I. Introduction

Since the founding of the United Nations in 1948, several instruments have been passed by the UN to protect the rights of women and children in the Member States. In the year 2000, the UN developed a Millennium Declaration with 8 laudable Millennium Development Goals (MDGs) with the aim to achieve it by 2015 (Heyzer, 2008). The eight MDGs are: 1. Eradication of extreme poverty and hunger; 2. Achieve universal primary education, by ensuring that all children, boys and girls alike, will be able to complete primary schooling; 3. Promote gender equality and empower women by eliminating gender disparity in primary and secondary education; 4. Reduce child mortality; 5. Improve maternal health; 6. Combat HIV/AIDS, Malaria, and other diseases; 7. Ensure Environmental Sustainability; 8. Establish a global partnership for development. Out of these 8 MDGs, four goals are directly addressing the well-being of women and children, though the other goals also have implications for women and children. Realization of all these goals will lead to better achievement of human rights of women and children which in other words means reducing their victimization. Though the millennium goals deal with general development of human population which is the perspective of macro victimology or General victimology of Mendelsohn (1976), in my view the achievement of the MDGs will have an impact on reducing criminal victimization also of the vulnerable sections of population like women and children.

In the present paper, we are directly concerned with the situation of women and children victims in India, and the legal and community measures to prevent and reduce their victimization and victim assistance programmes undertaken to alleviate their sufferings as proposed by the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 (United Nations General Assembly, 1985).
II. Some Demographic Details about India

Total Population: 1,156,897,766
(1.15 Billion) (July 2009).

- 0-14 years: 30.5%
  (male 187,197,389/female 165,285,592)
- 15-64 years: 64.3%
  (male 384,131,994/female 359,795,835)
- 65 years and over: 5.2%
  (male 28,816,115/female 31,670,841) (2009)

Literacy Rate: definition: those with age 15 and over who can read and write

- Literacy among total population: 61%
- Literacy among male: 73.4%
- Literacy among female: 47.8% (2001 census)

Life Expectancy: Total population: 69.89 years
  - Male: 67.46 years
  - Female: 72.61 years

Religions: Hindu= 80.5%, Muslim= 13.4%, Christian= 2.3%, Sikh= 1.9%,
  other= 1.8%, unspecified= 0.1%

III. Some Crime Statistics in India

The Code of Criminal Procedure of India, 1973 divides the offences into cognizable and non-cognizable. Cognizable offences are those in which a police officer can arrest without a warrant from the court. In non-cognizable offences, a police officer cannot arrest without a warrant. Latest ‘Crime in India’ publication (Government of India, 2008) states: 2.09 million offences were registered under the Indian Penal Code (IPC); 3.84 million offences under the Special and Local Laws (SLL). In total, 5.93 million offences were registered under both the IPC and SLL. Rate of total cognizable crimes during 2008 was 515.0, which rose from 504.5 in 2007. In 2008, among the total IPC crimes, 10.9% are violent crimes.

Violent crimes could be classified under four categories: (i) those affecting life, (ii) property, (iii) public safety, and (iv) women (Government of India, 2008). Share of violent crimes to IPC crimes showed a declining trend from 2004 to 2007, but showed a marginal increase in 2008 (from 10.8% to 10.9%). Total crimes against women both under IPC and SLL were 195,856 in 2008 as compared to 185,312 in 2007, recording an increase of 5.7% in 2008. Crimes against women under IPC were 8.9% in 2008. Rape offences were 11% out of the total number of crimes against women. Actual number of rape-victims was 21,485 out of 21,467 reported rape cases in 2008. Reported offence of rape increased by 3.5% in 2008 over 2007. Dowry deaths (8,172) in 2008 also increased by 1% over 2007.

(a) Crimes against women

Crimes against women have consistently increased during the period 2004-2008. The rate of crime against women has also increased from 16.3 in 2007 to 17.0 in 2008. Crimes against women under the Indian Penal Code accounted for 95.3% of the total crimes against women and the rest 4.7% were from SLL crimes against women.
Table 1. Head-wise Incidents of Crime against Women during 2004 - 2008 and Percentage variation in 2008 over 2007

<table>
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<tr>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>Rape (Sec. 376 IPC)</td>
<td>18,233</td>
<td>18,359</td>
<td>19,348</td>
<td>20,737</td>
<td>21,467</td>
<td>3.5</td>
</tr>
<tr>
<td>2.</td>
<td>Kidnapping &amp; Abduction (Sec. 363 to 373 IPC)</td>
<td>15,578</td>
<td>15,750</td>
<td>17,414</td>
<td>20,416</td>
<td>22,939</td>
<td>12.4</td>
</tr>
<tr>
<td>3.</td>
<td>Dowry Death (Sec. 302/ 304 IPC)</td>
<td>7,026</td>
<td>6,787</td>
<td>7,618</td>
<td>8,093</td>
<td>8,172</td>
<td>1.0</td>
</tr>
<tr>
<td>4.</td>
<td>Torture (Sec. 498-A IPC)</td>
<td>58,121</td>
<td>58,319</td>
<td>63,128</td>
<td>75,930</td>
<td>81,344</td>
<td>7.1</td>
</tr>
<tr>
<td>5.</td>
<td>Molestation (Sec. 354 IPC)</td>
<td>34,567</td>
<td>34,175</td>
<td>36,617</td>
<td>38,734</td>
<td>40,413</td>
<td>4.3</td>
</tr>
<tr>
<td>6.</td>
<td>Sexual Harassment (Sec. 509 IPC)</td>
<td>10,001</td>
<td>9,984</td>
<td>9,966</td>
<td>10,950</td>
<td>12,214</td>
<td>11.5</td>
</tr>
<tr>
<td>7.</td>
<td>Importation of Girls (Sec. 366-B IPC)</td>
<td>89</td>
<td>149</td>
<td>67</td>
<td>61</td>
<td>67</td>
<td>9.8</td>
</tr>
<tr>
<td>8.</td>
<td>Sati Prevention Act, 1987</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>10.</td>
<td>Indecent Representation of Women (Prohibition)  Act, 1986</td>
<td>1,378</td>
<td>2,917</td>
<td>1,562</td>
<td>1,200</td>
<td>1,025</td>
<td>-14.6</td>
</tr>
<tr>
<td>11.</td>
<td>Dowry Prohibition Act, 1961</td>
<td>3,592</td>
<td>3,204</td>
<td>4,504</td>
<td>5,623</td>
<td>5,555</td>
<td>-1.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>1,54,333</strong></td>
<td><strong>1,55,553</strong></td>
<td><strong>1,64,765</strong></td>
<td><strong>1,85,312</strong></td>
<td><strong>1,95,856</strong></td>
<td><strong>5.7</strong></td>
</tr>
</tbody>
</table>

Source: Crime in India 2008

Figure 1. Crime against Women Percentage Distribution during 2008

Source: Crime in India 2008
(b) Crime against children

Overall crimes against children have shown an upward trend during 2006-2008, with some decrease in specific types of crime. Particularly murder has decreased by 5.9% in 2008 over 2007. Kidnapping and Abduction have shown a significant increase of 20% in the year 2008 from that of 2007. In recent years, kidnapping of children from wealthy families by gangs for ransom has been highlighted in the media and police have adopted new strategies to prevent it.

Fig. 2 shows that in the year 2008, contribution of kidnapping and abduction is 34%; rape 24.2% and murder 5.8% towards the total crimes against children.

Table 2. Crime against Children in India and percentage variation in 2008 over 2007

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<tbody>
<tr>
<td>1.</td>
<td>Murder</td>
<td>1,324</td>
<td>1,377</td>
<td>1,296</td>
<td>-5.9</td>
</tr>
<tr>
<td>2.</td>
<td>Infanticide</td>
<td>126</td>
<td>134</td>
<td>140</td>
<td>4.5</td>
</tr>
<tr>
<td>3.</td>
<td>Rape</td>
<td>4,721</td>
<td>5,045</td>
<td>5,446</td>
<td>7.9</td>
</tr>
<tr>
<td>4.</td>
<td>Kidnapping &amp; Abduction</td>
<td>5,102</td>
<td>6,377</td>
<td>7,650</td>
<td>20.0</td>
</tr>
<tr>
<td>5.</td>
<td>Foeticide</td>
<td>125</td>
<td>96</td>
<td>73</td>
<td>-24.0</td>
</tr>
<tr>
<td>6.</td>
<td>Abetment of Suicide</td>
<td>45</td>
<td>26</td>
<td>29</td>
<td>11.5</td>
</tr>
<tr>
<td>7.</td>
<td>Exposure &amp; Abandonment</td>
<td>909</td>
<td>923</td>
<td>864</td>
<td>-6.4</td>
</tr>
<tr>
<td>8.</td>
<td>Procuration of Minor Girls</td>
<td>231</td>
<td>253</td>
<td>224</td>
<td>-11.5</td>
</tr>
<tr>
<td>9.</td>
<td>Buying of Girls for Prostitution</td>
<td>35</td>
<td>40</td>
<td>30</td>
<td>-25.0</td>
</tr>
<tr>
<td>10.</td>
<td>Selling of Girls for Prostitution</td>
<td>123</td>
<td>69</td>
<td>49</td>
<td>-29.0</td>
</tr>
<tr>
<td>12.</td>
<td>Other Crimes</td>
<td>6,127</td>
<td>5,974</td>
<td>6,595</td>
<td>10.4</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>18,967</td>
<td>20,410</td>
<td>22,500</td>
<td>10.2</td>
</tr>
</tbody>
</table>

Source: Crime in India 2008

Figure 2. Crime against Children Percentage Distribution during 2008
IV. Overview of Indian Criminal Justice System

India follows the British model of Criminal Justice System, as it was under British rule for a long period. Role, powers and functions of the Legislature, Executive, and Judiciary have been clearly demarcated. There is an independent judiciary and a Free Press. Prevention of crime, treatment and rehabilitation of criminals form the penal philosophy in India. For a long time, victims had no specific rights under the criminal justice system. State is vested with the full responsibility to prosecute and punish the offenders. Victims are mere witnesses during the prosecution.

1. Constitution, Criminal Law and Procedure

Following are the major four laws governing the criminal justice system in India: Constitution of India, Indian Penal Code, Code of Criminal Procedure of India, Indian Evidence Act.

Legislative power is vested with the Union Parliament and the State Legislatures. Law making functions are separated as Union List, State List and Concurrent List in the Indian Constitution. The Union Parliament alone is empowered to make laws under the Union list; State legislatures alone can make laws under the State list; both the Parliament and State Legislatures are competent to make laws on the Concurrent List. The Constitution guarantees certain fundamental rights to all citizens. Criminal jurisdiction is possessed concurrently by the central government and all the state governments.

Indian Penal Code, 1861 is the major substantive criminal law, defining all crimes and their punishments. The Code of Criminal Procedure, 1973 sets the criminal procedure to be followed during the process of investigation, prosecution and trial of an offence. These two codes are applicable throughout India and take precedence over any state legislation. All major offences mentioned in the Indian Penal Code (IPC) apply to resident foreigners and citizens alike. Apart from IPC, there are certain special laws which deal with certain specific subjects to tackle special crimes.

Indian Criminal Justice System has three sub-systems: Law enforcement (Police), Adjudication (Courts), and Corrections (adult and juvenile correctional institutions, Probation and other non-institutional treatment). Legal System in India is adversarial. There is no jury system or lay judges to perform judicial work. All members of the judiciary are qualified in Law and appointed by the government as full time Magistrates/Judges.

V. Policies for Victims, Women and Children

There has been no policy for victims framed by the Government of India. Though India has ratified the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, there has been no separate law for victims. But there has been a Policy for women and Policy for children.

1. Policy for Women:

The year 2010 is the centenary of the declaration
of International Women’s Day (India Current Affairs, 2010). The UN statistics reveal that 70% of the 1.2 billion people living in poverty all over the world are female. The UN states that women do more than 67% hours of work in the world, but they possess only 10% of the world’s income and owned 1% of world’s property. The value of unpaid work was estimated to be 16 billion dollars out of which 11 billion dollars represents the contribution of women. On an average, women are paid 30-40% less than man for similar work (India Current Affairs, 2010). India is not an exception from many other countries to such gender discrimination.

With regard to the working conditions of women in India, female share to non-agricultural wage employment is only 17%. Women’s role in the workforce is only 13.9% in the urban sector and 29.9% in the rural sector. The wages earned by the women is only 75% of man’s wage rates and it forms only 25% of the family income. Though 60 to 80% of the food in most developing countries is produced by women, there is no equality in wages in the field of agriculture in any part of India.

The discrimination and exploitation against women persists in different fields of activities, which result in distorted demography. The child sex ratio has dropped from 945 females per 1000 males in 1991 to 927 females per 1000 males in 2001. The United Nations Children fund made an estimate that up to 50 million girls and women are missing from Indian population due to female foeticide or high mortality of the girl child due to inadequate care. The average nutritional intake of women is 1400 calories a day in comparison to the requirement of 2200 calories.

After 60 years of India becoming a republic, women hold only 10.82% of parliamentary seats and less than 4% in High Courts and Supreme Court. The 73rd Constitutional Amendment granting 33% reservation in positions in all the elected village councils and town municipalities to women recently has proved to be a powerful instrument for the empowerment of women. Amazingly, this has resulted in over 1 million women taking part in decision making at the local level (India Current Affairs, 2010).

2. National Policy for the Empowerment of Women

The Government of India framed a National Policy for the Empowerment of Women, reiterating the principles of gender equality enshrined in the Indian Constitution (Government of India, 2001). Beginning from 5th five year plan (1974), a marked shift in the approach to women’s issues from welfare to development has been spelt out. Currently, the empowerment of women has been recognized as the primary issue to determine the status of women. The National Commission for Women was constituted by an Act of Parliament 1990 to protect the legal rights of women. The 73rd and 74th Amendment to Indian Constitution in 1993 has provided the reservation of seats in the local bodies at the village level and municipalities for women. Giving a strong foundation for their role and participation in decision making at the local level, the policy also takes cognizance of the commitment of 9th five year plan of other sectoral policies relating to empowerment of women.

The goal of this national policy is to attain the advancement, development and empowerment of women. The specific objectives include: (i). creating an environment through economic and social policies for full development of women to enable them to realize their full potential; (ii). the de-jure and de-facto enjoyment of all human rights and fundamental rights by women equal to men; (iii). equal access to participation and decision making in social, political and economic life; (iv). equal access to health
care, quality education, career and vocational guidance, employment, equal remuneration, occupational health and safety, social security in public office; (v). Strengthening legal systems to eliminate all forms of discrimination against women; (vi). changing societal attitude and community practices by the involvement of both man and woman; (vii), mainstreaming the gender perspective in the development process; (viii) elimination of discrimination and all forms of violence against women and girl child; and (ix). building and strengthening partnership with civil society particularly with women’s organizations (Government of India, 2001).

3. Policy for Children

Indian government has framed many policies for the empowerment and protection of children on different fronts.

National Policy for Children, 1974: This declared that children are the supreme assets of the nation and pleaded for a comprehensive health programme for all children, programmes to ensure nutrition in their diet to all children, to provide non-formal education, special care to the physically challenged and mentally retarded children and to ensure equality of opportunity to all children (Government of India, 1974).

National Policy on Education, 1986: This Policy gave supreme importance on the universal primary education and as a follow up measure, many programmes were started to implement this policy. The landmark judgment of the Supreme Court of India in Unnikrishnan’s case in 2003 made education a fundamental right for all children of 6 to 14 years in 1993 (Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors. Cited as: 1993 AIR 217, 1993 SCR (1) 594). This led the Government of India to bring a constitutional amendment introducing a provision as Article 21 A. On 1 April 2010, India joined a group of few countries in the world, with a historic law, making education a fundamental right of every child. Making elementary education an entitlement for children in the 6-14 age group, the Right of Children to Free and Compulsory Education Act, 2009 will directly benefit children who do not go to school at present (Government of India, 1986).

National Policy on Child Labour 1987: This is aimed to achieve progressive elimination of child labour in India by taking actions in the field of education, health, nutrition, integrated child development and employment.

National Health Policy, 2002: This Policy gives priority to school health problems and aims at health education and periodic health check-ups at schools (Government of India, 2002).

National Charter for Children, 2003: The Government of India after serious consideration adopted a National Charter for Children to reiterate its commitment to the cause of children to see that no child remains hungry, illiterate or sick. Under this charter, aspects such as survival, life and liberty of children, promoting high standards of health and nutrition, assuring basic minimum needs, and security, play and leisure, early childhood care for survival, growth and development, free and compulsory primary education, protection from economic exploitation and all forms of abuse, protection of the girl child, empowering adolescence, equality, freedom of expression, freedom to seek and receive information, freedom of association and peaceful assembly, strengthening family, responsibility of both parents, protection of children with disabilities, care, protection, welfare of children of marginalized and disadvantaged communities, ensuring child-friendly procedures relating to development and empowerment of children have been elucidated in the National Charter for
VI. Legal Framework to Protect Women in India

Offences against women are broadly dealt with in the substantive criminal law, viz., Indian Penal Code. Crimes against women under the Indian Penal Code include rape (376 IPC), kidnapping and abduction for specified purposes (Sec. 363-373 IPC), homicide for dowry deaths, or their attempts (Section 302/304B, IPC), torture—both mental and physical (498A, IPC), molestation (Sec. 354 IPC), sexual harassment (Sec. 509 IPC), importation of girls up to 21 years of age (Sec.366 B, IPC).

Besides the Indian Penal Code, under the Special and Local Laws (SLL), there are five legislations dealing with crimes against women. They are: Immoral Traffic (Prevention) Act, 1956; Dowry Prohibition Act, 1961; The Child Marriage Restraint Act, 1929; Indecent Representation of Women (Prohibition ) Act, 1986; Commission of Sati (Prevention) Act, 1987.

1. Some Specific Legal Provisions on Sexual Crimes against Women in India

Rape is considered as a serious crime against women. Section 375 of the IPC defines:

The offence of rape is said to have been committed if a man has sexual intercourse with a woman 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 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 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.

Exception: Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Therefore, rape is an offence only against a woman and cannot be committed against a man under the existing Indian criminal law. Regarding the concept of marital rape, according to Indian Penal Code (IPC), a husband cannot commit rape on his wife excepting when she is less than fifteen years of age. That means only if the wife is less than 15 years of age, the intercourse by husband amounts to rape. In all other cases of married women, even if the ingredients for the offence of rape are fulfilled, the law does not consider the intercourse of a man with his own wife as rape. However, such victims have the right to seek appropriate remedy under the Domestic Violence Act.

Normally a complaint or information about a
crime, including sexual crimes is required for the police to initiate action/investigation by police. This complaint or information about the occurrence of crime can be from a victim or a bystander or anyone who has knowledge about the occurrence of the crime. If the police officer himself is the witness to the crime, he can also be an informant/complainant about the crime to initiate action. But usually what happens in sexual crimes is that victims may not fully cooperate with the police and prosecution because of the embarrassment and difficulties of secondary victimization by the criminal justice system. Without the cooperation of the victims, the prosecution would find it difficult to prove the case and hence the cases may end in acquittal of the accused.

The police treat sexual assault such as rape seriously and initiate action, though many victims are reluctant to report the same and are unwilling to cooperate with the police and prosecution both during investigation and prosecution due to social and cultural reasons. However, in the case of milder sexual offences such as sexual harassment cases, and in domestic violence cases, the general attitude of the police is not to take them seriously as they do not consider these as serious offences. There is a need for attitudinal change among police and for the requirement of specially trained police personnel to deal with the aforesaid cases. Many sensitization programmes for the police is being undertaken by the Government of India and the state Governments.

According to the Code of Criminal Procedure Section 41(1), any police officer has the power to arrest any person who has been involved in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in the offence. Normally if the offender/accused person submits to the police while arresting, there is no need for a force arrest. But if the accused person resists the arrest by police, the police have the power to use the minimum force to arrest the accused person.

2. Punishment for Rape

Under section 376 of IPC, the punishment for the offence of rape has been provided as follows:

(1) Whoever, except in the cases provided for by subsection (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or both: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,

(a) being a police officer commits rape; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law or of a woman’s or children’s institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or
(e) commits rape on a woman knowing her to be pregnant; or
(f) commits rape on a woman when she is under twelve years of age; or
(g) commits gang rape
shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine.

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

3. Presumption as to Absence of Consent in Certain Prosecutions for Rape

Apart from the general definition of rape, rapes committed by some persons under special circumstances are dealt with as follows:

**Intercourse by a man with his wife during separation:** Under section 376 (a) of IPC, if a person has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine. The offence under this section is non-cognizable (where an arrest cannot be made without the order of a court), non-compoundable, and triable by Court of Session.

**Intercourse by public servant with woman in his custody:** Under section 376 (b) of IPC, if a public servant takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant who is subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term up to five years and shall also be liable to fine.

**Intercourse by superintendent of jail, remand home, etc.:** Under section 376 (c) of IPC, if a superintendent or manager of a jail, remand home or other place of custody or a women’s or children’s institution takes advantage of his official position and induces or seduces, any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term up to five years and shall also be liable to fine.

**Intercourse by any member of the management or staff of a hospital with any woman in that hospital, remand home, etc.:** Under section 376 (d) of IPC, if a person on the management of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term up to five years and shall also be liable to fine.

In a prosecution for rape under clause (a), (b), (c), (d), (e) and (g) of sub-section 2 of section 376 IPC, where sexual intercourse by the accused is proved and if the victim states in her evidence that she did not consent, the Court shall presume that she did not consent (e.g.) rape by police officer, public servant, jail staff, hospital staff as mentioned above.

**Assault or criminal force to woman with intent to outrage her modesty:** Under section 354 of
IPC, if a person 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 up to two years, or with fine, or with both. The act of pulling a woman, removing her dress coupled with a request for sexual intercourse would be an outrage to the modesty of a woman, and knowledge that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. When the accused who was the chief of police of a state slapped the back of a senior lady civil servant in the top administration in public place, then having regard to the sequence of events, the act of the accused prima facie amounted to outraging the modesty of the lady officer, according to the Supreme Court (Rupan Deol Bajaj v. K.P.S. Gill (1995) 6 SCC194; 1995 SCC (Cri) 1059.

4. Some Legal Provisions and Law Reforms to Protect Victims

There are some provisions in the Indian Evidence Act aiming to protect victims and witnesses from being asked indecent, scandalous, offensive questions, and questions with intention to annoy or insult the victims or witnesses. Criminal courts also have an obligation to order payment of reasonable expenses incurred by the witnesses and the victim to attend the trial proceedings. Besides, the judicial activism also has contributed to certain measures for protecting the victims during trial. They include an in-camera trial, exclusion of the identity of the victim or witness from all official documents to protect their privacy and safety. Recently, the Supreme Court has also accepted video conferencing method to record evidences. However, the powers to implement all these provisions to protect the rights of victims lie with the presiding officers of the court and their commitment to safeguard the interest of victims.

Section 304-B has been inserted in the Indian Penal Code by Dowry Prohibition (Amendment) Act, 1986 to combat the increase of dowry deaths of women. Dowry mentioned in this section is any property or valuable security given or agreed to be given in connection with the marriage. Under this section if the death of a woman with any burns or bodily injuries occurred 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. Under subsection 2 of Section 304-B, the person who has committed dowry death shall be punished with imprisonment for not less than seven years but which may extend to imprisonment for life. The offence under this section is cognizable, non-bailable and non-compoundable and triable only by Court of Session.

To prove the offence of dowry death of women, important amendments were brought in Indian Evidence Act, Sec.113 A: If the suicide of a married woman occurs within 7 years of her marriage, the law assumes a rebuttable presumption that it is a dowry death due to cruelty and the onus to prove that it is not a dowry death is shifted to the accused husband or relative of her husband from that of the prosecution. Also under Sec.113 B, on the question whether a person has committed a dowry death of a woman, if it is shown that such woman has been subjected to cruelty or harassment soon before her death, for any demand for dowry, the Court shall presume that such person has caused the dowry death.

Apart from the above offences against women dealt under the Indian Penal Code, a special law
to prevent and punish the offence of domestic violence was passed after a long struggle by the women’s organizations, by Indian Parliament in 2005 (Government of India, 2005) which came into force in 2007. This law gives many measures to protect the interest of women victims who suffer victimization at the hands of other members in their family including intimate partner violence.

5. Salient Features of the ‘Protection of Women from Domestic Violence Act, 2005’, and Victim Empowerment

The Protection of Women from Domestic Violence Act, 2005 (Government of India, 2005) Act is considered as a very progressive legislation by feminist organizations and women activists, as it contains several provisions to strengthen the position of victims and grant immediate relief and protection from further victimization. In the Act, “aggrieved person” implies the victim and means any woman who is, or has been in a domestic relationship with the respondent (accused) and who alleges to have been subjected to any act of domestic violence by the respondent. The “domestic relationship” has been defined as a relationship between two persons who live or have, at any point of time, live together in a shared household, when they are related by consanguinity (related by blood), marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. Definition of domestic violence is very wide which includes harms or injuries or endangers the health, safety, life, limb or well-being, whether mental or physical of aggrieved person (victim) or tends to do so and includes causing physical, sexual, verbal, emotional and economic abuse.

The Protection of Women from Domestic Violence Act, 2005 is a major achievement of the women’s movement after a struggle for 16 years. The unique feature of the Act is that it provides certain special measures to ensure the protection of the interests of victims of domestic violence by granting certain rights to them, which the enforcement machinery has to follow mandatorily. A Police officer, Protection officer or a Magistrate has a mandatory duty to inform the victim of her right to obtain a protection order or an order of monetary relief, a custody order, a compensation order or more than one such order and the availability of the services of Service providers, Protection officers, and right to free legal services under this Act. A violation of the protection order by the offender will be punished with one year imprisonment or a fine up to Rs.20,000 or both. Failure of discharge of duties by the Protection Officer shall be punished with one year imprisonment or with a fine of 20,000 rupees or with both.

Under Section 3, economic abuse would include deprivation of any economic or financial resources which the victim is entitled under any law or custom, whether payable under an order of a court or otherwise. Another special feature of the Act is it prohibits denying the victim continued access to resources or facilities which the victim is entitled to use or enjoy by virtue of the domestic relationship, including access to the shared household. The ‘Aggrieved Person’ does not confine to the wife but includes any woman in a “domestic relationship” with the respondent like a partner living outside wedlock and extends to all family members living together as a “joint family”. Under this definition, an Aggrieved Person could even be a mother or sister abused by the Respondent. The Act implies that an ‘Aggrieved Person’ is a woman and the ‘Respondent’ is “any adult male person who is, or has been, in a domestic relationship with the aggrieved person...”
(Raghavan, 2006).

The Act contemplates creation of ‘Protection Officers’ by State Governments in every district to whom any person, not necessarily the Aggrieved Person, could report an act of domestic violence or its likelihood. It is the duty of such officers to make out a ‘Domestic Incident Report’ in a prescribed format to the Magistrate and to assist him further in the matter. Despite the introduction of the special law to prevent domestic violence, any police officer can also deal with domestic violence under any other law if it is a cognizable offence. There is a genuine apprehension among the men that they could be victimized by a false complaint of a woman against an innocent man, as it has been witnessed many times under the Dowry Prohibition Act.

The Act also provides a category of ‘Service Providers’, which are voluntary agencies registered with State Government with the objective of protecting the rights and interests of women and to assist women subjected to domestic violence. The victim can notify an act of domestic violence to the Service Providers, who may forward the complaint to the Magistrate or Protection Officer, and send the victim for medical examination simultaneously. On receipt of the complaint, the Magistrate first hears the Aggrieved Person (victim) and the Respondent (accused). If convinced that the complaint of domestic violence is true, the Magistrate can pass a ‘Protection Order’, prohibiting the respondent from continuing the acts of ‘domestic violence’. The Magistrate is competent to pass directions to order monetary relief for compensating losses suffered or expenses incurred by the aggrieved person, besides ordering the respondent to stay away from the shared household. The monetary relief ordered would not preclude any subsequent compensation granted by the Magistrate under the Act. Later on, if the respondent violates the Protection Order, that becomes a specific offence under the Act and could be punished with imprisonment for one year or a fine up to Rs. 20,000, or both. In a country like India, where the police power is abused more often by political, monetary and other powers, there is a great responsibility for the government to monitor the implementation and prevent the abuse of the law which intends to wipe out the tears of suffering of women victims (Raghavan, 2006).

On the other hand, the police cannot do anything to deal with domestic violence cases unless the women victims cooperate with the police and tender evidence during investigation and testifying in the court during the trial. Sometimes even though women make complaints to the police on domestic violence cases initially, they withdraw their complaints subsequently when their men are about to be arrested and prosecuted. In such cases, though the police can proceed to prosecute the accused, it is a futile attempt if the victims are not willing to assist the police in dealing with the offenders as per law. So in such cases the police simply permit the women to withdraw their complaints and close the case or if the police insist taking action on the accused, the case may end in acquittal because the victim turns as a hostile witness during the trial, denying the happening of the offence.
The rights of children are protected by the fundamental rights and freedoms and also have been covered under the Directive Principles of State Policy. The framers of the Constitution were aware of the fact that the development of the nation can be achieved by the development of the children, and it is necessary to protect the children from exploitation as well. Following are the provisions of the Indian Constitution relating to children. Some of them are general provisions and are applicable to all including children and certain other provisions are directly applicable to children.

- Article 14 provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

- Article 15(3) provides that nothing in this article shall prevent the State from making any special provision for women and children.

- Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law.

- Article 21A provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

- Article 23(1) provides that traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

- Article 24 provides that 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.

- Article 29(2) provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

- Article 39(e) provides that the State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

- Article 39(f) provides that the State shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

- Article 45 provides that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

- Article 47 provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its
primary duties.

• Article 51A(k) provides that it shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years (Gupta, 2010).

1. Protection of Children under Other Legislations

Apart from the Constitution, there are a number of legislations which deal with the protection of children. The following are some of them:

The Guardian and Wards Act 1890
This Act deals with the qualifications, appointment & removal of guardians of children by the courts & is applicable to all children irrespective of their religion.

The Child Marriage Restraint Act 1929
This Act as amended in 1979 restraints the solemnization of child marriages by laying down the minimum age for both boys & girls. This law is applicable to all communities irrespective of their religion.

The Orphanages and Other Charitable Homes (Supervision and Control) Act 1960
This Act provides for the supervision and control of orphanages and homes for children.

Apprentices Act 1961
This Act lays down qualifications for persons above fourteen years of age to undergo apprenticeship training in any designated trade.

The Child Labour (Prohibition and Regulation) Act 1986
This Act prohibits the engagement of children in certain employment & regulates the conditions of work of children in certain other employment.


This Act regulates the production, supply and distribution of infant milk substitutes, feeding bottles and infant foods with a view to the protection and promotion of breastfeeding and ensuring the proper use of infant foods and other incidental matters.


This Act provides for the regulations of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic or chromosomal abnormalities or certain congenital malformation or sex-linked disorders & for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide (Gupta, 2010).

Empowering the child is the road to prevention from abuse and victimization. To empower the child, education is the tool. Therefore, primary education for children has been made a fundamental right as per the decision of the Supreme Court of India judgment in Unnikrishnan’s case (1993). The Article 21-A of the Constitution states that “The State shall provide free and compulsory education to all children of the age 6-14 years in such manner as the State may
by law determine.” The proposal also will have a positive impact on eradication of child labour. The spread of elementary education through constitutional measures would have a good impact on other social indicators like population growth, health and women’s development as well as enhancement of productivity of the economy and reduction in unemployment.

2. The National Commission for Protection of Child Rights (NCPCR):

This Commission was set up in March 2007 and its mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child (see at Government of India, 2009). India has ratified the United Nations Child Rights Convention in the year 1992 and this Act was passed as one of the necessary steps to protect the rights of the children in the country. The National Commission for Protection of Child Rights has been taking up various issues brought forth in the area of child abuse. After inquiry, the national commission can recommend initiation of proceedings for prosecution or any other action the commission may deem fit.

Ⅷ. New Provisions under Code of Criminal Procedure to Protect Victims

Historically in democratic India, the right to free legal aid to the suspects/accused persons is constitutionally recognized. Further, in the Code of Criminal Procedure, 1973 under section 304, it is stated that if the accused is not represented by a pleader in any trial in a court and if the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defense at the expense of the State. The accused/suspect can ask for legal aid at any stage of the process of the case including during the trial.

1. Situation of Victims in India


The Criminal Procedure Code (Amendment) Act 2008 (Ministry of Law and Justice-India, 2010) considered and took into account many recommendations from the Parliamentary Standing Committee on Home Affairs, Law Commission of India, Justice Malimath Committee, periodic guidelines issued by the Supreme Court of India, Criminal Justice Policy and numerous representations from legal luminaries, Non Profit Organizations and citizens of India.

Victims have the right to ask free legal services by making an application to Legal Services Authority at the District level or State level or at the National level depending on the case where it comes for hearing. But free legal aid is offered only to the needy persons who are poor and who cannot engage their own counsel. The Legal Services Authority decides whether the person should be given free legal aid or not on the basis of the financial position of the victim. The victims can ask for such free legal services during any stage of the case such as during investigation, prosecution or trial. Victims can also sit in the court to witness the trial and to assist the
prosecution through his/her counsel engaged by the victim.

Before the Criminal Law Amendment Act 2008 which came into force from December 2009, the victims had no say at all in their case excepting to serve as witnesses when they are summoned by the court. After 31 December 2009, since the Criminal Law Amendment Act 2008 came into force, the victims can sit inside the court and actively participate in the trial by engaging an Advocate of their choice, who will assist the prosecutor in the trial of the accused. Now the victims can raise objections through their Advocates on anything which concern victims such as the release of the accused on bail, sentence of the offender etc. So now the victims have a legal status to participate almost like a party along with the prosecution and to have the right to express their views, concerns and apprehensions through their advocates. Also, the victim has the right to prefer an appeal against any order passed by the court acquitting the accused or convicted for a lesser offense.

In Section 26, an important provision has been introduced in the Indian Penal Code through which courts trying sexual offences against women shall be tried as far as practicable by a court with a woman as presiding officer. This is a significant provision as the presiding officer of the court has enormous powers to stop/intervene when the woman victim is deliberately embarrassed or harassed by the defense advocates by raising inconvenient questions which are not necessary for the case, as a woman magistrate might be able to protect the interest of women victims in a better manner than by male magistrates.

Under section 357, a new section called 357A dealing with victim compensation scheme has been inserted, with the following subsections: 1. Every State government in coordination with central government shall prepare a scheme for providing a fund; 2. Whenever a court recommends for compensation, the District Legal Service Authority or the State Legal Service authority shall decide the quantum of compensation to be awarded under the scheme; 3. If the trial court is satisfied that the compensation awarded is not adequate or where the cases end in acquittal or discharge, and the victim has to be rehabilitated, it may make recommendation for compensation; 4. Where the offender is not traced or identified, but the victim has been identified, and no trial takes place, the victim or his dependents may make an application to the State or District Legal Services Authority for award of compensation; 5. On receipt of such recommendations, the State or the District Legal Services Authority shall award adequate
compensation by completing an inquiry within two months; 6. The State or District Legal Service Authority may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of police officer in charge of the police station or a magistrate of the concerned area, or any other interim relief as the appropriate authority deems fit.

Under section 372, a right to prefer an appeal has been granted to the victim against any order passed by the court acquitting the accused or convicting for a lesser sentence or imposing inadequate compensation, and such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court (Ministry of Law and Justice —India, 2010).

2. Interventions of the Higher Judiciary in India to Protect Victim's Rights

Besides the Criminal Procedure (Amendment) Code 2008 which has raised the legal status of victims in the CJS, the higher judiciary has also delivered many judgments protecting the rights of victims. The bench of the Madurai High Court in a recent judgment said that in a criminal proceeding sought to be quashed, the complainant should be heard. The issue was whether a victim was entitled to hear and take part in a criminal proceeding or not. In this case, according to the High Court, the victim had got every right to take part in the prosecution. As the victim is a part of the criminal justice, and in the anticipatory bail application filed by the accused person for suspected offences of dowry death and cruelty by the husband to a woman, the victim’s family has every right to intervene in the order to put forth their objections as the court said the “prosecution was primarily based on the victim or the person who set the case in motion. After all, the prosecution took up the case of the victim. While a decision of the criminal court did not affect society directly, it did so for the victim” (The Hindu, 2010).

In the last 60 years after India became a republic, there have been several laws to protect women and children from victimization. There have been constitutional guarantees to protect the weaker sections like women and children. The national policy for the empowerment of women and the national policy for children covering various ways of development of children, framed at different points of time, have all emphasized the importance of protecting the interest of women and children. Particularly, the special legislation, the Prevention of Domestic Violence Act 2005 is a significant development wherein many provisions to protect and prevent victimization of women in domestic setting has been ensured. Similarly in the case of children, the inclusion of the provision of free and compulsory education to all children of India in the age of 6 to 14 is expected to bring dramatic change in the life of children as education is the panacea for many social ills. Still, to achieve the goals of protecting the interests of women and children what is the barrier? In my view, the mindset of the people and the cultural prescriptions that women and children are subservient to adult men practiced for centuries is not an easy thing to be changed overnight. Legislation to change the age-old practices is most important, but law alone cannot ensure it unless the provisions of
the legislation are disseminated to the masses of people for their acceptance throughout the length and breadth of the country. In other words, the strict implementation of the law is required. For a serious and strict implementation of the progressive laws, the people in charge of implementation should have the conviction about the utility of these laws and the positive changes it may bring for the overall development of Indian society. Though there is no separate legislation as in other developed countries to protect the interest of crime victims, the recent amendment brought into the Code of Criminal Procedure through the Criminal Procedure Code (Amendment) Act 2008 has attempted to strengthen the legal status of victims by providing many rights to victims for the first time. Another important area for the empowerment of women is granting political rights and active participation of women in the political processes. Here also the country is witnessing enormous pressure from the civil society and women’s organizations for granting 33% reservation for women to contest in the elections to the Union Parliament and all the State legislatures. The law to provide reservation of 33% seats in the Union Parliament and State Assemblies is almost at the final stage for its adoption by the Parliament despite the intervention of many struggles.

References


Case Law