



## COMBATING VIOLENCE AGAINST WOMEN IN INDIA AND VIABILITY OF ADOPTING INTEGRATED REPARATION MODEL\*

*"There is one universal truth, applicable to all countries, cultures, and communities: violence against women is never acceptable, never excusable, never tolerable."* United Nations Secretary-General, Ban Ki-Moon (2008)<sup>1</sup>

### 1. INTRODUCTION:

In the U.N. Fourth World Conference on Women, it was observed that 'violence against women' (Hereinafter VAW) is one of the widespread social evils that persist in the society under which 'women are forced into a subordinate position compared with men.'<sup>2</sup> Legally speaking, States have a positive legal obligation to protect women from any form of violence and to ensure the perpetrators' accountability so that victims of such violation of human rights are provided with justice and just remedies. Indeed, eliminating VAW remains one of the most daunting tasks of our time. A society governed by the rule of law and having explicit constitutional mandate expects the accomplishment of sex-equality in which VAW shall not have any place. The Secretary-General's statement reflects such aspiration for an ideal society.

But the reality seems to be different. The suffering of women is endless, and the forms in which VAW happens are incessant, such as sexual assault, domestic violence, torture, honour killing, forced prostitution, revenge porn, forced abortion, trafficking, sex-discrimination, and many others.<sup>3</sup> When there are disturbances in the society, be it a situation of riot or civil unrest, females being more vulnerable, are subjected to sexual offences as grave as gang rape.<sup>4</sup> In fact, the

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\*\* Dr. Sarfaraz Ahmed Khan, Associate Professor, Maharashtra National Law University Mumbai. This paper is revised work of the paper presented during National Seminar Converse 2019 held on 15-16 Feb, 2019, on the theme 'Exploring the Contemporary Women Rights Issues in India' at Symbiosis Law School Hyderabad.

<sup>1</sup> U.N. Department of Public Information, News and Media Division, 2008 (SG/ SM/11437 WOM/1665).

<sup>2</sup> U.N. Fourth World Conference on Women, *Platform for Action*, 117, A/CONF. 117/20/Rev. I (September 15, 1995).

<sup>3</sup> See, United Nations publication, *Women Rights are Human Rights*, (2014), ISBN ISBN 978-92-1-154206-6.

<sup>4</sup> There are plenty of examples of sexual offences during riots in India. Internationally too, rape had been a tool to take revenge against the enemy. Accordingly, legendary feminists argued that in such a situation, rape could be considered as genocide. See, Catharine A. MacKinnon, *Are Women Human? And Other International Dialogue*, The Belknap Press of Harvard University Press (2006), p. 180.

numbers of women victims are more amongst the total victims of organized crime, such as 'Human Trafficking'<sup>5</sup>

VAW, in its various forms, including all forms of sexual violence, physical violence, and other forms of violence is pandemic which constitutes a grave violation of human rights on many occasions. India has signed and ratified several international human rights treaties including Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>6</sup> which imposes several positive legal obligations on India to rectify the situation. Numerous international legal instruments impose a positive legal obligation on India to promote and protect Women's human rights. In order to fulfil its legal obligation, India did enact several legislations to address VAW, including constitutional guarantees for equality and positive action, but how far they are adequate and effective needs to be analysed. In order to analyze VAW at International level and domestic legal obligation and viability of adoption of IRM for combating VAW, the Researcher has divided this paper into five parts. The first part tries to demystify the term VAW. The second part discusses about the gravity of the situation at international as well as national levels. The third part discusses the legal obligation on India within the framework on International human rights law. The fourth part discusses how domestic legal instruments try to address the issue of VAW and in conclusion, the Researcher argues that there is a need for not only legal reform but an effective implementation mechanism to address VAW.

## 2. DEMYSTIFYING THE TERM VAW

The General Assembly of United National (UNGA) played a significant role in mainstreaming gender issues and deliberated upon its diverse manifestations such as: 'VAW migrant workers; trafficking in women and girls; traditional or customary practices affecting the health of women and girls; crimes against women committed in the name of "honour"; and domestic VAW.'<sup>7</sup> The CEDAW did not define the term VAW but General Recommendation 19 tried to interpret state obligation under Article 1 of the CEDAW.<sup>8</sup> According to the CEDAW Committee recommendation, the definition of discrimination in Article of 1 includes 'gender-based violence, that is, violence directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion, and other deprivations of liberty.'<sup>9</sup> It further observed that 'gender-based violence may breach specific provisions of the Convention, irrespective of the fact whether those provisions expressly mention violence or not.'<sup>10</sup>

<sup>5</sup> ILO report 2012 indicates that around 56% of trafficking victims are women, *ILO 2012 Global estimate of forced labour (2012)*, [https://www.ilo.org/wcmsp5/groups/public/--ed\\_norm/--declaration/documents/publication/wcms\\_181953.pdf](https://www.ilo.org/wcmsp5/groups/public/--ed_norm/--declaration/documents/publication/wcms_181953.pdf).

<sup>6</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, 1979 (adopted December 18, 1981, enter into force September 3, 1981) < <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> > (last visited on January 10, 2011). Hereinafter *CEDAW*.

<sup>7</sup> UNGA, '*In-depth study on all forms of VAW*' A/61/122/Add.1 dated July 6 2006.

<sup>8</sup> CEDAW § 1:

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

<sup>9</sup> CEDAW General Recommendation No. 19: VAW, available at < <https://www.refworld.org/docid/52d920c54.html> > (last visited on January 9, 2019).

<sup>10</sup> *Ibid.*

The Declaration on the Elimination of VAW states that VAW is “a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women”<sup>11</sup> The African Charter on the Rights of Women in Africa defined ‘VAW’ as follows:<sup>12</sup>

VAW means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peacetime and during situations of armed conflicts or of war.”

Inter-American Convention on the Prevention, Punishment, and Eradication of VAW (Convention of Belém do Pará) affirmed ‘that VAW constitutes a violation of their human rights and fundamental freedoms, and .....offense against human dignity.’<sup>13</sup> Article 1 of the Convention of Belém do Pará defined ‘as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.’<sup>14</sup> Article 2 further explain and classify the VAW as follows:

- a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery, and sexual abuse;
- b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
- c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.<sup>15</sup>

CEDAW General Recommendation 35 further clarifies that 'violations of women's sexual and reproductive health and rights.....are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.’<sup>16</sup> The Committee further endorses that in ‘making the determination of when acts of gender-based VAW amount to torture or cruel, inhuman or degrading treatment, a gender-sensitive approach is

<sup>11</sup> G.A. Res. 48/104, Declaration on the Elimination of Violence against Women (December 20, 1993).

<sup>12</sup> The African Commission on Human and Peoples’ Rights, *Protocol to the African charter on human and peoples’ rights on the rights of women in Africa 2003*, Adopted by the 2nd Ordinary Session of the Assembly of the Union. Available at <[https://www.un.org/en/africa/osaa/pdf/au/protocol\\_rights\\_women\\_africa\\_2003.pdf](https://www.un.org/en/africa/osaa/pdf/au/protocol_rights_women_africa_2003.pdf)> (Last visited on January 9, 2019).

<sup>13</sup> *Inter-American Convention on the Prevention, Punishment, and Eradication of VAW* (Convention of Belém do Pará), adopted on June 9, 1994, available at <<https://www.oas.org/en/mc/vi/docs/BelemDoPara-ENGLISH.pdf>> (Last visited on January 13, 2020).

<sup>14</sup> Convention of Belém do Pará, *Ibid*, §1.

<sup>15</sup> *Ibid*, § 2.

<sup>16</sup> CEDAW General recommendation No. 35, on Gender-based Violence Against Women’ available at [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_35\\_8267\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf) (Last visited on January 9, 2019), at para 18. See also, Report of SR on Torture, January 5, 2016, A/HRC/31/57; CEDAW Committee, *L.C. v. Peru*, CEDAW/C/50/D/22/2009, para 8.18; Human Rights Committee, *Whelan v. Ireland*, CCPR/C/119/D/2425/2014 (2017); *Mellet v. Ireland*, CCPR/C/116/D/2324/2013 (2016), paras. 7.4.

required.<sup>17</sup> The above clarification under the umbrella of the General Assembly or CEDAW Committee shows the broad spectrum of offences that can be brought under the ambit of VAW.

### 3. VIOLENCE AGAINST WOMEN IN INDIA: A REALITY CHECK

One of the studies estimated that globally almost 35 percent of women had been subjected to either physical and/or sexual violence, which includes family-based violence.<sup>18</sup> The study further estimated that almost 'one third (30%) of all women who have been in a relationship have experienced physical and/or sexual violence by their intimate partner,' which clearly shows the extent of its prevalence within the four walls of the home.<sup>19</sup> In fact, the number of murders of women committed by intimate partners is as high as thirty-eight percent.<sup>20</sup>

The widespread prevalence of VAW in India is reflected in the National Family Health Survey (NFHS), which found that almost thirty percent of women experienced violence since the age of fifteen.<sup>21</sup> NFHS further found that while six percent of the women among them 'have ever experienced sexual violence in their lifetime' even the number of pregnant women subjected to violence during pregnancy was almost six percent.<sup>22</sup> The Crime in India 2016 report indicates that during 2014, 2015 and 2016 the number of offences women were 3,39,457; 3,29,243; and 3,38,954 respectively.<sup>23</sup> These are about the cases reported to the police station and experience show that a large number of cases are not reported. □

### 4. INTERNATIONAL LEGAL OBLIGATION TO COMBAT VAW

VAW affects women disproportionately, and every commission of such offence results in a violation of the human rights of women.<sup>24</sup> VAW, in almost all its facets, is strictly prohibited by international human rights law. In fact, some form of VAW addressed by the international community much before major human rights treaties were adopted under the auspices of the United Nations. For example, to combat sex-trafficking, four agreements were entered into between the period early 1900's to the mid-1930's – the first being the International Agreement for the Suppression of the 'White Slave Traffic' adopted in the year 1904.<sup>25</sup> Under the auspices of the United Nations, only in the year 1949, the Convention for the Suppression of the Traffic in

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<sup>17</sup> CEDAW Committee, *ibid*, para 17.

<sup>18</sup> World Health Organization, Department of Reproductive Health and Research, London School of Hygiene and Tropical Medicine, South African Medical Research Council (2013). [Global and regional estimates of VAW: prevalence and health effects of intimate partner violence and non-partner sexual violence](#), p.2.

<sup>19</sup> *Ibid*.

<sup>20</sup> *Ibid*.

<sup>21</sup> International Institute for Population Sciences, *National Family Health Survey 2015-2016* (NFHS), Ministry of Health and Family Welfare, Government of India, Chapter 16, available at <[http://rchiips.org/nfhs/factsheet\\_nfhs-4.shtml](http://rchiips.org/nfhs/factsheet_nfhs-4.shtml)>, (Last accessed on January 4, 2019).

<sup>22</sup> NFHS, *Ibid* 19.

<sup>23</sup> National Crime Record Bureau, *Crime in India 2016*, available at <<https://ncrb.gov.in/sites/default/files/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf>> accessed 2 January, 2019.

<sup>24</sup> CEDAW *supra* note 16.

<sup>25</sup> (a) *International Agreement for the Suppression of the "White Slave Traffic,"* (adopted May 18, 1904, entered into force July 18, 1905) 1 L.N.T.S. 83. Thirteen signatories of this agreement were from the European States. (b) *International Convention for the Suppression of the White Slave Traffic,* (adopted May 4, 1910, entered into force August 8, 1912) 3 LNTS 278. There were thirteen signatories, all European States except for Brazil. (Both amended by a protocol approved by the General Assembly on May 4, 1949, 30 UNTS 23.) (c) *International Convention for the Suppression of Traffic in Women and Children,* (adopted September 30, 1921, entered into force June 15, 1922) 9 LNTS 415. There were thirty-three signatories from Europe, North America, Asia, and Oceania. (d) *International Convention for the Suppression of the Traffic in Women of Full Age,* (adopted October 11, 1933, entered into force August 24, 1934) 150 LNTS 431.



Persons and of the Exploitation of the Prostitution of Others was adopted.<sup>26</sup> Accordingly, the regulation at the international level were exist since long against some facet of VAW to combat it.

The Vienna Declaration and Programme of Action<sup>27</sup> affirmed the universality of women's rights as human rights and called the world community to eliminate gender-based violence. The Declaration on the Elimination of VAW sets out a series of measures to be undertaken by the world community to prevent and eliminate VAW, including an obligation on States to 'condemn VAW and not invoke custom, tradition or religion to avoid their obligations to eliminate such violence.'<sup>28</sup> As the definition of discrimination under CEDAW includes VAW, the positive legal obligation on the state under article 2 shall be binding on each member state, which includes a series of measures the states need to undertake.<sup>29</sup> In fact, general recommendation 28 on the core obligations of States parties under article 2 of CEDAW are to 'respect, protect and fulfil women's rights to non-discrimination and the enjoyment of de jure and de facto equality.'<sup>30</sup> The specific facet of VAW, such as sex-trafficking, is also a violation of Article 6 of the CEDAW, and the state has a positive legal obligation to combat it.<sup>31</sup> CEDAW Committee in its General Comment 35 explained 'women's right to a life free from gender-based violence is indivisible from and interdependent with other human rights, including the right to life, health, liberty and security of the person, the right to equality and equal protection within the family, freedom from torture, cruel, inhumane or degrading treatment, freedom of expression, movement, participation, assembly, and association.'<sup>32</sup> General Comment 35 further observed that the issues of VAW need to be considered as social issues rather than an individual problem, requiring comprehensive

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<sup>26</sup> *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, 1949, (adopted December 2, 1949, entered into force July 25, 1951). Hereinafter *the Trafficking Convention*.

<sup>27</sup> adopted by the World Conference on Human Rights in Vienna on June 25, 1993, available at <<https://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf>> (Last accessed January 10, 2020).

<sup>28</sup> UNGA, *supra* note 7, at p. 14.

<sup>29</sup> § 2 of the CEDAW provides as follows:

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay, a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practise of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; □

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

<sup>30</sup> General recommendation 28, par. 9, available at <<https://www.refworld.org/docid/4d467ea72.html>> (Last visited on January 13, 2019). Few other UN human rights treaty bodies also use the same typology. See CESCR, General Comment No. 12 (1999).

<sup>31</sup> CEDAW *supra* note at 6, § 6.

<sup>32</sup> CEDAW General recommendation No. 35, *supra* note 16, Para 15.

responses, beyond specific events, individual perpetrators and victims/survivors' and accordingly needs comprehensive redressal mechanism.<sup>33</sup>

Under the auspices of the South Asian Association for Regional Cooperation (SAARC), the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution was one of the most important legal instruments to fight VAW more particularly sex-trafficking in the SAARC region.<sup>34</sup> The member states have also shown their commitment and firm determination to combat VAW.<sup>35</sup> Considering the wide ambit of legal obligations imposed by different international and regional legal instruments, some of them have binding obligations while others having persuasive value being human rights obligation, we can undoubtedly say that ample jurisprudence has been developed at the international and regional level, obliging the state to combat VAW.

## 5. LEGAL FRAMEWORK TO COMBAT VAW IN INDIA

Economic and Social Council 'expressed concern at the high levels of VAW and girls in many societies and drew attention to the need for ensuring effective and coordinated responses by the criminal justice system.'<sup>36</sup> Some studies found that 'women's exposure to violence has long been reinforced by non-protective legal frameworks.'<sup>37</sup> Let us see what kinds of protective mechanisms provided by the legal framework in India. In India, we have quite a few legislations, directly or indirectly, addressing the issues of VAW. The VAW, in the form of trafficking in human beings, is expressly prohibited by the Constitution of India.<sup>38</sup> We have discussed that VAW is one form of discrimination against women, Article 14 of the Constitution obliges states for equality in general,<sup>39</sup> while Article 15 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth.<sup>40</sup> Article 21A guarantees the fundamental rights of all children between the age of 6-14 years to have free and compulsory education. There are other constitutional

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<sup>33</sup> *Ibid.*

<sup>34</sup> The SAARC Convention, *Preventing and Combating Trafficking in Women and Children for Prostitution*, adopted on January 5, 2002, < [http://saarc-sec.org/digital\\_library/detail\\_menu/saarc-convention-on-preventing-and-combating-trafficking-in-women-and-children-for-prostitution](http://saarc-sec.org/digital_library/detail_menu/saarc-convention-on-preventing-and-combating-trafficking-in-women-and-children-for-prostitution)> accessed January 2, 2020. India, as well as Bangladesh, have ratified the Convention. Hereinafter *the SAARC Convention*.

<sup>35</sup> In the 11<sup>th</sup> summit of the SAARC, the member states 'expressed their collective resolve to treat the trafficking in women and children for commercial sexual exploitation as a criminal offence of a serious nature. See Paragraph 22 of the 11<sup>th</sup> SAARC Summit Declaration, <<https://www.satp.org/satporgrp/southasia/documents/papers/SAARC11.htm>> Last accessed February 15, 2020.

<sup>36</sup> Resolution 2006/29 of July 27, 2006, Quoted in, UNICRI, *Eliminating Violence Against Women Forms, Strategies and Tools* (2008), available at <[http://unicri.it/services/library\\_documentation/publications/unicri\\_series/eliminating\\_violence.pdf](http://unicri.it/services/library_documentation/publications/unicri_series/eliminating_violence.pdf)> (Last visited January 9, 2019).

<sup>37</sup> ANNA BARRERA VIVERO, *VIOLENCE AGAINST WOMEN IN LEGALLY PLURAL SETTINGS: EXPERIENCES AND LESSONS FROM ANDES*' 1 (Routledge 2016).

<sup>38</sup> § 23 prohibits traffic in human beings and forced labour while § 24 prohibits the employment of children in any hazardous employment or in any factory or mine unsuited to their age. The reading of § 23 and § 24 made a clear mandate for the government to take positive steps for the elimination of trafficking of a human being.

<sup>39</sup> § 14 Equality before law - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

<sup>40</sup> § 15 (3) provides for special protection in favour of women and children. It states that 'nothing in this Article shall prevent the State from making any special provision for women and children.'□

provisions that impose positive obligations on the state to take specific actions, which may be helpful in addressing the issues of VAW.<sup>41</sup>

The major penal statute in India is the Indian Penal Code,<sup>42</sup> which has a large number of penal provisions for different forms of VAW. It provides punishment of up to seven years for the commission of the offence of kidnapping<sup>43</sup> per se, while several other offences have been made punishable under the Code where kidnapping or abduction is committed with a specific purpose such as; for the purpose of begging',<sup>44</sup> with the intent to secretly and wrongfully confine such person',<sup>45</sup> 'compel women to marry'<sup>46</sup>, grievous hurt or slavery or unnatural lust.<sup>47</sup> It also prescribes punishment for up to 10 years for the procurement of a girl for the purpose of forced seduction or illicit intercourse.<sup>48</sup> In order to control cross-border human trafficking for commercial sexual exploitation, a specific provision was added in the IPC with regard to the offence of importation of girls from foreign countries for such illicit sexual intercourse.<sup>49</sup> Section 372 of the IPC<sup>50</sup> prescribes a punishment of up to 10 years for selling a minor for the purpose of prostitution while Section 373<sup>51</sup> lays down punishment for buying a minor for the purpose of prostitution. A series of sexual offences have also been created by IPC such as Rape,<sup>52</sup> and the definition has been further expanded to include oral, anal, and other similar sexual acts by the 2013 amendment of IPC.<sup>53</sup> It also provides punishment for outraging the modesty of a woman<sup>54</sup>

The first exclusive legislation to combat human trafficking for commercial sexual exploitation, one of the forms of VAW, was enacted in 1956 namely the Suppression of Immoral Traffic in Women and Girls Act (SITA),<sup>55</sup> now renamed as The Immoral Traffic (Prevention) Act 1956 (ITPA).<sup>56</sup> There are several other legislations which can be used for addressing the menace of VAW such as Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act),<sup>57</sup> Information Technology Act, 2000 (IT Act),<sup>58</sup> procedural laws like The Indian Evidence Act,

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<sup>41</sup> As an example, § 16 mandates for equality in opportunity for employment, § 39 requires the state to achieve social, economic and political justice for all and § 46 obliges the state to promote the educational and economic interest of women and weaker sections of society as well as to protect them from social injustice and all forms of exploitation.

<sup>42</sup> Indian Penal Code, 1860, available at <<https://www.indiacode.nic.in/handle/123456789/2263?locale=en>>.

<sup>43</sup> IPC (n 42) § 363.

<sup>44</sup> IPC (n 42) § 363A.

<sup>45</sup> IPC (n 42) § 365 - Kidnapping or abducting with intent secretly and wrongfully to confine a person

<sup>46</sup> IPC (n 42) § 366 - Kidnapping, abducting or inducing woman to compel her marriage, etc

<sup>47</sup> IPC (n 42) § 367 - Kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc

<sup>48</sup> IPC (n 42) § 366A.

<sup>49</sup> IPC (n 42) § 366B, inserted by § 3 of the IPC Amendment Act (Act 20 of 1923).

<sup>50</sup> IPC (n 42) § 372 - Selling minor for purposes of prostitution, etc.

<sup>51</sup> IPC (n 42) § 373 - Buying minor for purposes of prostitution, etc.

<sup>52</sup> IPC (n 42) § 375 define the term rape, and § 376 prescribes punishment for rape.

<sup>53</sup> The 2013 Amendment Act made a drastic change in IPC by bringing other kinds of sexual acts such as oral, anal, etc. within the purview of the law.

<sup>54</sup> IPC (n 42) § 354.

<sup>55</sup> Suppression of Immoral Traffic in Women and Girls Act (Act 104 of 1956), hereinafter *SITA*.

<sup>56</sup> The Immoral Trafficking (Prevention) Act, 1956 (ITPA), came into force on May 1, 1958. See for discussion on different offences recognized under ITPA, Dr. Sarfaraz Ahmed Khan, *Sex Trafficking and Law* (2018), Satyam Law International, ISBN 978-93-87839106.

<sup>57</sup> Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016) Hereinafter *JJ Act*.

<sup>58</sup> The I. T. Act has created several offences like uploading, distributing obscene or pornographic materials, etc. which may be used in circumstances when trafficking victims photographed or other materials are uploaded for the purpose of attracting customers or otherwise. Information Technology Act, 2000 (Act No. 21 of 2000)□

1872<sup>59</sup> and Criminal Procedure Code, 1973 (CrPC).<sup>60</sup> The Protection of Children from Sexual Offences Act, 2012 (POCSO),<sup>61</sup> a recently enacted legislation provides a broad and strong legislative framework for combating sexual offences against children.

The most significant legislation for providing a protective umbrella to the children is the Juvenile Justice Act.<sup>62</sup> The Act segregates 'children in difficult circumstances' into two categories, namely the Child in Conflict with Law (CCL)<sup>63</sup> and Child in Need of Care and Protection (CNCP).<sup>64</sup> All the children in difficult circumstances, including child victims of VAW, are entitled to protection under this legislation, thus making it one of the most important instruments for providing a protective umbrella for child victims. The Prohibition of Child Marriage Act, 2006 (PCMA)<sup>65</sup> is another legislation which may be used in several forms of VAW. The other significant legislation is the Information Technology Act, which was enacted to recognize digital evidence and prescribe a remedy for wrongs or offences committed through the means of information technology or the internet, including the offences against women.<sup>66</sup> The Protection of Women from Domestic Violence Act, 2005, is another significant legislation enacted to provide protection against VAW in domestic violence cases.<sup>67</sup> There are few other legislations too in place which also address a specific aspect of VAW such as: Pre Natal Diagnostic Techniques Act<sup>68</sup>, The Indecent Representation of Women (Prohibition) Act<sup>69</sup>, The Medical Termination of Pregnancy Act<sup>70</sup> among others.

Thus, a large number of legislations attempt to address the issues of VAW, but in reality, we are far from achieving the goal. We don't have a single and consolidated law that tries to address the issue of VAW holistically, not even definition exists in the single law of VAW. The need is not only to improve laws to bring in conformity with international legal obligation so as to have one umbrella legislation to incorporate overall protection mechanism in respect of violence VAW but also to have effective implementation mechanism and sensitivity of law enforcement agencies to make it priority offence.

## 6. CONCLUSION

Despite the evolution of the National and International framework regulating VAW including CEDAW, various Charters, etc., and increased awareness of sexual violence against women, the world has not seen any change or reduction in the rates of crimes against women. The data mentioned above clearly illustrates the areas where the law seems inadequate, for example, in the cases of non-stranger sexual assault crimes; or the sexual assault by a husband over his wife, in the sanctum of man's castle, where for a long time we have been inadequately troubled by the law's reluctance to intervene. Once a crime of sexual violence against women has been committed,

<sup>59</sup> The Indian Evidence Act, 1872 (Act 1 of 1872) Hereinafter *IEA*.

<sup>60</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974). Hereinafter *CrPC*.

<sup>61</sup> Protection Of Children From Sexual Offences Act, 2012 (Act 32 of 2012). Hereinafter *POCSO A*.

<sup>62</sup> JJ Act (n 57).

<sup>63</sup> JJ Act (n 57). § 1 (4) defines the term to include those children who have committed some offence, hereinafter *CCL*.

<sup>64</sup> JJ Act (n 57) § 2 (14). Hereinafter *CNCP*.

<sup>65</sup> The Prohibition of Child Marriage Act, 2006 (Act 6 of 2007). Hereinafter *PCMA*.

<sup>66</sup> IT Act (n 58) Several offences are created and prescribed punishment for them.

<sup>67</sup> The Protection of Women from Domestic Violence Act (NO. 43 OF 2005) Hereinafter *PWDVA*.

<sup>68</sup> Pre Natal Diagnostic Techniques Act (ACT NO. 57 OF 1994) Hereinafter *PNDTA*.

<sup>69</sup> The Indecent Representation of Women (Prohibition) Act (NO. 60 OF 1986) Hereinafter *IPWPA*.

<sup>70</sup> The Medical Termination of Pregnancy Act (Act No. 34 of 1971) Hereinafter *MTPA*.



it reiterates the fact that all the measures of combating and to stall violence have failed. The voices for bringing legislations to enhance punishment are largely not sufficient and merely an expression of helplessness and frustration. The emphasis has to be laid on the reparation model in an integrated manner.

Until and unless there is an institutional set-up that provides room for collaboration and coordination among all the stakeholders and service providers, it will be difficult to combat VAW.

