

**“STILL WAITING FOR JUSTICE
It’s about Women and Legal Justice System of India”**

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**“There is no chance of the welfare of the
World unless the condition of women is improved.”**

“It is not possible for a bird to fly on one wing.”

- SWAMI VIVEKANANDA

ABSTRACT -:

The women’s safety issue is indeed a global one, transcending borders and impacting all levels people, including governments, policymakers, non-governmental organizations and citizens. Lack of safety and fear of miss-happening have particular impacts on women, their ability to strengthen themselves and move around freely in society. Women’s activities are often limited as a because of insecurity and risk of violence. It also affects their freedom to be financially independent, and all of this has impact on their overall development.

There is some issues where need of immediate laws, to declare them unlawful and punishable like genital mutilation, Devdasis, witch-hunting, nikah halala, surrogacy etc. Society can also take some initiative at local level to crap these practices by the NGO & social activist can play lead role. In this paper, we can see recent legal initiatives for women’s.

KEYNOTES-: Domestic Violence, Surrogacy Bill, Devdasis, FGM, Witch-Hunting

INTRODUCTION

Thousands of years ago, Indian women were placed at higher strata of society. **Gargi, Maitreyi, and other women of Vedic lore** illustrate the high position Indian women enjoyed in ancient times. In India, from ancient times, women were symbolizes by divine and power And, God as confluence of man and woman (**Ardhanareeswara**) symbolized gender harmony.

But unfortunately, contemporary not only Indian women but others also continue to face discrimination and other social challenges and are often victims of abuse and violent crimes. Manifestations of violence include physical aggression, such as blows of varying intensity, burns, attempted hanging, sexual abuse and rape, humiliation, coercion, blackmail, economic or emotional threats, and control over speech, actions, and freedom also. In extreme, death is the result.

WOMAN SAFETY SCENARIO IN INDIA

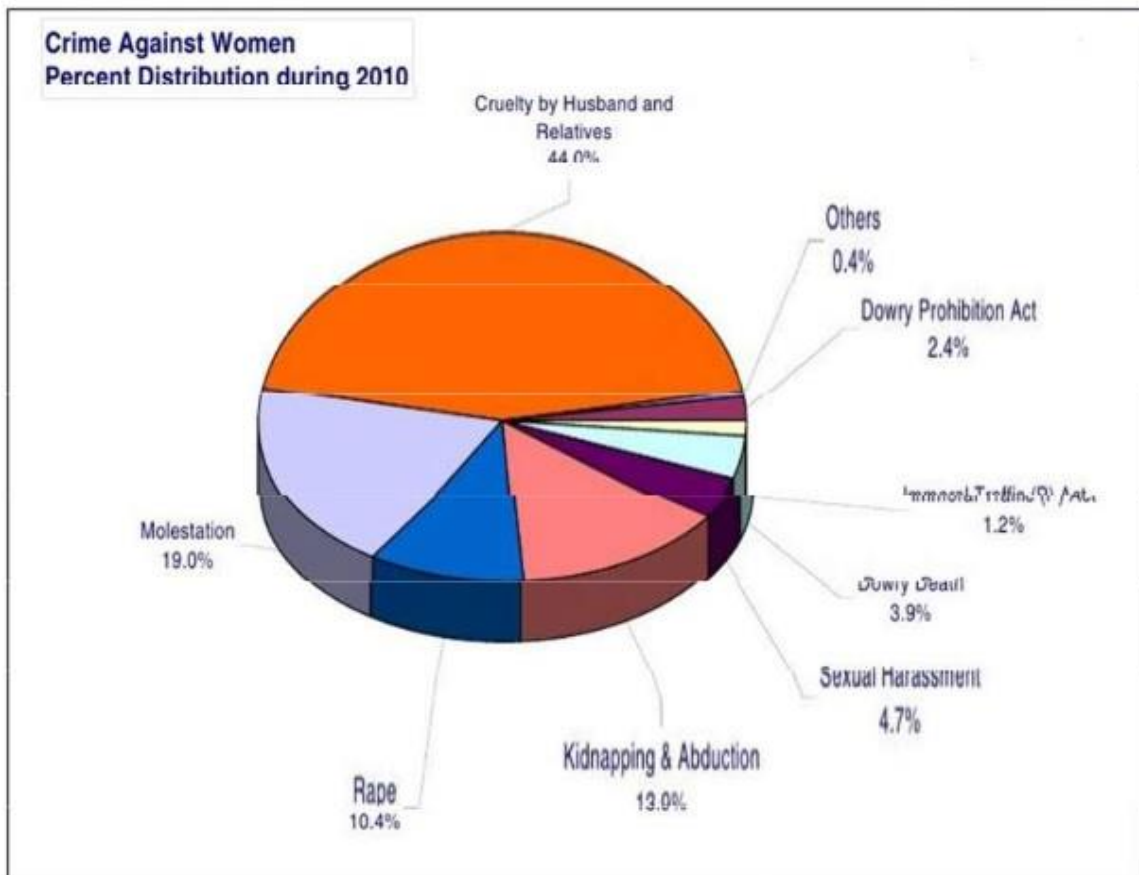
Woman, who brings us to life, women sacrifices her life for her family but the question is, what are we doing to that woman? Is she Safe in India? Your answer will be certainly not. According to a **global poll conducted**¹, India is the **"fourth most dangerous country"** in the world for women and the worst country for women among the G20 countries.

Another report by **NCRB**,² that has been tabulated below, shows that the crime against women is a very frequent and poses a serious concern.

Time Period offense-:

Every 3 Minutes	Crime against women
Every 9 Minutes	by husband or relative Cruelty
Every 29 Minutes	Woman gets raped
Every 77 Minutes	Dowry death

Further these statistics exclude many cases that were not registered with the police due to the social stigma attached to rape and molestation cases. Thus, the actual cases are much higher.



¹ <https://globescan.com/sharp-drop-in-world-views-of-us-uk-global-poll/>

² <http://ncrb.gov.in/> NATIONAL CRIMINAL RECORD BUREAU

Factors Affecting and Aggravating Woman Safety

Socio-cultural-economic Factors

Patriarchy -: why such crimes continue to occur is our mindset. Psychologists say that male dominion society allows men to commit violence against women. "It occurs when a man shows that a woman is inferior to him." It is **anti-feminism**, with the man forcing the woman into submission." With totally *different processes of socialization* that men and women undergo, men take up stereotyped gender roles of domination and control, whereas women take up that of submission, dependence and respect for authority. This reason relates to society's construction of female sexuality and its role in social hierarchy. A **female descendant** grows up with a **relentless** sense of being weak and in **want** of protection, whether physical, social or economic. This helplessness has led to her exploitation at every stage of life.

EXCEPTION -: Kerala, which does so well on the conventional measures of human development, follow matrilineal society, 88% women literacy rate, still face a fairly high level of domestic violence against women. Total violence—physical plus sexual— is just over 17%.

1. **Male domination**:- With **different processes of socialization** that men and women undergo, men take up stereotyped gender roles of domination and control, whereas women take up that of submission, Dependence and respect for authority.
2. **Economic dependence** of women over men has led to male domination over female.
3. Many activists blame the rising incidents of sexual harassment against women on the influence of "*Western culture*".
4. With the ushering in of *economic liberalization* Indian cities have witnessed a continual recasting of spaces to keep pace with the *burgeoning urbanization*.

The present state of affairs is specified whereas on the one hand the cities give ample opportunities for each ladies and men, on the other the nature of urban development has Resulted in enlarged exclusion of girls, particularly from the marginalized sections; it has reinforced the existing structure of gender-based violence.

Institutional Failures:-

- Less conviction rate in crimes against women and **delay in delivery of justice**.
- **Poor enforcement of laws** related to women safety.
- **Poor gender sensitization** of law enforcing agencies like police, judiciary etc.

Lack of safety and worry of crime have specific impacts on ladies and on their ability to require advantage of their right to be ready to participate in and move around freely in society. Women's activities are often limited as a consequence of insecurity and risk of violence, inhibiting daily activities such as going to work, their ability to use certain public spaces, or to go out at night. It also affects their freedom to be financially independent, and all of this has implications for their children and families.

What extremely has to be done is that the ethical overhauling of the minds of the people by suggests that of education and awareness.

Although, societal attitudes will take time to change, the police as well as parents and teachers need to draw on the **“Broken Windows” theory of criminology.**

According to this theory, small acts of deviance, if ignored, can escalate into more serious and major crimes. Do not ignore incidents of eve-teasing or stalking on the grounds that kids are entitled to some indulgence or of domestic violence as a result of it's a family matter.

Is Harsh Law Effective In Acting as Deterrence? If Not, What Is the Way forward?

The December 16 gang rape led to widespread outrage that forced the Central government to enact tougher anti- rape laws. *But, consecutive question is whether or not such strict law will decrease the crimes against women?*

Criminology after analysis, has established that *it is the certainty of punishment, and not its severity, that deters people from committing crimes.* The effectiveness of laws does not lie in how harsh they are but in how successfully they are enforced. ***Thus a harsher anti-rape law is not an answer, certainty of punishment is.***

While crime rates are increasing, the conviction rate is declining. In 1971, the conviction rate of IPC crimes was 62%, but by 2010, it had declined to 40.7%. In the case of rape, it was as low as 26%. Add to this the number of litigation pending in court and the fact that it takes decades to settle them. This scenario has to change if the law is to be made effective.

ISSUES RELATED TO WOMEN

DOWRY: AN EVIL

It is the money, goods or estate that a woman brings by a marriage. It is a gift demanded or given for a marriage. In 1961, the **Dowry Prohibition Act**, making the dowry demands in wedding arrangements illegal. Despite these provisions, witness a dowry death **every 77 minutes.**³

³ <http://medind.nic.in/jal/t07/i1/jalt07i1p38.pdf>

Issues Concerning Dowry related Crimes

- *Section 406* of IPC hardly demarcates boundary between dowry and Streedhan. This has been misused in demanding dowry.
- Law commission in 2012 furthermore *Justice Malimath Committee 2003* has advised to amend *Sec 498A* since its non-compoundable nature kills chance of reformatory justice.
- In India we've *got no provision for protection of a complainant*, not even under the Prevention of Dowry Act. A woman who has complained of harassment goes back to the very people against whom she has complained. What security will she possibly feel in such a situation, and how can she continue to act on her complaint? She certainly continues to be victimised often paying the ultimate price.
- there are *rarely any eye witness* who are ready to give evidence against the murderers as the crime is committed within the four walls of a home
- Due to an increasing trend towards *consumerism and materialism*, people see dowry as an avenue to fulfil their unfulfilled dreams.
- for some people, paying dowry at their daughter's marriage is an *investment for fetching high dowry through their own son's marriage*.
- some others, including women discuss on '*marriage with high dowry*' with pride. It is a matter of family reputation.

Way Forward To Counter the Menace of Dowry

- *Amend Section 406 and 498A of IPC* as suggested by Malimath Committee.
- *Strict enforcement of laws and sensitization of enforcement agencies.*
- *Attitudinal Change* in society that treats women as a commodity.
- Each one of us can set examples through "*Adarsh Marriage*", i.e., noble marriage by denying dowry grant in any form- cash or kind.
- Development of a community-based strategy of *neighbourhood committees* to create pressure on those in society who demand dowry.

DOMESTIC VIOLENCE

Domestic Violence could be a grave concern for Indian Society. Till 2005, remedies available to a victim of domestic violence *in the civil courts on the ground of divorce and in criminal courts (vide sec498A)* were limited. Remedies were associated with matrimonial proceedings, and the relationship outside marriage was not recognized. At present, Domestic violence includes inter-spousal violence, as well as violence perpetrated by other family members. It includes harassment, maltreatment, brutality or cruelty and even the threat of assault intimidation. Till 2005, remedies available to a victim of domestic violence in the civil courts on the ground of divorce and in criminal courts (vide sec498A) were limited. After 2005, it widens the scope of domestic violence and separate legislation addresses the issues concerning with complainants

- 44% of offences against women are domestic violence in India.

Issues Concerning Domestic Violence

- As per survey, *uneducated women face more violence than educated women.* Relationship between abusive behaviour and level of education has been found to be statistically significant.
- According to survey, findings of Visaria (1999) in older times, joint family offers protection to women and play a role to deter the male members of family for using physical force against women.
- Some reasons also found for domestic violence was financial problems of family , frustration , behaviour with in-laws, misunderstanding between husband and wife, consumption of liquor , and husbands personality traits.
- One of the main reasons why domestic violence prevails and continues is the lack of alternatives among the victims. Women and children may be economically captivated on abusers. Elderly people and children may feel too powerless to escape. Language or cultural barriers could isolate victims from seeking help.
- Victims generally feel, it is higher to suffer in silence than to be separated from beloved ones. They keep hoping for improvement, but it is normally observed that, without help, violence gets worse.
- Family members may be unaware of the legal help that is available from the local agencies. They may also be unaware of their legal rights.

Way Forward To Counter the Menace of Domestic Violence

- *Strict enforcement of laws and speedy disposal of litigation.*
- *Strengthening of Alternate Dispute resolution mechanism like Lok Adalat etc.*
- *Gender sensitization of enforcement agencies.*
- Development of a community-based strategy of *neighbourhood committees* (Mohalla Committees) to tackle violence.
- *Economic empowerment of women.*

SEXUAL HARASSMENT AT WORK PLACE:

- According to a survey conducted by Oxfam India, “at present, **17% of working women in India** have experienced sexual harassment at their workplace,⁴
- **Out of 10, 2 women** were harassed at their workplace daily in 2017, with Uttar Pradesh topping the 'shame list'.
- The women panel's report for the year 2017 says that on an average, the NCW received 1.7 complaints per day, a Times of India report said.⁵

⁴ <https://www.oxfamindia.org/pressrelease/2093>

⁵ <https://timesofindia.indiatimes.com/city/bengaluru/ncw-2-women-harassed-at-workplace-every-day/articleshow/62101990.cms>

- Issues relating to implementation of **sexual harassment of women at workplace (prevention, prohibition and redressal) act,⁶ 2013** has come recently-:
- **Issues in implementation -:**
 - 70% of the women do not report sexual harassment by superiors due to the fear of repercussions.
 - According to a 2015 research study, the mandatory provisions under this act for the establishment of Internal Complaints Committee (ICCs) not yet fulfilled by 36% of Indian companies and 25% of multinational companies.⁷
 - Litigation remains pending in court for long time enhancing the agony of victims.

Issues Concerning Harassment at Workplace

- In many cases, it has been found that the committees were set up only when there were serious allegations of sexual harassment. Many working women point out that, even if there is an enquiry committee, does anyone really bother to find out what happens to the victim when the enquiry is going on. She becomes an *object of curiosity, sympathy, disdainful glances or simply isolated by her colleagues*. The work environment where sexual harassment occurs has hierarchy, norms, and constraints that profoundly affect the way people behave in that setting.
- The *situation at home is worse*. Instead of sympathizing with her plight or standing by her, the attitude is one of distrust and suspicion or often humiliation and shame.
- Certain individuals use their *positions of relative power take undue advantages* to engage in sexual interactions. This type of behaviour clearly constitutes sex discrimination.
- *Male ego problems, sexual perversion, sexual obsession, widow-hood* etc is said to be some of the reasons for their harassment.

DISCRIMINATION AGAINST WOMEN -:

India has remarkably improved its ranking in the **WEFs Global Gender Gap Index⁸** – moving from 108th to 87th position out of 144 countries, within a year. Inter-state co-ordination is necessary to crack down upon unholy nexus between doctors, quacks and unlawful ultrasound centres.

⁶ <http://www.dnaindia.com/india/report-shame-in-india-2-women-harassed-daily-at-workplace-national-commission-for-women-2017-report-2568293>

⁷ <https://www.legalbites.in/sexual-harassment-act-2013/>

⁸ <https://www.weforum.org/reports/the-global-gender-gap-report-2017>

CYBERCRIME -: Cyber-crimes against women are increases with an **alarming rate** and it may pose as a major threat to the security of women as a whole.

- **Issues regarding women are not addressed in the IT Act 2000** -The threat to the security of women in general is not covered fully by this Act. This Act does not mention the typical cybercrimes like cyber staking, morphing and email spoofing as offences.
- Women are also experiencing **revenge-porn**, the distribution of **non-consensual photography**, often involving nudity and sex.
- Cases of men recording and sharing their raping of girls and women are increasing. **Internet has become a trafficking platform**- social media is used by traffickers to sell people whose photographs they share, without their consent.
- As per the **NCRB data under cybercrimes**⁹, 758 cases of publication or transmission of obscene, sexually explicit content (under section 67A, 68B and 67C of IT Act) has been registered in 2014.

Steps taken by the Government in Preventing Cybercrimes against Women

- **Cyber Crime Cells have been set up** each States and Union Territories for reporting and investigation of Cyber Crime cases.
- Government has set up **cyber forensic training and investigation labs** in the States of Kerala, Assam, Mizoram etc.
- The Scheme for **Universalisation of Women Helpline** has been approved to provide 24 hour emergency and non-emergency response to all women affected by violence.

RECENT LEGAL REFORMS FOR WOMENS-:

MATERNITY BENEFIT (AMENDMENT) ACT, 2017¹⁰-:

- The act is **applicable to all establishments employing 10 or more persons.**
- **Duration of maternity leave: The amended act increases this to 26 weeks.**
- This maternity benefit should not be availed before six weeks from the date of expected delivery. **The amendment changes this to eight weeks.**
- In case of a woman who has **two or more children**, the **maternity benefit will continue to be 12 weeks**, which **cannot be availed before six weeks from the date of the expected delivery.**

MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) BILL, 2014 -:

⁹ <http://ncrb.gov.in/StatPublications/CII/CII2015/chapters/Chapter%2018-15.11.16.pdf>

¹⁰

<https://labour.gov.in/sites/default/files/The%20Maternity%20Benefit%20%28Amendment%29%20Act%2C2017%20-Clarifications.pdf>

In February 2017, the Supreme Court of India declined the plea of a woman to abort her foetus detected with Down syndrome.¹¹

The whole matter of concern is about a **woman's right to choice over her body** and termination of foetus, which is considered as a life after a certain period of pregnancy in Medical Termination of Pregnancy Act 1971.¹²

Medical Termination of Pregnancy (MTP) (Amendment) Bill 2014 is intended to extend the legal limit for abortion from the present **20 weeks to 24 weeks** and will also allow for abortions-on-demand up to 12 weeks.

SURROGACY BILL, 2016-:

The Union cabinet recently has approved the introduction of a Surrogacy (Regulation) Bill, 2016 that seeks to ban commercial surrogacy and allow only infertile couples to bear a child using a surrogate mother.

Provisions of Proposed Bill¹³ -: Single men and women, heterosexual couples who choose not to opt for marriage, gay couples, transgender persons, single parent cannot have baby through surrogacy. Non-resident Indians or People of Indian Origin card-holders will **not be allowed to take recourse to a surrogate mother in India.**

Legally wedded Indian couples can have a surrogate child **only after five years of legal marriage** and will require a medical certificate as proof of infertility (Age of couple: 23-50 for females and 26-55 for males.). Also, they could seek "**altruistic**" surrogacy, but only through "close relatives". The bill makes it **mandatory for surrogate mothers to be married** and be a close relative of the couple wanting a child. She should also have given birth to a healthy child before bearing a baby for another couple. **A woman can only bear one surrogate child. Violating the law will result into 10 years in jail term or fine of 10 Lakh rupees.**

NEED OF IMMEDIATE LEGISLATION OVER THESE ISSUES-:

GENITAL MUTILATION

The SC give response from the Centre and four states on a PIL seeking ban on female genital cutting (FGM).¹⁴ It is commonly called khatna and **practised by Dawoodi bohras, a Muslim sect.** The custom is an issue for female child, when they are passes through six or seven-year old. Carried out largely by untrained midwives, it involves **cutting off the clitoral hood**, in the belief that it will curb a women's sexual drive.

FGM is banned in 24 African countries. Many western countries, including the United Kingdom and the US have also outlawed the practice. This ritual has both culture as well as religious background that exist even today also.

¹¹ <https://timesofindia.indiatimes.com/india/supreme-court-rejects-plea-to-abort-foetus-with-down-syndrome/articleshow/57389996.cms>

¹² <http://www.thehindu.com/opinion/op-ed/the-right-to-choice/article17395820.ece>

¹³ <http://www.prsindia.org/uploads/media/Surrogacy/SCR-%20Surrogacy%20Bill,%202016.pdf>

¹⁴ <https://www.hindustantimes.com/india-news/sc-seeks-govt-response-to-plea-seeking-ban-on-female-genital-mutilation/story-NpLEnSLmg7wcQHnsboUIQI.html>

Where, Partial or total removal of the external female genitalia by using a razor or a blade, with or more often with or without the use of anaesthesia. It is practised in around 27 countries in the sub-Saharan and North-east Africa and a few Asian countries including India among the Dagwood Bohras community.

This ritual which is done in the name of **controlling a sexual desire of women is seen as an essential part of brought up their daughters properly**, in a way preparing her for adulthood and marriage. It is done to refrain the girls from **illicit sexual acts**.

In December 2012, the UN General Assembly adopted a unanimous resolution to eliminate this practice.

Provisions in India

- Section **320** (causing grievous hurt), **323** (punishment for voluntarily causing hurt), **324** (voluntarily causing hurt by dangerous weapons or means), **325** (punishment for voluntarily causing grievous hurt) of **IPC** aim to curb such practises.
- Section 3 & 5 (committing penetrative sexual assault on a child), Section 9 (aggravated sexual assault) and 19 (reporting an offence) of **POSCO ACT** also aim to abolish violent acts like **FGM**.

THE DEVADASI SYSTEM: TEMPLE PROSTITUTION IN INDIA-:

- **Devadasi or Devaradiyar means “servant of God”-:** Devdasis is the issue of child prostitution where 6-15 years old girls dedicated to the god, and later on, these girls were subject of sexual exploitation by the male members of society.
- **The Saundatti festival, which is also known as the Yellamma Devi Fair,** happens on many occasions from October to February, with the girls given in dedication from November onwards. Parents choose a day that is convenient for them and that they consider auspicious.
- Back in 2006, the National Commission for Women had found between 44,000 and 2, 50,000 Devadasis in India. Most of them lived in Karnataka, followed by Andhra Pradesh and Maharashtra.¹⁵

WITCH HUNTS: EXPLOITATION OF WOMEN, SUPERSTITION AND MURDER COLLIDE IN INDIA-:

- Witch hunts primarily target women and shows culture of patriarchy. Men who brand women as dakan capitalize on deeply rooted superstitions and systems built on misogyny and patriarchy to lay blame on females.
- Areas which are tribal and rural, where education not yet reached and where people are guided by blind faith and superstition, these blind faiths invokes them to subject the victims accused of witchcraft to inhuman atrocities ranging from gang rape, mob lynching, naked parades, blackening of face, and shaving of head, beheading and

¹⁵ http://www.indianet.nl/pdf/HumanRightsInIndia_StatusReport2012.pdf

burning alive and coercing to consume human excreta.¹⁶ It is ironical on one hand our country being a democratic country talks about equality, right to life and liberty but on the other hand it takes away the same rights of there.

- **More than 2,500 Indians have been chased, tortured and killed in such hunts between 2000 and 2016, according to India's National Crime Records Bureau.**¹⁷
- There is need of strict enforcement of laws that penalises Witch hunting and the provisions under the Indian Penal Code 1860 can be used as an alternative for the victim.

Ways to Check Crimes at Public Place:

1. Strict enforcement of laws and fast disposal of cases through fast track courts. Family Courts have been set up in some states to adjudicate cases relating to maintenance, custody and divorce. The **Parivarik Mahila Lok Adalat (PMLA)** evolved by the NCW is a new substitution for justice which is part of the Lok Adalats (People's Courts) for providing speedy justice to women.
2. Strict patrolling and vigilance, particularly at night.
3. Gender sensitisation of the law enforcement agencies, especially the police and the judiciary through proper training.
4. Community policing initiatives such as **Mahila Suraksha Samiti** and Women State Committee could help in curbing crimes.
5. All-women police stations should be set up in as many states to facilitate the reporting of crime against women. There is a need to encourage women to approach police stations without fear, the appointment of one woman sub-inspector and two women police constables in each of the existing police stations is being made mandatory.
6. Development of a community-based strategy of neighbourhood committees to create zero Violence zones. This new approach to control violence concentrates on activating Mohalla Committees (neighbourhood groups) to tackle domestic violence.
7. Need to Trained women for self-defence.
8. Setting up of help lines for women in distress. Mobile apps which will raise alarm just by pressing a button in mobile in hour of need could be developed and used.
9. Regulation of public transport through strict licensing, GPS tracking, route advisory etc.
10. Ethical overhauling of the mindset of masses through awareness and education.

Way forward

- NGOs relating to women empowerment should be encouraged to protect women from domestic violence. Women should be financially empowered through various government schemes and programmes.

¹⁶ <http://nhrc.nic.in/Documents/AR/NHRC-AR-ENG07-08.pdf>

¹⁷ <https://www.scientificamerican.com/article/witch-hunts-today-abuse-of-women-superstition-and-murder-collide-in-india/>

- **Initiatives to check decline in child sex ratio** -:Beti Bachao, Beti Padhao Yojana, Sukanya Samriddhi Yojana, Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act (1994) ,
- **“Pink” initiatives in Kerela, where** Kerala State Road Transport Corporation (KSRTC) will roll out Pink-Coloured Buses exclusively for women in Thiruvananthapuram inspired by Pink taxis driven by women in Kerala’s cities. Its aim is to provide safe and comfortable public transportation to women especially during peak hours when buses are overcrowded.
- **TREAD (Trade Related Entrepreneurship Assistance and Development) Scheme** by Ministry of Micro, Small and Medium Enterprises (MSME) to promote women entrepreneurs via trade related training, information, counselling activities related to trades, products, services and financial aid.
- **Kanyashree Prakalpa Scheme of West Bengal government** - It aims to improve status of adolescent girls from disadvantaged families (annual family income not more than Rs. 1, 20,000) through small cash transfers for increased educational attainment by incentivizing schooling of all teenage girls, prevention of child marriage and financial inclusion.
- **Tejaswini Project in Jharkhand** to empower adolescent girls and young women with basic life skills and further provide opportunity to complete their secondary education and acquire market driven skills.
- **Mahila Shakti Kendra**, mentioned in budget 2017-18 speech, will be set-up at village level in 14 lakh ICDS Anganwadi Centres to provide for one stop convergent support services for empowering rural women with opportunities for skill development, employment, digital literacy, health and nutrition. It will also increase access of essential services for women.
- **Mahila Police Volunteer** under which Haryana, in first such initiative by a state, inducted the first batch of 1000 Mahila Police volunteers. It aims to create a safe and enabling environment for women by keeping an eye on situations where women in the village are harassed or their rights and entitlements are denied or their development is prevented.

Conclusion

Every single day single women, young girls, mothers and women from all walks of life are being assaulted, molested, and violated. The streets, public transport, public spaces in particular have become the **territory of the hunters**. There is an **unspoken war on the streets**. We don't need to look at statistics to confront the bitter truth. News stories of women from all over India being raped, beaten, killed are flashed across us day after day – and we all are aware of it. Educating girls and encouraging them to be at par with boys will help to achieve the goal of higher sex ratio in the long run.

This is the time to realise this that society cannot exist and grow by discriminating half of its population .This is the time society own up to themselves. Society stand by each other. No

more Harassment. We want what we deserve for us and for our daughters a safer India for women.