



WHITE BLACK
LEGAL
LEGAL

VOLUME 2 : ISSUE 5

|| September 2020 ||

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

WHITE BLACK LEGAL: THE LAW JOURNAL

CRIMES AGAINST WOMEN: A LEGAL PERSPECTIVE

-Rushali Sharma¹

India has now been fighting the war to protect its women for quite some time, and with the ever-mounting crime rate what is imperative is that we ensure that the rise in the statistics is only because of the rise in occurrence of crimes and not because of the abuse of laws.²The Indian constitution identifies every human being as equal to one another. Indian judiciary places substantial weight on constitutional integrity which is considered to be amongst the fundamental moralities of constitutional democracy, such as India. Being the largest democracy in the world and having the world's longest written Constitution, people's adherence to the constitutional values in India, such as social justice, individual liberty, rule of law and fundamental equality certainly becomes of supreme importance.

In ancient times, the women were treated with dignity and respect. During this period, there were women rishis as well, and they were held in high regard. In regal families, women were given respect and they even delivered a noteworthy commitment in the creation of choices and managerial capacities. They had information regarding all regions and had a significant influence in politics as well.

However, in the contemporary world it tends to be seen that heinous crimes against women have considerably increased. It indicates the enormity and pensiveness of the monstrosity perpetrated against women in recent years. The worldwide campaign for the decimation of brutality against women is a proof to this reality. The changes in the living standards, lifestyle, imbalance in the economic growth, changes in social ethos and meagre concern for the moral values among other factors has largely contributed to a vicious outlook towards women due to which there is multiplication in crimes against women.

MEANING OF CRIME AGAINST WOMEN

“The Semantic meaning of “crime against women” is direct or indirect physical or mental cruelty to women. Crimes which are “directed specifically against women” and in which “only women are victims” are characterized as Crime Against Women.³

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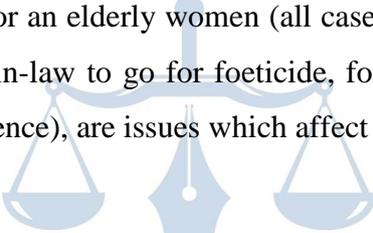
² Carrel, P. M., & Masters, W.H. ‘Sexual molestation of men by women’, [2007] Archives of Sexual Behavior, Vol. 11(2), 117.

³ Violence against Women and Children-Issues and Concerns, By Awadhesh Kumar Singh and Jayanta Choudhury, New Delhi, Serials Publications, 2012, p.2

Violence against women in India refer to physical or sexual violence committed against Indian women, typically by a man. Common forms of violence against women in India include acts such as domestic abuse, sexual assault, and murder. In order to be considered violence against women, the act must be committed solely because the victim is female.

The United Nations defined “Violence against Women” in 1993 in Declaration on the Elimination of Violence against Women. It defines it as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life⁴

In broad terms, it includes threats, sexual abuse, emotional abuse, controlling or domineering, intimidation, stalking, passive/covert abuse and economic deprivation, rape, abduction, kidnapping, murder (all cases of criminal violence, dowry death, wife battering, sexual abuse, maltreatment of a widow and for an elderly women (all cases of domestic violence) and eve-teasing, forcing wife/daughter-in-law to go for foeticide, forcing a young widow to commit sati, etc (all cases of social violence), are issues which affect a large section of society.⁵



CRIMES AGAINST WOMEN UNDER THE INDIAN PENAL CODE,
1860 (IPC)

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There are numerous legal provisions which punish the culprits committing offences against women. With the need of the hour, many new socio-economic offences have been enacted accompanied by various amendments in the existing laws with an objective to combat these crimes effectively.

The Indian Penal Code, 1860, lays down the provisions to penalise the culprit for the heinous offences against women. Various sections under Indian Penal Code, which specifically deals with such crimes are mentioned herein:

- Acid Attack (Sections 326A and 326B)
- Rape (Sections 375, 376, 376A, 376B, 376C, 376D and 376E)
- Attempt to commit rape (Section 376/511)

⁴ Violence Against Women in India By Guruappa Naidu, New Delhi, Serials Publications, 2011, p. 23

⁵ Violence against Women and Children-Issues and Concerns, By Awadhesh Kumar Singh and Jayanta Choudhury, New Delhi, Serials Publications, 2012, p.2-3

- Kidnapping and abduction for different purposes (Sections 363–373)
- Murder, Dowry death, Abetment of Suicide, etc. (Sections 302, 304B and 306)
- Cruelty by husband or his relatives (Section 498A)
- Outraging the modesty of women (Section 354)
- Sexual harassment (Section 354A)
- Assault on women with intent to disrobe a woman (Section 354B)
- Voyeurism (Section 354C)
- Stalking (Section 354D)
- Importation of girls upto 21 years of age (Section 366B)
- Word, gesture or act intended to insult the modesty of a woman (Section 509)

The Indian Penal Code has bifurcated offences against women under the following separate heads:

- Sexual Offences against Women
- Offences related to Marriage
- New Offences relating to Women

SEXUAL OFFENCES AGAINST WOMEN

This head encompasses the following offences with their respective sections-

➤ **RAPE (SECTION 375)**

Section 375⁶ states that, A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:

(First) — Against her will.

(Secondly) — Without her consent.

(Thirdly) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

(Fourthly) — 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.

(Fifthly) — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or

⁶ Section 375 of Indian penal Code, 1860, <https://indiankanoon.org/doc/623254/>

through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly) — With or without her consent, when she is under sixteen years of age.

Explanation—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

- **PUNISHMENT FOR RAPE (SECTION 376)**

Section 376⁷ provides punishment for rape. This section is divided into two sub-sections:

Section 376(1) provides a minimum sentence of seven years of imprisonment that may extend to life imprisonment and fine.

Section 376(2) provides punishment not less than ten years of imprisonment but may extend to imprisonment for life or death or fine.

- **GANG RAPE (SECTION 376 D)**

Section 376 D⁸ lays down the punishment for gang rape. Where a woman is raped by more than one person acting in furtherance of a common intention, each of them shall be liable for the offence of rape and shall be punished with rigorous imprisonment for not less than twenty years which may extend to lifetime imprisonment and fine.

- **OUTRAGING THE MODESTY OF WOMEN (SECTION 354)**

Section 354⁹ deals with Assault or criminal force to woman with intent to outrage her modesty. It states that whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

- **ESSENTIAL INGREDIENTS OF SECTION 354**

The following are the essential of the offence under Section 354, IPC:

⁷ Section 376 of Indian penal Code, 1860, <https://indiankanoon.org/doc/1279834/>

⁸ Section 376 D of Indian penal Code, 1860, <https://indiankanoon.org/doc/9545/#:~:text=%E2%80%94Whoever%2C%20being%20on%20the%20management,for%20a%20term%20which%20may>

⁹ Section 354 of Indian penal Code, 1860, <https://indiankanoon.org/doc/203036/>

1. The person who has been a victim of assault must be a woman
2. The accused must have used criminal force on her
3. An intention to outrage the modesty of a woman must be there.

➤ **INSULTING THE MODESTY OF WOMEN (SECTION 509)**

Section 509¹⁰ deals with Word, gesture or act intended to insult the modesty of a woman. It states that whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

This section is also referred to as the ‘Eve Teasing Section’.

• **ESSENTIAL INGREDIENTS**

This section requires-

1. An intention to insult the modesty of a woman;
2. The insult must be caused either by intruding upon the privacy of a woman; or by making any gesture or sound, uttering any word or exhibiting any object.

NEW OFFENCES RELATING TO WOMEN

The Criminal Law (Amendment) Act, 2013 added many new sections in the IPC, keeping in view the various new forms of offensive activities against the safety and dignity of women. Some of them are mentioned below:

➤ **DISROBING A WOMAN (STRIPPING) [SECTION 354B]**

Section 354B¹¹ penalises the offence of assaulting or using criminal force to a woman or abetting any such act with an intention to disrobe or compel her to be naked, with a punishment of not less than three years which may extend to seven years with a fine. It is a gender specific offence i.e. only a man can be punished under this section.

• **ESSENTIAL INGREDIENTS**

1. The accused must be man.

¹⁰ Section 309 of Indian penal Code, 1860, <http://www.bareactslive.com/ACA/ACT225.HTM#354C>

¹¹ Section 354 B of Indian penal Code, 1860, <http://www.bareactslive.com/ACA/ACT225.HTM#354C>

2. Use of criminal force or assault or abetment of any such act must be there.
3. There must be an intention to disrobe a woman or compel her to be naked.

➤ **VOYEURISM (SECTION 354C)**

Section 354C¹² deals with Voyeurism. It states that any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

• **ESSENTIAL INGREDIENTS**

1. The accused must be a male.
2. He must watch or capture the image.
3. The woman whose images are captured must be engaged in some private act.
4. The circumstances must be such that she has the expectations of not being observed by the perpetrator; or
5. The accused disseminates that image.

➤ **STALKING (SECTION 354D)**

Section 354D¹³ deals with Stalking. It states that any man who -

- (i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- (ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that-

- (i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

¹² Section 354 C of Indian penal Code, 1860, <http://www.bareactslive.com/ACA/ACT225.HTM#354C>

¹³ Section 354 D of Indian penal Code, 1860, <http://www.bareactslive.com/ACA/ACT225.HTM#354C>

- (ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
- (iii) in the particular circumstances such conduct was reasonable and justified.

- **ESSENTIAL INGREDIENTS:**

1. The accused must be a man and victim must be a woman.
2. Follow or contact a woman or attempt to contact; or
3. Monitors the use by the woman of the internet, email or any other electronic communication.
4. Despite disinterest of woman

➤ **ACID ATTACK (SECTION 326A & 326B)**

The Criminal Law (Amendment) Act, 2013 incorporated Section 326A and 326B¹⁴ with an intend to make specific provision for punishment in the case of acid attack.

Section 326A focuses on voluntarily causing grievous hurt by using acid. In the view of this section, whosoever causes permanent or partial damage or burns, disfigures or disables any part of the body of a person or causes grievous hurt by throwing or administering acid with an intention to cause such injury or hurt will be punished with imprisonment of at least ten years which may extend to life imprisonment with fine.

Section 326B has more legislative focus on the act of throwing or attempting to throw acid with the intention of causing grievous hurt. The punishment under this section is imprisonment of not less than five years with fine which may extend upto seven years.

- **ESSENTIAL INGREDIENTS OF ACID ATTACK**

The following are the requisites of an acid attack-

1. permanent/partial damage/deformity/burn/disfigure/disable any part of the body of any person; or
2. Grievous hurt by throwing acid; or
3. By using any other means;
4. There must be an intention to cause injury or hurt.

➤ **SEXUAL HARASSMENT (SECTION 354A)**

¹⁴ Section 326 A & B of Indian penal Code, 1860, <http://www.bareactslive.com/ACA/ACT225.HTM#354C>

According to Section 354A¹⁵, a person shall be guilty of the offence of sexual harassment against a woman in the following circumstances-

1. If he makes physical contact and advance unwelcome and explicit sexual act;
2. Demands or requests for sexual favours;
3. Shows pornography against the will of a woman;
4. Make sexually colored remarks.

The punishment for the offences specified under Section 354A (1) (i) to (iii) is the rigorous imprisonment for a term which may extend to three years or with fine or both and in the case of sub clause (iv), it is imprisonment for a term which may extend to one year or with fine or both.

In 2013, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was enacted to provide protection to women against sexual harassment at workplace and for the prevention and redressal of complaints regarding the matter of sexual harassment or any such incident thereto.

OFFENCES RELATED TO MARRIAGE

➤ **CRUELTY BY HUSBAND OR HIS RELATIVES (SECTION 498A)**

Section 498A¹⁶ deals with the offence of Husband or relative of husband or a woman subjecting her to cruelty. It states that whoever, being the husband the husband or the relative of the husband of a woman, subjects such own to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine

• ESSENTIAL INGREDIENTS

To constitute an offence under Section 498A, the following are the necessary conditions-

1. The victim must be a married woman/widow.
2. She has been subjected to cruelty by her husband or his relatives.
3. Such cruelty consisted of either-
 - Harassment of a woman with a view to coerce her in meeting a demand of dowry; or

¹⁵ Section 354A of Indian penal Code, 1860, <http://www.bareactslive.com/ACA/ACT225.HTM#354C>

¹⁶ Section 498A of Indian penal Code, 1860, <http://www.bareactslive.com/ACA/ACT225.HTM#354C>

- A wilful conduct by the husband or his relatives of such a nature as is likely to lead the lady to commit suicide or to cause grave injury to her life, limb or health
- That such injury inflicted may be either physical or mental.

➤ **DOWRY DEATH (SECTION 304B)**

Section 304 B¹⁷ deals with the offence where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death

Section 304B (1) defines dowry death whereas clause (2) lays down its punishment which is not less than seven years and may extend to life imprisonment.

• **ESSENTIAL INGREDIENTS OF DOWRY DEATH**

The following ingredients of the offence need to be established-

1. The death of a woman must be caused by burns or bodily injury or otherwise than under normal circumstances.
2. Such death must occur within the period of seven years of marriage.
3. The woman must have been subjected to cruelty by her husband or any other relative of her husband.
4. Such cruelty must be in connection with demand of dowry.
5. Such cruelty must be shown out soon before her death.

CONCLUSION

Notwithstanding the number of laws to protect and safeguard the rights and interest of the women, the rate of crime against women and victimization is mushrooming day by day. Solely laws are not responsible to regulate and control the augmentation of the crimes against women in our society. The suppression of evil eyes on women and inculcation of social ethics, morals and values, respect and honor in every human being towards women is the need of the hour and is a supplement factor that can equally contribute in reducing the number of crimes against women. Only legislation and law enforcement agencies cannot prevent the incident of

¹⁷ Section 304 B of Indian penal Code, 1860, <http://www.bareactslive.com/ACA/ACT225.HTM#354C>

crime against women. There is need of social awakening and change in the attitude of masses, so that due respect and equal status is given to women. It's a time when the women need to be given their due. This awakening can be brought by education campaign among youth making them aware of existing social evils and the means to eradicate same. Mass media can play an active role here as in the present days it has reached every corner of the nation.¹⁸ However, there is an exigency of more strict and stringent laws so that any person intending to commit such crimes cannot gain the courage to act in furtherance of his intention.



¹⁸ Op.cit, by Y. Gurappa Naidu, p.28