

Looking Through the Law Books: Gender Violence, Laws, and Limitations

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Abstract

Though women can be, and are, victims of any or all kind of violence targeted against men, there are certain crimes that are targeted against women. The figure of 18 rapes per second is quite alarming. However, considering the gross underreporting, the reality becomes more deplorable. There's something beyond the legislations and acts published in the extraordinary gazette that one must take into account before making any conclusions per se. Beyond the law books, there exists a vicious circle of deeply etched gender-based power dynamics that is often overlooked.

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“I am not your dog that you whistle for; I’m not a stray animal you call over, and I am not, I have never been, nor will I ever be, your ‘baby’!”

- Joy Jennings

Gender is not a simple dichotomy of boy and girl. It is, *ipso facto*, a hierarchy of male over female. Any hierarchy is intertwined with power relations, and so is the case with gender. Harassment, rape and other forms of sexual violence are deeply gendered, with a malevolent intent to establish control and property rights over the life, liberty, property, and sexuality of women. Neither the texts festooned in the legal documents nor the acts published in the gazette throw light upon the deeply debossed socio-cultural dynamics and power-struggle involved in violence against women.

The states with significantly high GDP (PPP) and HDI can be found in the top tiers of the NCRB database on violence against women¹. Though gross underreporting exists, these figures *prima facie* narrate another side of the fable- income, health, and literacy need not have a favourable impact on the skyrocketing cases of violence against women². It's the patriarchy, gender segregation, stereotypes, stigma, shame, and increasing social grip over individuals, their private lives and sexuality, emerging as a *major vis*, a paradox of unparalleled development, behind the stratospheric figures of gender-based violence, increasing just like video game scores.

Crimes Against Women

Whilst women can be victims of all kinds of crimes committed against men, certain crimes place women, just by being born women, on the side of the victims³. This includes domestic violence, femicide, sexual violence, and to an extent, digital violence⁴.

Violence against women is unique not only because it's driven by power concerns in a patriarchal ecosystem, but also because it chases women from womb to tomb. Even before a girl is born, she is exposed to gender-based violence, which follows her faithfully throughout her infancy, adolescence, adulthood, and old age. Even her shadow won't be as faithful as gender-based violence directed against her.

Domestic Violence: Home is No Longer Sweet Home

Domestic violence is one of the most common types of violence targeting women. While children and aged members can be the victims of domestic violence, more than 75% of cases involving domestic violence are targeted against women.⁵ WHO reported that 1 out of 3 females experienced intimate partner violence⁶. Also, among all global cases of murder of women, 38% of them are committed by their male intimate partner.⁷ Domestic violence includes at least five different forms, including economic, psychological, emotional, physical, and sexual. Domestic violence, finally, can also include the incessant demand for dowry and concomitant torture/abuse for procuring dowry.

Femicide, Foeticide, and Infanticide: Is Being Born as A Woman A Crime?

When a woman is murdered just because she is a woman, it's called femicide. However, femicide can occur even before the girl is born, in her infancy, and/or during her adolescence or adulthood.

The sex of the foetus is determined, and if found to be female, it is aborted immediately. This process is termed female foeticide⁸. However, with the advancements in technology and medical science, any chances of a female being born are eliminated through pre-sex selection methods.⁹ Nevertheless, there are still cases when a female infant is killed just after she is born, which is termed female infanticide.

Many families still prefer to have a boy child over a girl child. The child sex ratio of Kerala, a state that ranks first in terms of HDI and 9th in terms of GDP (PPP), was 960 per 1000 males in 2001¹⁰ and 964 per 1000 males in 2011¹¹. Even in economically and educationally advanced societies, the child sex ratio is rapidly deteriorating. The comparison of the 2001 and 2011 census reveal that out of 28 states, 19 witnessed a fall in child sex ratio, with five states recording a fall of more than 20 females per 1,000 males (0-6 years)¹².

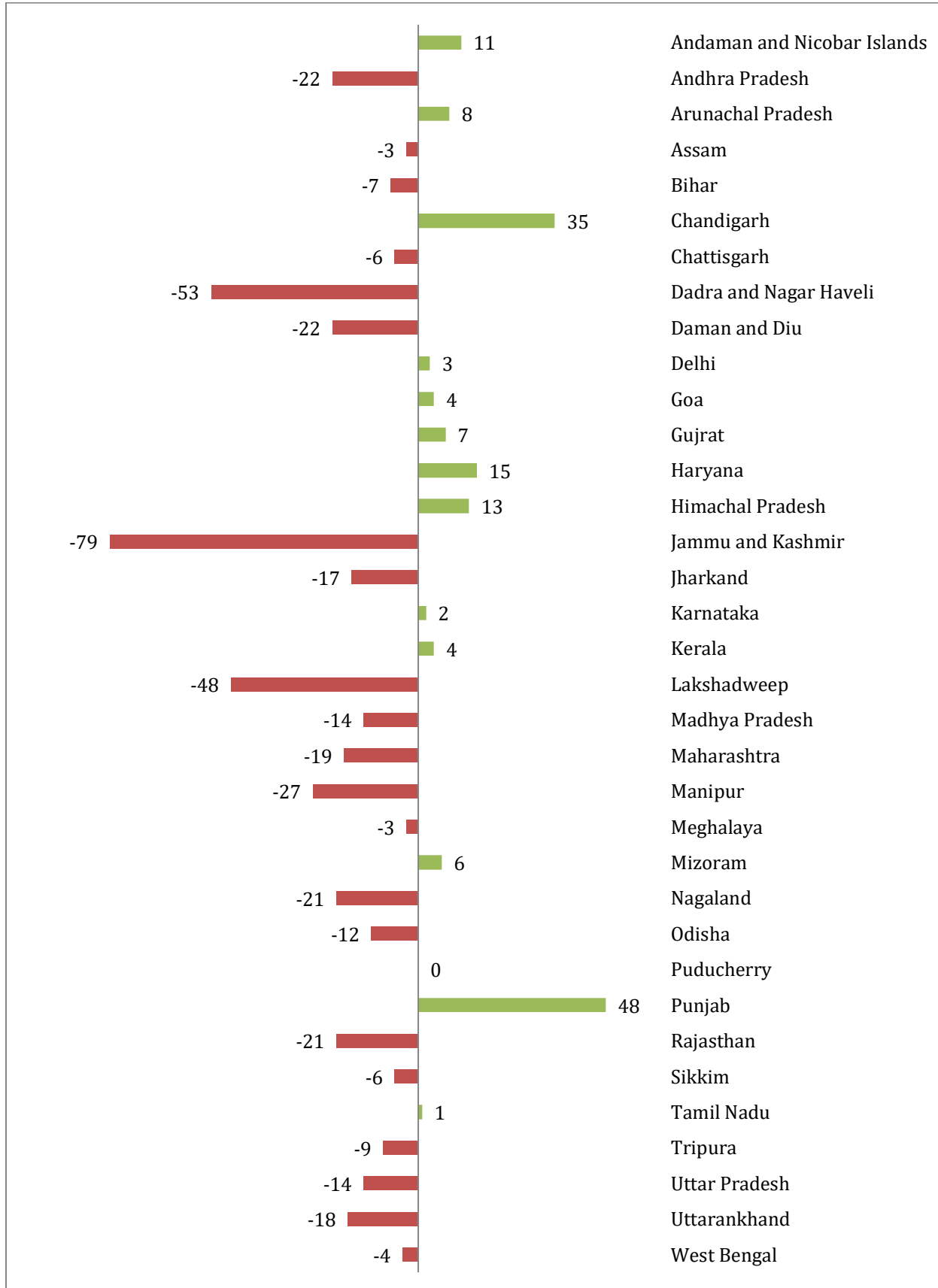


Figure 1: Graph showing the change in child sex ratio in Indian states/ UTs between 2001 and 2011 [(Child sex ratio in 2011) – (Child sex ratio in 2001)]

Further, *sati* can also be considered as a form of femicide as the adolescent or adult woman, whatever the case may be, is forced to jump into the pyre of her dead husband. Another form of femicide would be honour killing, where women are killed for eloping/ marrying beyond the norms put forth by the caste, community, society, or even her family¹³.

Sexual Assault: It's the perpetrator's fault!

The next type of violence is sexual violence that includes sexual harassment, rape, corrective rape, rape culture, human trafficking, female genital mutilation, and child marriage. According to UN Women, less than 40% of women experiencing sexual violence seek external support, and among those who seek support, less than 10% approach formal institutions.¹⁴

Sexual harassment is a broad term that covers anything and everything from a visual or verbal misdemeanour to physical assault or sexual abuse. Rape is another patriarchal instrument to reinforce the sexual supremacy of males, and corrective rape is again used to reinforce the concept of heterosexuality.

28,153 cases were registered under Sec. 375/376 IPC in 2020, which amounts to one rape every 18 minutes¹⁵, compared to one rape every 22 minutes in 2012¹⁶. Gross underreporting is valid *per se*, which makes the reality stranger, deplorable and worthy to be deprecated than fiction, joining hands with a pathetic conviction rate of fewer than 30%¹⁷, making things worse.

Trafficking and Child Marriage

Human trafficking, especially trafficking of women for prostitution, organ trade, sex slavery or any allied agenda, also falls under sexual offences. Female genital mutilation was declared as a violation of human rights by a joint statement issued by WHO, UNICEF and UNFPA in 1997.¹⁸ Four out of five child marriages features girl child brides¹⁹, which also accounts for violence against women.

Digital Violence: Paradox of Technology

Finally, the era of technology brought to the spotlight digital violence targeted mostly at women. It includes cyberbullying, non-consensual sexting, and doxing.

Legislation to Curb Violence Against Women

To tackle issues related to gender-based violence, the Government of India has, from time to time, passed several legislations. It includes:

1. Relevant provisions of the IPC
2. Dowry Prohibition Act of 1961
3. Immoral Traffic (Prevention) Act of 1986
4. The Commission of Sati (Prevention) Act of 1987

5. Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act of 2002
 6. Protection of Women from Domestic Violence Act of 2005
 7. The Prohibition of Child Marriage Act of 2006
 8. The Protection of Children from Sexual Offences (POCSO) Act of 2012
 9. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act of 2013
- among many others.

Provisions in the Indian Penal Code (IPC)

The relevant provisions in the IPC, as amended from time to time by the Government of India, include dowry death (304B), miscarriage (312, 313, 314), acid attacks and attempts to do so (326A, 326B), assault on women with an intent to outrage her modesty (354), sexual harassment (354A), procuring minor girls (366A), importing girls (366B), human trafficking (370, 370A), selling and buying of minor girls (372, 373), rape (375, 376), attempt to rape (376, 511), cruelty by husbands or relatives (498A), and infringing the modesty of a woman (509)²⁰.

The Dowry Prohibition Act

The Dowry Prohibition Act makes it illegal to ask or to receive dowry in any form, including property, goods or money. The amendment to the Act in 1983 specified the penalties and outlawed demanding dowry or advertising dowry offers, especially in matrimonial. It also inserted certain crimes related to dowry like dowry death, abetment to suicide (305, 306 IPC), and cruelty towards women by her husband or his relatives. Subsequent changes were also made in the CrPC (inserted Sec. 174(3)) and the IEA (inserted Sec. 113A and 113B)²¹.

Immoral Traffic (Prevention) Act

Between 12,000 and 50,000 women and children from neighbouring countries are smuggled into India each year for the sex trade²². Between 1,000 and 1,500 Indian youngsters are smuggled out of the country to beg in Saudi Arabia during the Hajj²³. Although trafficking from the north-eastern region is frequent, it is often disregarded. In 2008, 529 ladies have been trafficked in Assam alone²⁴. The Suppression of Immoral Traffic in Women and Children Act of 1956, renamed the Immoral Trafficking Prevention Act of 1986, prevent commercial exploitation and commodification of people for sexual activities, especially women.

The Commission of Sati (Prevention) Act

The Commission of Sati (Prevention) Act was passed after the death of Roop Kanwar to effectively eliminate the practice of *sati*, its abetment, and its glorification in any form. The Act also empowers the state government to remove certain temples or other structures commissioned in the name of any person who committed *sati*, provided the structure is not more than twenty years old²⁵.

Pre-Conception and Pre-Natal Diagnostic Techniques Act

In 1901, there were around 3.2 million fewer women than men. However, in 2001, the gap increased 11-times to 35 million²⁶. Consequently, the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, passed with an intent to arrest the declining (child) sex ratio, outlaws prenatal sex determination, genetic counselling associated with sex selection, preimplantation genetic diagnosis, and consequently, female foeticide.

Protection of Women from Domestic Violence Act

The Vienna Accord of 1994 and the Beijing Declaration, and the Platform for Action recognised domestic violence as a human rights issue²⁷. The fourth National Family Health Survey suggests that 33.3% of women between the age group of 15-49 have experienced sexual or physical domestic violence at home²⁸. The Protection of Women from Domestic Violence Act, passed in 2006, is a civil law that allows women who experience domestic violence to demand protection orders, monetary relief, custody order, residence order, or a compensation order. The aggrieved person will be given free legal services and a right to reside in the shared household.

The Prohibition of Child Marriage Act

According to UNICEF, there are not less than 1.5 million married girls under 18 in India, which makes it the country with the largest number of child brides. The report claims that 16% of the adolescent girls in India are married²⁹. The Child Marriage Act, therefore, sets the minimum age of marriage to 18 for women and 21 for men. However, it is considered to be one of the most ineffective acts, adding to the recent controversies related to the Rajasthan Compulsory Registration of Marriages (Amendment) Bill, 2021, mandating the registration of all marriages, including child marriages, indirectly legitimising them³⁰.

The Protection of Children from Sexual Offences (POCSO) Act

To protect children from sexual assaults, the Government of India introduced the POCSO Act in 2012. It defines a child as anyone under the age of eighteen and protects them from sexual assault, exploitation, harassment and pornography.

The Sexual Harassment of Women at Workplace Act

To curb sexual harassment of women at the workplace, and to provide women with a sense of security at the workplace, the Government of India, under the framework of the *Vishaka* guidelines, enacted the Sexual Harassment of Women at Workplace Act. The Act mandates the formation of an Internal Complaints Committee in any office or branch, whether private or public, having more than ten employees. Also, there will be a District Committee to overlook the functions of the ICC. The ICC must complete the inquiry within 90 days, and the report shall be sent to the District Officer/ employer, who shall take necessary action within 60 days³¹.

- Murder with rape (302, 303, 375, 376 IPC): 226
- Abetment to suicide (women) (305, 306 IPC): 5132
- Acid attack (326A IPC): 109
- Cruelty by husband or his relatives (498A IPC): 112292
- Kidnapping/ abduction to murder (364 IPC): 104
- Procurement of minor girls (366A IPC): 2480
- Human trafficking (370, 370A IPC): 943
- Buying minor girls (373 IPC): 1
- Attempt to rape (375, 376, 511 IPC): 3820
- Insult to women's modesty (509 IPC): 7250
- Immoral Trafficking Prevention Act: 1325
- POCSO crimes against girls: 46523
- Miscellaneous: 1366
- Dowry death (304B IPC): 7045
- Miscarriage (313, 314 IPC): 240
- Attempt to acid attack (326B IPC): 33
- Kidnapping and abduction (336 IPC): 29706
- Kidnapping/ abduction to marriage (366 IPC): 25098
- Importing girls (366B IPC): 1
- Selling minor girls (372 IPC): 12
- Rape (375, 376 IPC): 28153
- Assault on women to outrage her modesty (354 IPC): 86745
- Dowry Prohibition Act : 10488
- IT Act (Cybercrimes against women): 2399
- Indecent Representation of Women (Prohibition) Act: 12

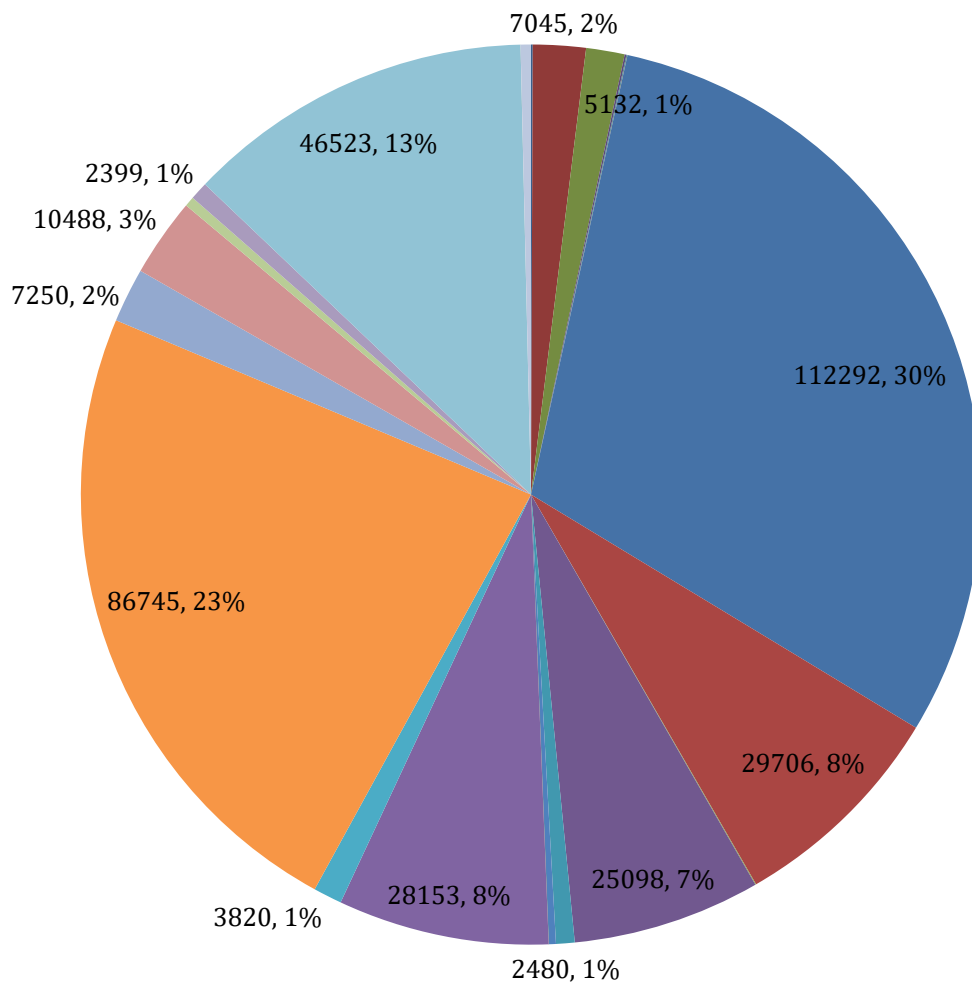


Figure 2: A closer analysis of reported cases of violence against women in 2020. Total: 3,71,503

Conclusion

Even in the presence of such comprehensive laws, the National Commission for Women observed a 46% rise in crimes against women in the first eight months of 2021, *vis-à-vis* 2020³². A Thomas Reuters poll ranked India the most unsafe country for women³³. In October 2020, the Supreme Court noted that crimes against women are being continued in a “never-ending cycle”³⁴. The National Capital Region ranked 3rd in GDP and 5th in HDI, witnessed 13,640 crimes against women in 2018, 13,395 in 2019, and 10,093 in 2020³⁵. Since the advent of the pandemic, the crimes against women got a boost, especially domestic violence³⁶, which made some local bodies impose compulsory quarantine as a penalty.

Whatever people say, the laws intending to curb violence against women are belittled by at least two facts: firstly, these laws are not serving the neediest, and secondly, women are victimised by the laws made for their protection.

Gross underreporting is a reality. 18 rapes every second is just a legal figure, and the reality will be insane. Only the courageous will report, while millions of women, still in the grip of society and social norms, are still searching for the keys in the dark. Patriarchy is the reality. Even though they get the key, it’s just the beginning of a war- a war against the society, a war against her family, a war against the state and even a war against the patriarch in herself.

Even the courageous think a hundred times before reporting- weighing the merits of legal success with the social ostracisation and stigmatisation- weighing a world of freedom with the world of house arrest, when she will be locked up in her rooms, with her documents, credit cards and phone seized, waiting to be sold off to someone in marriage, as soon as she communicates with her parents. This is the reality. The gap between the liberal democratic constitution and the communitarian, totalitarian society is, inevitably, humongous.

Many laws are often weaponised by parents, society or someone else to reinforce their control over individuals. The POCSO Act is the best example- the provisions of the act are frequently invoked when parents find their children elope for marriage, against their wishes³⁷. The provision for bogus complaints in the Sexual Harassment of Women at Workplace Act also invites criticism on similar ground- reverse victimisation³⁸. The anti-conversion laws passed by some states are intensifying the hurdles for an interreligious couple to get married³⁹. That is, women themselves are, directly or indirectly, becoming the victims of their own success.

We live in a society where we eulogise women as goddesses, at the same time, subordinate them to their male counterparts. We live in a society where women are worshipped during the day and gangraped at night⁴⁰. Churchill once said that “we shall fight on beaches, landing grounds, in fields, in streets and on the hills”⁴¹, but women, even before they are born, are fighting- fighting in her mother’s womb, fighting, even in her own house.

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