

Judiciary on Effective Criminal Justice towards Crime Against Women

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Abstract

The effects of sexual crimes upon victims and the wider community are pervasive and far-reaching, yet conventional attempts to address offending and seek justice for victims have not succeeded; rather, they have left victims without a sense of justice and often magnified the adverse impacts of the initial victimization. The applicability and appropriateness of restorative justice to such gendered categories of crime has been long debated, but emerging evidence suggests that it may offer victims greater satisfaction by way of recognition of the need for substantive over procedural equality, and consequent privileging of victims' needs and experiences. This focus on substantive equality and its implications for justice also aligns with international covenants, which recognize the inadequacy of formal equality and traditional approaches to justice when addressing crimes where perpetration is dependent on the manifestation of power and control. The article therefore sets out the case for restorative justice in accordance with these imperatives for substantive equality, and discusses the challenges inherent in providing safe restorative practices.

Keywords: *Violence against women Inequality, Law, Crime, Violence, Effectiveness, Societal Concept.*

1. INTRODUCTION

The Government of India is committed to bringing an end to all kinds of atrocities and crimes against women and children. A host of penal provisions to deal with such crimes besides a number of empowerment measures to create a positive enabling environment for them to excel in their pursuits are in place. The right to life as enshrined in Article of the Constitution of India constitutes a basic human right which includes the right to life with dignity sans violence. Further, the Constitution while according to equality to women provides for positive discrimination in favor of women in recognition of their social, economic and educational disadvantages. The Government of India recognizes that the assured safety of women and children in the country is the outcome of several factors which includes stringent deterrence to offenders, effective justice delivery mechanism including redressed of complaints in a timely manner in cases of crimes against women & children, easily accessible institutional support structure to victims for rehabilitation, etc. Though the status of women mirrors the social, economic and political development of the country, women are facing a life cycle of violence right from their birth to old age with varying degrees of prevalence and forms. The atrocities perpetrated upon women at present have many manifestations, which include sexual assaults, domestic violence, caste-based discrimination, dowry-related deaths, honor killing, witch-hunting, sexual harassment, violence against sexual minorities, trafficking, and forced and/or early marriages. Besides, there are multiple concerns about the violence faced by women with disabilities, lack of access to sexual and reproductive rights, sex selection practices, among others.

2. LITERATURE REVIEW

Lisa L.Smith (2019) Sexual and gender based violence (SGBV) is notoriously difficult to investigate and prosecute. SGBV occurs in varied contexts and requires flexibility in the investigative approach in order to develop a strong evidence base to enable successful prosecutions. In this paper we focus on the need for innovation and development of training protocols for gathering testimonial and forensic evidence in SGBV cases, particularly in low resource environments, such as developing countries, displaced communities, and conflict and post-conflict societies. We discuss existing international

guidelines that have been developed for improving the documentation and investigation of SGBV in these contexts, and argue there are significant gaps in the knowledge base that impede the effective implementation of such guidelines. In particular, collaborative research between academics, practitioners and NGOs is needed to address several priority areas. These include the development of programmer geared towards training non-specialist practitioners who work in low resource environments, as well as research programmer that evaluate the implementation of the programmers. This research will improve access to justice for victims and accountability for perpetrators of sexual violence.

Rahime Erbaş (2021) The study explores the main components of an effective criminal investigation as well as potential obstacles to such investigation envisaged in the case law of the ECtHR, namely in the frame of the domestic violence-related cases. To put particular emphasis on the case of referred to as “Europe's Landmark Judgment on Violence against Women” the study thus indicates the deficiencies in Turkish criminal procedural law that failed to meet an effective investigation and led the case to end up before the ECtHR. In order to explore the approach of the ECtHR on effective criminal investigations for women victims of domestic violence from the point of criminal procedural law, this study considers the ECtHR's unique conceptualization of positive (procedural) obligation of the State as a core proposition in combating domestic violence which calls on criminal law to take appropriate and effective action. Consequently, human rights of women emerge in criminal law to substitute the ultima ratio principle with prima ratio. Finally, the study provides some concluding remarks.

Ramadhar Singh (2014) Indians and Americans read about a severe crime committed by a man against a woman in the presence of his group of friends. The social order and the resulting public protest against that crime were manipulated. Participants indicated punishment goals they pursued. As hypothesised, public protest amplified the pursuit of the goals of retribution for the offender and omission by the group when the social order was deteriorating. Moreover, public protest affected the pursuit of the deterrence and retribution goals by Indians as if they acted as pragmatic politicians, but not by Americans as if they acted as principled theologians.

Paula Andrea Valencia Londoño (2021) the crisis provoked by COVID-19 has rapidly and profoundly affected Latin America. The impacts are seen not only in infection and mortality rates, but also in the economic decline and increased inequality that plague the region, problems which have been exacerbated as a result of the pandemic. Women, in particular, constitute one of the groups most heavily impacted by the pandemic, facing higher rates of unemployment and furloughing due to structural discrimination and a subsequent increase in economic dependency as they are forced to return to traditional unremunerated occupations like care giving and homemaking. However, it is the increase of direct violence's that has received the most media attention and remains the most visible manifestation of the impact of the pandemic on women. Nonetheless, in countries like Mexico and Colombia, said violence's are compounded in contexts of criminal violence which make the public sphere more dangerous than the private. Thus, this article focuses the analysis on the structural factors that consign women to a reality in which they permanently face discrimination. This article analyzes the behavior of violence against women in the period of pandemic in the cases of Colombia and Mexico from the perspective of horizontal inequality. It emphasizes that violence against women is a form of discrimination that inhibits the full exercise and enjoyment of one's rights finally, the responsibility of the State is evaluated in relation to granting women access to emergency assistance and the administration of justice. It is argued that violence against women is a continuum, the most extreme form of which is femicide, permitted by the failure of the State to guarantee equal protection for women.

Jennifer C.Sarrett (2021) People with intellectual and developmental disabilities (I/DDs) have disproportionately negative experiences in the criminal justice system as both victims and as the accused. While there are some programs aimed at addressing these disparities, most are not informed by people with these disabilities. The current project addresses this need. Twenty-seven adults with I/DDs were interviewed about any experience they had with criminal justice positive or negative, formal or informal. Here, their beliefs about and advice for criminal justice professional are presented. Overall, findings in both areas were varied based on disability level, race, gender, and type of interaction with the system. The most frequent claim was the need for a higher level of respect. These findings suggest that people with I/DDs feel that they should be treated with more respect and their

disability merits more attention in criminal justice interactions. These thoughts could prove helpful in reducing disparities in the criminal justice system.

3. RESEARCH METHODOLOGY

The present study utilizes a case study design on GBV in India. The rationale behind employing a case study approach in the present study is that it is one of the best approaches to understand the complexities of the issue of gender-based violence in the most complete way possible. What makes this study unique is that this case study approach will utilize multiple criminological theories and the findings from the NCRB data on crime against women in India to explain the nature, pattern and trend of gender-based violence in the country. According to wide range of data sources must be utilized in order to understand a case in its totality. The multiple sources that will be utilized in the present research will provide a most possible understanding of gender-based violence. The quantitative analysis of the data on incidences of crimes against women in India helps in developing an understanding on the trends and pattern of various categories of crimes against women. Trends and patterns of each categories of offences committed against women are also compared with other categories of crimes against women. This study there by provides information on what form of gender-based violence have increased or decreased over the years in India. The categories of crimes that are analyzed in this study are Dowry Deaths, Abetment of Suicides of Women, Causing Miscarriage Without Women's Consent, Deaths Caused by Act Done with Intent to Cause Miscarriage, Acid Attack, Cruelty by Husband or his Relatives, Kidnapping & Abduction of Women, Human Trafficking, Rape, Attempt to Commit Rape, Unnatural Offences, Assault on Women with Intent to Outrage her Modesty (Assault on Women, Sexual Harassment, Assault on Women with Intent to Disrobe, Voyeurism, Stalking), Insult to modesty of Women, Female Infanticide, Feticide, Honor killings and the offences covered under Dowry Prohibition Act, 1961, Immoral Traffic (Prevention) Act.

Various criminological theories from existing literature are then used to analyze the problem of gender-based violence in India. This approach is an effective source of information to deeply understand the nature of gender-based violence in the country. The findings of the study also provide detailed information on various categories crimes against women. Case study approach helps in capturing a wide range of perspectives on the GBV issues, especially on how gender-based violence is interwoven with the countries socio-cultural set up. Subsequently, resulting in prescribing effective prevention strategies to tackle the issue of gender-based violence. Adapting such a case study approach for the present study results in more meaningful and complete research than employing usual research designs that employs singular data sources. Moreover, the research style provides more freedom to the researcher in utilizing all available sources without confining.

4. DATA ANALYSIS

As per "CRIME IN INDIA-2019", cases under crime against women have reported as under. Rate of total crime against women in 2019 is 62.4 States and UTs. Crime rate is calculated as per 1 Lakh of population.

Crime Against Women (State / UP)

Crime Head	Crime Incidence		
	2017	2018	2019
Total Against Women	3,59,849	3,78,236	4,05,861
NO	Crime Head	Total Cases Reported	Major State/UT during 2019

1	Cruelty by husband or his relatives	1,25,298	Rajasthan (18,432)	Uttar Pradesh (18,304)	West Bengal (16,951)
2	Assault on women with intent to outrage her modesty	88,367	Uttar Pradesh (11,988)	Odisha (11,308)	Maharashtra (10472)
3	Kidnapping & Abduction	72,780	Uttar Pradesh (11,649)	Bihar (9,025)	Assam (6,989)
4	Rape	32,033	Rajasthan (5,997)	Uttar Pradesh (3,065)	Madhya Pradesh (2,485)

Majority of cases under crimes against women was reported under 'Cruelty by Husband or His Relatives' (30.87%) followed by 'Assault on Women with intent to Outrage her Modesty' (21.77%) 'Kidnapping & Abduction of Women' (17.93%) and Rape (7.89%). Uttar Pradesh reported 14.75% (59,853) out of total cases of crimes against women followed by Rajasthan 10.24% (41,550 cases) during 2019. Dowry death cases 7,115, abetment of suicide of women cases 5,009, acid attack cases 150 and Attempt to acid attack cases 42, Rape cases 32,033, Cybercrimes (women centric only) 1,621 were reported in year 2019. Women and Girls victims of rape cases under below 6 years were 144 and between 6 to 12 years were 428. Total rape cases victims in 2019 were 32,260. Number of cases in which offenders were known to rape victims 30,165 (94.2%) out of total 32,033.

Crime Against Women (Metropolitan Cities)

[19 cities with more than 2 million populations]

Crime Head		Crime incidence (IPC +SLL)			
		2017	2018	2019	
Total Crime against Women		40,839	42,180	45,485	
NO	Crime Head	Total Cases Reported	Major Metropolitan Cities during 2019		
1.	Cruelty by husband or his relatives	14,045	Delhi (3,697)	Hyderabad (1,568)	Jaipur (1,525)
2.	Assault on women with intent to outrage her modesty	9,206	Delhi (2,311)	Mumbai (2,069)	Bengaluru(803)
3.	Kidnapping & Abduction	8,767	Delhi (3,398)	Mumbai (1,327)	Bengaluru (617)
4.	Rape	3309	Delhi (1,231)	Jaipur (517)	Mumbai (394)

Majority of cases under crimes against women were reported under 'Cruelty by Husband of His Relatives' followed by 'Assault on Women with intent to Outrage her Modesty 'Kidnapping & Abduction of Women' and 'Rape'. Delhi reported 12,902 (28.4%) cases out of 45,485 cases crimes against women followed by Mumbai 6,519 (14.3%) cases and by Bengaluru 3,486 (7.7%) cases during 2019. Dowry death cases 385, abetment of suicide of women cases 425, acid attack cases 22, attempt to acid attack cases 12, Rape cases 3309. Cyber Crimes/Information Technology Act (women centric only) 205 cases reported in 2019.

In 2019, 150 cases of acid attack (IPC 326A) and attempt to acid attack (IPC 326B) 42 cases were reported as per NCRB. Government has taken many steps to prevent such attacks and accommodate the victims of such attack. In 2013, Acid attack is made a specific offence with a punishment of imprisonment not less than 10 years and which can extend to life imprisonment and with fine. The rights of Persons with Disabilities Act were revised in 2016 to include acid attack survivors as physically disabled. It extends reservation benefits in government funded education Institutions and government jobs to acid attack survivors. Acid attack is one of the most debilitating attacks as the victim has to go through an average of 80 percent facial reconstruction surgery. The mental and physical recovery is possible only after the victim shows extreme will power to survive. Acid attacks are strange in the sense that unlike other crimes against women, they are region and culture specific with most crimes taking place in South Asia. The motive behind an acid attack is to humiliate and not to kill. The most common reason for such an attack is the rejection of romantic or sexual advances of the culprit by the victim. Other motives are domestic dispute, dowry demands, property disputes and communal violence.

The present study utilizes secondary data to carry out the research. The data for the present research is collected from the annual reports of National Crime Records Bureau of India. The one and only official source of crime statistics in India is the Crime in India report which is a consolidated annual crime indicator of the whole country. The reporting of annual crime statistics started in 1953 by the Intelligence Bureau of India. Only a few crimes, particularly crimes which were then considered most serious (cognizable) were included in the report. Thus, when India started to consolidate its crime data, gendered crimes were not a part of it. Gradually, the Crime In India (CII) report began to publish data on victims of rape in 1971. The data collected from the Crime in India report is then correlated with data on development factors like Human Development Index of the country and Education Index and representation of women in police in India to provide reasoning to nature of reporting of crimes against women. The findings from the present study are then explained through various criminological theories.

5. CONCLUSION

Most crime against women is rooted in our social structure. Gender discrimination, which is a part of our way of life, is the genesis of violence against women. Such crimes are different from other violent crimes because of the deep rooted cause and huge implications that they have. The promotion of gender equality is an essential part of violence prevention. We have to keep in mind the complex structure of Indian society that makes prevention of such crimes more challenging. Most of the time, we are protecting women from the ones they know and trust and from the crimes that have been institutionalized in their way of life. While doing so, we are breaking not only the illusion of 'safety at home' but also the social structure and status quo which have thrived on such practices. So, even though the job of the state is tricky, it is absolutely crucial and necessary to create a safe society, especially for women. The state can't afford to fail in this task. The state can't deny its women the realization of the dream of freedom, rights, dignity and individual identity promised to them in the constitution. As it is this aspiration which grants legitimacy to the actions of the state, which intend to destroy the systems, which draw their own legitimacy from India's civilization, culture, history and society. Only if we see our job of preventing crime against women in this comprehensive background, we will be able to garner enough will power, inspiration and clear direction which are quite necessary for sustainability of our efforts. We have enough constitutional provisions, laws, rules and schemes that intend to prevent violence against women. But it is their implementation at grass root level, on which their success depends. Thus, the preventive strategies mentioned earlier have to be seen in the context of India's journey for its socio-economic transformation.

6. REFERENCES:

- [1]Lisa L.Smith (2019),” Achieving more with less: A critical review of protocols for forensic investigation of sexual violence in low-resource environments,” *Forensic Science International: Synergy* Volume 1, 2019, Pages 108-113
- [2]Rahime Erbaş (2021),” Effective criminal investigations for women victims of domestic violence: The approach of the ECtHR,” *Women's Studies International Forum* Volume 86, May–June 2021, 102468

- [3] Ramadhar Singh (2014),” Crime against woman and punishment goals: Social order and country moderate public protest effect,” *IIMB Management Review* Volume 26, Issue 2, June 2014, Pages 82-90
- [4] Paula AndreaValencia Londoño (2021),” The exacerbation of violence against women as a form of discrimination in the period of the COVID-19 pandemic,”
- [5] Jennifer C.Sarrett (2021),” Beliefs about and perspectives of the criminal justice system of people with intellectual and developmental disabilities: A qualitative study,” *Social Sciences & Humanities Open* Volume 3, Issue 1, 2021, 100122
- [6] Ammar, N. H., Orloff, L. E., Dutton, M. A., & Hass, G. A. (2012). Battered immigrant women in the United States and protection orders: An exploratory research. *Criminal Justice Review*, 37(3), 337–359.
- [7] Finn, M. A. (2013). Overview of: “Evidence-based and victim-centered prosecutorial policies: Examination of deterrent and therapeutic jurisprudence effects on domestic violence”. *Criminology and Public Policy*, 12(3), 441–442.
- [8] Gover, A. Richards, T. N. & Tomsich, L. (2015). Colorado’s innovative response to domestic violence offender treatment: Current achievements and recommendations for the future. Denver: Buechner Institute for Governance, Criminology and Criminal Justice Research Initiative, University of Colorado Denver. Submitted to Colorado Domestic Violence Offender Management Board.
- [9] Dupont, H. B., Kaplan, C. D., Braam, R. V., Verbraeck, H. T., & de Vries, N. K. (2015). The application of the rapid assessment and response methodology for cannabis prevention research among youth in the Netherlands. *The International Journal of Drug Policy*, 26(8), 731–738.
- [10] Elonheimo, H. (2014). Evidence for the crime drop: survey findings from two Finnish cities between 1992 and 2013. *Journal of Scandinavian Studies in Criminology & Crime Prevention*, 15(2), 209–217.
- [11] Marteache, N., Viollaz, J., & Petrossian, G. A. (2015). Factors influencing the choice of a safe haven for offloading illegally caught fish: a comparative analysis of developed and developing economies. *Crime Science*, 4(32), 1–13. doi:10.1186/s40163-015-0045-2.
- [12] McPherson, J. (2015). Human rights practice in social work: a US social worker looks to Brazil for leadership. *European Journal of Social Work*, 18(4), 599–612.