objective of the Study

While the Section 66C of Information Technology (amendment) Act, 2008(3), does list out the penalties for committing Identity Theft, it is completely silent on the definition of “Identity Theft” under the act, and also does not seem to address the menace of Identity Assumption. The various sections of IT Act take cognizance of Identity Theft as a crime, only after the act of committing a crime, whereas mere assumption of an identity per se, is not considered a crime. This paper aims to define “Identity Theft” making it more inclusive of unique personal identifiers as well as address different types of crimes under this category. This paper also examines the necessary changes needed towards providing
Identity theft crime in India

effective deterrence under the act along with the remedy for victims and provision for restitution

This paper discusses various Cases of Identity Theft resulting in financial loss, damage to reputation and damage to career. This paper also highlights the shortcomings in the existing sections of IT Act while discussing Identity Assumption.

Identity Theft Case Studies

The study through this paper examines a few cases of Identity Theft reported in the Main Stream Media with diverse consequences covering Financial Damages, Damage to reputation and Damage to career.

I- Identity Theft resulting in Financial Damage

Two foreigners residing in Northern Capital Region (3), were apprehended for hacking into the Punjab National Bank Current Account of a company owner in North Delhi, transferring Rs 16.00 Lakhs towards on-line purchases with large stores like Future Bazaar, Fashion and you etc. The store owners were intrigued by the large transactions and alerted the police leading to the arrest of the accused.

-The Law: The above case can be covered under Section 66 C of IT (amendment) Act 2008(8), which defines it as “Whoever fraudulently or dishonestly makes use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to rupees one lakh”.

-Points to consider: Many unsolved cases of hacking of bank accounts, Credit card misuse are resulting in financial losses, damage to personal credit histories resulting in mental trauma to the victim. While Sec 66 C of IT Act addresses of the punishment to the criminal, it is silent on restitution and relief to the victim.

II- Identity Theft resulting in Damage to Reputation

A case of Identity Theft has been reported in the New Indian Express (4), where-in the director of Telugu film Brundavanam, Mr Vamsi, had lodged a complaint that a fake Facebook account had been created on his name and his morphed photos were uploaded in addition to sending messages to a woman from the same account, which was traced by cyber police investigating the crime under the IT Act.

-The Law: The above case can be covered under Section 66 D of IT (Amendment) Act, 2008(8), which describes: “Whoever, by means of any communication device or computer resource, cheats by personation, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.”

-Points to consider: While the investigations are under way in such cases, the criminal is free to cause more trauma and damage to the reputation of the victim, which can be remedied by suspending the criminal activities pending conclusion of the case.
III - Identity Theft resulting in Damage to Career

According to news reports (5), “Wadgaon Road Police registered a criminal offence against an unknown educational trust running an Engineering college in Andhra Pradesh on a complaint lodged by former principal of a college in Yavatmal, Maharashtra, alleging that the college has misused his bio data and portrayed him as professor of physics on its website by using his name, date of birth, educational qualification and e-mail address. The complainant was on active service till February 28, 2011 but the College has shown him as professor since February 8, 2011.

Points to consider: This is a unique case where no one has appropriated the victim’s identity, but, his profile in totality, which is a combination of different personal identifiers has been utilized without being assumed by any individual. Hence, strictly speaking none of the existing sections of IT Act is applicable here.

As similar incidents as above can happen in the booming professional education segment, provision must be made in the IT act by declaring “usage of, or cause the use of unique or non-unique identifiers of an individual either alone, or in conjunction with other identifiers, whether unique or not, in order to wrongfully convey an identity is considered as Identity Theft by assumption”.

IV- Identity Theft resulting in Career Loss

According to news reports in Times of India (6), A manager of a NOIDA based company had his identity used by another person living under his name in Dubai for 2 years on a residential visa. He discovered this when called for a job in the middle-east, where-in the company he applied to, had mentioned issuing VISA in his name already, and informed that his job offer and visa were cancelled.

The Law: The above case can be covered under the Sec 66D, IT (Amendment) Act, 2008(8), which defines “Whoever, by means of any communication device or computer resource cheats by personation, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.”

Points to consider: This is a unique case of Total Identity Assumption, where complete identity has been stolen, denying the victim of the lawful usage of his identity, and when the case is solved, there should be a provision for the victim to be restored his legal identity with all the rights and privileges accorded under the constitution.

Observations of the study

The study under this paper has set out to define Identity Theft and Identity Assumption by analyzing various cases of Identity Theft, and, has come up with the following observations:
1) In the case of Identity Theft leading to financial damage, this study strongly argues in favour of restitution and relief to the victims in repairing their damaged credit history.

2) In the case of Identity Theft leading to reputation damage, this study strongly argues in favour of an interim relief to the victim, through suspension of the criminal activity undertaken, while the case is under investigation.

3) In the case of Identity Theft leading to career damage, the study highlights the shortcomings of the existing sections under the IT Act, and strongly argues in favour of defining Identity Assumption as a cognizable crime when a combination of identifiers can be utilized to assume an identity relating to the victim.

4) In the case of Identity Theft leading to career loss, the study strongly argues in favour of considering the Total Identity Assumption as a cognizable crime and providing restitution and relief to the victim by securing identity to the legal owner.

5) By examining different case scenarios, the study strongly argues in favour of considering Identity Assumption per se as a crime, whether or not a crime has been committed through Identity Theft or Identity Assumption.

**Conclusion**

In view of the observations of this study and upon examining the various provisions of different sections 66, 66 A, 66 B, 66 C, 66 D, 66 E, 67, 67 A and 67 B of IT Act, 2000\(^7\), IT (Amendment) Act, 2008\(^8\), it has been found that appropriate definition of Identity Theft, Identity Assumption and declaration of unique identifiers have not been made under the IT Act.

1) **In order to address the deficiencies as above, this paper attempts to define, Identity Theft and Identity Assumption as:**

   “Knowingly transfers or uses, or merely assumes without lawful authority, a means of identification of another individual by using unique identifiers, either alone or in conjunction with other identifiers of that individual, whether unique or not, with the intent to commit, or, aid or abet, any unlawful activity under applicable laws is a crime under the Act”.

2) **The Unique identifiers under the IT Act may be defined as those data such as:**

   “Name, Family Name, Date of Birth, PAN Card, Passport, Driving License, EPIC, Bank Debit or Credit Card with PIN and CVV, Log-in IDs, Passwords and Transaction codes, Digital signatures, UID, Biometric identifiers like Finger print, Retina / Iris Scan, Voice Scan (or) any such identifiers that may be deemed to be unique to a person, or any or all documents issued by and under State and Central Government authorities”.

In the light of the conclusions drawn as above, the objective of the current study has been adequately addressed in this paper.
Social Networking: A new target of cyber crime

Mehtab Khalil and Subuhi Hassan

Introduction

Today we live in such a world which is becoming technologically superior day to day. Cyber world is one of them, and its newest member is social networking websites. One may think what possible harm it can do upon us. Social networking sites like face book, orkut etc is a mode of communication and a form of reunion with the old pals in different mode of life. One may also think how social networking websites and crime can be related, how it can affect a person. Criminals are targeting social networking sites and it is becoming a new crime scene. Lots of interpersonal crimes are being committed on social networking sites. Increase in cyber crimes has led many countries to take various steps to stop cyber criminals from targeting innocent users, despite all efforts, cyber crimes on social networking are increasing.

Definition and nature of Cybercrime

Cyber crime is the use of computers and the internet by criminals to perpetuate fraud and other crimes against companies and consumers (Chaubey, 2009, p. 135). It is used to describe criminal activities committed on computers or internet, some of it is punishable by laws of other countries (Pati, n.d.). Any criminal activity that uses a computer either as an instrumentality, as a target or means for perpetuating further crimes comes within the ambit of Cyber Crime. A generalized definition of cyber crime may be “unlawful acts wherein the computer is either a tool or target or both” (Chaubey, 2009, p. 141).

Characteristics of Cybercrime

✓ The weapon with which cyber crime are committed is technology.
✓ Cyber crime does not have any jurisdictions, no boundaries.
✓ Cyber crime has the potential of causing harm and injury which is of an imaginable magnitude.
✓ It is extremely difficult to collect evidence of cyber crime and prove the same in court of law, due to anonymity and invisibility of cyber criminals.

Victims of Cybercrime

In most of the cases an innocent person becomes victims of cyber crime, who open or click any links on internet which has money associated with it without knowing anything.
Secondly are those victims who are greedy for money. Thirdly are those who have attitude of when it will happen then we'll do something. Lastly are those who download files songs etc from entrusted sources.

**Kinds of Cyber crime**

1. **Internet stalking:** It is the use of Internet or other electronic means to stalk or harass an individual, a group of individuals, or an organization for personal gain. Social networking websites like Facebook, MySpace are also being used for stalking and harassing individuals who leads to murder and suicide.

2. **Cyber bullying:** It is the done to harm other people, in a deliberate, repeated, and hostile manner. Social networking sites are being actively used to bully innocent individuals by posting hateful posts and pictures on Facebook. It leads to psychological effects on victims; trauma to them. As legal help comes late, it often leads to depression.

3. **Defamation:** Social networking sites are becoming a new place to defame others by making fake profile of individuals, organizations, group’s etc, giving false information and lowering reputation. Example on face book the picture of Manmohan Singh and Sonia Gandhi was made defaming their public figure.

4. **Identity theft:** It is a form of stealing someone's identity in which someone pretends to be someone else in order to access resources or obtain credit and other benefits in that person's name. Criminals’ steals victims’ data like credit card number etc. to commit crime, e.g. Cola-cola lottery scam. Stolen identity are also used on social networking sites to target individuals or in others illegal activities which is cyber terrorism.

5. **Cyber blackmailing:** It is done through which computers and internet is used to blackmailing others, by obtaining confidential materials in form of pictures, videos, etc. In a case boyfriend tends to blackmail his girlfriend that if she leaves him he will attach some of her pictures on face book and make it obscene.

6. **Online sexual exploitation of women and children:** Online advertisement of brothels, sex services, online sex tour are few examples, more over men share their sexual experiences with prostitutes, places to find such prostitutes, hotel prices, sexual acts etc. Live video conferencing is also used for online sex shows. An example of such site is alt.sex.services – now alt.sex.prostitution. Internet has become biggest source of advertisement for sex tourism.

7. **Sexting:** It is the act of sending sexually explicit messages or photographs, primarily between mobile phones. A child sends or have possession of such pictures are charged with possession, distribution of child pornography in those countries which have strict anti-child pornography laws like US. In present children are both victims and offenders of sexting.
8. **Online child grooming**: It refers to actions undertaken with the aim of befriending and establishing an emotional connection with a child, to lower the child's inhibitions in preparation for sexual activity with them. Jim Gamble, leader of the Child Exploitation and Online Protection Centre of the United Kingdom, stated in April 2010 that his office received 292 complaints about Facebook users through the year of 2009 but none of it has been registered.

**Social Networking: Ground for Divorce / Murder**

In recent cases in which there is no direct involvement of social networking sites but murders/suicides have taken place due to post, messages pictures etc. in a recent case a Dutch teen was jailed for killing girl over Facebook post, the case of Adnan Patrawala (Orkut); the suicide of Megan Meier on MySpace.

**Privacy in Cyberspace**

The right to privacy refers to the specific rights given to an individual to control the collection, use, disclosure of personal information. On social networking sites like Facebook, MySpace etc, the individual privacy is being infringed (Chaubey, 2009, p. 891). The basic right to protect individual’s privacy under the Universal Declaration of Human Rights, 1948 as follows,

**Article 12**: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation. Everyone has the right to protection of the law against such interferences or attacks. It is connected to freedom of expression under 19 (1) of Indian constitution.

**The Jurisdictions in Cyberspace**

The word “Jurisdictions” is wide and embraces every kinds of judicial action, it is the authority of court to decide and resolve dispute involving persons, property. There are certain principles which are being followed by the authorities to decide the jurisdiction of a case in cyberspace.

- **Territoriality Principle**: It allows a state to order service providers who operate on its territory to obey its regulations, it can also allow barring access to certain websites within state boundaries.
- **Nationality Principle**: The right of the state to regulate the conduct of its citizens or nationals anywhere in the world is like territorial jurisdiction but non controversial. For example states are outlawing child terrorism.
- **Effects of Principle**: Effect of principle can be invoked only when an act committed by one state to injury other. Jurisdiction is grounded only to injurious effect not the act done in the territories of a state.
- **Protective Principle**: It allows a state to protect its own governmental functions. International law allows state to punish certain criminals who committed offences outside the territory who are not its national, offences such as falsification of official document, counterfeiting of state seal or currency.
Universality Principle: Universality provides for jurisdiction over a crime which customary or conventional law labels it to be of universal concern. It does not require a direct contact unlike others.

Conclusion
There are many countries who are taken steps to overcome the problems of social networking cites specially facebook thorough banning it or making a change in it. Censorships of Facebook has been done by countries like Australia where facebook has 10 million Australian users and almost half of the population requires people to state at sign-up that they are at least 13 years of age because there is currently no way to formally enforce the age limit, in July 2011 Australia began considering giving parents access to their children's pages, requiring proof of age at sign-up, and increasing the age limit to 18. In China facebook was blocked following the July 2009 Urumqi riots because Xinjiang independence activists were using face book as part of their communications network etc. But in India the government does not regulate content [on WWW] and there is no proposal to formulate any mechanism to regulate the content. By these steps the victims are saved and cyber crimes are reduced.

References

Assessing the present status of cyber criminology: Obstacles, challenges, and promising paths

Michael Bachmann, Brittany Bachmann and Patrick Kinkade

Computers have become an integral part of every aspect of our lives. Computer technologies are relied on for nearly everything we do and we live in societies that are fundamentally dependent on digital infrastructure for their continued functioning. Increasingly, this mission-critical nature of computer networks for nearly all industry sectors, combined with the wealth of personal information that is being put online, has bred a new type of dangerous criminal—one that is targeting computers to steal our information, finances, and personal identifications (Bachmann & Corzine, 2009; Furnell, 2002; Holt, 2010; Jaishankar, 2007, 2008; Jewkes, 2007; Nhan & Bachmann, 2010; Yar, 2006). The Office of the President of the United States suggests that threat posed by these cyber-criminals “is one of the most serious economic and national security challenges” (2009, para. 18).

Today, governments around the globe struggle to employ effective countermeasures against cyber-attacks. The implementation of such countermeasures is increasingly facilitated by the vast amount of scientific knowledge about the technical details of the various attack methods (Amoroso, 2011). Unfortunately, the guidance provided by these studies is limited to details on the methods of attack and is left lacking insight about who the attackers are and how they differ from “traditional” criminals. This situation persists despite the concerted efforts of a small number of dedicated cyber-criminologists from around the globe (among them Bachmann, Brenner, Holt, Jaishankar, Jewkes, Kilger, Nhan, Turgeman-Goldschmidt, Wall, Yar, to name but a few) to advance this newly developing field of criminological study.

While there have been significant advances, the new field of cyber-criminology is still confronted with a host of problems, some related to the definition of the subject matter and others to the early developmental state of the field. To begin with, the debate as to whether the establishment of this discipline is justified at all (Graboski, 2001) still continues: are these simply traditional crimes committed with new means? Further, definitional controversies about what exactly the term “cybercrime” should encompass and how it should be delineated from other types of criminal enterprises is still in question. Exacerbating the situation are several practical problems researchers in this young discipline have yet to overcome. Among them are the remaining scarcity of reliable and generalizable data sets, the limitations of available data to largely victimization-centered surveys, the lack of theories formulated to explain crime and victimization online, and the shortage of scientific outlets for research products. Major criminological associations (e.g. the American Society for Criminology (ASC)) continue to marginalize cyber-
criminological studies in their annual conferences and, partly due to the many unresolved methodological problems, cybercrime researchers face significant difficulties in getting their manuscripts accepted by top-tier criminological journals. Working against this reality, the Federal Bureau of Investigation (FBI), in cooperation with the National White Collar Crime Center (NWC3), the RAND Corporation, and SANS have begun various projects to collect better cybercrime data (among them the Internet Crime Complaint Center (IC3)). Moreover, Jaishankar (2008) has introduced the first theory exclusively developed to explain offending in cyberspace and has founded the first academic journal exclusively dedicated to the criminological study of cyber crimes, the International Journal of Cyber-Criminology (Jaishankar, 2007). These and similar efforts aside, the fact remains that cyber-criminology is largely ignored or marginalized by mainstream criminology, and that many criminologists refrain from examining this important, future-oriented issue. Whether it is that they are lacking the necessary understanding of technology, are intimidated by the jargon of the field, or that they continue to fail to realize the full extent of societal implications of this new type of crime, the lack of consideration is troubling. Others become discouraged by the multitude of methodological problems involved in conducting quantitative studies of cyber-offenders, particularly when attempting to generate representative samples of online offenders. Taken together, these problems systematically discourage many from studying the problems and, in turn, result in still limited, albeit rapidly increasing, numbers of annual publications.

The proposed presentation addresses many of the main problems facing cyber-criminologists today. It intends to shed a light on the difficulties and suggests ways to overcome them. The strengths and weaknesses of potential methods are analyzed and their implications for the interpretation and generalization of results are considered. Suggestions for future research are provided. The presentation seeks to spark a conversation with the audience about promising solutions to some of the current problems and potential approaches of how to create standards for future research in the new area of cyber-criminology.
Cyber Stalking: Regulating harassment over internet

Nithin V. Kumar and R. Devi Shri

Introduction

Internet and the information revolution created by it have already impregnated all areas of human life. Internet and other telecommunication technologies are promoting advances in virtually every aspect of the society and every corner of the globe, fostering commerce, improving education and health care, promoting participatory democracy in developed and developing countries and creating social networking platforms around the world. Although internet has created many conveniences in modern life it has also introduced number of unexpected legal scenarios which were unknown to traditional criminal jurisprudence and challenges it by transcending all physical boundaries and limitations to detect, punish, and reduce crimes. Internet now has become a fertile breeding ground for many new and unique types of criminal offences like that of identity theft, online stalking, electronic money laundering, electronic vandalism, terrorism and extortion, investment fraud etc.

This paper attempts to analyse the issue of Cyber stalking and tries to advance certain proposals for remedying the legal lacunae. First part of this paper defines the crime of cyber stalking and tries to identify the characteristics of this particular crime and its offender as well as how social networking sites like facebook or myspace are being misused. Second part of the paper tries to examine the existing Cyber Stalking legislations across the world and analyse how Indian laws are competent to deal with this issue and lastly authors’ concludes this paper by attempting to advance certain policy considerations that should be kept in mind while framing a legislation to remedy this particular offence.

Literature Review

Authors while researching for this paper came across number of highly researched materials which tries to conceptualise the nature of cyber stalking and throws light into flaws of existing legislations worldwide dealing with online harassments. To provide and understand the basics and background of the paper research was done into three main areas, firstly to conceptualise the nature of offence of cyber stalking secondly, the impact of offence on the victims and lastly the legal recourse worldwide specifically US, UK and India and their flaws in dealing with the situation. A couple of highly researched articles that would help to understand the nature of cyber stalking are the following:

Cyber Stalking

- An exploration of predatory behaviour in Cyber space: Towards a typology of cyber stalkers, by Leroy McFarlane and Paul Bocij.
- Cyber stalking: A global menace in the information super highway, by K Jaishankar & V Uma Shankary.
- Cyber stalking: An analysis of online harassment and intimidation by Michael L Pittaro.
- Harassment through the digital medium – a cross jurisdictional comparative analysis on law of cyber stalking by Warren Chick.

This paper is completely based on doctrinal research and has extensively relied on articles, bare acts and book which are found online. The research data’s included within the paper are also part of various survey reports which are found online. Inclusion of empirical data by analysing incidents of cyber stalking within a university or a region/city would help one to understand how far this menace is prevalent in India.

**Cyber Stalking – Definition and Nature**

Stalking is not a new problem, it has already found its place in criminal jurisprudence owing to media coverage received by this term owing to number of celebrity stalking cases, although many world countries including India have not enacted a specific Anti-Stalking code to prevent this kind of abuse[^290]. Despite decades of acceptance of this term into criminal research there is no concise universal definition for the term stalking and even worse there is very much less literature available with respect to cyber stalking[^291]. Stalking is generally referred to as “harassing or threatening behaviour than an individual engages in repeatedly, such as following a person, appearing at a person’s home or place of business, making harassing phone calls, leaving written messages or objects and may or may not be accompanied with a credible threat of serious harm or assault”[^292].

Internet now has simply provided a new medium for the same old crime. Cyber Stalking has been defined as the use of internet, email or other electronic communications devices to stalk another person along with some threatening behaviour[^293].

The term cyber stalking can be used interchangeably with online harassment and online abuse[^294]. Lot of literature have looked into difference between offline and online

[^290]: See Bombay High Court Judgement in matter between Meeran Borwankar and Asha Bajaj. Also see “there is a need for Anti Stalking law” an News citing the above judgement available at [http://www.dnaindia.com/mumbai/report_there-is-need-for-anti-stalking-law-he_1201895](http://www.dnaindia.com/mumbai/report_there-is-need-for-anti-stalking-law-he_1201895)

[^291]: See an explanation of predatory behaviour in Cyber Space: Towards a typology of Cyberstalkers, Leroy McFarlane and Paul Bocij


[^293]: See why does Cyber Stalking occur as often as it does? Available at Cyberangels.org

[^294]: See Supra note 1

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[^290]: See Bombay High Court Judgement in matter between Meeran Borwankar and Asha Bajaj. Also see “there is a need for Anti Stalking law” an News citing the above judgement available at [http://www.dnaindia.com/mumbai/report_there-is-need-for-anti-stalking-law-he_1201895](http://www.dnaindia.com/mumbai/report_there-is-need-for-anti-stalking-law-he_1201895)

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[^293]: See why does Cyber Stalking occur as often as it does? Available at Cyberangels.org

[^294]: See Supra note 1
stalking, with one side taking view that both the crimes are part of the same species while some other taking a stand that online stalking is a completely new offence and needs to be treated differently from traditional stalking cases. Cyber stalking takes place mainly through three means emails, internet stalking accompanied by physical threats and computer based stalking. McFarlane and Bocjii based on their research have classified cyber stalkers into four, vindictive, composed, collective and intimate cyber stalkers where as other authors adds more to the list like acquaintance stalker and stranger stalker\textsuperscript{295}, rejected stalker, intimacy seekers, incompetent suitors, resentful stalkers, predatory stalkers and delusional stalkers\textsuperscript{296}.

Cyber stalking cannot be completely regarded as an offence against women as a study conducted by Working to Halt Online Abuse (USA) reveals that the number of female cyber stalkers has increased from 27\% in 2000 to 38\% in 2003 which indicates that issue at hand is gender neutral\textsuperscript{297}. Studies also reveal that the psychological fallout from electronic stalking and by putting false and humiliating information on internet caused more intense stress and trauma to the victims than an offline stalker’s victim\textsuperscript{298}.

**Anti stalking legislations**

The second part of this paper examines contemporary legislations in US, UK and India which deals with cyber stalking. All individual states in US have enacted some kinds of stalking legislation and most of them have addressed cyber stalking within these provisions\textsuperscript{299}. Most state requires three elements to present to prove a stalking case\textsuperscript{300}: 

- Threshold of threatening behaviour on the part of the offender which continues as a series
- Intention on the part of the offender to perform those acts
- Knowledge on the part of the offended that it would cause emotional distress to a normal person

It must be noted there in comprehensive federal legislation to deal with cyber stalking in US though several Bills have been proposed in senate as well as a Model Anti stalking code for states was passed in 1993.

Paper would specifically examine the position in England by looking into provisions of Protection from Harassment Act of 1997 and current developments following the National Stalking awareness week in March 2011. In India also there is a legal lacuna with respect to cyber stalking and even stalking for that matter. India doesn’t have a separate code to deal with these matters though it is a need of the hour. The Indian information technology Act does not directly address the issue of online stalking but the problem is

\textsuperscript{295} See Joseph c merschman, The dark side of web: Cyber stalking and Need for contemporary legislation, 24 Harvard Women’s Law journal, 255, 2001  
\textsuperscript{296} Supra note 1  
\textsuperscript{299} Find state wise Anti Stalking legislations here http://www.haltabuse.org/resources/laws/index.shtml  
Cyber stalking

dealt in a separate manner under section 72 and 72 A which deals with breach of confidentiality and privacy. This paper attempts to analyse these provisions of IT Act and see how far they are useful in dealing with the offence of cyber stalking.

There is a legal vacuum in addressing the issue of cyber stalking in most jurisdictions and owing to nature of the offence and the possible effects it may produce on the victims requires formulation of an effective code to deal with this offence. Authors in their conclusion attempts to lay down certain policy measures which should be taken into consideration by the governments while framing Anti Cyber Stalking legislation.
Reflections of cyber naxalism on social networking behaviours in cyber democracy

Payal Thaorey

The concept of Socialism and Liberty of expression both has engrossed its roots from the Preamble of the Constitution of India. Though, in the contemporary world it has changed its modes, from visible environment to invisible cyber matrix. This limitless cyber world provides enormous opportunities for the netizens to explore new behaviors particularly with the social networking sites. Whereas naxalism aims to change the face of India, which they feel possible only with a violent struggle that will effectively end the oppression and merciless exploitation of landless workers and tribes by landlords, industrialists and tradesmen and create a classless society.

The Social Networking Sites has billions of users. Its application ranges from propagation, communications, to expression of thoughts, expression of anger, cyber Protest etc. Its impact can also be seen on the politics where it has allowed the citizen groups to connect with another. It is not only a tool to organise protest but also a means for a new repertoire of collective action. Along with this the most important feature of SNSs is that it allows the user to maintain his anonymous status whereby not allowing others to know about that user’s identity. Being horizontal, bi-directional and interactive with less fear of identity being disclosed the Internet favours participatory organisational processes.

The Anti-G8 protest in Genoa in July 2001 and the European Social Forum in Florence in November 2002 are the examples where the use of internet was made to represent the protests, demands and ideas of the people. Though such protests (expression of anger) are considered as genuine and legitimate as per the protestor, but there is every possible chance that it might turn into criminality and anti national movement.

The hate sites against Countries and Communities which have often defied a legal solution sometimes leads to naxalism. The existence of such sites, damages the peace and harmony in the Community if left unattended. At the same time excessive attention to such sites may actually further the cause of the negative propaganda.

The Internet has now come in handy for these anti social elements known as hackers to spread anti governmental movement to further the cause of Naxalism and terrorism. It has therefore become an important task of the Cyber Security Agencies in the country to take preventive and punitive action so that Cyber Space is not used to harm the sovereignty of the country and the democracy of the cyber space.

The hactivists many a times while expressing their views, agitations and angers hits official websites of the country and shutdown the official functioning. The DDOS attack of "Anonymous Hackers" in India on the websites of the Supreme Court of India, raises a
Reflections of cyber naxalism

serious concern on how the ill advised actions encourages hactivists to pursue a policy of confrontation with the Government. It is possible to dismiss the incident as an expression of anger for a cause which may actually be right. But this incident also makes us uneasy with the thought that it may provide legitimacy and invoke sympathy to an action which can very easily and very soon get out of control and degenerate into a mass anti-India action on the Internet. This shows us the glimpse of how the Naxalite movements have grown in India starting with a genuine cause of raising against unfair oppression then degenerating into criminality and an issue of national security. The responsible elements in the community (particularly the Law enforcing Agencies and Media) have to closely monitor the emerging situation so that the anti national hate sites are nipped in the bud with timely moderate regulation.

The name www.hinduism.org indicates that it is a site that should logically be promoting the cause of Hinduism. On the one hand it propagates Hinduism whereas on the other it creates a Muslim-Hindu divide which ultimate provokes the public. These sites have enough potential to irritate the excitable elements in the Hindu society and provoke them to act irrationally against some other groups in the society. If this happens, then the inaction of the community at the present juncture would be devastating.

Another illustration is the Kashmir Movement – where due to unrest, youth are using internet pages through the community called “Kashmir Unrest” to express their anger against human rights abuses. Social networking sites like Facebook, Orkut and YouTube and other web platforms have become a battleground for the angry youth of the valley. All these incidences point out towards a behavior on the social networking which has the potential of becoming a Naxalite movement.

Recently, some 10 Mexican government online properties as well as the websites of several Mexican ministries and political parties were attacked by Mexican hacktivist group known as Mexican Cyber Protest (MCP) on the day the country celebrated its independence. All these incidences show that cyber protest has a huge potential inside it. If the demands of the hactivists are not fulfilled than they are ready to destroy the government/official websites.

Another issue of concern here is that the Government left with two choices in such kind of attacks by the hackers:

First is the choice of using the law and make the Internet Censorship an effective move with an iron hand. They can ban all erring sites or may start a "White List of allowed Websites at the ISP level" and ensure that all websites available in India are licensed and the criteria for license is that they should follow the content prescriptions of the ruling Government. This will ensure that the fight between the Netizens and the Government will continue and perhaps increase. The hactivists may join forces with the anti India terrorists and may even pose a threat to the national cyber security. The defacements and DDOS attacks can be ignored and if fought with strong counter insurgency measures. It will provide a lot of job opportunities to Cyber Security firms
who can tie up with the DIT and enjoy the lucrative business that may flow in from the enormous Government funds available for fighting National Security.

The second choice is to realize that the best way to fight the current wave of insurgency is to diplomatically accept its mistake and change the current policy. The maturity of the Government will be on test in the coming days as we follow the reaction of the Government to the current wave of attacks for anonymous hackers on select Government websites leading to cyber naxalism.

**Factors responsible for Cyber Naxalism in the cyber Democracy**

- Easy access to the wide network
- Low cost
- Viral characteristic – news spreads exponentially
- Demand for instant gratification – queries, responses and counter-responses are posted instantaneously
- Anonymity
- Lack of legal provisions
- Global viewing
- Easy to have Cyber protest
- Unfair oppression
- Convenient mode for Expression of anger
- Diversion from the issue
- No restriction on the expression of thoughts (may leads to creating further controversies)
- Identity thefts

Besides providing a pervasive infrastructure for discreet communication, cyberspace is proving to be a facilitator for malevolent seeking to enlist new recruits and to purvey a distorted version of the reality which affects the cyber democracy.

**Regulatory Mechanism**

There is no single global legal framework regarding the regulation of operation of online soft networks. The regimes which are available to deal with the electronic governance, Information Technology and online Trade not sufficient even at the international level.

**Framework & Guidelines for the use of social Media for Government Organisation**

The Engagement Analysis under 5.1. (6) States that Social media is different from other internet activities and hence monitoring must be an integral part of any social media strategy.

Further the *Information Technology Amendment Act, 2008* does not contain a direct provision which deals with social networking behaviors. Though Section 43, 65, 66A,
66F, 69A of the IT Act, 2008 may be extended to a certain extend which may help in regulating the SNSs behavior particularly with Cyber Naxalism.

*Section 153A & 153B of Indian Penal Code* also contributes in dealing with the cyber Naxalism through Social Networking Sites. In 2003 Government of India established the Indian Computer Emergency Response Team (CERT-IN) to ensure Internet security.

The researcher is of the view that, though the concept of Cyber Naxalism is at very primary level in India, but certainly its impact and consequences cannot be ignored. The diversification in the usages of Social Networking sites raises concerns for the law making agencies throughout the globe.
Generation Y and online victimization in Nigeria: How vulnerable are younger internet users?

*Philip Ndubueze*

**Introduction**

Digital technology has produced a generation of people who have developed a strong sense of attachment to the Internet, computers, cell phones and computer mediated communications like emails, social networking sites and instant messaging. This generation often referred to as the generation Y are computer-hypersensitive and internet-centric. They have a growing network of friends which they met for the first time online and with whom they sometimes make offline contacts. Young people normally shut out their parents/guardians who are supposed to do the gate keeping function and protect them from online predators. On the 22nd of July, 2012, a 24 year old young woman, Cynthia Osokogu, the daughter of a retired army General was murdered in cold blood in a hotel room in Festac town, Lagos, Nigeria by men whom she met on face book. Whereas, the suspects were tracked by the Nigeria police through the hotel’s Closed Circuit Television (CCTV) footage and are been prosecuted, the murder of Miss Osokogu has raised serious concerns about the safety of thousands of young Nigerians who interface with hitherto unknown persons on the internet.

The internet and other new technologies are a necessary evil in society (Shalhoub-Kevorkian & Beranblum, 2010). Teenagers use them to connect and socialize with their friends (Keith & Marin, 2005). Two-third of those within the age bracket of 12-15 and a quarter of the 8 to 11 age bracket frequent social networking sites (Spielhofer, 2010). Students whether they are offenders or victims do not want to be disconnected from their online social networks (Kraft & Wang, 2009). There is an upsurge on the number of young people who access the internet and computer mediated communication (Bowker, 2000; Hinduja & Patchin, 2007). Criminals have also found in the internet and other computer mediated communications a veritable platform for information exchange (Di Marco & Dimarco cited in Holt, 2010). Hirtenlehner, Starzer and Weber (2012) identified 4 different patterns of stalking. One in 13 children who are between the age bracket of 11 and 16 have repeatedly been victims of cyber bulling in the past one year. One quarter of children who are 14 years of age have arranged face-to-face meeting with an online contact, while 15% of the 8 to 12 year old bracket actually did (Spielhofer, 2010). Similarly, 1 in 7 children between the age bracket of 10 and 17 are sexually solicited online (Iowa Internet Crime Against Children, 2009).

Despite the grave risk the internet and computer mediated communication platforms expose young people to, the subject matter of online victimization of young people have
Generation Y and Online Victimization in Nigeria

not been fully explored by researchers. This study attempts to feel that void by bringing to
fore the vulnerability level of the generation Y to online victimization and propose ways
to deal with the problem. The study found that age is predictor of cyber crime
victimization and concludes that young respondents by virtue of their penchant for the
internet and computer mediated communication are the most vulnerable age group.

Methods

A study sample of 1500 was drawn from Lagos metropolis using multi-stage approach.
The cluster, simple random and availability sampling methods were used in selection of
the respondents. The first stage involved the division of Lagos metropolis into 16 clusters.
From the 16 clusters, simple random sampling was used to select 10 local government
areas. The second stage involved the use of the simple random sampling to select 5 cyber
cafes from each of the 10 local government areas, totalling 50 cyber cafes. The third stage
involved the selection of 30 cyber cafe users from each of the 50 selected cyber cafes to
make up 1500 respondents. This was done using availability sampling method. In each of
the chosen (50) cyber cafes, respondents were selected on the basis of availability at the
cafe until the required number of 30 respondents were selected. However, only 1354
questionnaires were validly completed and used for data analysis.

Results and Discussion

The selected sample consisted of 817 males and 537 females. The youngest respondent
was 15 years of age while the oldest was 57 with a mean age of 32 years. The data indicate
that 18.9% of younger respondents and 13.0% of older respondents have been victims of
cyber crime. Similarly, 81.1% of younger respondents and 87.0% of older respondents
have not been victim of cyber crime. There is no significant deference ($X^2 = 3.311, df = 1, p= .069$) in cyber crime victimization between the two age groups of the respondents.
However the result of the logistic regression predicting the influence of demographic
variables on cyber crime victimization shows that three variables: age, occupation and
religion were statistically significant (p<.018, p<.002 and p<.044 respectively). The
distribution suggests that younger respondents are more likely to fall victim of cyber crime
than older respondents. Therefore, age is a good predictor of cyber crime victimization.
The relationship between age and crime has long been established in literature
(Stolzenberg & D’Alessio, 2008).

The generation Y possesses some character traits that clearly distinguish them from the
generation X (comprising of those born earlier than the 1980s). This generational gap
explains the difference in their approach to emerging technologies and their vulnerability
to online victimization. The will be buttressed in the table below.
Table 1: Online Character Index of Generation Y and Generation X

<table>
<thead>
<tr>
<th>Generation Y</th>
<th>Generation X</th>
</tr>
</thead>
<tbody>
<tr>
<td>Computer/internet-centric</td>
<td>A computer/internet-centric</td>
</tr>
<tr>
<td>Internet-adventurous</td>
<td>Internet-precautious</td>
</tr>
<tr>
<td>Online friendly</td>
<td>Online non-friendly</td>
</tr>
<tr>
<td>Online care free</td>
<td>Online careful</td>
</tr>
<tr>
<td>Fun/compulsion-based surfing</td>
<td>Work/need-based surfing</td>
</tr>
<tr>
<td>Predators-insensitive</td>
<td>Predators -hyper sensitive</td>
</tr>
</tbody>
</table>

Furthermore, in Nigeria certain socio-economic factors account for the vulnerability state of younger internet users. First, admission into public institutions of higher learning is highly competitive. Second, there is high youth unemployment. Third, today, unlike a decade ago, more women are engaged in the labour force. Consequently, the generation Y have spare time and capacity which look for platforms for expression and found in the internet that platform.

**Conclusion/Recommendations**

The internet and computer mediated communication have changed the scope and tenor of victimology. Obviously, online victimization is one subject matter that will continue to engage researchers worldwide. Young people are increasingly depending on the Internet the world over; a dependence that has increased their vulnerability to online victimization. This paper tried to establish a nexus between age and online victimization. The paper argued that the character traits of the generation Y make them more susceptible to cyber victimization.

To close the vulnerability window of generation Y to online victimization, national governments should establish more task forces to protect children and young people against internet crimes. Furthermore, Internet Service Providers (IPSs) should cooperate with law enforcement agencies to police internet users and alert relevant law enforcement agents once users cross the line of on-line ethics. They should also be on the lookout for paedophiles that lurk around the internet with a view to pre-empting their nefarious activities. Parents should closely monitor the online activities of their children and take time to educate them on the dangers on online adventurism. Above all, the various ministries of education should make “Internet Education” a critical component of the computer education being taught in schools.

**References**


Ascertaining jurisdictional and related issues:
Cyber space analysis

Prachi Negi and Mustafa Haji

Introduction

Cyber space today is a virtual platform with no boundaries. It is a place which has no defined dimensions and has immense space for everyone to get involved in transactions without having a need to even disclose their identities. At a given point of time millions of people indulge in some or the other activity in cyber space. Many people out of this pool end up involving in activities which further encroach into some other countries’ legal jurisdiction. And this, the people commit oblivious of the laws in other countries. Such situations then become problematic because no country would entertain people encroaching upon their laws and regulations. Hence they reciprocate in terms of taking action against such persons. However it is not very easy for a country to accuse and trail someone on mere establishment of facts because the action which one country considers as crime is not necessarily a crime for the other country. And even if does there is always a room for debate. Thus these again make things complicated and therefore make jurisdiction an important aspect to ascertain liabilities.

Jurisdictions are of 3 types. These include jurisdiction to prescribe, jurisdiction to adjudicate and jurisdiction enforce. Jurisdiction to prescribe relates to authority of a sovereign to make its law applicable to the activities, relations or status of persons or the interest of persons in things by legislations, executive or by the courts. Jurisdiction to adjudicate refers to a sovereign’s authority to subject people to its laws and see whether the laws in force have been violated by any chance. Jurisdiction to enforce as the name itself suggests deal with the enforcement of laws to people within and outside the country.

There have been many cases where people have got indulged in activities on the internet which have made them liable for certain offences in other countries. For instance, in the case of Dow Jones & Co. incorporators v. Joseph Gutnick 36,301 involved an issue where an online publication operated by a US magazine had published an article which was found to offend persons in Australia. A case was therefore filed in Australia. When the question of jurisdiction came up, the court held that it had jurisdiction to take such cases. Also in one of the very landmark cases of V - Yahoo!, Inc. v. La Ligue Contre Le Raisme et L'Antisemitisme302 the issue was whether a French court can ask Yahoo which was based in the US to remove contents which were offensive for people in France. After a

3012002 HCA 56
302169 F. SUPP. 2D 1181 (N.D. CAL. 2001)
Ascertaining Jurisdictional and related issues

long debate in the US court as well as the French court, Yahoo was finally made to remove contents.

There are many such cases in the developed nations where the courts have conveniently solved the issues of jurisdiction. However India being a new country to the cyber sphere has very few legislations and judicial precedents when it comes to cyber space. A concrete and a standard law to establish jurisdiction has not come in force as yet.

**Cyber defamation in India**

One of the major problems in the cyber space which the researchers believe is that of defamation. People find it very convenient to defame and insult anyone on the internet because it is a common presumption that the probability of someone getting caught for defamation on the internet is very less. But this is not true because the risk of a person getting defamed on internet is much higher that a normal print media. And hence the reciprocity is also very high. India is very new to the internet issues. Hence on of the first major cases which were witnessed in India with respect to cyber defamation was in the year 2001 which ended up with the Delhi High Court granting an injunction upon the defendants for spreading erroneous information on the internet. The case is named as *SMC Pneumatics India Pvt. Ltd. V JogeshKwatra.*

The case involved a person sending defamatory information from a foreign country to a company involved in India. The High Court not taking into the territorial dilemma granted an injunction against the foreign company.

In India the crimes with regards to cyber defamation are governed by the Information Technology Act 2001 but however the information Act does not provide for a concrete solution to the territorial problems. The information technology Act 2001 talked about limited issue related to defamation. Section 79 talked about cyber defamation and the immunity to the intermediaries. Section 79 has been further amended in the year 2008. The provision is very similar to section 230 of the Communication Decency Act in the United States. Section 79 talks about how certain persons shall not be liable for defamation. Sub clause 2 of the section provides that: “The intermediaries shall not be responsible for the defamation provided that they had no knowledge and control over the contents. However it could be again noted that this section restricts to only publishing the information by certain persons”.

In a recent case of *Ramjethmalani v SubramaniumSwamy* the courts held that honesty is of the belief of the touchstone. It has also been held in the case of *Broadway Approvals Ltd. and Anr. v. Odhams Press Ltd. and Anr.* , that honest and fair expression of opinion

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305 Notwithstanding anything contained in any other law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available by him.
306 AIR 2006 Delhi 300, 126 (2006) DLT 535
307 (1965) 2 All ER 523. This has also been held in the case of *Telnikoff v. Maturevitch, (1991) 4 All ER 817 as well.*
on a matter of public interest is not actionable even though it may be untrue and not established at a trial. Also in another case of  Prof. Imtiaz Ahmad v. Durdana Zamir the Delhi High Court observed that: "Under the law of defamation, the test of defamatory nature of a statement is its tendency to incite an adverse opinion or feeling of other persons towards the plaintiff. A statement is to be judged by the standard of the ordinary, right thinking members of the society at the relevant time. The words must have resulted in the plaintiff to be shunned or evaded or regarded with the feeling of hatred, contempt, ridicule, fear, dislike or disrespect or to convey an imputation to him or disparaging him or his office, profession, calling, trade or business."

Therefore taking into account all these cases and the amendment to the section 79 of the Information Technology Act it could be concluded that in India person who is a publisher shall not be responsible as long as the publishers proves that there was no malice involved and the publication was under an honest impression. Also the courts refuse to grant injunction on the basis that there is likelihood of a person getting defamed if the information is let remain on the internet. One of the very interesting case which deals with this issue is the case of TATA v Greenpeace. In this case TATA Company had accused Greenpeace for using their name to promote a game online and therefore was seeking an injunction and damages of Rs 10 crores. The Delhi High Court refused to grant an injunction on the grounds that it was very premature to do so before a proper trial has taken place. An injunction could be granted only if it was proved that there has been malice. Justice Bhatt relied upon the case of Bonnard v Perryman which is an authority for the same. The Bonnard rule says that defamation can be proved only in a trial. Justice Bhatt also held that granting an injunction at this early stage would “freeze the entire public debate on the effect of the port project on the olive ridley turtles’ habitat” and “would most certainly be contrary to established principles.”

Conclusion

Today, the world is transforming at an alarming rate and so is the number of various online crimes such as cyber defamation, cyber terrorism, child pornography and etc. Therefore a need to curb all these problems has become a necessity for any country. India too condemns these issues and therefore the government tries to take many initiatives to curtail such problems. However a proper mechanism to identify and then prosecute such offences has lacked due to the non-availability of a proper jurisdiction. Hence ascertaining proper jurisdiction acts as a basic foundation for a sovereign to enforce its laws. And therefore we need to go make a body which would govern the internet laws in India.

308 2009 INDLAW DEL 119
309 Ibid ( Para 25 of the Judgment)
310 IA 9089/2010 in CS(OS) 1407/2010
311 [1891] 2 Ch. 269
312 Ibid 14
The misuse of social networking sites by terrorists: Challenges to India’s national security in the 21st century

Praful Adagale

Introduction

The concept of security itself is an elusive term to fit into the national security framework, so is the concept of securitization (Buzan, Waever & Wilde, 1998). With the advent of revolution in the information and communication systems in parallel with globalization, there has been a transformation in the concept of security that has also taken place, from information technology to information warfare. The influence of globalization channelizes and empowers the nonstate actors to fight asymmetric warfare in other states or regions (Krishner, 2008). The use of internet for free flow of information, carry out financial transition and more significant is to communicate by the way of building networks with people across the nation is definitely the most cost effective tool, it provides to the user across the world. However, this new world is named as the world of ‘cyberspace’. The term was created by W. Gibson in his cyberpunk novel “Neuromancer”, (Dunn, 2005). This cyberspace is misused by terrorist and extremist, in order to achieve their both, political and economic objectives, to fulfil their goals (O’Day, 2004). The use of internet which offers anonymity, speed, and low cost tools, makes the social networking sites more vulnerable and easily accessible to the terrorists. The internet allows diffusion of command and control; and the terrorist groups are known to share information and to collaborate with one another through cyberspace (O’Day, 2004). Cyber terrorism is the latest and possibly the most intriguing form of terrorism. It is the convergence of terrorism and cyberspace, bringing together two significant modern fears: the fear of technology and the fear of terrorism (O’Day, 2004).

Although prior research has examined the prevalence of terrorist groups’ usage of internet (e.g., Conway, 2006; Crilley, 2001; Gerstenfeld, Hoffman, 2006; Weimann, 2004a, 2004b, 2006 :) it provides abundance of information pertaining to the descriptive accounts of the misuse of internet by terrorist (Jaishankar, 2011). It is equally important to apply criminological theory to understand the issue in more theoretical framework. In order to understand the misuse of social networking sites by terrorist the application of social learning theory, developed by Akers (1985, 1998), will be helpful to explain a variety of criminal behaviours across a variety of criminal populations. As it operates through four mechanisms of differential association, definition, differential reinforcement and imitation, explain how internet is being used to enhance terrorist operations. (Freiburger, Crane, 2008).

The Space transition theory (Jaishankar, 2008) also assists to correlate how people in physical space interact in the cyberspace. This can be examined with the understanding of
the use Social networking theory (Kadushin, 2004), to study the misuse of Social networking sites as a ‘network model’ for terrorists, to utilize the information available on Social networking sites and carry out transnational crime. The Department of Homeland Security report of United States also states the misuse of social networking sites as Face book by terrorist to share operational information and to target, recruit and radicalize members of the general public.

In case of India, there is evidence of terrorist using (SNS) to plan, hacking, fund raising, spreading religious propaganda, and recruitment of youths. The recent incident of misuse of social networking sites, YouTube’s, to spread inflammatory material with a motivated agenda, such as the doctored pictures of alleged atrocities against Muslims in Assam and Myanmar that incited violence in Mumbai and threats of retaliation elsewhere created exodus of north easterners to move to their native land in lakhs across India (The Hindu, August 23, 2012). This is evident to prove how cyberspace has been used by anti-social elements to create fear and violence in the society. In case of terrorists’ communicating and sharing of information is evident from the use of Face book and Orkut that has its share of narcotics, kidnapping and murder troubles in India.

Aim
To study the misuse of cyberspace by terrorist via social networking sites and its challenges to India’s national security in the 21st century.

Objective
✓ To examine the Misuse of Social networking sites (SNS) by Anti Social Elements
✓ To address the nexus between cyber criminals and terrorist in the cyberspace
✓ To critically examine how terrorist employ all cyber criminal acts in the cyberspace
✓ To analyze how terrorist misuse cyberspace by use of SNS for their purpose
✓ To understand how use of internet and SNS aid cyber criminals.
✓ To make the policy makers aware of the misuse of SNS and its challenges to India’s national security in the 21st century
✓ The paper will aid to make a distinction between cyber crime and cyber terrorism

Significance
➢ The study will promote a better understanding of how transformation in cyberspace arises to major challenges to India’s national security
➢ The topic is contemporary for future studies as it encompasses criminological theories to evaluate the misuse of cyberspace by criminals and terrorists in the 21st century
➢ The study is imperative as it encourages both the public and private sector to tackle the challenges to national security in the cyberspace
➢ The study will facilitate how democratic nation ought to safeguard its freedom of expression and piracy in the cyberspace by implementing effective legal polices
The misuse of social networking sites by terrorists

Methodology
The proposed research work is both descriptive and theory oriented. As it will employ descriptive research as a method to understand the challenges by misuse of cyberspace to India’s national security and examine the misuse of social networking sites by using social networking and social learning theory. Both primary and secondary resources, which include government reports and documents pertaining to the topic, are well research.

Conclusion
The analysis shows that the misuse of social networking sites by terrorists’ is an alarming cause of concern and a challenge to India’s national security agencies in the 21st century. It also examines that mere forming an agency to counter such threats will not suffice India’s national security apparatus in near future. Confronting such threats requires a joint effort both from the centre and the state to work together to mitigate the misuse of cyberspace by extremist groups. In Cyberspace the cybercrimes are transnational, trans-jurisdictional and global, in nature, which makes it difficult for the security agencies to tackle and protect such threats. Firstly, defining terrorism and accepting one universal definition of terrorism and further defining cyber terrorism will be evident to frame legal legislations to counter terrorism so as well cyber terrorism. In analysing the misuse of SNS by terrorists’ the major challenge arises to craft a legal framework to distinguish between cyber crime and cyber terrorism. Terrorists’ use cyber tools and methods to achieve their purpose are all acts of cyber crime however, the challenge to the agencies remains in distinguishing the act as cyber crime or cyber terrorism. In both the acts, the groups from the physical space come together in the cyberspace as per the circumstances and conduct a cyber plan to disrupt either the cyberspace or the physical space. This is the point which is makes it difficult for the agencies and lawmakers to decide their offence as cognisable and under what category. The challenge also looms for agencies to be liable for the cyber attack that takes place in the cyberspace via SNS which has its servers located outside India. The international relations theorist Joseph Nye has discerned four different types of threats to cyberspace as cyber war, cyber espionage, cyber crime and cyber terrorism. Cyberspace and misuse of internet is bound to take place due to lack of unawareness amongst the people in India to use internet and its services in a more amicable manner. The government is working with social networking websites to create an institutional mechanism to prevent their misuse. There are some 12 stakeholders in protecting the cyber defences of India, including the Home Affairs Ministry, the National Disaster Management Authority, National Information Board and a motley crew of others (The Hindu, August 23, 2012). Lastly, it remains a major barrier for democratic countries like India to preserve its fundamental rights as freedom of expression and speech in both the physical and cyberspace and continue to manage such threats by implementing effective rules and legal laws to legalize such acts of terror. This threat is bound to come in different forms however, predicting, practicing and promoting the topic of cyber threats might assist the policy makers and security agencies to better prepared for threats from cyber attacks in the 21st century. Indian Prime Minister Speech also states that “Our country’s
vulnerability to cyber crime is escalating as our economy and critical infrastructure become increasingly reliant on interdependent computer networks and the Internet. E-commerce and E-banking is bound to increase in this digital world and cyber threats needs to be given top priority in the coming decades to fight terrorism both at land and cyberspace in the 21st century.

References
India is a victim of electronic and social networking warfare: An analysis

Riyazahmed Mangoli and Mohammed Subhan Attar

Introduction

Today, India has over 10 Cr Internet users, 3rd largest in the world after China and the US. The number is likely to double by 2015. With 2.8 Facebook users India is the 5th largest user and is expected to become 2nd largest by the end of 2012. Indians are facing a terrible situation by seeing a lot of inflammatory and harmful contents/information, which has found to be appearing through Electronic and Social Networking (Singh & Athrady 2012). As internet users being enormously increased so increased the possibilities of India becomes the victim of electronic and social networking warfare.

More the users increase, increases the more risk of becoming the victim of social networking. The recent Norton Report (2012) survey found that, “Every second, 18 adults become a victim of cybercrime, resulting in more than one-and-a-half million cybercrime victims each day on a global level. With losses totaling an average of US $197 per victim across the world in direct financial costs, cybercrime costs consumers more than a week’s worth of nutritious food necessities for a family of four. In the past twelve months, an estimated 556 million adults across the world experienced cybercrime, more than the entire population of the European Union. This figure represents 46 percent of online adults who have been victims of cybercrime in the past twelve months, on par with the findings from 2011(45 percent)” (Norton Report, 2012).

What has happened in Assam is a result of bulk of the content/information, which contained images and videos mostly morphed, aimed at targeting people of North East. It disturbed the peace and harmony among the communities leading to public disorder and exodus of North Eastern people from some parts of the country causing threat to life and national security (Singh and Athrady 2012). Resultantly, many have become the victims of this hatred messages. Losses of lives and property occurred in a great extent due to spreading rumours and instigating violence through Electronic and Social Networking media. Unfortunately and as usual, we fall prey to the evil designs of neighbours across who used these media to their fullest advantage to create confusion and commotion.

The government of India has identified over 250 websites and blogs that participated in the online campaign of hatred against Indians from the North-East. About 125 websites have already been blocked. The Department of Telecom has said that objectionable content is still available online and has suggested that social networking sites have not responded to requests to urgently delete inflammatory posts (NDTV, 2012).
Objectives of the Study

- To study the mis-use of Electronic and Social Networking.
- To understand and analyze the way Electronic and Social Networking being used as a war against in India.
- To know the Indian Governments Stand and measures taken to control and prevent such future wars.

Methodology

For the purpose of present study and analyses, the data being extensively collected from the same media like News Channel Reports, leading News paper articles available on Internet and Websites etc.

Analyses of the Problem

One side Assam was boiling due to cross broader insurgency and on the other side there were news of mass killing of Muslims in Burma. Some photos are still available on the net on the title Muslim Killings in Burma or Massacre of Muslims in Burma etc. Mean time Bulk of the content/information, which contained images and videos mostly morphed, aimed at targeting people of North East.


The Government directed intermediaries, including international social networking sites, to block 245 webpages over three days starting August 18, 2012. The initial response from international social networking sites indicated that such content has been hosted from outside the country and to a large extent from a neighbouring country (Pakistan). The proxy servers and Virtual Private Network services, which hide the user identity operating from number of countries, appear to have been used for uploading the content (Pilot, 2012).

It is seen that how one particular belief people feel unrest and disturbed. As expected, under such disturbed and tensed condition, the annoyed people come on the road in a huge mob to condemn such incidents and during the course of time sometimes it may turns into the big violence, which even converted into communal violence and ethnic conflicts. Then the country has to face instability by losing many lives and property of its citizen due to such incidents. The very peace, harmony and tranquility will be automatically disturbed at a great extent.

Result and Discussion

By seeing the drastic results of misuse of social networking, Telecom Minister Kapil Sibal summoned executives of social media networks, like Facebook, Yahoo, Google and
Microsoft, asking them to filter all offensive messages and videos, he faced strong resistance (Singh & Athrady 2012).

Where as, while opposing the government’s attempt to monitor and control the Internet, they said the Indian IT law does not make the companies liable for messages posted by its users. “Take one Twitter account. If one person tweets, there may be ten persons re-tweeting on it. If this is the case of one Twitter account, think of the number of tweets possible on one lakh Twitter accounts. It is humanly impossible to filter each and every account,” says a social media representative. Though Facebook and Google, which host YouTube and Orkut, promise to co-operate with the government to prevent posting any hate messages, they did not provide any permanent solutions (Singh & Athrady 2012). But the officials of social networking websites had clearly told about their helplessness on pre-screening of content due to the large volume of content that gets uploaded simultaneously across the world. Instead, they said that as servers are located in foreign locations, like in the US, Indian law is not applicable to them.

The Indian Telecom Policy wants the international social networking sites and service providers to adhere to the national laws and provide solutions for more effective national security interventions. The policy proposes creation of ‘National Telecom Security Certifying Organisation’ for allowing free traffic of only filtered content since the government believes that the tech solution is better than regimented cyber policing, crippling Glasnost which is core to any vibrant democratic society (Singh & Athrady 2012).

It is obvious from the above analyses that India seems to become the victim of Electronic and Social Networking warfare. Indians are facing a terrible situation by seeing a lot of inflammatory and harmful contents, which has found to be appearing through Electronic and Social Networking. This clearly indicates that how social networking is being utilized as a weapon of war against India.
New media and society: A study on the impact of social networking sites on Indian youth

Rohit Bafna and Shatakshi Shekhar

Introduction
The speed of Internet has changed the way people receive the information. It combines the immediacy of broadcast with the in-depth coverage of newspapers making it perfect sources for news and weather information. Even with the multimedia excitement of the web, Electronic mail (email) is the most frequently used application of the Internet. Many people, who have access to the Internet at school, home and at workplace use the Internet for no other purpose than to send and to receive the mail. It’s not just friends and co-workers that are receiving email. The paper would show how these social networking websites are web-based services that allow individuals to construct a public or semi-public profile within a bounded system view and traverse their list of connections and those made by others within the system. The nature and nomenclature of these connections may vary from site to site.

The objective of the study would be identifying and assessing issues regarding youth social networking usage and the resultant impact on their social interactions and social behavior on the whole. This research employs the method of Qualitative research through quantitative analysis to gather an in-depth understanding of the behavioral changes caused by the social networking sites on youth and the reasons that govern such behavior. The paper would use research tools to analyze and give out conclusion and recommendation to shed light on the evolution of the dominance of social networking sites among the Internet users and its eventual outcome in the social behavior patterns of youth (17-22 yrs).

Background of the study
The speed of Internet has changed the way people receive the information. It combines the immediacy of broadcast with the in-depth coverage of newspapers making it perfect sources for news and weather information. Even with the multimedia excitement of the web, Electronic mail (email) is the most frequently used application of the Internet. Many people, who have access to the Internet at school, home and at workplace use the Internet for no other purpose than to send and to receive the mail. It’s not just friends and co-workers that are receiving email. Wherever you look, the web is providing email addresses. This has made communication between the strangers easier than ever. Chatting is one of the more popular activities on the Internet- people can talk to anyone across the world. Introduction of social online networking sites has facilitated communication. These
are web-sites where users can create a profile and connect that profile to others to form an explicit personal network.

_They are web-based services that allow individuals to_

- Construct a public or semi-public profile within a bounded system
- Articulate a list of other users with whom they share a connection and
- View and traverse their list of connections and those made by others within the system. The nature and nomenclature of these connections may vary from site to site.

Through social networking, people can use networks of online friends and group memberships to keep in touch with current friends, reconnect with old friends or create real life friendships through similar interests or groups. Besides establishing important social relationships, social networking members can share their interests with other likeminded members by joining groups and forums. Some networking can also help member’s find a job or establish business contacts. Most social networking websites also offer additional features. In addition to blogs and forums, members can express themselves by designing their profile to reflect their personality. The most popular extra features include music and video sections. The video section can include everything from member generated videos from hundreds of subjects to TV clips and movie trailers (YouTube).

Social networking sites have facilitated communication. Members of such sites can easily form groups (called the communities) and share their opinions among themselves through discussion threads, forums and polls. Though these sites serves good in many ways, it has its negative effects too such as cybercrimes which has become a privacy threat to the people worldwide. Although advantageous in many ways by building new relationship and reconnecting with lost or old contacts, it also brought up some behavioral changes among the youth, not only the behavioral changes but also their social behavior and approaches. It has also ended up as a nightmare for a few people.

**Objective of the study**

Identifying and assessing issues regarding youth social networking usage and the resultant impact on their social interactions and social behavior on the whole.

**Review of literature**

Williams et al (2008) in A review of online social networking profiles by adolescents states that Social networking profiles involve individuals creating and maintaining personal Internet sites allowing authors and other users to post content, thus creating a personal network.

Lenhart and Madden (2007) in Adolescent social networking, said that in the past few years social networking has “rocketed from a niche activity into a phenomenon that engages tens of millions of Internet users. The study proposes that online social networking profiles posted by adolescents contain intimate, candid, and observable self-disclosure and peer interaction that can be analyzed creating an overall picture of
adolescent behavior, highlighting specific areas needing additional research, and addressing implications for parental monitoring and intervention.

Lehnhart and Madden state that fifty-five percent of teenagers use and create online social networking profiles. They opine that with more than half of teenage Internet users interacting online, the concept of blogging is a salient research topic investigating what adolescents are blogging about, how they are socially interacting, and what potential effects this phenomena may have on other dimensions of their lives.

Boyd (2007) says that gender appears to influence participation on social network sites. Younger boys are more likely to participate than younger girls (46% vs. 44%) but older girls are far more likely to participate than older boys (70% vs. 57%). Older boys are twice as likely to use the sites to flirt and slightly more likely to use the sites to meet new people than girls of their age. Older girls are far more likely to use these sites to communicate with friends they see in person than younger people or boys of their age.

Larsen (2009), based on the empirical data, says that both genders seek the acknowledgement they get from having their looks commented on, but the girls are more preoccupied with what kind of comments they get and whom they come from. In general, it is very important that the comments come from friends and people they know, rather than strangers. This indicates that photo comments are not just about having ones outer looks valued and acknowledged (identity construction), but also about practicing and maintaining friendships.

Methodology

Research approach

This research employs the method of Qualitative research through quantitative analysis to gather an in-depth understanding of the behavioral changes caused by the social networking sites like Orkut on youth and the reasons that govern such behavior.

Sampling method

The sample size is 100 and they are divided into two categories each of 50, the categories are teens (17-19) and youth in the age group of 20-22. Samples were randomly selected from different schools and colleges who are active members of social networking sites.

Research methods

The research has made use of survey method. Survey was conducted among randomly selected social networking sites users in India with a sample size of 100 between age group of 17 to 22 yrs who were school students and college students. The age group youth (17-22yrs) was chosen since they are the heavy users of social networking sites and also early adopters of advanced technological applications. Another reason for choosing this age group is that:

- Youth of the age group (17-22 yrs)
- View world idealistically
• Become involved with world outside school/home
• Relationships stabilize in that
• Sees adults as equals
• Seeks to firmly establish independence

Findings

A majority of the Indian youth is members in one or more social networking sites but also is low users of such sites and used Internet more for mailing and surfing the net (downloads). The findings of the study include:

• 98% of the members in social networking sites are members in Orkut.
• 54% were members in more than one social networking site
• 95% who are members in one or more social networking sites spend varying amount of time from less than 1 hr to about 5 hrs everyday in social networking sites.
• 48% social networking users register as members to maintain existing contacts
• 42% youth make friends in such sites based on their likeness.
• About 60% of social networking sites users are attempting to establish their personality through these sites
• And 68% interact with strangers (online friends) through personal chats in other messenger services.
• But 10% share their personal problems with online friends while 7% have very intimate relationship with their online friends (strangers).
• And 20% are good friends with the virtual strangers.
• About 66% have friendship networks/contacts with people of different cultural/racial/ethnic backgrounds through social networking sites.
• 28% had spent less face to face time together at home before & after using Internet at home
• 95% of youth state that social networking sites acts as platform for reconnecting with lost friends, maintaining existing networks/relationships and sharing knowledge, ideas and opinions.

Conclusion

primary objective of the research undertaken has been to shed light on the evolution of the dominance of social networking sites among the Internet users and its eventual outcome in the social behavior patterns of youth (17 22 yrs). Previous research in spheres of social networking sites and its impact on youth in different global and demographic context provided an extensive secondary source base for the study.

As with many technologies, adoption of the Internet especially for its social uses has seen its highest levels of usage among younger users. The majority of current college students have had access to the Internet and computers for a large percentage of their lives. These digital natives see these technologies as a logical extension of traditional
communication methods, and perceive social networking sites as often a much quicker and more convenient way to interact. That they are aware of the danger and risk involved in these sites is a positive indicator that Indian youth are not only techno-savvy and socially active through social networking sites but they also possess social consciousness.
Cyber Crime and Legal Issues

Shalini Singh and Palak Gupta

Introduction

Cybercrime is booming. Be it Israel's "Trojan Horse" program that had infiltrated some 60 companies, in 2005, US’s online fraud, the RBN’s infiltration in countries like Turkey, Malaysia and Singapore, the hyped cyber war between Russia and Estonia, China’s 29 per cent of the world's bot-infected computers, or the 3 million internet crimes committed in UK alone.

We have eradicated dangerous health issues, but we are still not able to eradicate issues related to cyber crime. Traditional crimes as well as new age crimes are on the rise. Without internet and computers, the world wouldn’t have been an easier place to live. In the era of e-governance and e-commerce, a lack of common security standards can create havoc for global trade as well as military matters. Cybercrime Prevention Act of 2012, signed into law by President Benigno Aquino, first cyber police station in the state that was opened in Bhopal, In a FBI survey in early 2004, 90 percent of the 500 companies surveyed reported a security breach and 80 percent of those suffered a financial loss, Social network users are becoming more careful about protecting their privacy., Millennials are the most addicted users, and also the most responsible when social networking on smartphones. Social media have emerged as a major factor in the growth of cybercrime in the Middle East, online experts say.

Cyber Crimes can be divided into 3 major categories: Cyber Crimes against Persons, Also known as Cyber harassment is a distinct Cyber Crime. Harassment can be sexual, racial, religious, or other, 2nd is Cyber Crimes against Property- includes computer vandalism (destruction of others' property), transmission of harmful programs.3rd type is Cyber Crimes against Government, (Cyber terrorism) is one distinct kind of crime in this category. The growth of internet has shown that the medium of Cyberspace is being used by individuals and groups to threaten the international governments as also to terrorize the citizens of a country. New crimes devoted to the Internet are email “phishing”, hijacking domain names, virus immiision, and cyber vandalism, apart from, crimes like The act of defeating the security capabilities of a computer system in order to obtain an illegal access to the information stored on the computer system is called hacking, denial-of-service (DoS) attack, Virus Dissemination, Internet Relay Chat crime.” Over the last nine months, our threat intelligence network has detected more than 4,000 versions of the Koobface virus hit social network users. Cybercriminals continue to target social networks because they can quickly access a large pool of victims. But our findings
show that people are becoming aware of this, and they're now safeguarding their device against it, said Jacques Erasmus, Webroot threat expert.

A Discontented employee or an Organized hacker or even a child of 12 year can commit cyber crime. Cyber stalking and harassment has become very popular. Students of middle and high school took advantage of this and started taunting their classmates. Even adults are not far behind; they have also started stalking others via Internet. The instances of extortion and blackmailing is been seen even in the virtual world now. With the help of Internet, hackers can get into Internet users pc and search for embarrassing nude photos or messages. Even control the webcam and microphone of one’s computer resulting in infringement of one’s privacy. The Internet has become the latest place for promoting the global trafficking and sexual exploitation of women.


The FBI has tried many programs and investigations in order to deter Internet crime, like creating an online crime registry for employers. The Heartland debacle highlights the potential fallout companies face as a result of ineffective planning for data security breaches. Cyber crisis planning process and Cyber Crisis Management (Incident Response – Stop the bleeding) process is an efficient, method to curb the extent and timeline of cyber criminals illegal operations.

Conclusions

Technological innovations are fundamentally changing the way people live, work, play, share information, and communicate with each other," says John Stewart, Cisco vice president and CSO. Cybercriminals and terrorists should have no refuge online, just as they should have no sanctuary offline. I can therefore announce today that the United Kingdom is a developing a new 'center for global cyber security capacity building' in the United Kingdom ... And, we will be investing 2 million [British] pounds a year to offer countries independent advice on how to build secure and resilient cyberspace, improving coordination and promoting good governance online.

India has somewhat been successful in creating effective cyber deterrence India became twelfth nation in the world to enact cyber law by enacting the Information
Cyber Stalking

Technology Act, 2000. India introduced Information Technology Act 2008, which replaced it with 2000 act. So now India’s cyber law has become more focused on cyber deterrence. While protecting against the ever growing threat of cybercrime is certainly important, it doesn’t give governments free license to pass laws meant to silence criticism and opposition. Every country is entitled to formulate its policies and laws in light of its history, traditions, culture, language and customs, and manage the Internet accordingly. In most cases, laws have not kept pace with the technical ability of an adversary to move rapidly through national, commercial and private internet service providers.

It’s so astonishing that mere words and harmless looking acts are result of killing many innocent victims. The need to improve the existing acts and laws is a must.

The reality is that Internet criminals are rarely caught. One reason is that hackers will use one computer in one country to hack another computer in another country. Another eluding technique used is the changing of the emails, which are involved in virus attacks and “phishing” emails so that a pattern cannot be recognized. An individual can do their best to protect themselves simply by being cautious and careful. Internet users need to watch suspicious emails, use unique passwords, and run anti-virus and anti-spyware software. Do not open any email or run programs from unknown sources.

Like an AIDS test, penetration testing in the cyber security arena offers assurance and protection only as of the date of the testing. The “Chan Scale of Cyber Insecurity”, based on the potential harm that can be caused differentiates potential harm into low risk, medium risk, medium to high risk, high risk and critical risk. This model is efficient. The risks of cyber crime are very real and too ominous to be ignored. Every franchisor and licensor, indeed every business owner, has to face up to their vulnerability and do something about it. At the very least, every company must conduct a professional analysis of their cyber security and cyber risk; engage in a prophylactic plan to minimize the liability; insure against losses to the greatest extent possible; and implement and promote a well-thought-out cyber policy, including crisis management in the event of a worst case scenario. All countries need to realize that the Internet and cyberspace is shared by all of us, and that we need collaboration at the international level to counter the broad range of threats.
Cyber Stalking: Perspective from cyber policing experience

Sujit Mukhopadhyay

Introduction

Relations are bindings in between two people and among a group of People or Society at Large. After the invention of Cyberspace, people has got enough scope to develop their friend list both in real world and virtual world, which does not have its boundary in respect to city, state and country. It was started from the arrival of first Social Networking site (SNS) since 1997 with the launching of sixdegrees.com. SNS is network of Interpersonal Relationship (IPR). And there after the major SNSs like, MySpace (2003), LinkedIn (2003), Hi5 (2003), Orkut (2004), Facebook (2006) and others came to the web for all the netizens with instant messaging facilities. After the development of GPRS in mobile phone, it (SNS) fueled the interested people to develop its friend circle more sophisticated than earlier.

How Relationships are built up

As a real life Cybercrime Investigator and a techno savvy person I have experienced that with the advent of SNS the netizens, 1) who does not have enough time in hand, 2) who are in between the age of 15 to 22 and always want adventure, 3) who wants to educate themselves through internet, 4) who wants to cheat other through disguise, 5) who wants to commit crime by following a targeted person, 6) who wants to refresh themselves in the midst of their busy schedule, 7) who wants to sell themselves in job market, 8) who wants to recruit new employees, 9) who wants to spread their news and views (Like political parties, NGOs and others) through forums, 10) who wants to find their partners and old friends and few others register their profiles in SNS for building up his/her own net work.

What kinds of Relationship are built up?

Generally the following relationships are built up in the society with or without the help SNS. I want to mention those IPRs, which are not developed by virtue of birth but these IPRs are those, who use SNS for committing Cybercrime and offline crime after gathering information from them;

A) Relationship developed without the help of SNS:
1) Husband/wife
2) Boy/Girl Friend
3) Neighbor
4) School/College Friend
5) Office Colleague
6) Among group members  
7) Employer/Employee  
8) Teacher/Student  
9) Institution/Student  

B) Relationship developed with the help of SNS:  
1) Internet Friend  
2) Internet Lover (Affecters are youths)  
3) Fan/Follower and others.

As long as the IPR is good there is no problem but when it tastes bitter, the Cyber Crime and other type of crimes with the help of SNS starts its journey.

**What Kinds of Crimes are committed by using SNS**

With the advancement of modern science the Crime has changed its modus operandi form real world to virtual world. Generally Crimes have been classified in the following two different ways by exploiting the facilities of SNS;

**A) Offline (Though these are not directly cybercrime but these are the outcome of SNS)**
- Kidnapping (result of internet love affair through SNS)
- Sex Trading (result of internet love affair through SNS)
- Offence against Property (result of Fan Follower through SNS)
- Offence against body(result of internet Friend and Fan Follower through SNS)

**B) Online (Cyber Crime)**
- Cyber Stalking and Cyber bullying
- Online Defamation
- Identity theft
- Email id and SNS Profile Hacking
- Emotional blackmailing by pretending lover
- Online Extortion
- Data and personal confidential information theft
- Internet scams through SNS (online cheating)
- Crime with Programming/Coding Skill
  A) Click Jacking  
  B) Hacking by IP Tracing  
  C) Copy Paste Script Attack

**Case Studies and Interpersonal Crimes emerging from SNSs**

All the cases discussed here are real life case studies and most of them are investigated by me and some cases which are taken as references from internet. In some of the cases the facts are only mentioned as all of them are under trial but the cases, which are taken as references from internet the original names of victims are there as per internet record.
Offline interpersonal crime, outcome of SNS
A) **Kidnapping:** - Trusting on an online love affair a lady went to her online lover. Reaching there she found other person, whose face and voice differs with her online lover. Actually she was trapped by an online racket. She ultimately found her residence in a brothel at Kamatipura, Mumbai, India. (This case shows the both about Kidnapping and sex trading).
B) **Offence against Property:** - Twitting in twitter about recent movement update of a person is increasing the house theft.
C) In USA Child Abduction has been increased and it has been done by infertile women, who collects information about pregnant lady through SNS and then develops IPR and abducts the new born.

Cybercrime through SNS
A) **Cyber stalking and Cyber bullying:** This is the major alarming crime in human life, which may lead a person (victim) to commit suicide as this causes a huge social damage in his/her life. This is basically a mental assault of a target (may be male or female) by using digital media (SNS). We all know about Megan Meier case of Nov 2007 but there some other cases also, one of them very recent case in Jammu Kashmir in India is noted below;

*Suicide Note:* In her suicide note, Raksha alleged that Lovepreet was responsible for making her take the extreme step. "He posted obnoxious comments on my Facebook wall and had been issuing threats for the past week. He was also hurling abuses at me. He used to harass me and had also circulated my mobile phone number among several boys. He called up my shelter home and lied to the authorities that I borrowed Rs. 20,000 from him. Deepak Saini, too, is involved. They made it difficult for me to enter the college. I am sorry. Please [inne saaza de dena](https://example.com) (do punish them)," she wrote.

B) **Online Defamation** is the outcome of cyber stalking. In India defamation has specific section of law in IPC but not in IT Act.
C) **Identity** Theft in done in SNS by creating fake profile in some others name by using his/her personal details.
D) **Hacking** is done by knowing the security questions and personal secret mobile number attached to the profile through online chatting in SNS. This leads to [personal information theft and data base theft](https://example.com).
E) **Emotional blackmailing and online Extortion** is generally done by online pretending lover. In a real life case a lady complaint that she was being threatened by her online lover for posting her private picture on net if she does not pay money to him. Investigation revealed that she developed a love affair in FB and then they had a web chat where she showed her private movement to her lover due to emotional blackmailing and he was from African country.
F) **Internet scams through SNS** generally occurs from friends in SNS, who publish in the wall for cheap loan, research paper submitting, blog writer, work at home and etc. offer.

G) **Crime with Programming/Coding Skill**
   ✓ **Click Jacking** is the process where if someone clicks on a link but it sends you to some malicious link for stealing your information or steals browser related information.
   ✓ **Copy Paste Script Attack** is an attack, where online friend requests for pasting a script on the address bar by which he poisons, hijacks or steals data from the browser.
   ✓ **Hacking by IP tracing** is trick where friend asks to click a link for knowing the IP and then uses tool like Nmap, Armitage IP scanner, etc for hacking the system.

✓ **Problem Faced By LEA**

LEA faces a lot of problem during solving cybercrimes as in most of the cases now a days the accused uses proxy servers and anonymous connections and in some cases it is found that the accused is using the IP of that country, which does not have Mutual Letter of Agreement Treaty (MLAT) or Letter Rogatory (LR) with the country, where cybercrime is committed. Besides this the ISP does not verify properly during providing connections to end user and SNSs do not provide information to the LEA in right time. The MLAT and LR is time consuming factor.

**How to Solve**

This problem can be solved by passing strict law against the offender and the intermediaries (ISP and SNS service provider) depending on the nature of crime. Users must be conscious. SNS should publish “How to Protect” guideline on each wall. There should be a restriction on accessing SNS and the service provider should be bound down to provide information within 48 hours to the LEA otherwise their service should be blocked by the country. MLAT and LR procedure should be easier.
Cyber bullying victimization among youth in Singapore: An exploration of the correlates

Thomas Holt, Grace Chee and Esther Ng

Over the past few decades, bullying has been identified as one of the most significant problem behaviors confronting children and adolescents (Olweus, 1991). Bullying behaviors typically involve persistent physical, verbal, or emotional harassment of one individual over another, often accompanied by a power imbalance that negatively impacts the intended target (Dake, Price, & Telljohann, 2003; Espelage, Bosworth, & Simon, 2004). The increased use of technology among youth populations has facilitated the emergence of so-called cyber bullying, where cell phones, email, and other forms of Computer-Mediated Communications (CMC) allow individuals to create and send harassing messages or rumors about victims in a distributed fashion (Berson, Berson, & Ferron, 2002; Hinduja & Patchin, 2008; Holt & Bossler, 2009; Twyman, Saylor, Taylor, & Comeaux, 2010; Ybarra & Mitchell, 2004). Additionally, many who experience cyber bullying also report concurrent bullying victimization in the real world (Erdur-Baker, 2010; Hinduja & Patchin, 2008; Kowalski & Limber, 2007; Ybarra & Mitchell, 2004).

The growing research on cyber bullying has, however, provided limited information on the prevalence of this problem in Asian populations (Hokoda, Lu, & Angels, 2006; Huang & Chou, 2010; Li, 2006; Wong, Lok, Lo, & Ma, 2008). This is problematic given the rapid expansion and adoption of technology within these countries. Furthermore, few researchers have considered cyber bullying victimization through criminological theory perspectives (e.g., Hinduja & Patchin, 2008; Ybarra et al., 2007). In particular, there is growing evidence to suggest that routine activities theory (Cohen & Felson, 1979) provides a practical framework to assess on-line harassment victimization among college students (Choi, 2008; Holt & Bossler, 2009; Marcum, 2008; Marcum, Higgins, & Ricketts, 2010), and juvenile populations (Bossler Holt & May, 2011). Routine activities theory suggests that victimization is most likely when individuals are placed in high risk situations, in close proximity to motivated offenders, appear to be attractive targets, and lack a capable guardian (Cohen & Felson, 1979). In addition, individuals who engage in criminal and deviant behavior are at an increased risk of victimization as they increase both their proximity to motivated offenders and the probability of retaliation, while also decreasing social guardianship by associating with delinquent others (Jensen & Brownfield, 1986; Lauritsen et al., 1992; Zhang, Welte, & Wiec xorek, 2001).
It is theoretically plausible that routine activities would be fruitful to explain bullying victimization via the Internet and mobile phones in a juvenile sample. This study considers the applicability of elements of Routine Activities theory with a nationally representative sample of youth in Singapore. Citizens of this country have a high degree of access to computers, technology, and high speed Internet connectivity (CIA World FactBook, 2006; Liau, Khoo, & Hwaang, 2005). As a result, this juvenile population should have exposure to technology and prospective experiences with bullying on and off-line. The findings of this study will be discussed in depth, along with implications for criminologists, mental health professionals, and educators.

This study utilized data from a self-report survey collected from one primary (n = 680) and eight secondary schools (n = 3,382) in Singapore in 2006. These schools were located across the country, and incorporated students from all social, economic and cultural backgrounds. This sample was developed to understand the prevalence and incidence of both real world and cyber-bullying across Singapore. Due to missing data, the total sample size for cyber bullying victimization is n = 3223 and n =3233 for mobile phone bullying victimization. This sample is, however, in keeping with the demographic composition (55% male; 45% female) of the larger data set and the youth population of Singapore generally (CIA World FactBook 2006).

To assess cyber bullying victimization, a scale for bullying experiences in chat rooms, email, computer Instant Messaging, bulletin board systems, and newsgroups was created (alpha = .921). Due to limited variation in the frequency of bullying experiences, this was collapsed into a binary (0=No; 1=Yes) response with 18.9% of the sample reporting cyber victimization. A two item scale (alpha = .806) was created to measure mobile phone bullying victimization through mobile phone text messages, and mobile multi-media (MMS) messages. This scale was also turned into a binary measure with 17.7% of the sample reporting mobile phone bullying victimization.

The elements of Routine Activities theory were operationalized in keeping with the existing research on on-line harassment and cyber bullying generally (Bossler & Holt, 2009; Holt & Bossler, 2009; Marcum 2008; Marcum et al., 2010). Proximity to motivated offenders was measured through Internet access at home, school, and mobile phone ownership. To further explore this issue, six measures for routine technology use were included; the frequency of 1) chat room, 2) email, 3) Instant Messaging, 4) bulletin board systems (BBS), 5) blogs, and 6) MMS texting each week. Additionally, experiences with real world or traditional, bullying victimization are also included as both a proximity and suitability issue since individuals increasingly report experiences with bullying both on and off-line. Target suitability is assessed on the basis of school adjustment or attitude while at school, grade in school, and gender (1=male). While guardianship measures are not included, this model provides a partial assessment of this theory and valuable insights into the correlates of bullying victimization via cyberspace and mobile phones.

Two binary logistic regression models were estimated for cyber bullying and mobile phone bullying victimization respectively due to the use of dichotomous
dependent variables with limited variation. In the model for cyber bullying victimization, physical bullying victimization was positively correlated with victimization experiences, as was Internet use at home. The frequency of use in every form of electronic communication was also significant, except for MMS texting. Individual affect was also significant, with those reporting negative attitudes while at school being more likely to experience victimization. Finally, females and younger students were more likely to report experiencing cyber bullying victimization. Despite the significance of gender, there were no differences between the sexes based on separate regression models and an equality of coefficient tests (Paternoster, Brame, Mazerolle, & Piquero, 1998).

For mobile phone bullying victimization, cell phone ownership was correlated with victimization, as were those who experienced traditional bullying victimization. Time spent in IM chats were negatively correlated with the risk of mobile phone victimization, while blogging and sending MMS texting increased the overall risk. Negative affect was also significantly correlated with mobile phone bullying victimization, as was being female. Additional regression models were parsed by gender and an equality of coefficient test demonstrated that males who blogged and sent MMS text messages frequently were more likely to experience mobile phone bullying victimization. School level was also significantly different between the sexes, such that females in higher grades were more likely to be victimized.

These findings provide some support for Routine Activities Theory regarding cyber and mobile phone bullying victimization. In particular, those youth who experience traditional bullying in the real world were also more likely to report both cyber and mobile phone bullying victimization (Hinduja & Patchin, 2008; Kim et al., 2005; Klomek et al., 2008; van der Wal et al., 2003). Thus bullying victimization in the real world may increase a victim’s proximity to bullies in virtual spaces. Technology use also has a substantive impact on both forms of victimization, such that individuals who own mobile phones are more likely to report mobile phone bullying. The frequency of use of various forms of CMCs affect the risk of cyber bullying victimization by increasing overall exposure to motivated offenders (Hinduja & Patchin, 2008; Holt & Bossler, 2009; Marcum, 2008; Marcum et al., 2010; Ybarra & Mitchell, 2008). Target suitability also differentially increases risk of victimization, such that females and those with negative affect while at school are more likely to experience both cyber and mobile phone bullying (Hinduja & Patchin, 2008; Kim et al., 2005; Klomek et al., 2009; Ybarra & Mitchell, 2008; van der Wal et al., 2003).

These findings suggest that the predictors for bullying victimization do not differ based on regional differences generally (Hinduja & Patchin, 2008; Huang & Chou, 2010; Klomek et al., 2009; Li, 2006; Ybarra & Mitchell 2008). In addition, the relationship between traditional bullying, technology use at school and at home, and affect suggest a need for intervention strategies that involve both schools and parents generally (Nansel et al., 2001, 2003; Hinduja & Patchin, 2008). School administrators and counselors must implement programs to diminish bullying in the
school which may in turn diminish the risk of cyber and mobile phone bullying (Hinduja & Patchin, 2008; Marcum 2008; Marcum et al. 2010). This may help to reduce the attractiveness of a given target and reduce the likelihood of victimization.

At the same time, parents must manage their child’s access to technology due to the relationship between home internet access, frequency of CMC use, and mobile phone access. For instance, supervising on-line activities through the use of filtering software and placing computers in public spaces within the home may help increase communication between parents and children about appropriate on-line activities (Hinduja & Patchin, 2008; Marcum et al., 2010). Mobile phone management must also be encouraged and enforced despite the portability and lack of interception capabilities afforded by these devices. This may help to reduce exposure to motivated offenders while on-line and affect the likelihood of victimization. Finally, parents must recognize changes in affect or mood, a lack of appetite, and other physical symptoms which could indicate a child may be experiencing bullying on or off-line (Nansel et al., 2001, 2003; Hinduja & Patchin, 2008; Ybarra & Mitchell, 2004). In turn, this may help to diminish the risk of bullying victimization in both real and virtual spaces.

References


Obscenity in social networking sites

Tripti Verma and Arun P. Mandal

Introduction
The main aim of any Social Networking Site is to facilitating the building of social networks or social relations among people who, for example, share interests, activities, backgrounds, or real life connections. In simple words, social networking is a way for one person to meet up with other people on the net. People use SNS’s (social networking sites) for meeting new friends, finding old friends, or locating people have the same problems or interests.

But today these sites become an open sky for obscene acts. If you ask to any teenager about the use of SNS he will reply you “making friends and have chat, fun and sex”. Anyone can make a profile ID and enter into these sites and post any obscene material whenever or wherever he or she wants, it does not matter about the age, sex, place or any other limitations. SNS become heaven for sex workers which are dangerous to society. In the name of legal obligation only you have to accept the terms and conditions while making registration for an ID which says, if you post or publish any obscene material you will be liable.

Definition of obscenity
Obscenity depends on time and place. Literally obscene means “words, thoughts, books, pictures, etc. indecent, esp. sexually; disgusting and offensive, likely to corrupt” (Gupta & Agrawal, 2012).

Methodology
We analyzed the basic structure of functioning of social networking sites and their laws. Tried to point out the defective provisions of the terms and conditions. We collected data from internet and searched cases related to obscenity in cyber law. After the analysis of functioning the SNS’s found some root causes which are playing an important role in increasing obscenity and due to that crime has been unable to be cured.

Root causes of incitation of obscenity in cyber law
No fear of prosecution:
If you post or publish any obscene material in these sites you can be deleted only through the option given “report or abuse” nothing more. They have in their terms and condition that they will not be responsible for any obscene publication posted by you, only have the right to produce the material at the time of requirement. Only
MySpace has cleared he can take appropriate legal action if found any publication of obscene material (Myspace, 2012).

**Easy registration process:**
Anyone can make an ID and enter into these sites with just filling a form which requires a contact no. or an Email ID. They prohibited for more than one personal ID without the prior permission of company. They verify the identity trough mail id or phone number. It means you can make a fake E-mail ID and can enter into SNS and do whatever you want.

**Entry of minors:**
The minimum age for eligibility for registration has been given 13 years or above in most of the sites (Myspace, 2012; Facebook, 2012). Yahoo has not specified the age but said guardian has to take care the acceptance of terms and conditions (Yahoo, 2005). We all very well know that minors are not able to rational judgment what is right and what is wrong for them so the law has given special privileges’ and care to them, to save from evil consequences. But SNS’s is an open space for young people to indulges in obscene acts.

“Most important thing according to the Contract act, a minor cannot make a contract, and in SNS’s minors accepting terms and conditions and making contract, which is against law of contract and the whole contract is void.” (Wikipedia).

1- **No substantive control over the publication**
This is the most vital reason for increase in the percentage of crime of obscenity in cyber law. SNS’s do not scan or screen before publication of any material even you don’t need any permission before posting any comment or content. The easiest way to defame any people anytime without any fear of law. This is the worst consequence of the freedom given by SNS.

2- **Popularly known place for fun only**
Social media has played an important role in spreading the bad image of these sites as a place for making friends for fun and sex only. They are unaware of the benefits of using social networking.

3- **Lack of parent’s care**
Today’s world becomes more demanding about the time for everyone. Both father and mother are working which results in lack of time for their children. When they feel unsecured and needs care they try to meet their requirement through making new friends (Sue Lynn Carty).
4 - Other reasons

Some other reasons like stress, problems with family and friends, academic tension, lack of parents care, search of supporter and for fashion also people go to these sites. They feel safe and easy way to find someone for friendship specially youngsters.

Conclusion

Obscenity is more of a social evil. It is not through legislation that we can check or curb it. The only possible way out is by increasing and spreading awareness among masses. When you are provided with an opportunity to make use of something, it depends completely on you as to how you use the object. In several cases, people get tempted at the notion of having something to their own at full liberty and tend to misuse the opportunity that they provided with. It is evident that mistakes have been done by the SNS’s but user is also responsible for his acts. Both are liable and have to take some initiative for the solution of problem. Only application of law is not enough which is clear from the available data. We need to concentrate in the root causes of the problem.

I would like to suggest some steps for the same:

 ✓ The registration process should be taken only after giving a valid ID proof; it will create a fear in the mind of accused.
 ✓ SNS’s should scan or screen every content or material before publication.
 ✓ Minors should be strictly prohibited for the use of these websites and if allowed should be in the care of parents.
 ✓ Parents and teachers must teach how to make good use of these sites specially for improving knowledge.
 ✓ Communicate the users often about the good and bad of the internet. Also try to improve the moral values that is what is right and what is wrong.
 ✓ Establishing household rules for computer use and try to allow children’s to use in the room commonly used for family.
 ✓ All internet email names and passwords should be known by parents and all changes need to be authorized.
 ✓ Last but the most important teachers and parents must give sufficient time to their children’s and take care of them.

We are living in the wondrous period of technological development where we cannot imagine our life without internet, the only need is to use with proper care and safety. It is true that social networking played an important role to open up the possibilities of discovering and learning new information, sharing ideas and interacting with others.