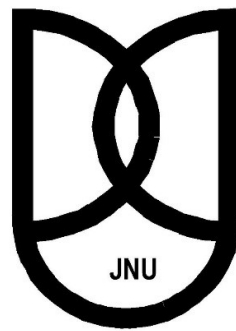


**CRIME, GENDER & RELIGION IN INDIA:  
A STUDY OF SELECTED POST-2010 CASES**

*Dissertation submitted to Jawaharlal Nehru University  
in partial fulfilment of the requirements  
for the award of the degree of*

**MASTER OF PHILOSOPHY**

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**2018**



23 July 2018

### DECLARATION

I declare that the dissertation entitled “**Crime, Gender and Religion in India: A Study of Selected Post-2010 Cases**” submitted by me for the award of the degree of **Master of Philosophy** of Jawaharlal Nehru University is my own work. The dissertation has not been submitted for any other degree of this University or any other university.

  
**Harsh Kushwaha**

### CERTIFICATE

We recommend that this dissertation be placed before the examiners for evaluation.



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# Chapter- 1

## Introduction

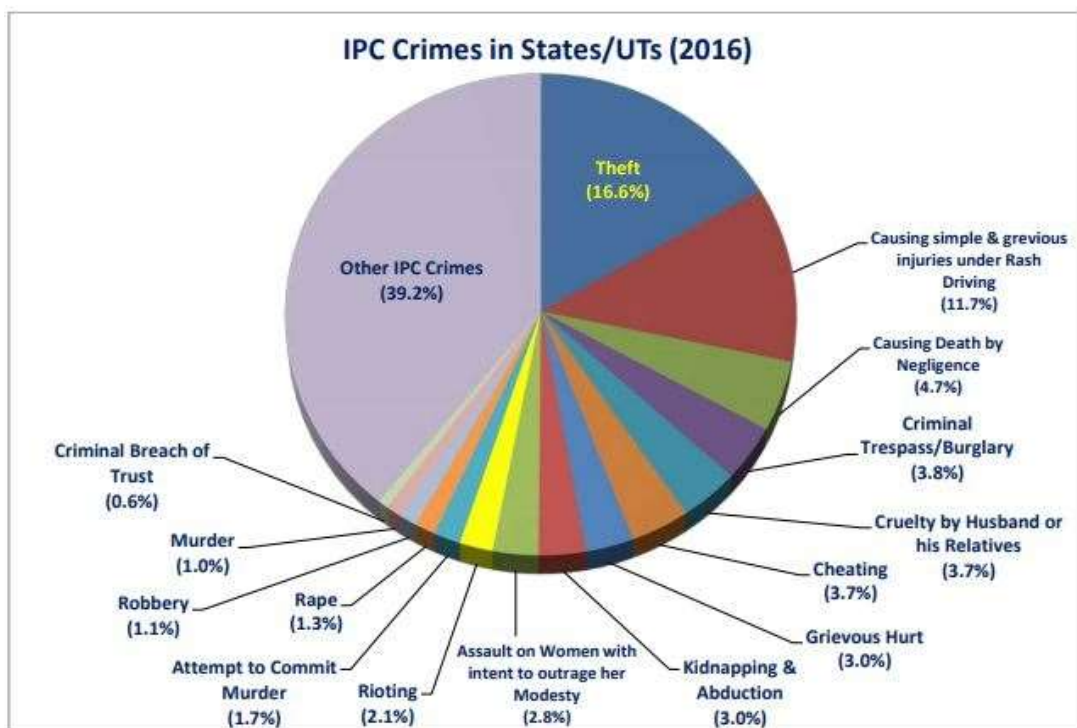
### 1.1. Background

In India the process of inclusion of multiple identities still remains incomplete even after having more than 70 years of democratic system in our country. This study contends that the faults in the process of inclusion is resulting in a lot of confrontation, insecurity, fear, violence, hate, vendetta politics, etc. The socio-political and economic domains in our country are becoming increasingly exclusive may be for reasons like scarcity of resources, power politics, increasing competition or may be changing global dynamics. The societies are becoming bitter as there is a revival of politics based on cultural identities like religion, language, caste, race, creed, etc. this study These issues are directly or indirectly is related to an increase in the phenomenon of crime and a good amount of research back this up. One can argue that the nature of the society, its history and culture are significant variables to understand criminal behaviour. Given this background, one can infer that “the nature of various crimes and criminal behaviour in India should be explained as a consequence of its peculiar social-cultural, political and historical conditions rather than merely a law and order problem in the state apparatus.” Therefore this dissertation is centred on exploring the causes for criminal motivations in India. As the study of crime in itself is a wide subject, therefore this study focuses on just two identities, i.e., gender and religion from the diverse cultural context of India in order to better reflect on the whole scenario of crimes of violence based on gender and religion in the Indian context.

In Indian context crime is an activity that involves breaking the law and enforcements. We would give our own definition of crime for the purpose of this study. So as to bring all the essential features of what we call ‘crime’. Crime can be defined as human behaviour that violates the criminal laws of a state. Crime is primarily a social phenomenon. Crime can be measured as a cost to individual victims and society as a whole. Any instance of crime may have different causes and can also carry with it some difficult meanings. A crime may also be defined as an act or omission, good or bad, which a society or state (criminal justice system) thought fit to punish or otherwise deal with under its laws for the time being in force.

In the second half of the year, 2017 National Crime Records Bureau (NCRB) published its 2016 edition of “Crime in India” report. It is important to mention here that, in 2016, the total crimes were 2.97 million and the crime rate was 379 crimes per lakh population. According to the report, major crimes like rape, kidnappings, Murder, and abduction rose by 2.6% across the country. The increase in crime is a great concern because the crime rate in India is already high.

Figure- 1



Source NCRB report 2016

According to NCRB the report “Uttar Pradesh (U.P) accounted for 9.5 percent of total Indian Penal Code (IPC) crimes reported within the country which was followed by Madhya Pradesh (8.9 percent), Maharashtra (8.8 percent) and Kerala (8.7 percent).” According to the report, there is an increase of 2.9% in crimes against women. Every day 106 rape cases are registered in India. In this context, Madhya Pradesh stands at 1st position followed by U.P and Maharashtra. There is an increase of 82% in rape cases against children. In U.P alone this is an increase of 400%. In corrupt states, Maharashtra stands out at first position for the last three consecutive years. The city-wise statistics shows that

“Delhi accounts for 38.8% of the total IPC crimes amongst nineteen metropolitan cities followed by Bengaluru (8.9%) and Mumbai (7.7%).” In Delhi over six crimes are committed by Juveniles (less than 18 years of age) every day. Of 382 cases of crimes against foreign nationals 154 cases were from Delhi. These figures are disappointing, but one should not forget there are still many cases which go unreported all over India for many reasons.

On the basis of these facts, one can argue that crime rate in India is increasing at an alarming rate. This is quite a sad fact, and in this context, this dissertation attempts to study and reflect on the social problem of crime in India with the help of contextual and cultural realities of crime, criminals, and criminal justice system of India. Before beginning with criminology in Indian context, let us explain first why criminology needs to be studied in the cultural context of a particular nation. For this one needs to understand a particular branch of criminology which is called comparative criminology. Every nation has a different social and legal control system and different ways of thinking about crime. The globalized and internet-mediated world, however, increases the penetration of crime across borders. So in spite of different systems of prosecuting crime today, different nations face similar and sometimes the same attacks on their respective legal frameworks that maintain law and order. Comparative criminology is widely recognized as a cross-cultural comparison of crime rates across countries. Crimes alike genocide, crimes against humanity, war crimes and crimes of aggression are recognized as common crimes across cultures by the International Criminal Law.

Now, let us explain and understand the association between Indian cultural context and crime in India through review of the literature available on this topic. As we know, law and culture are closely related, and that is why we discussed comparative criminology in the above paragraph. This can be seen through “the cultural and religious components that may be identified in the fabric of law, for instance, Sanskrit based Hindu law, Islamic legal systems or customary laws prevailing at local levels. Criminological understandings, therefore, demands considerations of how this multi-layered system interacts with the state law. The history of Indian legal order shows an intricate construction of institutions and codifications which relate to the British legal system to Hindu or Muslim traditions and



since Independence to various international interactions as well.”<sup>1</sup> India is a democratic, multicultural and multilingual society with wide socio-economic contrasts due to the caste system, religious affiliations, regional disparities and economic gaps.

Despite the urbanization Indian society largely remains essentially rural and relationships are still rooted in religion, caste, and traditional local customs. These are mechanisms of the local authorities that can be coercive at the local level. In India, legal reforms have been a big way of reforming country along the values of democracy, justice, liberty, equality and secularism, etc. Legal acts outlaw certain practices that are deeply entrenched in its local cultures. An educated and aware citizen of India is caught between the affirmation of his or her global modernity and his or her rooting in the more traditional political and social networks. Contemporary modern application of criminology has resulted in tensions between values presented as universal and local social realities. This can be exemplified using the current perception of caste. On one hand, parliament enacted the SC/ST act in 1989 which criminalizes any discrimination against the caste which was previously considered of low ranks. On the other hand, caste discrimination remains very active even today despite all legal and constitutional measures, and we can see it in cases of “Honour killings” and “Dalit killings” for petty reasons.

“Despite the historical context of gender and caste inequalities and religious conflicts among communities, India’s constitutional law guarantee citizens the right to religious freedom and the practice of one’s own culture, and prohibited gender- and caste-based discrimination. Scholars suggest, that in ensuring freedom of religion, the Constitution also affirms to some extent gender inequality through religious, cultural and patriarchal practices, and recognition of personal laws” (Mukhopadhyay, 2003; Sundar, 2011; Parashar, 2008; Williams, 2011).

Zoya Hasan in her article “*Gender, Religion and Democratic Politics in India*” argues that “the Hindu religious politics and women’s activism associated with it provides a compelling example of the instrumentalisation of women to accomplish the political goals of the Hindu right. Against those who argue that, in the current communal conjuncture, reform within Muslim personal laws or Islamic feminism is the best strategy for enhancing

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<sup>1</sup> Daniela Berti, Gilles Tarabout. Criminal Proceedings in India and the Question of Culture. An Anthropological Perspective. Werner Gephart. Rechtsanalyse als Kulturforschung, Vittorio Klostermann, pp.193-206, 2012, Recht als Kultur, 978-3-465-04147-4.

the scope of Muslim women's rights, she says that such an approach tends to freeze identities within religious boundaries. It shows how women's and minority rights are used within the politics of religion to sideline the agenda of women's rights" (Hasan, 2010).

Sheela Saravanan in "*Violence against women in India-A literature Review*" opined that "violence against women is partly a result of gender relations that assumes men to be superior to women. Given the subordinate status of women, much of gender violence is considered normal and enjoys social sanction. Manifestations of violence include physical aggression, such as blows of varying intensity, burns, attempted hanging, sexual abuse and rape, psychological violence through insults, humiliation, coercion, blackmail, economic or emotional threats, and control over speech and actions."<sup>2</sup> With regard to this Diamond, Charles and Allen in their work "*Domestic Violence and Crime and Disorder Reduction Partnerships*" stressed on "an urgent need to conduct aggressive grass root level researches to analyze various contributing factors in domestic violence, such as financial, socio-economic and cultural factors."<sup>3</sup>

In seeking to explain the persistence of communal violence in India, Paul Brass draws on a functionalist theory and argues that "communal riots have functional utility and benefits a wide range of groups and organisations in society particularly the BJP and other political organisations affiliated to RSS (Rashtriya Swamsevak Sangh). He says Hindu-Muslim divide and polarisation which is rooted in the discourse of communalism and militant Hindu nationalism has been extremely valuable to the political fortunes of BJP" (Brass, 2005). Asghar Ali Engineer in his book "*Communalism and communal violence in India*" states that "communalism is a modern phenomenon and its fundamental causes are secular like competition for share in political power or government jobs. Religion is not its fundamental cause but an instrumental cause because it has great mobilizing power." In other words he argues that "one must distinguish between religious violence- the reason for which lay in sectarian or doctrinaire differences and communal violence- the reason for which lay in conflict over controlling power and economic resources between the elites of the two communities" (Engineer, 1989).

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<sup>2</sup> Sheela Saravanan (2000), "Violence against women in India-A literature Review" Institute of Social Studies Trust (ISST), India.

<sup>3</sup> A. Diamond, C. Charles and T. Allen (2004), "Domestic Violence and Crime and Disorder Reduction Partnerships" Findings from a Self-Completion Questionnaire (Home Office Online Report 56/04).

“Since 2014, with BJP coming into power under Prime Minister Narendra Modi, Hindutva groups have raised the pitch over the trade and slaughter of cattle. This has emboldened cow vigilantes, hurting livestock farmers and traders, but most of all, Muslim communities that depend on the meat industry for both their livelihoods and nutrition. The worst side of beef hysteria is the violence directed at Muslims. Mob violence has occurred in other cases too, including attacks on Dalits suspected of illegally transporting cows, the killing of alleged child traffickers in Jharkhand, and the lynching of a police officer at a mosque in Kashmir. All these attacks are deplorable, and seem to indicate a weakening of the rule of law” (Dey, 2017).

There is a vicious cycle to this hate now, and the political system needs to take full responsibility for these hate crimes based on religion and caste to take place under their nose. They deliberately let loose a climate to target Muslims and Dalits in order to polarise and gain in number game of democratic politics. “The shameless videotaping of lynch attacks, which in most cases is carried out by the attackers and uploading it online, can mean things like the perpetrator is performing a great act of “masculine heroism” or it also indicates the assurance of their impunity—“even if your face is filmed as part of the mob you’re assured nobody will do anything (otherwise you wouldn’t tape your crime). It also sends a strong message to the targeted communities that this is going to be their status” (Saldanha, 2017). These lynchings in India reflects what we are becoming as a society after 70 years of democratic system and socio-economic development.

Jayanti Alam in her book “*Religion, Patriarchy and Capitalism*” argues that “most of the oppressive structures that work against women are attributed to religion, which are further legitimised and sanctioned by the society at large. The primary control over this rests with a few powerful male members. Thus, it is further articulated that the separate personal law given on the basis of religion further works against them. The effect of patriarchy, religious laws and social obligations in the social realms hinders a woman's realisation of her rights. This unearths the social barriers faced by women that withhold their entry into the socio-political sphere that yield to the diktats of a patriarchal society. The stereotypical portraying of women in social customs and morals irrespective of their caste, class and religious background makes women submissive in the male dominated society. The politicisation of religion under the banner of a secular nation in a way engendered violence in our times. The fact that ‘woman’ is the most discriminated category — double discrimination — has

not been a concern of the makers of the law of the land. The tearing of Women's Reservation Bill in Parliament shows how intolerant our representatives are towards the women's cause" (Alam, 2013).

Identities like gender, caste, and religion each of them have a deep-seated historical presence in the socio-economic and political aspects of our day to day life. Many a times, this results in wide scale confrontations and conflicts which have great implications for crime and criminal behaviour in India. The dominant interpretation of various religious scriptures is widely within the framework of patriarchy and masculinity. Therefore this historically resulted in the disempowerment of women. Politics use religion and other cultural identities to get numbers in the democratic game of politics. The women in India bear the brunt of all of this as it tries to alienate them from the sphere of power and increases all sorts of violence towards them. They are objectified and become a symbol of "Honour" around which the game of patriarchy, masculinity and power politics is played. This can also result in female criminality as this research suggests.

## **1.2. Research Question**

This study attempts to trace and find out how identity markers like 'Gender' and 'Religion' influence the phenomenon of crime within the cultural and contextual realities of India?

## **1.3. Objectives of the Study**

- To understand various perspectives on crime.
- To know motivations behind crime and criminals in India.
- To understand how categories like gender and religion influence the scenario of crime in India.
- To understand gender based violence in India within the context of select cases studies post 2010.
- To understand religion based violence in India within the context of select cases studies post 2010.

## **1.4. Methodology**

This study is primarily based on the reading of secondary sources. The secondary literature has been supplemented by data from the government reports such as National Crime Records Bureau (NCRB) reports and the Census of India, 2011 and various other non-government databases and reports. This research has utilised these empirical reports and databases primarily for backing up theoretical claims as well as for supplementing major arguments and observations made in this study while studying crime in the context of two broad identity markers i.e., gender and religion.

This study explores how the interface between violence, gender and religion are influencing crime and criminal behaviours within the cultural and contextual realities of India and what are the motivations behind them. To substantiate the arguments, there will be an attempt to reflect on selected case studies of crimes of violence happened in India within the framework of gender and religion post-2010 to give this study a time framework. The research draws upon interdisciplinary approach for a better study and scrutinisation of crime, gender and religion problematic in India. The methods which have been followed in this study are content analysis, data analysis and critical evaluation of few case studies which comes under the purview crimes of violence under Indian Criminal Justice System.

Despite all of this, the study has certain limitations. To begin with this study as such does not study the interrelationships between crime, gender and religion in India. But the main focus of the study is to look at how identities like gender and religion is influencing the phenomenon of crime or violence in India. This research has focused on particular and popular case studies of crimes of violence related to gender and religion post the year 2010 rather than examining all kinds of crimes in general mainly because costs and benefits associated with different crimes may vary in a diverse country like India along with its complex socio- economic and political systems.

Reporting of crime is surrounded by controversies. Newspaper data also have their own limitations. The use of supplementary data from other sources is an attempt at minimising them. Official crime statistics can help clarify conceptual issues about the relationship between macro-level processes and crime. However, such data must be interpreted with caution and should take into account how socio political actors and institutions produce crime rates.

## 1.5. Outline of the Chapters

The research has been divided into five chapters. Here along with a brief outline of the chapters an attempt has been made to give major arguments and observations made during the research which are as follows:

The first chapter of this dissertation is the “*Introduction.*” It provides a general outline to the study and sets the background for further study and analysis. This chapter highlights the broad research question, objectives of the study and reviews the relevant literature comprising of important books, articles, websites etc. It also contains the outline of the chapters along with the major arguments and observations made during the research.

The second chapter titled “*Theoretical Perspectives of Crime*” is focussed on thinking about “crime.” Crime is primarily a social construction. Crime can be measured as a cost to individual victims and society as a whole. It is related to the culture; it is related to the people. Criminality appears to be interwoven into the social fabric of civil life which can have political and economic implications. Given this context, there are many different ways that theorists have chosen to think about crime and criminals. Then over time, those ways of thinking have changed, and we have research that backs certain things up and research that disapprove other things.

From the beginning that is something genetic to believing that it is a rational choice to believing that it has something to do with important moments in people’s lives and this chapter intends to explain and analyse all of this in the course of this chapter. This chapter will delve into the nitty grittiness of criminal behaviour along with reviewing and analysing major theoretical explanations for such behaviour. In particular, this chapter aims to look at classical & neo-classical theories of criminology, then at positivist thought on criminology (biological & psychological theories) and in last at sociological and feminist approaches to examining crimes and criminals. Some of the major arguments of each of these theories along with the observations have been given below in brief.

Understanding crime and causation can be done through different theoretical viewpoints of criminology. Classical and neo classical theories of criminology talk about questions of choice that people have free will and they make choices. Besides deterrence and rational choice theories, other neo-classical theories which are commonly referred to as

environmental criminological theories would emerge as well. All these theories that shall be discussed in this chapter ultimately rest on the classical view that “criminals are normal rational individuals who choose to commit crime after calculating the potential risks and rewards of doing so. All of these theories share this fundamental assumption even though they may differ in other respects.” Therefore classical and neo classical criminology have real implications for punishment- that is if we put in place the right laws people will think people will think about their action in a way that makes them choose not to commit crimes.

Other types of criminological theories are positivist theories which mostly speaks how crime is determined. This school of thought is different from the classical school of thought. The classical criminologists concentrates “on the question of choice and criminal behaviour and how these would affect people’s choices. The positivists focus on the causes of criminal behaviour, people’s biology, people’s psychology and how social environment come together to explain criminal conduct.” Biologically for example perhaps we have genetic components prone to criminal behaviours and that is why we commit crimes. Therefore here people do not make choices as one can do in classical and neoclassical criminology.

Having looked at classical and neo-classical theories of criminology which focussed on choice and free will and then at biological and psychological theories of criminology whose primary focus was individual’s psychological and genetic makeup, then there is a move towards sociological theories of criminology. Sociological theories are most prevalent today as a significant number of theories in criminology have developed through this school of thought. Sociologists do not look at individual people that’s more a psychological perspective. Sociologists look at people on a grand scale. Sociological theories examine social structures, social processes, social behaviours and social life of people within society. However, sociologists “do not consider non-sociological theories as necessarily ‘wrong,’ but consider them to offer only partial explanations at best.” Whereas the emphasis in sociological theories is on the social context where crime takes place – “crime and criminals can be understood better in relation to the social structure, to specific social conditions and processes.” There are a number of different sociological explanations for criminal behaviours that look at social class or environment. Some theories look at how criminal behaviour is learned or life course theories, for example, talks about the ways in which turning points in our lives affect whether or not we commit a crime.

Then there are critical criminologists. Neither Marx nor his collaborator and colleague Engels planned a full-blown theory of crime. However, it's been later social theorists operating inside a Marxist framework who have developed a Marxist theory of crime. Here the main focus is to examine how crime is related to the power structure of society. From a Marxist perspective, "crime is the result of free enterprise, and also the comparatively high rate of crime in capitalist societies is the indicator of the contradictions and issues that are inherent to such a system. So several styles of crime are to be expected beneath a capitalist system."

These critical criminological theories instead of looking at crime and why does somebody commit a crime, it looks at why laws are created the way they are who benefits and who does not benefits. So for example that people who have power create the laws in their own interest. So that they do not end up being punished for things that they do but when other people who are powerless or have less power are punished for things that they do to keep them powerless. That the law is not something that we all agree on. It is not a consensus model. However, most criminological theories sort of depend on this consensus model which suggests that we all agree on our laws and all these laws are in our best interest and therefore if we break them it is our responsibility. Critical criminology looks at laws from a sort of conflict perspective which suggests that power dictates who makes the laws. These theorists support humane policies aimed toward preventing crime and political activity that incorporate a truthful and equal distribution of wealth and power.

Then there is a discussion in brief about gender and criminology. In the history of criminological theories women were left out mainly for reasons like most crimes were committed by men, and therefore researchers finding it challenging to find women to do research with or they did not think it was important to include women because women were so rarely relative to men are engaged in criminal behaviour but that has been changing now. Now feminism has also been integrated into criminological methods as there is also an increase in female criminality for various reasons. The feminist perspective has challenged crime related theories, concepts, strategies and assumptions of those who are concerned with the study of crime. Theories of crime were developed with male subjects with the belief that they will apply to girls as well. These assumptions led to the idea that girls don't seem to be biologically fit to commit to crime. Rather some circumstances force girls to act out reprehensively. These events led to the formation of a theory aimed towards explaining



the causes of gender inequalities, girls' oppression and therefore the driving forces behind why women engage themselves in criminal behaviour. This theory is termed as feminist theory.

After explaining and reviewing all the major theories of crime one can argue that all these theories at some point of time show an affinity with some political ideology or any of these theories can be used for some political purpose. In short, all these theories of crime have some political significance and are mostly focused on social conflicts and power relationships. Since Lombroso's time, the dominant criminological thinking pattern is to deal with the problem "why do individuals commit crimes?" However, this study wants to emphasize here that in order to answer this problem more comprehensively one needs to go beyond individual criminals and must try to understand the phenomenon of crime in relation to the criminal justice system and changing socio-economic structures and power relationships in this globalized, digital and internet-mediated world. This methodology can be instrumental in reflecting on the criminal incidents of various sorts in a country like India which is highly populated and too much culturally diverse. To that end, this study in next two chapters tries to examine how identities like gender and religion are influencing crime and criminal behaviours within the cultural and contextual realities of India and what are the real motivations behind them. To substantiate the arguments, there is also examination of selected cases of crimes happened in India within the context of gender and religion post-2010 to give this study a time framework.

If one thinks about Gender and crime, one of the most obvious things one can say is that men commit more crimes than women. Men are arrested for crime more often as well as they are convicted for crimes more often. This is true internationally. By huge margins, men are ahead in committing various sorts of crime in India than women. National Crime Records Bureau (NCRB) shows that "though women criminals are a minority compared to male criminals convicted of heinous crimes but their numbers are also increasing." Given this context, the third chapter titled "*Gender and Crime in India*" has been written with a broader focus on crimes against women as this is an issue of grave importance in India. An attempt has also been made to examine gender-specific legislations in India in order to know how law, society, and gender is negotiating with each other. This chapter tries to deal with gender-based violence in India by studying and reflecting on the issues within the cultural and contextual realities of India. This chapter discusses some selected and popular

gender violence cases post 2010 like Nirbhaya's Gang rape Case and Varnika Kundu's stalking case in order to analyse and explain the problem in a more comprehensive manner. This can be argued here that the issue of gender-based violence is more global in nature, but crimes against women in our country can only serve here as just case studies for this persistent social plague that afflicts nearly 1/2 the population of the globe. Here, in brief, a mention of some observations and arguments from the third chapter.

Overall one can argue in the context of Nirbhaya's rape case that we had a very unexceptional reaction to an event which is not exceptional. It's really a tragic thing to say that such a terrible incident is not exceptional. "The problem is that why this particular crime created a lot of outrage because it plays into the idea of criminal poor, the vegetable vendor, the gym instructor and the bus driver actually assaulting a middle-class girl whereas when rape is used as a means of domination by upper castes, politicians, police or even army it does not even get punished most of the times. There are laws and money and muscle power that protects them (Roy, 2013)." However this study argues here that this horrific incident has led to some sort of stringent laws, increased surveillance, etc. but all of this will mostly protect the middle-class women or rich people or large metropolitan areas. In some areas, we are not looking for laws as such. There are laws but when the police itself starts behaving like criminals. There are so many testimonies to this. This is so contrasting to the image of modern India which is being portrayed by our filmmaking industry, our business class or by our political system- a new tech India. It seems here that there are so many worlds competing over here. One can argue there are some crimes that are not just defensible no matter what political outfit or political ideology you come from. When it comes to women or children no crime is defensible.

The feudal India has a huge history and a legacy of disrespect and violence against women. Any account of partition, or what is done to Dalit women or what happens in communal riots contains that. "Earlier at least the rich and powerful did what they did with a fair amount of discretion, but now it's all out there on television, newspapers and social media. There is anger and psychosis building up and women or other vulnerable sections at the top, middle and at the bottom are paying the price for it" (Roy, 2013). There is a widening gap between the rich and the poor in the aftermath of globalization which is perpetuating most of the crimes in the society, and there are many criminological theories that support this argument.

There is an environment of hostility towards women in India in a patriarchal and conservative space of this country. What the aftermath of the horrific case of Nirbhaya did in India was to create a movement of hope for women in India. For the very first time, the issue of gender moved from the margins of society to the centre stage of politics. This led to the mainstreaming of gender as a political issue. And the reason there was much noise around this issue is because young evolved men and women took to the streets and protested with a great noise.

Gender-based violence is one of the worst forms of violence directed against someone on the basis of their gender or sex which results in sexual, physical, and psychological harm. These acts violate individual human rights. Gender-based violence is most of the times perpetrated by men against girls, women, and other vulnerable sections like LGBTQ community. However, in contemporary times men can also be victims of gender violence. It is not always that only women are victims of gender-based problematic but men also sometimes get into this trap badly which can have disastrous consequences for them as well as his family and there are so many testimonies to this. The understanding that why men rape and why gender-based violence is there with such alarming regularity, give us the insight it is not the apples but the barrel itself is rotten. It is the barrel that rotes the apples. It is the society that is responsible because it teaches men in a patriarchal privilege how to think the very first day they enter in this world. It provides them with a set of attitudes towards women which lead them to know with certainty they are not doing anything wrong if they sexually abuse anybody.

In feminist discourse, it's very important that men are also involved in creating a gender just space for people to live in. Patriarchy in itself is a trapping for men as well probably slighter less because there is a male privilege. Men also feel trapped and left out in the current discourse. In this competitive world, men are also expected to be in a certain way. But anyways it requires effort, and it can require discomfort too if a man wants to move towards better health in gender relations whether be it the women he works with or women who he is related to or the women he might be married to. If men are not outside of their comfort zone and not giving up on their false entitlements then probably we can never get gender equality, and gender issues will remain forever.

The real disease is gender inequality, and everything else is just a symptom of it. We need to amplify rapists and need to expose their beliefs. One needs to understand what goes on

in their minds to start understanding how to change them and how to make society much more responsible and evolved in the context of gender. There are very few people in this country who are enlightened on gender issues. There is asymmetry of power between genders in the political, social and economic domains of India and therefore it is necessary to have dialogues and debates on these issues across the country only then we can hope for gender justice.

The fourth chapter of the dissertation entitled “*Religion and Crime in India*” tries to study how religion is affecting crime in India. It tries to deal with the question “crime based on religion in India- is it just religious violence or there is a bigger narrative to it?” In the present scenario, the religiosity crime relationship is quite a resilient and an important relationship that has a profuse impact on both the theoretical level and the public policy levels. Over the last few decades, there has been an increasing curiosity to find out if religion increases crime, decreases crime or has no effect at all on crime and criminal behaviour in society. “Empirical research findings demonstrate that there is an inverse relationship between religiosity, crime, and some social deviations. But, quite some social scientists have also argued that there is a positive relationship between crime and religion. This assertion is based around arguments that both strong religious convictions and criminality tend to be associated with low intelligence or low education level or social status.”<sup>4</sup>

However, most of this theoretical and empirical analysis between religion and crime is grounded in western society and culture which are mostly homogenous in nature and are quite developed politically, economically and socially. The inverse relationship between religiosity and crime is not so simple. If we consider a country like India which is so diverse, then this inverse relationship between religion and crime becomes so superficial to analyse and study the religion- crime problematic. This chapter basically tries to study religion-crime problematic in the context of select cases post the year 2010. This chapter mentions that religious violence operates at different levels, ranging from individual relations and interests to the local, institutional and national politics to communal riots. In this chapter, an attempt has been made to look at how religious violence has become a part of Indian political, social and cultural life and how this is being played out and who all are

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<sup>4</sup> Ellis, L. (1996). Arousal theory and the religiosity-criminality relationship. In L. Siegel & P. Cordella (Eds.), *Contemporary criminological theory*. Boston: Northeastern University Press.

generally involved in it. In cases of religious or communal riots, the main idea is drawing boundaries between who we are and who they are in very concrete terms. Thereby engendering a lot of misconceptions and confrontations in the social life. However many scholars believe that communalism is not necessarily a product derived out of religious feeling, it is a form of politics also. Some of the important observations from the chapter have been given below.

India is a highly religious society. Along with this wide diversity of religion we also various languages, castes, distinct tribal groups and the second largest population of around 1.3 billion population in which penetrates a great number of socio-economic inequalities. This study does not deny the relevance of the inverse relationship between religion and crime in the Indian context, but any study on religion crime problematic must also count on all the above-mentioned factors in order to get comprehensive results. The nature of the society, its history and culture are significant variables in understanding criminal behaviour.

Given this context, this chapter examined 2013 Muzaffarnagar riots (U.P) which can be considered as one of the biggest communal riots which took place at a very crucial juncture of this decade just before 2014 Lok Sabha elections. A criminal incident that could have been stopped through immediate police action flared up into large-scale communal riots. The local Muslim and Hindu leaders added fuel to the fire by their incendiary speeches. On 8th and 9th, September 2013 communal riots engulfed several villages across Muzaffarnagar. In the year 2013 around 533 incidents of communal riots were reported, and then Muzaffarnagar riots became a national issue. The sudden eruption of violence created anarchy like a situation in the city. The politics on these unfortunate turn of events at Muzaffarnagar refuse to die down even today. The Justice Vishnu Sahai commission, which made an enquiry into the 2013 Muzaffarnagar riots, “blamed members of the SP and the BJP for being involved in the violence. The commission also blamed senior police and administrative officials for errors which led to the escalation of the violence.”<sup>5</sup> “The clashes between the Hindu and Muslim communities in Muzaffarnagar district of Uttar Pradesh, India in August–September 2013, resulted in at least 62 deaths including 42 Muslims and 20 Hindus and injured 93 and left more than 50,000 displaced.”<sup>6</sup>

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<sup>5</sup> "Panel finds Samajwadi Party, BJP hand in UP riots". Times of India. 24 September 2015.

<sup>6</sup> "Fresh clashes in UPs Muzaffarnagar leave 26 dead, Army deployed in affected areas". The Hindustan Times.

In next section of this chapter there is also an attempt to study and locate gender in religion crime problematic. Here it was found that a multi religious and complex society like ours bestows women on a higher pedestal; where they signify the 'sanctity and dignity' of the household and community. Perhaps, this is a reason the unfathomable burden of communal riots lies with the women the most. Communal disparity and religious violence in Muzaffarnagar riots led to the usage of women's bodies as the battleground and for the establishment of superiority in the society. In India, women are considered as honour and property of the family and people believe if you want to hurt someone, you need to strike at them. This notion, thus, makes women the first target. Also no one - the victims, her family, and the community - wants to admit the crime. A rape case is always tried to be hushed up by the society. Muting her voice, in such cases, reaffirms how patriarchy is deeply rooted in our society. Politicians also don't help the situation by blaming the victim or claiming such incidents are an exaggeration of media houses. Thus, this not only makes the women an easy target in the scheme of sexual violence but also lets the criminals do the crime more freely. They have no fear as they know the very nature of the crime would ensure that it goes unnoticed. Also, the angst is generally directed towards a minority community. Combating the multiple patriarchies in Indian society calls for complex strategic thinking. It should be noted here that caste, a boundary marker distinct from communal identities, have also generated forms of gendered violence and its own regional politics which have done a disservice to women especially to Dalit women.

Is crime or violence based on religion just a breakdown of law and order? Clearly, on the one hand, it is. It shows that these incidents can keep on happening and there is no fear of repercussion. And at the same time, there is an atmosphere of impunity that exists. I think it is a breakdown of law and order which is being promoted by the ruling dispensation when they promote or when they applaud the killers of Akhlaq when the Minister goes and drapes the tricolor around them applauds them etc. When Minister goes around saying that we will break the bones of those people who kill cows etc. When Ministers goes around saying that Muslim boys are enticing Hindu girls and whenever you see a Hindu girl with a Muslim boy you should beat up that boy etc. When this kind of narrative is being spun out by those who are in power today when people who oppose these are being subjected to the filthiest of abuses when killers of Gauri Lankesh are applauded on social media and the persons who are applauding the killers of Gauri Lankesh are the persons being felicitated and followed by the Prime Minister on twitter etc. This is clearly creating a climate and an

atmosphere where such crimes are bound to grow. On top of that when these killers are allowed to go away with impunity, then there is going to be an extreme breakdown of law and order, and it can prove very dangerous for the democracy of this country as it happened during the emergency of 1975.

We can't imagine anybody who will look at Afrazul's killing video and not feel absolutely sick to their stomach but when we go online and look at the reactions on such kinds of incidence and the brazen justifications given by so many people online it makes us feel sick about what kind of society are we becoming. We as people need to ask ourselves about the destruction of civilized values and not to be proud of this. India's religious violence issue has less to do with religion and more to do with xenophobia. As with other minority religions in developing countries, Muslims find it difficult to get representation and support. Still, many Hindus have been known to stand up for Muslims in India and have even sheltered and protected them during riots. Although the two groups are currently at odds, it is hoped they can resolve their differences as India continues to grow.

India is a nation with a population of 1.3 billion population packed into 4% of the world's geography. We are nearly 20% of the world's population. So here and there we step on each other's toe. If I step on someone's toe, he doesn't have to be a Muslim or Hindu to hit me because everything is scarce in India but not population. So we keep stepping on each other's toe. So here and there friction happens because there is a scarcity of resources and not necessarily because of the distinction based on caste, religion, race, and gender. But having said that if countries or certain sections of the community try to build walls of religion, race, caste, sex or gender, etc. then we need to build tunnels, or we have to find a way for breaking these narrow walls. And that's precisely what a good human should be. However the most important thing is that for a society to function well, all important parts of it have to feel relevant, they should feel they a stake in it.

If a society has people who have been left out for one reason or the other whether its caste, religion, gender, ethnicity, language, physical disability, etc. depending on the society, we are talking about. All of these types of discriminations essentially put people in a position where they feel that they don't belong here or they don't have a stake in the future and success of the society because they would not have a share in it. That's what is wrong because the practical purpose of pluralism is to let everyone feel involved and everyone to be a stakeholder in society and everyone to feel they are in the future of the society. The

moment you marginalize, alienate or push people aside two things happen. First, you lose people who can actually build up your future but second you also potentially breed a viper in your bosom. It's often the alienated people in the society, or one who feels left out are the ones who turn against and harms the society. Therefore inclusion and not building walls is crucial for India.

At last this dissertation is concluded in chapter fifth titled "*conclusion*". Here, is a sum up of the major findings of the entire study along with a review of chapters. At last the study argues that solution to crime is both socio-economic justice and the unbiased and proper use of criminal justice system.



## Chapter-2

### Theoretical Perspectives of Crime

#### 2.1. Introduction

If one has to think like a theorist about the reasons why people gain or lose weight, then what could be one's response? Is it genetic something that is in people's DNA, is it something that is dictated by people's behaviour or is it something that has to do with external factors such as poverty. People living in poor neighbourhoods for example might not have the same access to fruits and vegetables as rich people have. The problem of weight gain or weight loss can also be due to psychological reasons such as people might stop eating due to anger for various reasons, or it may also be due to food addiction that causes people to have less control over their ability to decide whether to eat or not. This chapter is focussed on thinking about "crime". Just like weight gain or weight loss, there are many different ways that theorists have chosen to think about crime. Then over time, those ways of thinking have changed, and we have research that backs certain aspects up and research that disapprove other aspects.

First, let's begin here by mentioning what is crime, deviance, and delinquency. Crime is defined as human behaviour that violates the criminal laws of a state. Crime is primarily a social construction. Crime can be measured as a cost to individual victims and society as a whole. Any instance of crime may have different causes and can also carry with it some difficult meanings. The concept of social relativity can be applied to law-breaking behaviour or crime. The social relativity is a notion according to which "social events are interpreted differently according to cultural experiences and personal interests of the initiator, observer, or recipient of that behaviour" (Marsh, Theories of crime, 2006). Deviant behaviour is one which violates social norms. There can be many things that might be considered deviant that are not the norms of society that are not criminal. It is relative to the culture; it is relative to the people. So deviance is something that is dependent on one's perspective. Deviance to one person may be normal to one person but may be not to other. Delinquency is mainly done by young people and is a violation of criminal law and other misbehaviours committed by young. For example- "running away from home, being ungovernable, and drinking alcohol are certain offenses that are only illegal for children."

Criminology is an interdisciplinary profession built on the scientific study of crime and criminal behaviour, including their manifestation, causes legal aspects, and control. The popular media often equates criminology as being synonymous with being a forensic scientist or a crime scene investigator or a criminal profiler, but in reality, this type of work would be much more likely to be conducted by a criminalist rather than a criminologist. Even though the two terms sound similar, there are enormous differences. A criminalist is one who is a specialist in the collection and examination of the physical evidence of a crime. Criminologist is one who studies crime, criminals, and criminal behaviour. It is mainly for academics, researchers, and policy analysts. They have also developed many theories to explain and understand crime.

Even though most people are not criminals, yet they love watching it or reading about it in newspaper, television or social media. Murder, robbery, fraud, drug smuggling, gang warfare, rape, football hooliganism, etc. make good subjects of conversation and exciting and profitable films. Criminality is something that has existed throughout history. Crime is not a static or clear-cut phenomenon. What was viewed as criminal in the past may be contrary to current notions and vice versa. One of the most important findings of crime is its relative nature.

*“It is easy to think of examples of behaviour which one society sees as criminal and another as quite acceptable and normal; and there are behaviours which are seen as criminal now but which were perfectly acceptable in previous times. Burning and hanging women as witches was commonplace in Europe in the 16th and 17th centuries. Witches were believed to have made pacts with the Devil which gave them supernatural powers. They were blamed for all sorts of personal and social misfortunes – illnesses, bad weather, loss of and damage to property. Alcohol drinking and bigamy also illustrate the relative nature of crime and deviance”* (Marsh, Theories of crime, 2006).

Given this context, this chapter focuses on different ways of thinking about crime and criminals. From the beginning that is something genetic to believing that it is a rational choice to believing that it has something to do with important moments in people’s lives and this chapter intends to explain and analyse all of this. This chapter will delve into the nitty gritty of criminal behaviour along with reviewing and analysing major theoretical explanations for such behaviour. In particular, this chapter aims to look at classical & neo-

classical theories of criminology, then at positivist thought on criminology (biological & psychological theories) and in last at sociological and feminist approaches to examining crimes and criminals.

## **2.2. Classical & Neo-Classical Theories of Criminology**

The classical and neo classical theories of criminology is much more concerned with examining how the criminal law influences criminal offenders. Adherence to this perspective contend that punishment should be swift, it should be certain and severe to deter criminals. Cesare Beccaria work- "*On Crimes and Punishments*"(1764) represents the foundation for both classical and neo classical perspective. This section will try to explain the classical school of criminology and then will delve into explaining neo classical theories of criminology.

The premise of the Classical School of thinking is that "while making decisions people have free will, and that punishment can be a deterrent for crime, as long as the punishment is proportional to crime and is carried out correctly" (Marsh, 2006). The father of criminology is none other than Cesare Beccaria, and in fact, the birth of criminology as a study within itself started with the publication of his work "*On Crimes and Punishments*" in 1764. His work is based on ideas like "free will, rationalistic hedonism which is a philosophical tradition going back to the past." He proposes "a simple formula of human choice that is based on the rational calculation of costs and benefits. He argues that punishment should always be in proportion to the gravity of crime so that the cost of crime is more than its rewards" (Beccaria, 1986). Today, this approach is the basis for all modern criminal justice systems. "Classical criminology emerged in a period when the social contract theories began to challenge the demonic perspective that had dominated European thinking for more than a thousand years. The crime was seen as manifesting the work of the devil and consequently, the criminal justice system of the time tended to impose excessive and cruel punishments. Beccaria was a protest writer who sought to change these excessive and cruel punishments by applying social contract theory ideas to crime and criminal justice. His ideas served as the basis for new criminal justice system which later developed in the West" (Marsh, 2006).

Here let us mention a few arguments from his book which can be very interesting and useful. He says that "the role of a legislator is to define crimes and to define specific

punishment for each type of crime. He felt that the role of judges should be to determine guilt, i.e., whether a defendant committed the crime or not. Once that determination is made, then the judges should follow the law in determining the punishment. He did not like vast discretion among judges” (Beccaria, 1986).

Another point he mentions that excessive severity not only fails to deter crime but it actually increases it. He writes “the severity of punishment of itself emboldens men to commit the very wrongs it is supposed to prevent. They are driven to commit additional crimes to avoid the punishment for a single one. The countries and times most notorious for severity of penalties have always been those in which the bloodiest and most inhuman of deeds were committed for the same spirit of ferocity that guided the hand of the legislators also, ruled that of the parasite and assassin.”<sup>7</sup> This is very compelling. He would also argue that “seriousness of the crime is determined by the extent of harm that it inflicts on society and others factors were irrelevant in determining the seriousness including the intent of the offender which is very interesting. He writes “sometimes with the best intentions men do the greatest injury to society. At other times intending the worst for it they do the greatest good” (Beccaria, 1986). However, if we were to read it straight what it’s written and how it has been interpreted, he would say that the intent is not what should be looked at rather look at the harm. If the act does not result in harm than it should not be punished.

He writes “ the certainty of punishment even if moderate, will always make a strong impression than the fear of another which is more terrible but continued with the hope of impunity; even the least evils; when they are certain always terrifies men’s minds” (Beccaria, 1986). Here he talks about the certainty of getting the punishment- the idea that you will be caught. Subsequent research that was conducted in the late 1960s, 1970s and even today has shown that certainty is one of the most important aspects as to whether or not a crime will be deterred. Severity is not that important if shoplifting gave you a 5 or 10 years sentence but there was 1% or 0% you will be caught would not really matter. Whereas on the other hand if there was 99% or 100% certainty that you would be caught shoplifting and you will be given a verbal reprimand of a harassing nature that according to Beccaria would be more likely to deter. So that is very interesting which brings me to my next point. The purpose of punishment is to deter. Therefore punishment should be proportional to the seriousness of the crime. For this, he writes “it is to the common interest not only that

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<sup>7</sup> Cesare Beccaria, *On Crimes And Punishments* (Henry Paolucci trans., Macmillan 1986) (1764)

crimes not be committed, but also that they are less frequent in proportion to the harm they cause to society. Therefore the obstacles that deter men from committing crimes should be stronger in proportion as they are contrary to the public good and as the inducements to commit them are stronger" (Beccaria, 1986). He also argues that law should be published. This way the public may know what these laws are. He advocates replacing capital punishment with imprisonment.

Jeremy Bentham has also made a great contribution to 'classical' theory of criminology. His campaign for political and social reforms in all areas, most notably in the field of criminal justice system, had a theoretical basis in his theory of utilitarianism, explained in his work "*An Introduction to the Principles of Morals and Legislation*," printed in 1780 but published in 1789. He formulates here "the principle of utility which means one should approve an action if it produces benefits, advantages, pleasure, good or happiness or prevents mischief, pain or unhappiness." Therefore he analyses everything in terms of pleasure or pain. According to him the pursuit of pleasure or avoidance of pain is the motivation behind every human action. Any action will be morally right if it produces the overall happiness minus the amounts of pain mean the utility overall (Bentham, 1988).

Bentham is interested in the well-being and the happiness of the people and therefore argues that punishment in the form of pain should always be justified in terms of a greater good. According to Bentham "crime is committed by individuals because an individual seeks to gain excitement, sex, money or anything of value to a human being. The human conduct is directed at maximizing pleasure and minimizing pain, (the pleasure-pain principle). He says that human being is a calculating animal who weighs potential gains against the pains likely to occur. If the pain is outweighing the gains, he will be deterred, and it will produce maximal utility. Therefore, in a criminal justice system, the punishment or penalty should be in proportion to the crime or violence committed" (Bentham, 1988). However, the concept is a bit problematic because it depends on a critical assumption that if deterrence works, then the potential offender will always act rationally. But generally most of the crimes are a spontaneous reaction to a situation or opportunity, and therefore there is a problematic here.

Classical theories of crime dominated criminological theory during the late 1700s and much of the 1800s. However deterministic or positivistic theories of crime emerged with the publication of Cesare Lombroso work "*The Criminal Man*" which first appeared in 1876.

Since the introduction of Lombroso work, deterministic theories have continued to dominate the discipline. Generally, the deterministic theories which will be discussed in the next section do not see crime as a choice rather determinists contend that criminal behaviour is determined by a variety of individual and societal factors. While these theories were popular neoclassical theories of crime began to emerge in the 1970s with Gary Becker's work on deterrence. Later scholars such as Cornish and Clark would make a significant contribution to this discussion. Besides deterrence and rational choice theories other neo classical theories which are commonly referred to as environmental criminological theories would emerge as well. All these theories that shall be discussed in this section are neo classical theories. Since these works ultimately rest on the classical view that criminals are normal rational individuals who choose to commit crime after calculating the potential risks and rewards of doing so. All of the theories that will be discussed will share this fundamental assumption even though they may differ in other respects.

The main argument of Deterrence theory is that "people are rational and pursue their own interests always attempting to maximize their pleasure and minimize their pain." Individuals who have a stake in society are candidates who are most likely to be deterred by sanctions. For this reason, deterrence theory may do a good job of explaining white collar crime and drunk driving. Since these two types of offending often occur by persons in the middle class who presumably have most to lose. Gary Backer who is an economist was the first scholar to identify and fully discuss the utility of deterrence theory.

Becker acknowledged that "many people operate under a high moral and ethical constraint, criminals rationally see that the benefits of their crime outweigh the cost such as the probability of apprehension, conviction, and punishment, and their current set of opportunities. From the public policy perspective, since the cost of increasing the fine is trivial in comparison to the cost of increasing surveillance, one can conclude that the best policy is to maximize the fine and minimize surveillance."

*"One of the main differences between this theory and Jeremy Bentham's rational choice theory, which had been abandoned in criminology, is that if Bentham considered it possible to annihilate crime completely (through the panopticon), Becker's theory acknowledged that a society could not eradicate crime beneath a certain level"* (Becker G. S., 1968).

Mark C. Stafford & Mark Warr argue that “deterrence researchers should focus either on specific or general deterrence.” In their article first, the authors contend that studies on deterrence need to examine an individual select experience with punishment as well as his or her indirect experience with punishment. They also develop a phrase which they refer to as “punishment avoidance.” They suggest that “punishment avoidance is likely to affect one’s perception of both the certainty and severity of punishment.” To use an example if a graffiti artist often avoids punishment he may view himself as immune for punishment which will increase his criminal behaviour (Mark C. Stafford, 1993).

Next, let us move to Cornish and Clarke version of rational choice theory which was developed in the mid-1980s. The authors develop a concept which they refer to as bounded rationality. By this, the authors suggest that individual rationality is constrained by all sorts of biological, psychological and social factors. By this, they mean that researcher should focus on particular types of crimes rather than examining all kinds of crimes in general. They argue that this is mainly because costs and benefits associated with different crimes may vary. They also make a distinction between criminal involvement and criminal events. One of the major criticism of rational choice theory is that several scholars have suggested criminals often commit crimes with very little planning and very little consideration for costs and benefits. Interestingly Cornish and Clarke acknowledged this. Still, they argue that “even impulse acts reveal some consideration of costs and benefits.” So finally we can say that the concept of bounded rationality is one of the author’s main contribution to rational choice theory (Clarke, 1987).

Next, let us consider environmental criminology. These theories focus on explaining criminal events as well as exploring the role that opportunity plays in crime. There are at least three theories of environmental criminology, and they are

- I. Routine activity theory
- II. Situational crime prevention theory
- III. Broken windows theory

First, let’s turn to the routine activity theory. This theory was proposed by Cohen and Felson in 1979, and in this neo classical environmental theory of crime, the author argues that “a crime is likely to occur when a motivated offender and a suitable target come

together in the absence of capable guardian” (Felson, 1979). Interestingly the author suggests that “lifestyles contribute to both the volume of crime and the type of crime found in any society.” This theory rather simple but is ground-breaking on many levels. As one read this theory one think about the types of crime that are most likely to occur and the types of items that are most likely to be stolen and what type of people are most likely to be victimized.

Next, Ronald Clarke appears by writing a piece titled- “*Situational Crime Prevention.*” He argues that criminologists have focused too much on the origins of criminal disposition and they have ignored the role of opportunity. He suggests that crime prevention strategies should focus on making the choice of crime less attractive. Interestingly he argues that rather than focusing on the criminal justice system we should turn our attention to factors that reduce the physical opportunities for offending and increase the chance of offender being caught (Clarke R. V., 1980). This may go a long way in reducing crimes. This study argues video cameras are one way to limit offending. Also closing off streets to limit escape routes, adding locks and alarm systems and security guards are another ways of securing oneself from criminals. There are criticisms of this theory, for example, the public could find it objectionable that instead of punishing offenders all the above measures may pose an inconvenience for law-abiding citizens who are being watched or monitored.

Finally, let us turn to Wilson and Kelly’s Broken windows theory in their 1982 article titled “*Broken Window*” which is as much as a policing theory as a criminological theory. They both argue that “crime is not due to local criminological social conditions but rather due to the presence of and failure to control disreputable and wicked people. They contend that solution to crime is not social reform but rather the use of criminal justice system.”<sup>8</sup> Here the central premise is that “unchecked social disorder or public incivility is the cause of serious crimes.” According to the author, if you want to prevent crime, you must fix the broken windows which will essentially reduce opportunities for individuals to commit crimes. In this case, the authors use the phrase as a metaphor for panhandlers, drug addicts, rowdy teens and they argue very passionately if residents do not feel very comfortable outside on the streets disreputable people may begin to take over so in order to keep this

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<sup>8</sup> Wilson, James Q; Kelling, George L (Mar 1982), "Broken Windows: The police and neighborhood safety", The Atlantic.



from happening they argue that police should utilize formal social controls this will, in turn, bolster informal community control such as neighbourhood watch program.

### **2.3. The Positivist School of Thought in Criminology**

In the previous section, Classical and neo classical theories of criminology have been discussed. Now this section will deal with the positivist school of thought in the field of criminology. Positivism is a methodology and a way of thinking about data that quantifies it. They are focussed on measuring behaviour and characteristics for example. This school of thought is different from classical school of thought. The classical criminologists concentrated on the question of choice and criminal behaviour and how these would affect people's choices. Whereas positivists focus on the causes of criminal behaviour, people's biology, people's psychology and how social environment come together to explain criminal conduct.

#### **2.3.1. *Biological Theories: An Overview***

The early positivists were focussed on biology. So the earliest of the positivists who focused on crime were people who focussed on something called "Phrenology." A German physician named Franz Joseph Gall in the late 1700s and early 1800s popularised phrenology. He mapped out how sections of the brain or how specific areas of the brain affected people's criminal behaviour. Indeed, we know today that brain has sections that govern our speech or facial recognition for example. What Gall was doing was that he mapped the brain and suggested "if someone had a bump on their skull, it indicated that portion of the brain was overdeveloped and certain areas governed criminal behaviour. For example, Paedophilia has also been associated with prefrontal damage" (Marsh, 2006).

In the late 1800s, the biological theory of the Italian criminologist Cesare Lombroso generated a considerable amount of interest as well as controversy. In his book "*The Criminal Man*" (1876) his investigations of the skulls and facial features of criminals led him to the hypothesis "that serious or persistent criminality was associated with atavism or the reversion to a primitive stage of human development. He used Darwin's theory of evolution by natural selection to argue that criminals were biological throwbacks (i.e., their looks, morality, and behaviour were atavistic – or like their primitive ancestors)." Lombroso challenged the Beccaria's notion that criminals were rational self-interested

individuals who were otherwise normal people. Instead, he argued that “criminals were not normal and were biologically different from non-criminals. They were physically and morally degenerate.” Cesare Lombroso study of individual criminals led him to findings such as that “persons with specific skeletal, cranial, and neurological malformations were “born criminal” because they were biological throwbacks to an earlier evolutionary stage.”<sup>9</sup> Though it may sound controversial but biological bases for criminal behaviour cannot be denied as these have been backed up by reliable scientific research. The link between looks and criminal behaviour can be true. Indeed these ideas are so attractive that they appear in the wider popular culture.

A lot of research has been done correlating genetics to everything from our psychological disorder to our success in the job world. Some topics that are related to genetics in crime such as twin studies, adoption studies, XYY syndrome and human genome project (a project to map the entire human genetic code). Given this context, now let's turn to an interesting article titled “*Gene-Based Evolutionary Theories in Criminology*” written by Lee Ellis and Anthony Walsh in 1997. In this ground breaking article, the authors argue that under some conditions individuals with negative traits might be able to produce these traits at higher rates. The authors argue for example these are the genes which produce traits of “pushiness” and “deception.” As one reads this theory, it brings to mind repressive crime control policies such as sterilization of inmates. The authors do not advocate this, but they do make some interesting points that are worthy of mentioning which I will discuss in second chapter. Ellis and Walsh used gene-based theories to look at specific types of crimes such as spousal abuse and child neglect/abuse (Lee Ellis, 1997).

### ***2.3.2. Psychological Theories: An Overview***

Biological theories of crime have nothing to do with choice and everything to do with your physical makeup and how what one is born with, affects whether or not that individual commits a crime. Psychological theories of crime have a solid amount of biological background to them, and I suppose certainly a level of choice to them. While examining psychological theories of crime, one of the most important theory is “Psychodynamic theory.” Psychodynamic theory is premised on the idea that “an individual’s early childhood experience influences his or her likelihood of committing future crimes.”

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<sup>9</sup> Criminology- Britannica Online Encyclopaedia

The founder of psychoanalysis known as Sigmund Freud talks a bit about criminal behaviour. According to him, there are three key elements central to human personality: (1) the id (instinctual drives), (2), the ego, and (3) the superego and these three elements are central to his explanation for criminal behaviour. Freud says that *“id as the basic instincts drive our behaviour. The most important idea here is that id demands instant pleasure or gratification while disregarding concern for others. It represents the unconscious biological drives for food, sex, and other necessities over the life span. These drives are restrained by moral and ethical codes (the ‘superego’) that children internalize as a result of their great love for and attachment to their parents. Adults develop a rational part of their personality (the ‘ego’) that mediates between the drives of the id and the restraints of the superego. Because the id is a relatively constant drive, criminality is assumed to result from the failure of the superego, a consequence of its incomplete development. However, when a crime is committed, advocates of psychodynamic theory would suggest that an individual committed a crime because he or she has an underdeveloped superego.”*<sup>10</sup> The idea that Freud came up with for explanation of criminal behaviour was that people’s early childhood experiences sometimes lead to frustration and aggression. Therefore they were unable to cope up and turn to criminal behaviour given those lack of coping skills. He also focussed on the concept of superego specifically which meant that people would not understand the consequence of their actions.

One of the psychological disorder - opposition defiant disorder is a diagnosis that is given only to children. These are the kids who are often defying the rules, who are often arguing with the adults, who are getting into trouble in school. They are angry, spiteful and generally found to have low self-esteem. Researchers in this field have found out that kids who have an oppositional defiant disorder are more likely to be involved in juvenile offenses such as bullying or fighting, cruelty towards animals or even sexual assault. Schizophrenia is another psychological disorder that is often linked with criminal behaviour. It is important to mention here that schizophrenia means split mind and it is not the same as multiple personality disorder. People having multiple personality disorder means people have multiple personalities in one brain. People diagnosed with schizophrenia are generally crazy people who are hearing voices, who are hallucinating

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<sup>10</sup> Freud, S. (1953) ‘Criminals form a sense of guilt’. In: S. Freud, the Standard Edition of the Collected Works of Sigmund Freud, vol. 14. London: The Hogarth Press (pp. 332–3).

things that are not there in reality, acting up like laughing and crying unnecessarily. They also might believe themselves to getting messages from angels, devils or aliens. Here, it is important to mention that in cases like these classical theories of criminology fall short as they believe that everything is based on choice and not on biology or psychology. However neoclassical theories of crime worked hard to believe that there were biological and psychological situations that choice could not account for. So one needs to think about how these theories work with each other but then sometimes do not on a case to case to case basis.

B.F Skinner championed behaviour analysis and is the father of learning theory in psychology. Skinner's work looked at what is known as operant behaviour. "Operant behaviour is the sort of behaviour which operates on the environment to produce consequences – for example, if a rat in a cage pushes a lever to receive a food treat as a reward. The rat operates on the lever, which produces a consequence (the food). The relationship between a behaviour and its consequences he termed a contingency, and he identified two types of contingency: reinforcement and punishment."<sup>11</sup> Skinner believed that behaviour could be learned and therefore through behavioural modification (this may sound a lot like classical and neo classical school of thought), unacceptable behaviour can be changed to become acceptable behaviour using rewards and punishments. Skinner did not care about why crime happens but what he bothered about was how to get rid of it using rewards and punishments.

Another prominent social learning theorist is Albert Bandura. Bandura maintains that "individuals are not born with an innate ability to act violently, in contrast, violence and aggression are learned through a process of behaviour modelling. Aggressive acts are modelled after three primary sources: (1) family interaction, (2) environmental experiences, and (3) the mass media." Bandura focussed on aggression specifically as something that was learned by children by observing role models, imitation of role models or acting out the roles of those people. The second source of behavioural problems, environmental experiences, suggests that individuals who reside in areas that are crime-prone are more

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<sup>11</sup> Skinner, B.F. (1974) About Behaviourism. New York: Knopf.

likely to display aggressive behaviour than those who reside in low-crime areas.<sup>12</sup> One could argue that high-crime areas are without norms, rules, and customs.<sup>13</sup>

Here we can also talk about the role of media or T.V in cultivating aggression. The American psychological association put out a report called- the APA taskforce on television and society. The conclusions of those reports were that there are direct effects of media violence on people specifically children. Most likely to be children because they like to watch aggressive behaviours. Another argument could be people who see a lot of violence in media may be less sensitive to violence in the real world. The people who watch a lot of violence in media may start to believe that world is a terrible place, a mean place, a dangerous place and that need to react accordingly.

## **2.4. Sociological Theories of Crime**

Having looked at classical and neo classical theories of criminology which focussed on choice and free will and then at biological and psychological theories of criminology whose primary focus was individual's psychological and genetic makeup, now in this section, let us turn to sociological theories of criminology. Sociological theories are most prevalent today as a significant number of theories in criminology have developed through this school of thought. Sociologists do not look at individual people that's more a psychological perspective. Sociologists look at people on a grand scale. Sociological theories examine social structures, social processes, social behaviours and social life of people within society. However, sociologists "do not consider non-sociological theories as necessarily 'wrong', but consider them to offer only partial explanations at best." Whereas the emphasis in sociological theories is on the social context where crime takes place – "crime and criminals can be understood better in relation to the social structure, to specific social conditions and processes."

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<sup>12</sup> Sheldon, R. (2006). *Delinquency and juvenile justice in American society*. Long Grove, IL: Waveland Press.

<sup>13</sup> Bohm, R. (2001). *Primer on crime and delinquency theory* (2nd ed.). Belmont, CA: Wadsworth.

Key sociological explanations of crime are as follow-

#### **2.4.1 *Social Structure Theories***

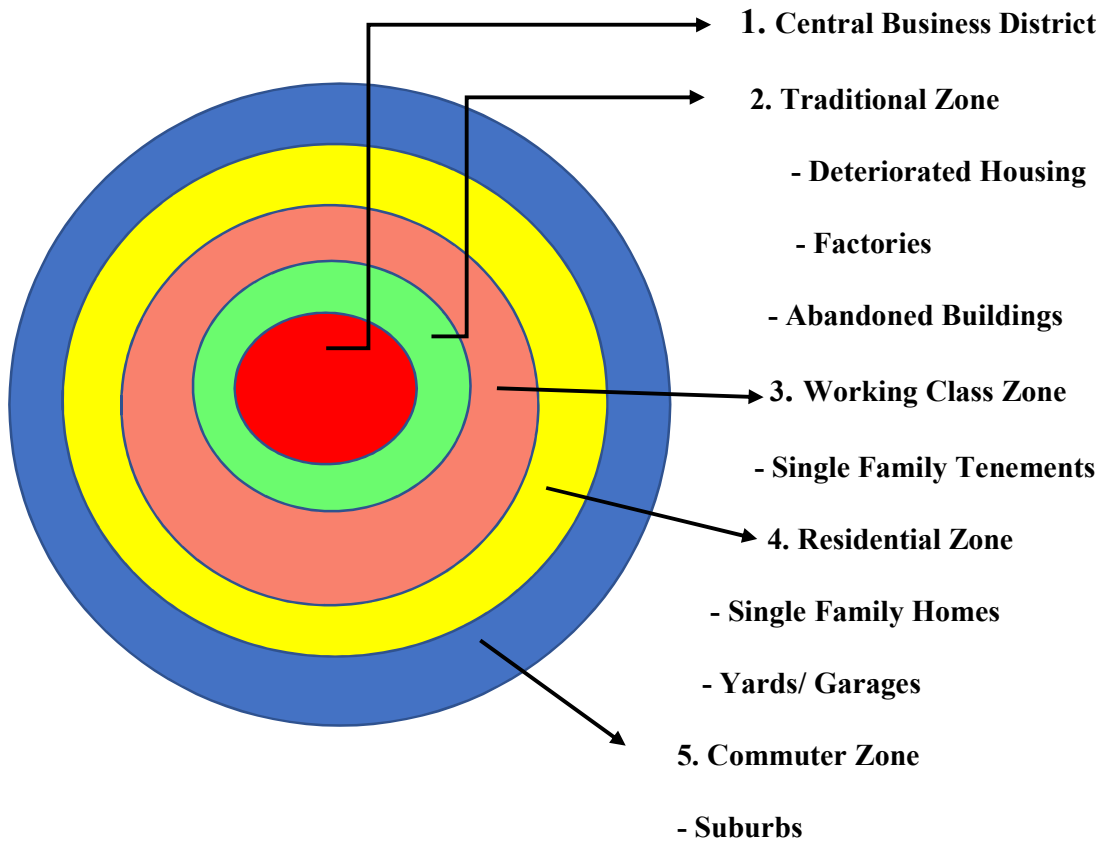
According to social structure theories “crime is generally a result of an individual’s position within the structure of society mainly in the context of economic and social arrangements of society.” These arrangements within society most of the times contribute to the low socioeconomic status of identifiable groups. These groups can be more prone to committing different kinds of crimes. In the types of social structure theories a few of them like social disorganization theory (ecological approach), strain theory and culture conflict theory (culture deviance theory) has been discussed below.

##### *A. Social disorganization theory*

The main idea behind social disorganization theory have come from what is called the Chicago School. The notion is that modern, urbanizing and industrializing societies have a great amount of social disorganization and therefore- “there is growth in social problems, including crime, underpinned the work of sociologists at the University of Chicago in the 1920s and 1930s. This approach and theorizing have become what is known as the Chicago school.” This school was greatly influenced by ideas of figures like Emile Durkheim who is the founder of the structural-functionalist approach in sociology. Durkheim argues that “social order is to be based on a core of shared values which forms the moral basis for social solidarity. He says that without the regulation of society individuals would just aim to satisfy their own needs and aspirations without having regard for others.” On these ideas of Durkheim, the Chicago school saw crime as a social, rather than an individual, phenomenon.

One of the main argument of social disorganization theory is that crime mainly occurs due to structural causes rather than individual traits. Social disorganization theory or ecological approach considers neighbourhood as the basic structure of society. This theory focuses mostly on concentric zone theory which one can look at major cities throughout countries and one can see this theory in action. Ernest Burgess, one of the leading sociologist of Chicago school, developed “ecological approach by mapping out the different ‘zones’ of Chicago which formed five concentric circles covering the entire city” as shown in the figure 2 below.

Figure 2.



Source- [isprawl.blogspot.com](http://isprawl.blogspot.com)

*Burgess theorizes that urban areas grew from urban core towards outer areas.<sup>14</sup> If one looks at zone 2 in the figure mentioned above, one will notice that this is where most of the social problems and crime occur and this zone is referred to as the zone of transition. This zone is characterized by neighbourhood instability and is often a place where new comers live. And if one sees zone 5 which is known as commuter's zone, one notices that this is at the outermost edge of the city which has the least amount of crime. These areas are known as suburbs today.*

<sup>14</sup> Park, Robert E.; Burgess, Ernest W. (1925). "The Growth of the City: An Introduction to a Research Project". The City. University of Chicago Press. pp. 47–62. ISBN 9780226148199.

Burgess's approach mainly influenced Clifford Shaw and Henry McKay investigation of juvenile delinquency and urban areas. Their hypothesis is that "higher of delinquency can be found in inner-city areas which were characterized by rapid population, high levels of poverty, growth, heterogeneity (meaning racial and ethnic heterogeneity) and transiency." Individuals who are well off move away to neighbourhoods in zone 4 and 5. These authors argue that it's not the people but the characteristics of an area, regulates levels of delinquency. They also found out that "in high delinquency areas competing and conflicting moral values had developed this. Whereas in areas of low rates of delinquency they argue that these neighbourhoods tend to have constructive leisure activities, more parental supervision." High delinquency areas have many adult criminals which allow new young, directionless youth to come into contact with these criminals which in turn facilitates transmission of criminal values across generations. This is basically known as neighbourhood disorganization where "informal community bonds break down, conventional institutions become weak, families become disrupted, and schools are also often disordered to some degree. As a result, a value system is generated which is supportive of crime, and it gets nurtured and transmitted across generations" (McKay, 1942).

Of course, there are limitations to many of these studies which are largely confined to the city of Chicago. There are few problems which one can find in concentric zone model. Certainly, some types of crime are quite common in such a zone of transition. We know that transitional areas do have a solid amount of violent property crimes. One of the problems with the social disorganization theory is the fact that it does not account for crimes by people which occur in other zones. What we know it's not only poor immigrants that are smoking weed or stealing things for example. Another sort of people may have different methods. White collar crime, for example, is incredibly common among who live in and out of the concentric zones. Domestic violence does not only happen with people who are poor and living in those transitional zones. So the social disorganization theory does really fail to explain why certain types of crime happen in those other areas.

### *B. Anomie or Strain Theories*

Anomie or strain theories posit that motivation for the crime comes from social forces that pressure individuals to commit crime. These theories tend to own a macro level focus



whereas strain theories have a small level focus. In his classic 1938 theory, “social structure and anomie” sociologist Robert Merton argues that “U.S places a comparatively robust stress on the goals of financial success. Nevertheless, there's a weak stress on legitimate norms like education and diligence for achieving this goal. He says that in U.S financial success may be a major goal for nearly everybody nevertheless not all people have constant access to the legitimate means to achieve that.” If there's excessive stress on the goals with very little concern for norms then the individuals are going to be reliable on other innovative methods which can be both wrong and right. For an innovator, it's acceptable behaviour to commit say white-collar crime as long as it ends up in wealth. On the other hand, there is a “conformist” who accepts the cultural goal as well as institutionalized means to realize his goals. Thus a conformist will work or study hard so as to lawfully earn their slice of the aspiration.

Robert Agnew's general strain theory later broadened the primary focus of strain theory by emphasizing that there are multiple sources of strain. In his general strain theory, he has given additional sources of strain and mentioned which of them can lead to crime as well as why. He conjointly argues that “crime is possibly to occur amongst people who lack the power to cope in a very legal manner. He conjointly makes a distinction between objective and subjective strains. He contends that objective strains are events or conditions that are usually unlikable by the general public. This might embody things like being bereft of food or shelter. Subjective strains on the opposite hand tend to take issue from individual to individual. What's powerfully unlikable by one person might not be unlikable by another. Once strains measure high in magnitude or seemed to be unjust than this might produce incentives for criminal responses per Agnew. If a person experiences 2 or additional strains, this conjointly taxes his or her coping responses and can go on the path to commit crime. Whereas the general public deal with strains in a very legal manner, but there can be people who could lack the power to deal with strains in a very legal manner, or a similar people could have sure temperament traits that lend them to believe that crime is acceptable or it's appropriate to accompany criminal people” (Agnew, 1992). Apparently, there has been some empirical support for general strain theory as delinquency has been found to be higher among people who experience a range of negative events moreover as well as relational issues.

So, overall crime can be reduced by reducing individuals' exposure to strains that are conducive to crime and reducing their likelihood of responding to strains with crime. Having said that when we look at the delinquents around us, they are not really reporting that they feel the strains. They are not more distressed than other people, but they are still involved in crime. So is it the strain that is causing them to be involved in crime or some other factors.

### *C. Culture conflict theory*

There are various groups within the society, subcultures and different values among those groups, may be they have their own areas to protect and the conflict between these groups then lead to crime. So culture conflict theory sees the primary cause for crime during clash of values between varied socialised groups is over what's acceptable or correct behaviour. Thorsten Sellin<sup>15</sup> talked regarding the culture conflict and crime and also the root explanation for crime was found in numerous values regarding what's acceptable or correct behaviour. The primary conflict is a fundamental clash of cultures. An example may be someone who moves from a country where honour killings are okay to reside in the United States. His daughter then dates someone in U.S who is outside of their culture, and he then kills her for his honour. Secondary conflict is when you have smaller groups or cultures within the primary one class. They might be racial or ethnic groups that clash with each other, and that's considered as secondary conflict.

Subculture theory looks at smaller cultures within main cultures. These cultures have values and preferences that people in these cultures receive through their socialization, through their education through their being raised within the community; they then cultivate a selected set of values. Thus subculture theory is that perspective that emphasizes the contribution made by various groups to crime. In his study "Delinquent Boys" printed in 1955, Albert Cohen provides a special version of strain theory. Cohen queries whether or not criminal and delinquent behavior is caused by a want for material goals. Like Merton, he focuses on the working-class delinquency, however, argues that "an outsized quantity of such behavior is communicatory and not focused on efforts of acquiring money or goods. Delinquency focused on vandalism or violence may be a clear example of such behavior that's not involved with material gain. He says that American society is dominated by

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<sup>15</sup> Johan Thorsten Sellin was a Swedish American sociologist at the University of Pennsylvania, a penologist and one of the pioneers of scientific criminology.

middle-class values and norms that are passed on through the education system and mass media. He analyses the education system especially for his rationalization of delinquency. Colleges emphasize and embody middle-class values, so working-class boys (he centred on males) are unequipped to contend with middle-class boys, or 'college boys,' and to realize standing through education. Such working-class boys, or 'corner boys' as Cohen calls out them, suffer frustration at college and respond by going against middle-class value system." Working-class, corner boys, than emphasize completely different, basically delinquent, values – they form what Cohen outlined as a delinquent subculture.

Again a variety of criticisms can be levelled at these early American subcultural theories. The type of delinquent offenders they portray are seen as somehow completely different from non-offenders and who are forced into delinquency by circumstances virtually on the far side their management. Such a proof looks to ignore the very fact that the bulk of young males faced with similar things don't become a part of delinquent gangs. Subcultural theories target young offenders reacting against middle-class society and therefore the norms related to it; but, they are not answering queries like why such young offenders stop offending as they grow and develop. Most people remain in the same social class after they reach adulthood and are still likely to experience the same lack of 'success.' This raises the question of why their behavior changes away from delinquency, although, of course, other factors such as increased responsibilities are likely to play a part.

#### **2.4.2. Social process/social development theories**

In this section, there will be discussion on both social process and social development explanations for crime and criminality.

- *The Social Process Perspective*

The social process perspective looks at how people interact with society and how people make decisions and choices of what they do. Everybody can do good things as well as bad things, but it depends upon the process of interaction between individual and society. This perspective assumes everybody can violate the law. However, "criminality is not an innate human characteristic. Criminal behaviour is learned in one's interaction with others, primarily through socialization." Here we will be discussing mainly three theories in brief and they are 1. Social learning theory 2. Labelling theory and 3. Control theories.

*a) Social learning theory*

This theory argues that all behaviour is learned and in the same manner criminal behaviour is also learned. Edwin Sutherland says that “the idea of learning to become a criminal or an offender is central to the thought of differential association. Differential association explains criminal behaviour in terms of the contact, or association, with specific social groups and environments. He argues that crime was socially outlined by powerful sections of society. However he didn't lose sight of the individual and the way specific people were drawn into crime. He felt that criminal behaviour was learned like any other behaviour. He argues that crime is learned through a method of differential association with others who communicate criminal values and advocate the commission of crimes.”<sup>16</sup> The author additionally argues that crime isn't well totally different from others sort of behaviour.

Robert Burgess and Ronald Akers adds the concept of reinforcement to the theory of differential association and therefore it becomes Differential Association – Reinforcement theory. The authors argue that “people learn behaviours that are rewarded as positive and likewise individual’s criminal behaviour is also rewarded by individuals and groups that value such activity.” It means we learn how to do things and then its rewarded in some way may be because of our criminal behaviour we get into a certain group of people, and we are accepted by them. Or maybe there is monetary reward and that reward according to Burgess and Akers then reinforces this behaviour and makes it more likely we are going to continue that behaviour (Robert L. Burgess, 1966).

*b) Labelling theory*

The premise here is that “the criminal or deviant is an individual who has been labelled by society.” This theory basically suggests that once you get locked up and you get charged then you are labelled by society as a criminal and that level than causes you to go out and cause crime. It's basically the suggestion of labelling theory that its government’s fault, cops fault or the criminal justice system fault that causes people to go out and commit crimes.

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<sup>16</sup> Sutherland, E. (1949) White Collar Crime. New York: Holt, Rinehart and Winston.

Perhaps the most famous and quoted statement defining the labelling approach is found in Howard Becker's collection of essays *Outsiders*:

*“Social groups create deviance by making rules whose infraction constitutes deviance and by applying those rules to particular people and labelling them as outsiders. From this point of view, deviance is not a quality of the act a person commits, but rather a consequence of the application by others of rules and sanctions to an offender. The deviant is one to whom that label has been successfully applied; deviant behaviour is behaviour that people so label.”* (Becker, 1963, p. 9)

Basically, Becker blames society for deviance because we label people, we push people out of society, and we don't accept certain people, and that causes people to become deviant. Labeling theory was quite liked within the Nineteen Sixties and early Seventies but then fell into decline—partly as a result of the mixed results of empirical inquiry. Labeling theory is criticized for implying that criminals are powerless and passive victims who have simply had the misfortune to be labelled as criminal and haven't been ready to do anything regarding it.” This perceived to ignore the fact that criminals may typically prefer to engage in fraud, smuggling, and different sorts of crime.

*c) Control theories*

Unlike strain theories of crime, control theories don't see people as being “blank slates” to that society writes its script. Rather control theories posit that it is an attribute for individuals to interrupt the law. Like different animals, humans can also look for crime as a straightforward means of gratification. With control theories of crime rather than asking why did they do it, it might be a lot of applicable for criminologists to reframe this question and instead raise why did they didn't do it. Control theorists contend that “society exert control over individuals and this is often why individuals refrain from crime. Crime and delinquency occur once people bond to society is weaken or broken. So, in essence, varied levels of control instead of outright motivation explains why some individuals break the law over others.”

In *“Techniques of Neutralization: A Theory of Delinquency”* (1957), Matza and Sykes planned a “drift theory” (also called neutralization theory), in keeping with that delinquents use a series of justifications to neutralize their deviant behaviour. These rationalizations and justifications given by offenders permit law breaking or crime to take place. The

authors argue that “most delinquents interiorize the dominant normative systems and after they violate these norms they feel a sense of guilt and shame. Neutralisation techniques means a set of beliefs that justify criminal conduct in bound circumstances. Thus in some state of affairs wherever the wrongdoer is capable of using neutralisation, deviance is also seen as valid by the wrongdoer although not by the system or society to a large extent.” In keeping with Sykes and Matza, one in all the primary ways that the wrongdoer neutralises the deviant or criminal act is by denying responsibility. As an example a welfare cheat may justify his or her transgression by alleging that the system forces her to commit fraud so as to feed her family. Sykes and Matza additionally discuss the technique of neutralization that they portray as a condemnation of condemners. In this “neutralization wrongdoer shifts, the main focus of attention from his or her own deviant acts to the motives and behaviour of those who disapprove of the violations.<sup>17</sup> Usually, the wrongdoer can argue that his condemners are hypocrites, as an example, an employer may steal merchandise from the shop wherever she works at. However, she could tell herself that this is often acceptable behaviour since the owner of the shop cooks the books and doesn't report financial gain to the national government. In essence, this actor is excusing her behaviour by focusing on the transgression of somebody else.”

Finally, let's turn to Michael Gottfredson and Travis Hirschi 1990 control theory titled “*a general theory of crime*”. In their book, the authors argue that “lack of self-control is the chief source of criminal behaviours. They posit that self-control is the source of resistance against criminal temptations and this theory represents a marked departure from Hirschi's' social bond theory. Self-control theory argues that criminal propensities area unit established in childhood.” These authors believe that criminal behaviour is gratifying and a straightforward means of immediate short pleasure which needs few skills. Also, self-control theory explains why offenders have interaction in several noncriminal deviant behaviours like smoking, drinking alcohol, etc. they argue that people with low self-control touch the varied opportunities that are presented before them and this ends up in criminal events. The authors conjointly suggest that people with low self-control tend to commit a variety of criminal acts. People with low levels of self-control conjointly tend to pursue immediate sources of delight and are in an exceedingly series of unstable relationships and

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<sup>17</sup> Sykes, Gresham, and David Matza. 1957. Techniques of neutralization: A theory of delinquency. *American Sociological Review* 22:664–670.

can have unstable job profile. These authors argue that root cause of crime lie in the primary years of life. The authors argue that low self-control isn't caused by biological predispositions rather they contend that low self-control is caused by ineffective parenting and that they argue that direct control is the key to effective parenting (Michael R. Gottfredson, 1990). The authors conjointly argue that so as to instill self-control in kids the parent should have an attachment to the kids and have a priority for the well-being and behaviour of their kids. The authors assert that folks should supervise their kids and should be capable of recognizing deviants' acts of their kids, and most significantly they need to penalize those deviant acts. However, the penalty need not be of corporal nature. If the parent is in a position to convey a way of disapproval, this in itself could also be a robust sanction which can deter future acts. The parenting shouldn't be too harsh or too lenient. When parents themselves lack self-control, they're not going to do a smart job of socialization their kids.

- *The Social Development Perspective*

Social process approaches embrace social learning theory, labelling theory, and social control theory. "Whereas social development theories, in distinction, target the life course and emphasize contingent events that have an effect on the transitions that individuals build as they move through the life cycle. They judge all aspects of the life, from birth through adolescence and into adulthood, for clues to the social conditions, individual circumstances, and life experiences that result in crime and deviance. Crucial to the social development perspective is that human development happens at the same time on several levels."<sup>18</sup>

Life course theories tie into these theories of development or social development perspective. In life course we have development of criminal careers, you have various influences that affect people throughout of their life course. Think as an example of some kid who grows up in a neighbourhood where a certain gang is very influential, and you know the father was in a gang as well as older brother was also in the gang and kid grows up in a gang, and that's his life or life course. And that kid develops. So life course perspective focus is in the dimensions of criminal offending over the entire course of somebody's life. So what's their criminal career, the sequence of crimes committed by an individual offender and for some it's an accelerating or increasing thing, for example, somebody started their career by stealing loose bicycles, and then he moved onto eventually

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<sup>18</sup> "Encyclopaedia of Criminology and Criminal Justice", Springer Nature, 2014

braking into properties and ultimately actually going into robbing places at gunpoint or a knife point at the same time starting his drug career. By the time he is a 19 or 20, he becomes a drug addict and gets messed up and finally ends up in prison.<sup>19</sup>

### **2.4.3. Critical Criminology**

Critical sociology came into prominence within the late Nineteen Sixties, and early Nineteen Seventies as Miller and colleagues contend that a lot of those criminologists lived through the social turmoil of the Nineteen Sixties (Marsh, 2006). They realized that inequality was deeply entrenched and those in power and authority wish to reinforce rather than change the status quo. These criminologists argue that traditional theories of crime ignored the powerful interests that promoted inequality. Critical criminology has also been referred to as conflict, radical and Marxian criminology. Concepts of inequality and power are central to the understanding of crime. Neither Marx nor his collaborator and colleague Engels planned a full-blown theory of crime. However it's been later social theorists operating inside a Marxist framework who have developed a Marxist theory of crime. Here the main focus is to examine how crime is related to the power structure of society. From a Marxist perspective, "crime is the result of free enterprise, and also the comparatively high rate of crime in capitalist societies is the indicator of the contradictions and issues that are inherent to such a system. So several styles of crime are to be expected beneath a capitalist system. This is often due, in part, to the capability of the powerful to criminalize that which threatens their interests; and to the very fact that primary motivations of capitalist societies, like materialism and self-enrichment, will be pursued illicitly as well as lawfully" (Marsh, Theories of crime, 2006, p. 120).

Building off the work of revolutionary Karl Marx critical criminologists posit that free enterprise or mainly capitalism enriches some and impoverishes several. This produces a large economic gap, and therefore the state operates to legitimize and shield state arrangements that profit those protective of free enterprise. Crime is political here which means "what's and isn't illicit reflects the power structure in society for instance as is typically the case injurious acts of the poor are outlined as crime whereas injurious acts of the wealthy and powerful often aren't." The criminal justice system may be a tool of rich

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<sup>19</sup> Delinquency and Crime: Current Theories (Cambridge Studies in Criminology) – March 29, 1996 by J. David Hawkins (Editor)



and powerful wherever white collar crimes, by and large, are usually unnoticed. Additionally, critical criminologists see “capitalism as the root cause of criminal behaviour. Under capitalism, the poor face demoralizing living conditions that may foster crime by stunting their healthy developments” (Marsh, 2006). The pressure for profits plus the shortage of state regulation may cause economic losses and violence. Therefore the critical criminologists posit that the answer to crime is that the creation of an equal and inclusive society. These theorists support humane policies aimed toward preventing crime and political activity that incorporate a truthful and equal distribution of wealth and power. Along the ideas of Marx, they also argue that the condition of the working class can only be alleviated when workers bond together in revolt against the capitalist system for the creation of a socialistic pattern of society.

A Dutch scholar known as Willem Bongers was one of the first scholars to apply Marxist thought in his work “*Criminality and economic conditions*”, published in 1905. His refined read of the socioeconomic causes of crime in laissez-faire economy retains its connection to the current day, specifically, his notions of “egoism” and “demoralization.”

*“As capitalist economy emerged, there have been social forces of competition and wealth, leading to unequal distribution of resources, avarice, and individualism. Once self-interest and additional selfish impulses assert themselves, crime emerges. The poor would commit crime out of need or to get out of the way of injustice. Hence, those with power exercise control and impose penalization, equalizing the definition of crime with damage or threat of damage to the property and business interests of the powerful. Although the basic activities comprising, say, a theft, is also identical, thieving by the poor are given greater stress than thieving by the wealthy. This can have two consequences: direct which can increase the pressure for survival in an unequal society; and indirect therein it'll increase a way of alienation among the poor. He believed crime within the streets was a result of the miserable conditions within which workers lived in competition with each other. He believed that economic condition alone couldn't be a reason behind crime however rather economic condition in addition to individualism, materialism, false desires,*

*racism, and therefore the false masculinity of violence and domination among street thugs.*"<sup>20</sup>

Bonger's central thesis is that "capitalist mode of production breeds crime." He argues that "egoism is rooted in economic relations. This refers to the ruthless competition as well as the exploitation of others in the pursuit of profit. Capitalism isolates individuals by weakening the bond that unites them." He also asserts that capitalists do not feel morally tied to others and view people as commodities meant to serve their interests. Additionally, according to Bonger capitalists can commit crime undetected and have little fear of the law, and he also says that the proletariat is dependent upon the bourgeoisie and lives in a subordinate position while feeling poor and deprived. So the proletariats then learn at a young age to sell his or her labor as a survival mechanism. Often coming into contact with bad influences and this may in turn coupled with poor housing conditions and unemployment lead to increase in criminal behavior. Bonger also argues that there is lower proletariat who does not succeed in selling his or her labor as a result this individual will experience very dire and chronic poverty and will struggle to survive. However, the lower proletariat is often seen as a detriment to society. Bonger concludes his essential piece by arguing that "economic condition play an important role in crime with the bourgeoisie exploiting the proletariat." He argues that to reduce crime capitalism needs to be replaced with socialism where the means of production are commonly held.

## **2.5. Feminist Theories of Criminology**

Feminism may be a complex concept, however, may be outlined more or less as organized activity on behalf of women's rights and interests. The history of feminism may be outlined into 3 waves. The primary wave consisted of women's franchise movements advocating for equal rights together with the right to vote and end of racial discrimination, and it started from the middle 1800s and went on until early twentieth centuries. The second wave was from 1960 and introduced the women's liberation and civil rights movement. This was the primary time that feminism was recognized in sociology as results of the feminist scholars' acknowledgment of the exclusion of gender from criminological studies and analysis. The third wave may be a continuation of, and a reaction to, the perceived failures of second-

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<sup>20</sup> Bonger, W.A., *Criminality and economic conditions* Tr. by H.P Horton, Little, Brown and Co., Boston, 1916

wave feminism, that began within the Nineties.<sup>21</sup> This wave of feminism targeted on multiplicities that is that the belief that multiple gender, races and sexualities exists. The feminist perspective has challenged crime related theories, concepts, strategies and assumptions of those who are concerned with the study of crime. Theories of crime were developed with male subjects with the belief that they'll apply to girls as well. These assumptions led to the idea that girls don't seem to be biologically fit to commit to crime. Rather some circumstances force girls to act out reprehensively. These events led to the formation of a theory aimed towards explaining the causes of gender inequalities, girls' oppression and therefore the driving forces behind why women engage themselves in criminal behaviour. This theory is termed feminist theory.

Within the feminist theory lies the liberal perspective that attributes “feminine oppression to role socialization stating that males have a lot of social power and standing than females.” For instance, her household responsibilities stop her from participating in criminal behaviour. Thanks to this role girls have fewer opportunities to commit crime than their male counterparts. But Adler posits that “the liberation of women throughout the nineteen seventies enhanced economic opportunities for girls and allowed women to be as crime-prone as men. Whereas women have demanded equal rights within the fields of legitimate endeavours, an analogous range of determined girls have forced their manner into the planet of the major crimes like professional crime, murder, and robbery” (Adler, 1975, p. 3). Farrington and Morris found some empirical proof that “ladies did receive less severe punishments. However, feminine offenders are much more probably to be first-time offenders and to have committed a less serious variety of the offense; they scarf smaller or fewer things, used less violence, and so on.”<sup>22</sup> Recent statistics show that “women’s involvement in crime is rising. Within the last decade, the amount of ladies in jail has nearly doubled. However, their involvement in crime remains stripped compared to that of males.”

Lombroso, whose somewhat outlandish theories of crime and criminals were checked out earlier, during a far-famed study with Ferrero revealed in 1895 and entitled “The feminine Offender”, offered a physiological explanations for the low rate of feminine crime, tilt that

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<sup>21</sup> Krolokke, Charlotte; Sorensen, Anne Scott (2005). "Three Waves of Feminism: From Suffragettes to Grrls". *Gender Communication Theories and Analyses: From Silence to Performance*. Sage. p. 24. ISBN 0-7619-2918-5.

<sup>22</sup> Farrington, D. P. & Morris, A. (1983). "Sex, sentencing and reconviction". *British Journal of Criminology*. Vol. 23, pp229–48.

“the physical characteristics that were joined with criminalism were rare amongst females than males.” He argued women were ‘congenitally less inclined to crime than men’ however those women which did commit the crime weren't feminine. Though mostly discredited, the biological argument that ladies are naturally less inclined to crime and that feminine criminals are in some ways maladjusted but has never been absolutely abandoned.

## **2.6. Criminology in Indian Context**

In India the discipline of criminology is still in the stage of infancy with few professional courses and not so much research in higher education in this field. Now criminology in India is led by the “Indian Society of Criminology” which was established in the year 1970. The objectives of this society include advancing the study and application of criminology and allied sciences for the welfare of society and facilitating cooperation among different stakeholders interested in the prevention and control of crime. Consistent with the multidisciplinary nature that criminology has, “Indian Society of Criminology” has attracted membership of not only criminologists but also of psychologists, sociologists, judges, lawyers, police officers and others. The field of criminology has come forth as a challenging profession to the youths of this Nation. The different courses related to this helps one in gaining knowledge about effectively identifying the causes and preventive measures.

Most theoretical explanations for criminal behaviours are based on western society and culture which have already been discussed above in this chapter. India is not having a similar level of development of criminological theorization. Moreover, “the application of a number of these theories, like Social Disorganization, to the Indian state of affairs, poses lots of challenges because the Indian cities hardly fit the western urban centres. Most Indian cities are a centuries old Mughal rule structures, Victorian Villas, trendy high rise flat complexes and where thatched huts exists side by side. Virtually each residential neighbourhood is encircled by sprawling slums. There are a few exclusive business layouts since employees and therefore the Indian business category people have historically favoured living near to their workplaces” (Thakur, 1980; Weinstein, 1974). “In most areas, the residential areas close to the centres of the cities have high economic values in distinction to the North American ones. Moreover, there's very little proof of zonal decay in Indian cities as found in Chicago by Shaw and McKay” (Shaw, 1942).

“The tradition of extended families still persists in India despite growing urbanization and scarceness of space. An obvious implication of getting an oversized or joint family is that management over the young is present, social control is extensive and strict. Social control theory could offer a proof but the wide unfold prevalence of child labor in several industries and almost no supervision throughout the day by working parents in metropolitan cities would like to have some extra explanations. Similarly, real and perceived social and economic inequalities are a continuing feature of the Indian society for many years. The class structure continues, and people appear just to accept their position within the social hierarchy while there is no robust dissent or marked strain for criminal behaviour” (Kumar, 2008). However on the basis of social conflict and violence against scheduled castes many scholars have argued that loss of ancient power amongst the so-called ‘higher castes’ is inflicting strain, notably from positive discrimination policies of the government for the ‘backward castes.’

## **2.7. Concluding Remarks**

After explaining and reviewing all the major theories of crime one can argue that all these theories at some point of time show an affinity with some political ideology or any of these theories can be used for some political purpose. In short, all these theories of crime have some political significance. Political theories of crime causation are mostly focused on social conflicts and power relationships. These theories applicable to any form of crime, have not historically focused on explaining individual criminal conduct, but instead emphasize on explaining variations in crime rates in the context of gender, race, caste, religion, etc. “If the criminal justice system is also seen as an instrument of political control or repression, then the politicization of all crime can also be implied. It may also be stressed that explanations of political crimes do not seem to be essentially the province of labeling and conflict theories, however, could also be derived from any theory” (Leon Radzinowicz, 1966).

“Theories having affinities with conservative and radical ideologies seem to be more than theories with affinities to liberalism to study crime and criminals in political terms, whether or not as threats to political stability or as resistance to political oppression. Theories having affinities with conservative ideas of crime and criminals tend to encourage the view that crime threatens the political order, whereas radical Marxist theories assert or imply that crimes might either be acts of accommodation or resistance, to oppression or oppressive

acts by state and capitalist domination.”<sup>23</sup> Whereas the advocates of Liberalism emphasize: “on the historical failure to provide rehabilitation a good chance; finding out the sources of crime in social environments rather than individual pathologies; redirecting budgeting choices so on reward lawful behaviour instead of penalize criminal behaviour; examining the larger punitiveness of the American criminal justice system as compared to the systems of alternative advanced Western industrial societies; and providing the general public with additional correct data concerning crime and criminals. All of these efforts, however, did not overcome the conservative or radical ascendance.”<sup>24</sup>

Since Lombroso's time, the dominant criminological thinking pattern is to deal with the problem "why do individuals commit crimes?" However, it can be emphasized here that in order to answer this problem more comprehensively one needs to go beyond individual criminals and must try to understand the phenomenon of crime in relation to the criminal justice system and changing socio-economic structures and power relationships in this globalized, digital and internet-mediated world. This methodology can be instrumental in reflecting on the criminal incidents of various sorts in a country like India which is highly populated and too much culturally diverse.

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<sup>23</sup> Quinney, R. (1977) *Class, State and Crime*. Harlow: Longman.

<sup>24</sup> Currie, Elliott. *Confronting Crime: An American Challenge*. New York: Pantheon, 1985.

## Chapter-2

### Gender and Crime in India

#### 3.1. Introduction

Gender is a concept which is difficult to define but it can be broadly referred to as the role of a male or female in society, known as gender role, or an individual concept of themselves, or gender identities like lesbian, gay, bisexual, transgender, queer and questioning (LGBTQ). According to World Health Organisation (WHO) gender refers to “the socially constructed characteristics of women and men – such as norms, roles and relationships of and between groups of women and men. It varies from society to society and can be changed. While most people are born either male or female, they are taught appropriate norms and behaviours – including how they should interact with others of the same or opposite sex within households, communities and work places. When individuals or groups do not “fit” established gender norms they often face stigma, discriminatory practices or social exclusion.”<sup>25</sup>

Gender-based crimes of violence is one of the worst forms of violence directed against someone on the basis of their gender or sex which results in sexual, physical, and psychological harm. These acts violates an individual human rights. Gender-based crimes of violence is most of the times perpetrated by men against girls, women, and other vulnerable sections like LGBTQ community. However, in contemporary times men can also be victims of gender violence. Who are perpetrators? Non- partner violence is violence inflicted by someone who one does not know well like strangers, acquaintances or colleagues. However most of the times violence is generally perpetrated by someone who is close to us. This is known as interpersonal violence which is perpetrated by either a friend or a family member. Intimate partner violence is inflicted by someone who is in an intimate partner relationship with a lover, spouse or an ex- partner.

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<sup>25</sup> "What do we mean by "sex" and "gender"?". World Health Organization. Archived from the original on 30 January 2017.

Maithreyi Krishnaraj in her work *“Understanding Violence Against Women”* narrated “different forms of atrocities instituted against women. She states that “Violence accompanies power. It is committed to prove or feel a sense of power maintained as an instrument of coercion. Any individual or group facing the threat of coercion or being disciplined to act in a manner required by another individual or group is subject to violence. Though physical violence is pervasive against women, it can take other forms which generate an atmosphere of threat or reprisal. There are crimes specifically directed against women like rape, sexual harassment, sexual abuse, sexual exploitation, prostitution, domestic violence and pornography. The forms may vary between cultures and settings, but what is near universal is male violence far exceeds female violence” (Krishnaraj, 2007). Violence is an inherent attribute of crime and if one thinks about Gender and crime, one of the most obvious things one can argue that men commit more crimes than women.

Men are arrested for crime more often as well as they are convicted for crimes more often. This is true internationally as there is no place in the world which one can think of where women are in trouble with the law more than men are. By huge margins men are ahead in committing various sorts of crime in India than women. National Crime Records Bureau (NCRB) shows that women criminals are a minority compared to male criminals convicted for heinous crimes but their numbers is also increasing. Given this background, this chapter is written with a broader focus on crimes against women as this is an issue of grave importance in India. This chapter is focused on exploring and analysing the main causes for an increase in the crimes against women in India. There is also critical analysis of gender specific legislations in order to better comprehend the interface between law, society and gender in India.

Given this context, let us try to discuss some major theories of crime or violence against women in order to back up the major arguments and observations going to be made in this chapter. Let us begin with psychological perspective. Psychological accounts of violence against women are not as popular today as they were in the early 1970s, but several researchers still argue that many men beat women because they are mentally ill, suffer from personality disorders, or consume large quantities of drugs or alcohol. “Why do men assault the women they love? One of the most common answers to this question is that these men must be sick or mentally disturbed. How could a normal person punch, kick, stab, rape, or shoot someone he deeply loves and depends on? The media contribute to the widespread



belief that men who assault or kill female intimates are sick. For example, the media's use of quotations such as, 'We don't know what happened' typically makes the cause of death appear inexplicable or the result of a man's suddenly having snapped" (Meyers, 1997, p. 110).

If we look at social learning theory "violence and aggression are not inherent properties of the individual; rather, they are learned behaviors. The social learning theory that is most often used to explain woman abuse in intimate relationships is the intergenerational transmission theory" (Levinson, 1989). Briefly, proponents of this theory maintain that male children are more likely to grow up to assault female intimates if their parents abused them or if they observed their fathers assaulting their spouses (Malley-Morrison, 2005). However, it can be argued that "the family is not the only training ground for woman abuse and child abuse. However, people also learn violence and other forms of intimate abuse from external sources such as the media and male peers."<sup>26</sup>

Unlike the above mentioned theories, feminist perspectives focus on how broader social forces such as patriarchy contribute to violence against women. There are different definitions of patriarchy, but it is referred to here as "a sexual system of power in which the male possesses superior power and economic privilege" (Eisenstein, 1980, p. 16). "While there are a variety of feminist theories of woman abuse in adult heterosexual relationships, most of them share the view that men abuse women to maintain power and control over them."<sup>27</sup> Radical feminist theory argues that men engage in violence against women because they need or desire to control women. This statement made by British feminist Jill Radford (1987) exemplifies this perspective: "It is clear that men's violence is used to control women, not just in their own individual interests, but also in the interests of men as a sex class in the reproduction of heterosexuality and male supremacy."<sup>28</sup>

Some feminists from economic point of view point out that "some women are more vulnerable than others to violence, including women living in poverty. Briefly, in their attempt to show how macro level forces shape male interpersonal dynamics and woman

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<sup>26</sup> Straus, M. A., Gelles, R. J., & Steinmetz, S. K. (1981). *Behind closed doors: Violence in the American family*. New York: Anchor.

<sup>27</sup> Saunders, D. G. (1988). Wife abuse, husband abuse, or mutual combat? A feminist perspective on the Empirical findings. In K. Yllo & M. Bograd (Eds.), *Feminist perspectives on wife abuse* (pp. 90–113). Newbury Park, CA: Sage.

<sup>28</sup> Radford, J. (1987). Policing male violence—policing women. In J. Hanmer & M. Maynard (Eds.), *Women, violence and social control* (pp. 30–45). Atlantic Highlands, NJ: Humanities Press International.

abuse, DeKeseredy and Schwartz (2002) argue that recent economic transformations in North America (e.g., the shift from a manufacturing to a service-based economy) displace working class men and women who often end up in urban public housing or other “clusters of poverty.”<sup>29</sup> “Unable to economically support their families and live up to their culturally defined role as bread winner, socially and economically excluded men experience high levels of stress because “their normal paths for personal power and prestige have been cut off” (Raphael, 2001). Such stress prompts them to seek social support from male peers with similar problems. As demonstrated by studies of woman abuse in dating, “male peer support may alleviate dating life events stress, but it can also have negative consequences for the health and safety of women” (DeKeseredy, 1988). For example, DeKeseredy (1988) found that “for men with high levels of such stress, social ties with abusive peers were strongly related to woman abuse in Canadian university dating.” Similarly, “patriarchal male peer support in public housing promotes sexual assault and other highly injurious macho activities” (Raphael, 2001).

In Indian context, Sharma and colleagues in their article “Kitchen accidents vis-a-vis dowry deaths” argues that “the phenomenon of violence against women arises from patriarchal notions of ownership over women's bodies, sexuality, labor, reproductive rights, mobility and level of autonomy. Deep-rooted ideas about male superiority enable men to freely exercise unlimited power over women's lives and effectively legitimize it too. Violence is thus a tool that men use constantly to control women as a result of highly internalized patriarchal conditioning coupled with legitimacy for coercion to enforce compliance and increasing aspirations, frustrations and 'might is right' becoming a legitimate view and increasing need for assertion of individual egos and control. Within this context, several developments serve as a backdrop to the discussion and analysis of increased violence against women. In the wake of liberalization, new modes of living are being introduced. Consumerism, unreal aspirations incited by the barrage of the advertising industry and 'get rich quick' schemes have been increasingly influencing the thinking and behaviour. An increasingly growing gap is being witnessed between the aspirations and their fulfillment, which is reflected in an increased violence in human interactions” (B R Sharma, 2002).

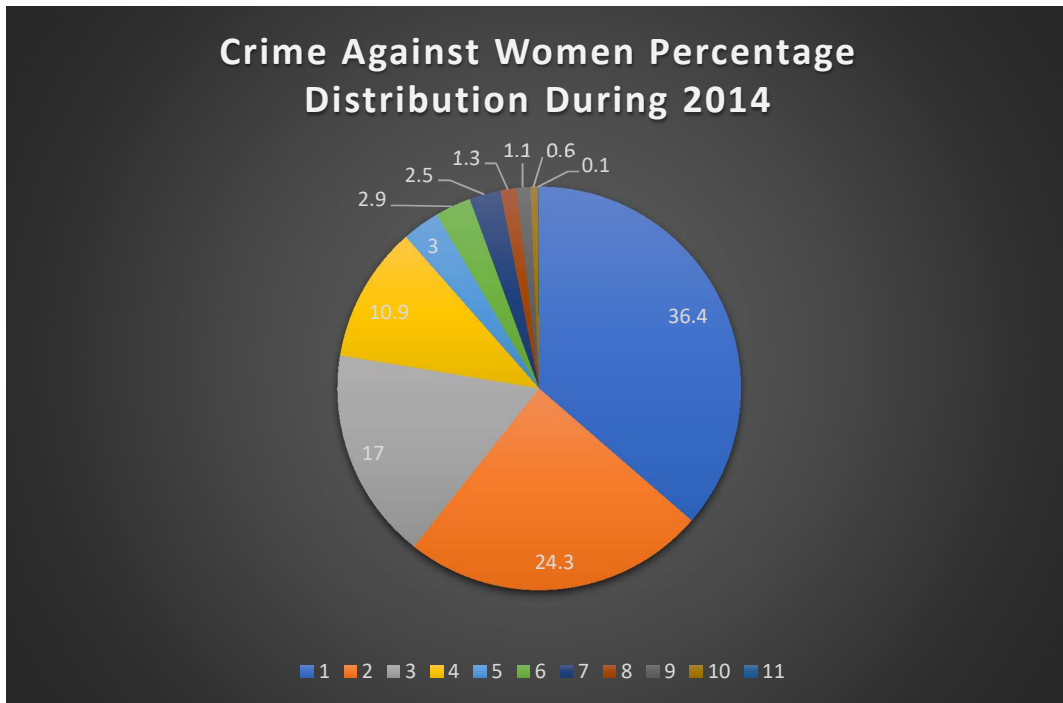
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<sup>29</sup> DeKeseredy, W. S., & Schwartz, M.D. (2002). Theorizing public housing woman abuse as a function of economic exclusion and male peer support. *Women's Health and Urban Life*, 1, 26–45.

The data given by NCRB (National Crime Records Bureau) overall summarises various crimes committed against women in India. Let us look at one such data from 2014 “Crime in India” report of NCRB.

**Figure- 3**

Source- NCRB report of 2014



- 1) Cruelty by husband or his relatives
- 2) Assault on women with intent to outrage her modesty
- 3) Kidnapping and abduction of women
- 4) Rape
- 5) Dowry Prohibition Act 1961
- 6) Insult to the modesty of women
- 7) Dowry deaths
- 8) Attempt to commit rape
- 9) Abatement of suicide of women
- 10) Immoral traffic (Prevention) Act (women cases only)
- 11) Other crimes against women

*“Between 2005 and 2014, 2.24 million crimes were reported against women in India. That is 26 crimes reported every hour. In 2015, sexual harassment incidents involving assault, stalking or use of criminal force rose by 2.5%. Kidnapping and abduction of women also increased to 59,277 cases in 2015. Rape cases shot up in 2016 by 12.4% as opposed to a 5.6% decline between 2014 and 2015, which experts said was on account of under-reporting. Other crimes against women, including cruelty by the husband, assault, kidnapping and abduction, rose by 2.9% in 2016. There were a total of 38,947 rapes in 2016, compared to 34,651 in 2015. Uttar Pradesh had the highest number of crimes against women. While the state recorded 14.5% of the total cases of crimes against women, it accounted for 12.4% of the total number of rape cases, second only to Madhya Pradesh, which recorded 12.5% of the total rape cases in 2016. In urban India, Delhi accounted for 33% of the total crimes committed against women in metropolitan cities. The national capital also reported the highest crime rate among all metropolitan cities in 2016, at 182.1 per 100,000 population as opposed to the national average of 77.2. It accounted for 40% of rape cases committed in the metros.”*

----- Data from NCRB Report of 2016

These are just the reported crimes. Crimes against women remain primarily unreported in India, where gender-based violence is deeply interconnected with the social and cultural fabric. Experts explained that the rising figures may be because more cases are being registered, with police now mandatorily required to register a case. While reporting gender-based crimes has become easier, experts stated that rape cases continue to be under-reported because of the social stigma that women and their families face. Ankita Mukhopadhyay<sup>30</sup> in her article *“India’s Fight Against Gender-Based Violence”* contends that “many times women who speak up against crime are subjected to social isolation and scorn. There are numerous instances where the police refuse to register a woman’s complaint. The police blame the women in most cases, especially in cases of domestic violence. The police need to be sensitized. The entire problematic of sexual offenses also needs to be explained to them. This is the case not just in India, but across the world and these crimes are increasing

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every year. Technological and economic advancement have not succeeded in creating a safe world for girls and women. In fact, one can argue technology is widely misused to harass and stalk women.” Though the statistics represent themselves, this study argues here that the issue of gender-based violence is more global in nature, but an attempt has been made to study gender based crimes in this chapter within the cultural context of India. Crimes against women in our country can only serve here as just case studies for this persistent social plague that afflicts nearly 1/2 the population of the globe.

### **3.2. Crimes of Sexual Violence- Causes and Consequences {*Nirbhaya's Gang rape Case (16th December 2012) and Varnika Kundu's stalking case (night of August 4/5, 2017)*}**

If one looks at modern India today, he or she would think that women are making great strides everywhere whether in politics or the corporate world or sports women are grabbing headlines and doing better than ever before. However, if one breaks down the data and looks at statistics a very different story emerges, one which suggests that gender equality is still illusive. India is ranked 125 out of 159 countries in the United Nations Development Programme (UNDP)'s latest 2016 Gender Inequality Index (GII). The maternal mortality ratio is 174 against each 100,000 live births. Only 12.2 percent of seats in Parliament are occupied by women. Just 26.8 percent of women higher than the age of 15 years are part of India's labor force — compared to 79.1 percent men. India came down 21 places on the World Economic Forum's (WEF) Global Gender Gap 2017 index to 108, even behind neighbors like China and Bangladesh, primarily thanks to less participation of women in the Indian economy and lower rate of wages. According to the government figures, 2000 girls are being killed in wombs or immediately after they are born every day in India. 92 women are raped every day, and these are only the reported rapes, our law does not recognize marital rape yet or unreported rapes. So this is a conservative figure. Only 1 in 10 Indian companies are led by women, and one figure that shocks the most is that female labor force participation is actually coming down despite an increase in education and income. The numbers are actually plummeting at 27% today which is worse than 40% in the 1990s. What is holding women back? Why is equality still illusive? How much of misogyny and patriarchy is wired into our traditions, into our social customs and our cultural and political conditioning? This section will try to reflect on all of this and will try to relate how not addressing most of these broader gender-related questions is actually

resulting in an increase in crime rates and gender-based violence in India. This section will try to deal with gender-based violence in India by studying and reflecting on the recent Nirbhaya's Gang rape Case (16th December 2012) and Varnika Kundu's stalking case (night of August 4/5, 2017) within the cultural and contextual realities of India.

Nirbhaya's gang rape case was a rape case that shook the conscience of our nation and gave a big boost to various sorts of dialogue on gender-related violence in the political, social and economic arenas. On 16th December 2012 a 23-year-old paramedical student, returning after watching a movie with a friend, was gang-raped and brutally assaulted by six men in a private bus in Delhi. The savage attack on the young women left her internal organs badly damaged. Nirbhaya's Mother- Asha Devi has reflected very well on horrors of sexual violence in one of her interviews<sup>31</sup> and here let us mention few statements from there- "She was 23 when it happened. There must have been many happy memories. But I don't remember much of those. All I remember is the pain that she went through. I can never forget that day. It feels like it's happening right now. I have this regret that she lived for ten days after that incident but I could not give her a sip of water. Even today I remember that night. Within a few hours our lives changed and we were forever separated from our child. My eyes wait for her to return. Of course that will not happen. I will not forget till I die. At that time it was said that a law (Criminal Amendment Act 2013) was enacted. We thought things would get better. That something like this would not happen again. But that is not the reality. Every day incidents like this are taking place. In fact it has become much worse especially in Delhi. Every day there are cases of two or four or five year's olds being raped and killed. I also read in the newspapers about the child whose intestines were damaged.<sup>32</sup> If such people and such mentalities are not understood by our system by our society and our governments then how will be save these victims?" Jyoti Singh's death lit a fire with protests erupting all over the country, demanding an end to the rape culture in India. This rape murder jolted India, and most of the country united for peace. There was people's

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<sup>31</sup> Scroll.in- It is an independent news, information, and entertainment venture.

<sup>32</sup>Rituparna Chatterjee, Front page editor, HuffPost India- A horrific report of rape and murder from Haryana of a five-year-old girl confirms that despite the cyclical media and civil society outrage, cities continue to be unsafe for women and children. In the latest case of sexual violence, the child from Haryana's Hisar was raped and tortured to death. A wooden stick was found thrust in her vagina with such force that it caused serious injuries to her uterus and intestine – a horrific reminder of the Delhi gang-rape of a physiotherapist on a moving bus in December in 2012.

movement for safety, and as a result, our political system bended and new anti-rape laws were enacted.

Here let us briefly encapsulate Varnika Kundu's stalking case of Chandigarh (night of August 4/5, 2017) which in true sense is a case of India's modern women assertive illustration of independence. She was driving back home at 12:30 a.m. These two guys in their car out of nowhere just started stalking her constantly trying to block her way and did this for about 6 kms. She said in one of her interviews<sup>33</sup> that "she always felt that Chandigarh was one of the safest city in India. It was her home. And there is always a sense of safety because it was so small that within a 5 minute radius there is someone who she knows and lives somewhere around there and can help her out. But at 12: 30 a.m. there is really not much people around. At that night she had her first ever panic attack while she was driving. She was having spasms in her back that she said in any other situation would made her incapable of doing anything. But this was a matter of life and death and somehow she managed to escape." The guy in the passenger seat really got out of the car and walked towards her car. But first time she managed to reverse and leave. The second time he comes really aggressively actually managed to reach her car and tried to open the door but thankfully she called the cops by then and that was the exact movement that the cops showed up that the cops run towards them and she drove off home safely.

A lot of girls go through this kind of stalking and teasing in public places and say to herself does she complain or think nothing will come out of it even if she does or it will take forever or these people might have connections or who is going to go to court and police station. Sometimes she will care and sometimes not. Sometimes she will think she will be judged. Every woman in India literally face some sort of sexual harassment or the other. Guys on bikes would drive by and touch them inappropriately and all of that and they tend to ignore most of it because it's almost women in India think that sexual harassment is some kind of bootcamp and like how they have toughen themselves. They are so brutalised by it and it is so common that they don't even respond with the rage that it always merits. This can also be argued that rage comes much later first is relief that it was just that and not more. But if varnika would not have had complained she would have think a long time thinking that it might can happen again or these guys may do the same thing with many other girls.

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<sup>33</sup> [www.ndtv.com](http://www.ndtv.com)

It was possible that the confidence with which these guys did this showed that they may have done the same things in the past and got away with it.

Parents in these kinds of incidence chain their daughters. They think they are doing a favour to them by protecting them. They impose curfew hours on daughters. They say come back at certain hours. They say we are doing it for your good. A lot of parents get overprotective. Instead of putting the blame or curfew where it needs to be put at the doorsteps of harasser. There is always a kind of dilemma that a parent faces, they don't know whether they are doing the right thing if they allow their children the freedom to be themselves because most of them are told that probably they are not doing the right thing in a patriarchal set up of the society. Varnika's father who himself is an IAS officer said at the time of incident they really don't know who those boys were. They just thought they were some wealthy kids or brats doing it for fun or they may had some serious intention but they did not know they guys had a political background from the same state in which he was serving. It added a point of pressure because this transfer happened. They were mentally prepared that they need to take a lot because there is going to be victim shaming. There might be an attempt to malign her and her sister and to malign her family also. Varnika was a potential victim but now she is a survivor because of her courage.

Gender-based crimes of violence is rooted in the theory of violence which is "one person's arbitrary belief in the right to exercise power over other people, interpersonal relations, and interpersonal interactions and is situated in the socio-political and economic context of power relations."<sup>34</sup> The public-private divide that operates powerfully in several women's lives do not enable them to talk regarding the humiliation and violence they endure. Both of these, trivializing and silencing are political acts that support a structure of oppression on the basis of gender.<sup>35</sup> Girls observing domestic violence at home are more likely to tolerate abusive marriage partners, therefore subjecting another generation to the same unhappy dynamics. The wife's tolerance is explained as learned helplessness, or traditional socialization (Ahuja, 1987). Woman is generally one who is a peacemaker in relationships, the one who is responsible for making the marriage work.

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<sup>34</sup> Kelkar, Govind, ,1991, Violence against Women in India- Perspective and Strategies , Bangkok, Asian Institute of Technology.

<sup>35</sup> Agnes, Flavia, 1980, Violence in the Family: Wife beating, Bombay, SNDT, Women's Centre, 1980.



To put it in perspective, violence against women is framed within the discourse of gender justice, gendered violence, human rights, health and well-being, partner violence, intimate partner violence, sexual exploitation, wife abuse, rapes, marital rapes, among others.<sup>36</sup>Therefore gender equality is important to get rid of all of this. Australian sociologist Raewyn Connell explains “how in various ways men and boys are gatekeepers for gender equality.” In his essay, Connell makes 3 important points relating to gender equality within the global context. First, Connell argues that “men are ‘gatekeepers’ to equality between men and women in several ways—as they have access to resources, authority, and skills and all of this is essential for social change. The point is that those men who believe in gender justice and equality can do a lot in order to improve it.” Second, Connell illuminates “the variety of masculinities and men’s movements worldwide. As an example, on the one hand, homosexual men are mobilizing and leading anti-discrimination campaigns, for the gay liberation movement. On another hand, there is also a large chunk of men and traditional organizations who are trying their best to preserve gender inequality. For instance, conservative religious organizations (Christian, Islamic, Hindu, Buddhist) controlled largely by men many of times discriminate and exclude women” (R.W.Connell, 2005).

Finally, Connell points out that “we currently have a much more subtle and elaborated scientific understanding of issues regarding men, masculinities, and gender than ever before. Given the diversity in gender and masculinity politics world-wide it is unrealistic to expect worldwide consensus for gender equality, but it is possible that gender equality may someday become hegemonic among men.”<sup>37</sup>

Nirbhya’s mother Asha Devi has reflected very well on the whole issue of gender-based violence in India. She brings out the hypocrisy which is perpetuating such kinds of heinous crimes in our society and talks about the hard struggle which one has to go through in seeking justice for the victims. She is angry because the men who were convicted of the rape and murder of her daughter have still not got hanged even though the Supreme Court has upheld the trial’s court judgement and sentencing the 4 to death, the fifth accused Ram Singh has hung himself and the sixth accused is the juvenile who now roams free. She

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<sup>36</sup> Violence against Women in Democratic India: Let's Talk Misogyny- Jean Chapman

<sup>37</sup> R. W. Connell “Change among the Gatekeepers: Men, Masculinities, and Gender Equality in the Global Arena”: *Journal of Women in Culture and Society*, Vol. 30, no. 3, pp. 1801–1826. Copyright © 2005 the University of Chicago.

disclosed the name of her daughter because she felt that her daughter was a victim. She did not commit any crime. She says “those who gang-raped and murdered her daughter should hide their names and identity for committing that brutal act.”<sup>38</sup>

Over this case, Arundati Roy argues that “we had a very unexceptional reaction to an event which is not exceptional. It is really a tragic thing to say that such a terrible incident is not exceptional. The problem is that why this particular crime created a lot of outrage because it plays into the idea of criminal poor, the vegetable vendor, the gym instructor and the bus driver actually assaulting a middle-class girl whereas when rape is used as a means of domination by upper castes, politicians, police or even army and it does not even get punished some of the times. There are laws and money and muscle power that protects them” (Roy, 2013). This can be argued here that this horrific incident has led to some sort of stringent laws, increased surveillance, etc. but all of this will largely protect the middle-class women or rich people or large metropolitan areas. In some areas, we are not looking for laws as such. There are laws but when the police itself starts behaving like criminals. Belknap in the work “*The invisible woman: Gender, crime, and justice*” says “women victim’s lack of confidence in Criminal Justice System further adds to reluctance in reporting.”<sup>39</sup> There are so many testimonies to this. This is so contrasting to the image of modern India which is being portrayed by our filmmaking industry, our business class or by our political system- a new tech India. It seems here that there are so many worlds competing over here.

The feudal India has a huge history and a legacy of disrespect and violence against women. Any account of partition, or what is done to Dalit women or what happens in communal riots contains that. Sheela Saravanan, “*Violence against women in India-A literature Review*” opined that “violence against women is partly a result of gender relations that assumes men to be superior to women. Given the subordinate status of women, much of gender violence is considered normal and enjoys social sanction. Manifestations of violence include physical aggression, such as blows of varying intensity, burns, attempted hanging, sexual abuse and rape, psychological violence through insults, humiliation, coercion, blackmail, economic or emotional threats, and control over speech and actions.”<sup>40</sup>

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<sup>38</sup> Scroll.in- It is an independent news, information, and entertainment venture.

<sup>39</sup> J. Belknap (2001), “*The invisible woman: Gender, crime, and justice* (2nd Ed.)”. Belmont, CA: Wadsworth.

<sup>40</sup> Sheela Saravanan (2000), “*Violence against women in India-A literature Review*” Institute of Social Studies Trust (ISST), India.

Another factor can be that there is a widening gap between the rich and the poor in the aftermath of globalization which is perpetuating most of the crimes in the society, and there are many criminological theories that support this argument. Earlier at least the rich and powerful did what they did with a fair amount of discretion, but now it is all out there on television, newspapers and social media. There is anger and psychosis building up and women or other vulnerable sections at the top, middle and at the bottom are paying the price for it. With regard to this Diamond, Charles and Allen in their work “*Domestic Violence and Crime and Disorder Reduction Partnerships*” stressed on “an urgent need to conduct aggressive grass root level researches to analyse various contributing factors in domestic violence, such as financial, socio-economic and cultural factors.”<sup>41</sup>

Leslee Udwin’s hour-long activist documentary “*India’s Daughter*” recounts this harrowing rape case. The film’s most potent elements include interviews with convicted killer Mukesh Singh and his defence lawyer M.L Sharma who blamed the victim for the crime. Mukesh Singh said “you can’t clap with one hand. It takes two hands to clap. A decent girl would not roam around at 9’O clock in the night. A girl is more responsible for a rape than a boy.” ML Sharma also said “A girl or woman is more precious than a gem. They are a diamond. It is up to you how you want to keep that diamond in your hand. If you put out diamond on the street. Certainly, the dog will take it out. You can’t stop.” Testimonies like this really ignited public anger prompting the Indian government to ban the broadcast of India’s daughter across the country. This is a bigger problem of gender inequality, and it is important to note that this is not just the case in India, this is going on all around the world. That is why we have rates of violence against women that are very high around the world.

Heise in the work “*Violence against Women: An Integrated, Ecological Framework*” stated that “in Indian culture, the norms of tolerance complement patriarchal society. The crimes against women are considered as normal and are deeply manifested in psych of community.”<sup>42</sup> Of course, violence against women is not unique to India, but here are three essential things to know:

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<sup>41</sup> A. Diamond, C. Charles and T. Allen (2004), “Domestic Violence and Crime and Disorder Reduction Partnerships” Findings from a Self-Completion Questionnaire (Home Office Online Report 56/04).

<sup>42</sup> L. Heise (1998) “Violence against Women: An Integrated, Ecological Framework”, Violence against Women :262–90.

*The first is that the root of the problem goes much deeper than violence against women. In India, girls are valued less than boys, and this results inequality in society. Girls attend schools at much lower rates than boys. Girls and women experience lower rates of nutrition than their male counterparts. And female sex-selective abortion is rampant in the country, and today we have around 914 girls per every 1000 boys. And so we can see from some of these statistics that the problem runs quite deep in the society.*

*The second issue is that there is a culture of complicity around violence against women and this is something that has spurred a lot of these demonstrations with people protesting the fact that culturally there is not enough exposure and conviction against those who are perpetuating acts of violence against women. In many cases there is an all-male police force that forces women to rescind their accusations of rape, even to marry their rapists to make the cases go away. Girls are pressurized to keep silent. This, of course, happens in other countries too, but is widespread in India and many stories are now coming out across the country. Rape cases languish in courts, they are not dealt with quickly, the evidence is destroyed, and the conviction rate is very slow.*

*The third thing is that demonstrations that have occurred are in many ways unprecedented. This is an outpouring of anger, of resentment, of exposure on an issue that has gone largely unexamined in India and could make a turning point if this middle-class anger is not sustained in overtime. It could result in some substantive changes for women. In particular for violence against women, but more broadly throughout the society. While that remains to be seen, it is a positive indication that people are no longer willing to sit silently by and tolerate the injustices that occur for women and girls.*

It is important that all the vulnerable sections of society need to come out and if they want tell their stories, nobody should stop them. This way they will do a great service of removing the stigma from the society. It is important to say I am XYZ, it happened to me, and there is no shame in it as she has not done anything wrong. The shame should be there for the perpetrators. Why should a rape victim be a subject of shame at all? They are “sheroes.” They are survivors and not the victims. By speaking about herself, Varnika in

her stalking case spoke about everyone else and more power to her. Her story spread three messages;

- First, something happens to you go to the police
- Second, you need to speak out because you are not wrong in it
- Social media and media helps

A lot of people feel that they are afraid to call the police because in most cases police do not respond. If they do respond their first act is to shame the victim. They try to discourage you from filing the case. In this context, one should applaud Chandigarh police for this because they saved her life. But one thing has to be said not every woman has to take pressure to stand up because it takes a huge toll on her but those who stand up and fight for her rights should get this support that was made available to Varnika. One part is standing up for yourself when it happens. However one also needs to be also concerned when there is a bail or the case whichever way it goes or when the verdict comes out. In clear terms what if the perpetrator wants the revenge? In this context, women need to empower themselves. They do not need to wait for people will come and give them their rights. They have the rights, and they need to exercise them. It is important every woman carries some sort of protection and undergo some form of self-defence training. One needs to be stubborn and ready to fight and not let the fear taking over their minds.

In "*India In Love Marriage And Sexuality In The 21st Century*", Ira Trivedi sets out to explore the new Indian sexual revolution – because she has no doubt that India is in the middle of one. Young people everywhere are exploring their sexuality and coming into conflict with the older generation which believed in the virtues of Sita and Ram. The book's timeframe covers the ancient past and immediate present – the watershed being the Nirbhaya episode which Trivedi says showcases not the strength, but the weakness of Indian men who feel themselves threatened by successful women. India's women, in fact, are the ones who are changing and changing faster than Indian men are. Women today are demanding their rights and coming up against stumbling blocks like khap panchayats who feel that jeans and mobile phones in feminine hands are a threat to traditional values (Trivedi, 2014).

In the context of Nirbhaya gang rape of 16th December 2012 Trivedi says that “India is on the brink of a sexual revolution., I think that something is happening out there and there I

try to equate India's sexual revolution with what is happening in India in terms of sexual violence, and here I reach a conclusion as sexuality is coming out of the traditional and conservative closets and as sex is becoming more apparent everywhere on Bollywood-Hollywood screens, on televisions and sexual violence is to coming out of the closets too. India is going through the worst crises that it had in terms of rapes or other gender based crimes in the past few decades and at present. The numbers are astounding what I found. Today a new incident of rape is reported every 22 minutes. This is actually the official figure. The unofficial figure is 50 to 200 times more than what is actually reported. According to official statistics from National Crime Records Bureau the number of reported rape cases in India has increased 1250% from 1971 to 2012. So the extent of rape in India was actually not getting better at all but in fact getting worse.”

According to Trivedi two main reasons for India's rape crises were (1) sexual repression and (2) increased reporting. Young women are feeling more comfortable to talk about rape and sexual violence which was in fact part of India's sexual revolution because as Trivedi said earlier because sex was coming out of the closet people were comfortable talking about it. Women whose parents would have actually told her please don't go and report any sort of violence, it's going to ruin your chances of marriage were now being told by the same parents go and report what is happened to you. One can see this increasing across the board. The other reason sociologists tell and is the most prominent one is sexual repression. They say we live in a country that has been sexually repressed for centuries and as this form of sexual repression comes out it reaches a boiling point almost and then men rape. But this is not all, there must be more reasons behind this which have been discussed below.

One of the other big reason can be rural to urban migration. The numbers are again astounding. India has the largest migration in the history of the world from rural to urban. Over the next four decades, 31 villages will continue to show up in an Indian city every minute. 700 million people in all. This rapid transformation has led to a violent cultural conflict. I am going to share here a quote by a journalist Anjali Trivedi which sort of sums all of it perfectly.

*“Mega malls are erupting next to maize farms. A young woman buys a mojito at a bar; a young man who has never seen a woman other than his sister or mother is shaking up the cocktail for her. Young man and women are uprooted from their homes and in the process, unknowingly at times lose their social anchoring.” – Anjali Trivedi*

Moreover, as of this large skill migration was not enough there was a couple of other reasons that actually were part and parcel of this migration. One of them was the breakdown of age old caste system and traditional social mores. So what happens is that when we still go to India's villages these caste systems and gender roles are very well set most men and women don't interact for a certain age. They go to single sex schools. They only meet the women who are their mothers or sisters and there is a very little interaction happening between genders and castes. But as this migration is happening, as modernisation and westernisation is taking place – many of the old traditional roles that existed earlier just do not exist anymore. This is leading to a lot of confusion amongst a lot of people especially young people both men and women. So what does this change mean? Where does one stand in this change? What does one make of the sexual feelings or desire that one gets obviously the feelings of love and romance. So all of these are big questions that India's young people are asking themselves.

The caste equation is changing as well. As lower caste men and women both are getting promoted. The government has launched so many schemes to promote lower castes to help these people getting jobs and education. We have schemes at schools, colleges and at university level for them. This has led to a lot of anger amongst the higher castes. In some villages we have seen brutal caste war happenings and higher caste men would rape lower caste women to show Dalit men their place in the society. This is a common phenomenon happening all across the country in rural villages. In Nirbhaya gang rape case every one of those six men who raped her were migrants. They came from violent atmospheres. They were slum dwellers in Delhi. They all were unhooked and unanchored and few of them were married and their wives were in villages. They didn't have a place in society as such. These are many of the reasons that have actually come up in order to answer the question why these men raped.

Another one of the big invisible reason for why there is so much of sexual violence in India is a skewed sex ratio.

- India's sex ratio- the number of females per thousand males is one of the lowest in the world.
- 940 Indian women for every thousand men. Translates to 37 million more men than women. More than the population of Canada.

- In the 17 to 35 year old category, which commits the most sex crime, there are 17 million excess men.

Jean Dreze and Reetika Khera in their article “*Crime, Gender, and Society in India: Insights from Homicide Data*” argues that low female –male ratios and high murder rates are two manifestations of a patriarchal environment: patriarchal values and practices manifest themselves both in high levels of violence and in strong preference for male children (leading, in turn, to low female- male ratios). They posit that patriarchy in a broader sense of subjugation of women, is intrinsically based on violence or at least a threat of it. From this perspective it is not surprising that areas of high violence are associated with sharp gender inequalities, of which low female- male are one manifestation” (Khera, 2000). “The so-called martial castes of North India, in particular, are notorious for their fiercely patriarchal culture and low female-male ratios.”<sup>43</sup>

What is the problem of too many men and too few women? High male to female ratios have historically been correlated with high rates of violence. It is these young unmarried men who actually commit the most crimes. Men will dominate the women more and we have seen this in Nirbhaya or any other such case. Young unmarried couples lack the stable social bonds that keep them from committing violent crimes. This is a pretty bad news for India. Because female infanticide and sex selective abortions continue to rise. The situation is actually going from bad to even worse. In the 2011 census the country’s youngest population group which is 0 to 6 years was reported to have 914 women for every 1000 men, the lowest number of women ever recorded in any age group since India’s independence. So what was mentioned earlier was 940 was the average. So one can think what was happening to all women that should have been born. They were all actually being killed and therefore in India sexual violence is going to rise and not decrease looking at the skewed sex ratio in India.

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<sup>43</sup> Dreze, Jean and Haris Gazdar. 1997. "Uttar Pradesh: The burden of inertia," in J. Dreze and A. K. Sen (eds.), *Indian Development: Selected Regional Perspectives*. Oxford and New Delhi: Oxford University Press.



### **3.3. Gender Specific Legislations in India**

In this section, an attempt has been made to address the interface between law and society and how concerns for gender have been encapsulated in India. So the thread that links law, gender, and society in India is unique because Indian society has a unique structure. Primarily Indian society has been patriarchal in its structure. Historically we have had patriarchy prevailing in the system of society not only that we have had traces of matriarchy but that were nominal and often not regarded as a matriarchal system. Now that patriarchy forms the most important facet of Indian society. The laws obviously were always oriented towards addressing problems of men and always took into cognizance male or masculine psychology when they were being formulated. No doubt we did have as we have even today certain legal provisions for Indian women as well. However, they were at the end of a long and arduous struggle. So women in India have confronted several disabilities like sati system, purdah system, lack of education and basic civil rights. Having fought a very long battle to protect the rights of women, Indian women started gaining gradual recognition of their rights in the system fighting against men. The adoption and enforcement of Indian constitution was a major watershed in the rights of women and the feminist movement that India was witnessing at that period of time because under Article 14, Indian constitution guaranteed the right to equality to all citizens of the country. Now the spirit of equality which pervaded the supreme law of the land was sufficient to ensure that Indian women are treated at par with men but also people with other gender identities had to be treated as equal identities because that is what the supreme law of the land guaranteed.

Given this background, it's important to understand the importance of special legislations which came to surface for protecting the social, political and economic status of women. Not only Indian women but also Indian men who believed in the supreme equality of women with men have had to fight a long and arduous battle. A battle that was in search of the identity of the status of women. Recognition of the status of women was important no doubt, and this is where we had bring in the law and legislations which come into the picture for safeguarding the social status of women. Let me begin here with the Bengal sati regulation act of 1829. In the 19th century, the then Governor- General of India Lord William Bentinck worked for the protection of the rights of the women who were being immolated on the funeral pyres of their husbands. Sati as a system and as an institution had become a very distinct and a prominent feature of Hindu society then, and social reformers

like Raja Rammohan Roy and Dayanand Saraswati had waged a serious battle against this particular institution<sup>44</sup>. Because it was considered to be degrading towards the health of the Indian society as a whole, Bengal sati regulation act of 1829 was significant act as first time we had a legislation in the country which defined the term Sati and it was followed by a very special legislation which was enacted by the centre which was called the commission of Sati Prevention Act of 1987. So followed by the 19th-century enactment, we then move on to the twentieth-century enactment which had similar provisions to that of the 19th-century enactment but is a legislation which is intended to prevent, prohibit and punish the practice of Sati in its most varied forms.

Followed by sati prevention and prohibition act we then had Hindus Widow Remarriage Act in the year 1856 as the problem of widows in India was phenomenal. They were exploited physically, emotionally and financially in all forms that can be conceived. As a consequence of child marriages which affected both men and women, we could see that Indian women were very young in age. Sometimes as young as 9 or 10 years old were married off to men who were more than a decade older to them or sometimes even 2 to 3 decades old. As a consequence of this Indian women were left either without the confirmation of marriage or very young children immediately after their marriage. Sometimes within a couple of years of their marriage, we had their husbands dying as the age gap was very high between men and women. As a consequence of this practice, Indian widows used to face several problems in terms of social deprivation and ruination. They were looked down upon as individuals, and their social life was a hell because of the simple reasons that their husbands were dead. The remarriage of widows was not conceivable at that age because widows were considered as inauspicious. Obviously, the idea of sanctity was attached with the image that they carried impacted Indian society in a severe way.<sup>45</sup> So we did have to come up with a law at that time and as a result in 1856 the Hindus Widow Remarriage act was born. One of the primary contributions of this act was to validate the remarriage of widows which was still then recognized as illegitimate. Not only that, children who were born out of such wedlock were recognized as illegitimate children. So by conferring legitimacy on the validity of marriage as well as legitimizing the children

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<sup>44</sup>Arvind Sharma (2001), *Sati: Historical and Phenomenological Essays*, Motilal Banarsidass, ISBN 978-8120804647, pages 19–21

<sup>45</sup> Carroll, Lucy (2008). "Law, Custom, and Statutory Social Reform: The Hindu Widows' Remarriage Act of 1856". In Sumit Sarkar, Tanika Sarkar (editors). *Women and social reform in modern India: a reader*. Indiana University Press. p. 78. ISBN 978-0-253-22049-3. Retrieved 31 August 2011.

born out of such marriages Indian government at that point of time ensured that the remarriage of widows is considered to be a legal thing and this is where the journey of the emancipation of widows in India started. Another significant act which deserves special mention because it is relevant even in the current era. So in the year 1929, we did come up with the Child Marriage Restraint Act. One of the significant contributions of this act was to ensure that women are not married off until or unless they attain a threshold age. Here the minimum age of marriage was fixed at 18 for women. Any act of marriage under 18 was made punishable by law.

Now after looking at the number of laws that had to be enacted just for protecting the social status of women, let us look at the most important segment of laws which has a bearing on the life of women. Marriage as an institution has played a significant role in the life of women. Marriage, as it is seen, has also been linked to the social status of women because not getting married till date poses a problem for a woman. The worst part about the whole story is that even after one is married, she is not free from the clutches of the evils that come with marriage sometimes. Marriage has been considered to be one of those social institutions which has also born the maximum problems for a woman. With marriage are associated with many other problems which qualify as legal problems in the life of a woman which means problems like divorce, custody struggles, right to maintenance battles, etc., all of these things are associated with the idea of marriage. For a woman, marriage is a significant institution, and at the same time, this is that institution in the Indian society which is responsible for bringing out a lot of legal problems. We have an entire body of laws which for governing the rights of women at the time of marriage because it was felt by the legislators, women have to be protected in the institution of marriage. They have to be protected in the domestic setup, and along with that, they need to be protected in the aftermath of marriage if at all marriage falls apart. Let me bring here some laws which Indian legislature has come up with for the purpose of protecting the rights of women. First such enactment was passed on the year 1961, and it was known as Anti Dowry Prohibition Act.<sup>46</sup> Now under the act, the term dowry has been defined, and any payment, request or acceptance of dowry has been punishable offense. The institution of dowry for a very long time has been associated with the institution of marriage in India. Dowry as a system meant that the women when were married off had to carry certain goods with them in the form of

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<sup>46</sup> Paras Diwan and Peeyushi Diwan (1997). Law Relating to Dowry, Dowry Deaths, Bride Burning, Rape, and Related Offences. Delhi: Universal Law Pub. Co. p. 10

valuable securities in the form of property because they were being married off into a family which considered her to be an economic burden. Therefore in order to set off the economic burden parents of women were and still are being made to pay a substantial amount of either money or property to cover up some amount of economic compensation for the fact that woman was moving into the household of another man. The idea was that woman made no economic contribution to the household so which meant for instance that even when a woman is rearing children, teaching the children or cooking for the family. They are never considered to be actions or activities which carry any economic benefits. Therefore dowry prohibition act became necessary because women met with a lot of matrimonial violence in the country. Not only that in their domestic homes they were sometimes even thrown out of the pictures. They also face a lot of harassment to bring less amount of dowry.

After this another significant legislation was enacted as Domestic Violence act, 2005. It came into the picture for the purpose of matrimonial households. Now, this is something which deserves special attention because the concept of domestic violence in India is something which is probably prevalent in other countries as well. However, in most of the Indian households, women witness domestic violence at homes. This is a form of intimate partner violence or violence which one receives the end of a spouse or an intimate partner. Therefore domestic violence act is progressive piece of legislation which is passed a couple of years back. An important feature of this act is that it not only recognized married relationships or married women as victims but also recognized live-in relationships. The law is progressive and also caters to the changing demands of society by taking into cognizance the fact that women need to be protected even when it was a quasi-marital relationship or a marital relationship which has not been recognized or has been rendered invalid.<sup>47</sup> A problem which is however associated with this act is that it faces severe non-implementation issues because one of the primary features of this act is that it needs to be implemented by protection officers who are in charge of giving protection orders to women. Now due to non- appointment of protection officers in many parts of India the legislation has met with failures on several occasions. When we talk about matrimonial cruelty and other matrimonial issues we cannot do away with the legal provisions which are present in the Indian Penal Code (IPC). So obviously Section 498-A deserves special mention here. This section of IPC talks about the protection of women in the matrimonial household. This

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<sup>47</sup> Datta, Damayanti (4 December 2006). "The new laws of marriage". India Today, 29 March 2013.

law is targeted towards the protection of married women and is targeted against the husbands and relatives of the husband. Another significant section in IPC is section 304-B which takes care of dowry deaths. This section presumes that if a woman has died under unnatural circumstances within seven years of her marriage in her matrimonial home, then the initial presumption is that it is a case of dowry death. Obviously, the death should have a certain connection with demands for dowry and other such things like her being harassed for dowry or her being treated cruelly at the hands of her in-laws.

Here let's also mention another facet related to the social life of a woman when she is married, and this is the concept of restitution of conjugal rights. This concept has been captured in Hindu law, Islamic law, and Christian law and in every other piece of personal law that we have in India. The restitution of conjugal rights is a concept which states the women and men when they get married are entitled to the conjugal society of each other. Here a spouse would have a cause of action against his or her spouse if at all a person abandons conjugal society of other or denies conjugal society to the other on an irrational or unreasonable ground. The problem with the restitution of conjugal rights is that it has often been used by men as a weapon to control many activities of women. For instance there has been numerous judgements which have been delivered by the various High Courts wherein women have had to give up their jobs or change the course of her jobs because the requirements of their jobs was such that they had to stay away from the matrimonial home.

There are several provisions for divorce in various personal laws which have been derogatory to the dignity of women. To cite an example, the system of Triple Talaq in Islam has had been controversial for a very long period of time as by pronouncing Talaq three times a man could instantly terminate his relationship with the woman no matter for how long their marriage may have sustained. However, very recently the Supreme Court in a majority judgment declared triple talaq as unconstitutional as it violated the right to equality of Muslim women given to them under article 14 of the Indian constitution. The Supreme Court said "Talaq Talaq Talaq does not mean instant divorce. It is unconstitutional and not integral to religious practice and violates constitutional morality."<sup>48</sup> Therefore one step closer to the gender parity in personal laws. Now another piece of law which deserves special attention is the Hindu Marriage and Guardianship Act of 1956. Let us see if the law

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<sup>48</sup> "SC strikes down 1400-year-old Islamic practice of Triple talaq". Outlook. 22 August 2017.

has been able to equate men with women in the spirit of article 14 of Indian constitution. Under section 6 of this act, a woman or the mother is rather, is given the status of natural guardianship only after the father which means when it is a legitimate child the law clearly states that the father is the primary natural guardian and only after the father the mother is the natural guardian. This makes the status of mother secondary in this context which is questionable because one does not see the reason as to why between parents the distinction between primary and secondary has to be made. Even if it is made what is the rationale behind the making of such demarcations. Interestingly the same section 6 of this act also mentions the case of an illegitimate child; here the mother will be considered as the primary natural guardian, not the father. Therefore this brings many questions to our mind for instance when you talk about a legitimate child why is a father should be considered to be the primary natural guardian but when it gets down to the illegitimate child, we take the mother for granted as a primary natural guardian. So the inconsistency of law is apparent whenever there are greater social responsibilities associated, and we try to shift them on women in question.

After discussing matrimonial laws, it is now important for us to take a look at laws which have been designed to meet the requirements of women at their workplace. I will begin here with the Equal Remuneration Act, 1976. This act had to be devised because men and women were not treated equally at their workplace. When it comes down to the question of parity of pay, there were many occasions where a woman was discriminated against on irrational grounds and was not entitled to the same as their male counterparts. With the Equal remuneration act of 1976, an attempt was made to not discriminate between men and women at workplace and to ensure that equal pay is given to the equal amount of work without any discrimination on the grounds of gender. Apart from this, we have certain special enactments which cater to special needs of women, for instance, Maternity Benefit Act of 1961. Under this special act, provisions are made for women at the workplace when they are pregnant or are with the child.<sup>49</sup> So they are entitled to special regulations in terms of leaves, work from home, etc. but when one looks at the actual implementation of the act, there are many real-life instances where women are either denied promotion or are really given the same benefits that they are actually entitled to under the piece of this legislation. However, in the latter of the law, we do grant women special benefits under the maternity

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<sup>49</sup> [https://www.medindia.net/indian\\_health\\_act/maternity-benefit-act-1961-introduction.htm](https://www.medindia.net/indian_health_act/maternity-benefit-act-1961-introduction.htm)

benefit act of 1961. It would be pertinent here also to mention the case of Vishakha vs. State of Rajasthan where the Supreme Court laid the guidelines for preventing sexual harassment at workplace. The purpose of the judgment was to ensure or to bring light to the fact that women need special protection at workplaces. On many occasions, we have attempted to come up with laws for safeguarding them. How far they are being implemented is a different question altogether but a very important one.

Here, now let's get to the domain which discusses gender concerns in a very important aspect of law, i.e., criminal law. In the Indian penal code where we talk of substantive criminal law and basic standards of law demand that there is equality in terms of treating men and women. However when it gets down to the commission of crimes or punishment for crimes. It will be interesting to note that there are certain provisions in the IPC which are apparently gender insensitive on many counts. Let's begin with the offense of adultery. If one looks at adultery laws in India and adultery is an offense which involves a married woman because for the offense of adultery to be committed one must ensure that a woman is married. It cannot be committed against spinsters for instance. While the offense involves a married woman, it is interesting to note that it is the man to man offense which means the cause of action can be held by the husband of the woman against the paramours of the woman. So that being a man to man offense the question then arises what exactly is the role of the woman here. The law makes the provision that she cannot be punished even as an abettor. Essentially the participation of the woman in the entire act is seen to be although something which is as good as non-existent because probably the legislators felt that for the offense of adultery being committed the man had an important role to play and not a woman. This is derogatory to the dignity of women because when you look at it, we treat as though she is somebody who is not capable of giving consent so she is somebody who can just be swayed or can be objectified in the entire act. Not only that women are not allowed to prosecute female paramours of a husband, so which means for instance when her husband has sexual intercourse with a woman who is not the wife of the concerned person. The wife here cannot prosecute the female paramour of the husband.<sup>50</sup> Although the nature of the offense is something which can be committed by both men and women. The woman cannot take advantage of the relevant provisions made for adultery in the IPC. This is something which is obviously not in the interest of women. First, we do not punish

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<sup>50</sup> Isha- Adultery laws in India : Should it be decriminalized or not?, The Indian Wire, July 11, 2018

them as abettors. We do not punish them as participators in the offense of adultery. That is how we look down upon their status because we conceive of them as individuals who cannot give their consent to the sexual act. Secondly and the most important we do not allow them the privilege of prosecuting female paramours of their husbands.

Section 377 of IPC is another area where we need to take a look at how the law approaches gender concerns. Now in the country today we have transgender identity, gay and lesbian identities coming up and not being recognized. Not only that IPC penalizes any actions which are sexual in nature and are confined to gay, lesbians or transgender. It not only derecognizes homosexuality but for the worse, it tries to criminalize homosexuality, and that is one area which deserves special attention.

Another major area which became very prominent after the Nirbhaya episode is the provision of rape in IPC under Section 375. Initially, the definition of rape included only penile penetration and was not something which includes oral penetration. However, after the major amendment in 2013 to the IPC, we now recognize oral penetration as an action of rape. Not only that we have also increased and widened the ambit of rape and sexual assaults and have come up with several such new offences or actions which are liable of being penalised like voyeurism, stalking, etc. now before concluding I want to mention that many of our laws are obsolete and not really very gender friendly. At the same time, many beneficial legislations have come into the picture to protect women. But how far they are relevant and for what period we have to wait for them to come into existence is something which needs to be scrutinized. Given this, this study contend that law is an agent of social change and therefore it will have a significant impact on how the perception of society changes towards various genders. Therefore if we have laws which are gender-friendly obviously, it can play a positive role in changing our attitudes toward women or LGBTQ.

Here in short let me also discuss about increase in female criminality in India. Females are not just victims of violent crimes but also perpetrators of crime. Maithreyi Krishnaraj in her work "*Understanding Violence Against Women*" states that "though physical violence is pervasive against women, it can take other forms which generate an atmosphere of threat or reprisal. There are crimes specifically directed against women like rape, sexual harassment, sexual abuse, sexual exploitation, prostitution, domestic violence and pornography. The forms may vary between cultures and settings, but what is near universal is male violence far exceeds female violence" (Krishnaraj, 2007). National Crime Records



Bureau (NCRB) shows that women criminals are a minority compared to male criminals convicted for heinous crimes but their numbers is also increasing. The consequence of patriarchy is the growing criminality amongst women. A plethora of research has indicated that the utmost reason for female criminality is their dissatisfaction with the unequal status of women in society. And the more these females get educated, the more willing they are to step outside the bounds of expected traditional social roles. Furthermore, research has also highlighted that strange personal interrelationships with husband and other family members or relatives or friends, deprivations, and denial of basic needs of life like affection and security were the main causes of ultimate criminal behaviour in women. It is also intriguing to note that some women are misusing laws that have been formulated for their own welfare against men. This epidemic would not change until gender-based violence or crime is challenged to its core.

Now let us also explain in this section other side of the story as it is not always that only women are victims of gender based problematic but men also sometimes get into this trap badly which can have disastrous consequences for them as well as his family. Avadhesh Yadav from Jhansi committed suicide on February 25, 2015, because of his wife. Laws that have been made to protect women, abuse of same became the reason for his death. One among several such stories that one usually find in regional newspapers or channels because this and whatever I will mention rarely makes a national headline or breaking news. So when I enquired about the case of Avadhesh Yadav and got to know that he was a young, energetic, hardworking bank employee – a middle-class man with normal dreams of marriage spending life with his soulmate like almost all Indians do. Unfortunately, marriage became the biggest mistake of his and also the reason for his death. In a three and a half page suicide note Avadhesh shares how he and his family were implicated in a false dowry case. His wife demanded that his father's property should be transferred in her name to settle the matter. When they refused, she filed a molestation case against his brother and father. His father suffered a heart attack and just a few days later Avadhesh hanged himself. I would share here few lines from his suicide note “to all I request you to save my family from the unexpected problem... to the NHRC and to the NCW, please investigate if I and my family were wrong ever. How can the law be so biased that it turns a man into a criminal merely on a statement of a woman? I thought a lot but found no option. Mummy and Papa, I am sorry but please do not cry as it would hurt me more.” One may not know Avadhesh, but he is among several men in India who are killing themselves because of domestic

violence, false cases of dowry, demands of huge sums of money to settle these matters leaving no option but a suicide note to reclaim their innocence.”<sup>51</sup> To put it in perspective Avadhesh suffered a misuse of section 498-A of Indian Penal Code commonly known as Anti Dowry Act. One need not ask for a dowry to be implicated in a dowry-related case. If this was a woman death than that would perhaps be called as a dowry death by law but unnatural deaths of husband are not recognized under the law, and thus we do not have any statistics.

In a famous 2012 'rape' case, a trial court acquitted two young men, which included a student of Amity University, who were accused of gangraping another student of the university. The court pulled up Delhi Police and the investigating officer (IO) for carrying out a biased probe, cooking up evidence and hiding crucial information in the case which proved the innocence of the accused.<sup>52</sup> In this case the parents of the girl forced her into implicating the accused because they did not like that their daughter got drunk with Prashant on the day of the alleged crime. Though there was no evidence whatsoever to the allegations and even thought the place of the crime being imaginary. Prashant and Milan spent a harrowing 14 months in Tihar jail and underwent a criminal trial for two and a half year despite having every proof of innocence. Their bail was constantly denied perhaps because that time India was reeling under the aftermath of the horrifying Nirbhaya case. No action has been taken against the false accusers in this or several such cases.

Whenever a woman is abused, we ask what if she was your mother or sister or wife. Here let us ask what if Avadhesh was somebody's brother and you see him dying every day and eventually dead one day for no mistake. What if Prashant and Milan were your son your brother or just a friend and no matter how much one cried of their innocence with evidential proofs, you would not be heard. Justice should be served to women and women protection laws should be made but what about justice to men who are implicated in false cases. Their lives are ruined, and their careers are shattered. Their self-respect and dignity are all lost. Asking money for dowry is wrong but is asking money after filing a false case alright? How is the abuse of these laws that have been made for the protection of women helping the cause of women?

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<sup>51</sup> Deepika Narayan Bhardwaj- On Women's Day, read the suicide note of a man, News18, dated 7 march 2015.

<sup>52</sup> Sana Shakil- Court acquits Amity rape accused, says evidence cooked up, The Times of India, dated 6 march 2015

Supreme court of India has observed that “by misuse of the provision (IPC 498A) a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as assassin’s weapon.” Even Delhi High Court in one of the case has recognised that - “women, are misusing rape laws to force lovers to get married.” If a cry of a wolf is made too often as a prank assistance might not be available when an actual wolf appears. Parting away comments in a false rape case filed by a women in Delhi Justice Virendra Bhatt said “false rape cases play havoc as the crime statistics shoot up. The crime graph tends to trivialize the offence of rape.” These words in all these quotes are from esteemed courts of India. A lot of people may misunderstand victimization of males as which is against women whereas it is not. It is against injustice.

### **3.4. Concluding Remarks**

The society way of coping with the embarrassment and shame of what a perpetrator does to its women is to marginalize them and say they are just rotten people in a barrel. The broader understanding of this study is that why men rape and why gender-based is there with such alarming regularity, gave me the insight it is not the apples but the barrel itself is rotten. It is the barrel that rotes the apples. It is the society that is responsible because it teaches men in a patriarchal privilege how to think the very first day they enter in this world. It provides them with a set of attitudes towards women which lead them to know with certainty they are not doing anything wrong if they sexually abuse anybody. The girl was out after dark, and she deserves it that is broadly their thinking.

There is an environment of hostility towards women in India in a patriarchal and conservative space of this country. What the aftermath of the horrific case of Nirbhaya did in India was to create a movement of hope for women in India? For the very first time, the issue of gender moved from the margins of society to the centre stage of politics. This led to the mainstreaming of gender as a political issue. And the reason there was much noise around this issue is because young evolved men and women took to the streets and protested with a great noise. Her parents sacrificed so much for her to go to medical school. She went to go to see a movie called ‘life of pie’ but after returning from movie, she was raped brutally in a moving bus by six men in Delhi. At last six these six men were convicted. The reason this case struck such a chord in a way that others before could not is because this was a story of aspirational and young energetic India. This was a story of a woman whose father was a baggage loader at airport in Delhi. He is a lower income family. He sold the

only plot of land to educate her daughter and to give her dreams of becoming a doctor. It is apparent that young India has an emerging dream of a better future and Nirbhaya represented the hopes and aspirations of so many men and women of her generation. But there are men and women in India that blame a woman after every incident of sexual violence, and it is not unique to India. The real disease is gender inequality<sup>53</sup>, and everything else is just a symptom of it. We need to amplify rapists and need to expose their beliefs. One needs to understand what goes on in their minds to start understanding how to change them and how to make society much more responsible and evolved in the context of gender. There are very few people in this country who are enlightened on gender issues. There is asymmetry of power between genders in the political, social and economic domains of India and therefore it is necessary to have dialogues and debates on these issues across the country only then we can hope for gender justice.

In feminist discourse, it's very important that men are also involved in creating a gender just space for people to live in. Patriarchy in itself is a trapping for men as well probably slighter less because there is a male privilege. Men also feel trapped and left out in the current discourse. There is women pressure on men also to be in a certain way. One has to take note of the fact that men and women are not two different species. They are of the same species. There are problems in every system of thought whether its patriarchy or matriarchy. It is not anyone is pure evil or poor good. One thing that needs to understand is that there should be a sense of values to drive equality between men and women. A society cannot achieve its true potential till we find this kind of balanced gender equality. Our ancient scriptures themselves say “the gods abandon the land where women are not respected. Therefore we should have a sense of balance when we approach issues of men and women.”

No one should belittle the massive issues that women face in India today but there is a standard paradigm that India has now, and it causes problems for many men as well. If a man actually wants to make a choice that he does not actually want to work, he actually

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<sup>53</sup> India is ranked 125 out of 159 countries in the United Nations Development Programme (UNDP)'s latest 2016 Gender Inequality Index (GII). The maternal mortality ratio is 174 against each 100,000 live births. Only 12.2 percent of seats in Parliament are occupied by women. Just 26.8 percent of women higher than the age of 15 years are part of India's labor force — compared to 79.1 percent men. India came down 21 places on the World Economic Forum's (WEF) Global Gender Gap 2017 index to 108, even behind neighbors like China and Bangladesh, primarily thanks to less participation of women in the Indian economy and lower rate of wages.

wants to stay at home. Society makes it very difficult for men to exercise that choice. Even within masculinity, there is more acceptance of this one kind of man but films. Literature and everything else has spoken about different kinds of men. Men also suffer from masculine demands. In this competitive world, men are also expected to be in a certain way. But anyways it requires effort, and it can require discomfort too if a man wants to move towards better health in gender relations whether be it the women he works with or women who he is related to or the women he might be married to. If men are not outside of their comfort zone and not giving up on their false entitlements then probably we can never get gender equality, and gender issues will remain forever.

## Chapter- 4

### Religion and Crime in India

#### 4.1. Introduction

Religion is about personal beliefs. But religion can also be thought of as a social institution in the same way as we might study the family or the government. One can ask questions about religion's role in the society. Like how do different religions influence social norms in a society? Does it improve social cohesiveness or entrench inequalities? Before answering these big questions let's answer what religion is? To understand how social scientists think what is religion we need to go back to the Emile Durkheim. Durkheim defined "religion not so much in terms of gods or supernatural phenomenon but in terms of the 'Sacred' - things that are set apart from the society as extraordinary, inspiring awe and deserving of reverence. He says that in all societies, there is a difference between the 'sacred' and the 'profane' or mundane everyday parts of life. Religion then is a social institution that involves a unified system of beliefs and practices that recognizes the sacred. But sacred does not mean good and profane does not mean bad. Instead of recognizing something as sacred, religion is about seeing a certain place, object or experience as special and creating markers that separate it from our day to day life" (Durkheim, 2001).

It is natural then to think about religion from the perspective of symbolic interactionism which thinks about society in terms of symbols that humans construct. And all religions rely on the use of symbols to create the sacred, for example, rituals are a form of symbolic practices that highlight faith. Many religions use certain actions during prayers that symbolize deference to god such as Catholics, making the sign of Cross before prayer or Muslims supplicating themselves and facing Mecca, the birthplace of the Prophet Muhammad. Objects can also take on sacred meanings. Types of dress or grooming practices, such as men's beard in Islam or Orthodox Judaism, also become sacred indicators of faith because they are visible symbols of religious beliefs. But the role of religion in society goes beyond influencing our symbolic practices.

In addition to defining the sacred and the profane, Durkheim also looked at religion through the lens of "structural functionalism." And he identified three major functions of religion that contribute to the operation of the society. "First, religion helps to establish social

cohesion by uniting people around shared symbols, norms and values. He argued that religious thought promotes norms like morality, fairness, charity, and justice. Churches, Mosques, Hindu temples act as gathering places, forming the backbone of social life for many people. Second, Durkheim said “societies use religion as a form of social control. People behave well not only out of fear of their friends and families disapproving but also out of a desire to remain in their God good books. Christianity and Judaism, for example, have ten commandments- a set of rules for behaviour that they believe were sent directly from God. But these commandments are not just rules about how to worship, many of them match up with societal norms like respecting your parents or not committing adultery or with secular laws which prohibits murder and theft. Third, according to him, religion in a functionalist perspective provides people with a sense of purpose in life. Sometimes it can feel like our lives are such tiny blips in the grand scheme of the universe it can be hard to imagine why our actions matter, religion gives people a reason to see their lives as meaningful, by framing them within the greater purpose of their God’s grand plan” (Durkheim, 2001).

While Durkheim’s framing demonstrates the many ways religion promotes social unity, religion can, of course, be a force of division. Social conflict theory perspective understands religion in terms of how it entrenches existing inequalities. Karl Marx saw “religion as an agent of social stratification which serves those in power by legitimizing the status quo and framing existing inequalities as part of divine plans. Rulers in many societies were believed to be given their right to rule by divine right. Having wealth and power was seen as an indication of God’s grace. For these reasons Marx saw religion as a huge barrier to revolutionary change referring to it as the opium of the masses. After all, it is hard to convince people to rise up against the elites if they believe that the elites have the power of God behind them” (Raines, 2002). In addition to entrenching political and economic inequalities, social conflict theory perspective also explores how religion contributes to gender and racial inequalities. In fact, divine figures and their prophets in most religions are male. Virtually all of the world’s major religions are patriarchal, with religious texts often explicitly describing men in the image of God and women in subordinate roles to men. For example “in Christianity, the first man Adam was created in God’s image whereas the first woman Eve was created from Adam’s rib to serve and obey Adam. In the Bible, Eve committed the original sin by tempting Adam to eat the forbidden fruit and got both of them eliminated from paradise.” Religion has also been used as a way to control women’s

behaviours, requiring them to dress moderately or not to be with strange men outside of their family. Religion has also been used to uphold another type of social inequality. Slavery in the U.S, for example, was framed as morally justifiable based on various texts from the Bible, but that is not to say that religion is always on the side of the oppression. In this context, it can be said that the positive or negative effects of religion to a great extent depends on where one is standing as an individual or as a society - in terms of class, region, race, language, ethnicity and political negotiations, etc.

In the present circumstances crime and religion receive a lot of independent attention from the academic community as well as from the popular media, but at the same time, it is interesting to note that despite all this there is still a lack of substantial literature that can exactly determine the relationship between religion and crime. In the present scenario, the religion-crime relationship is quite a resilient and an important relationship that has a profuse impact on both the theoretical level and the public policy levels. Over the last few decades, there has been an increasing curiosity to find out if religion increases crime or decreases crime or has no effect at all on crime and criminal behaviour in society. While discussing about contemporary research on the religion crime nexus, it would be worthy of mentioning about the Hirschi and Stark classic study of 1969 "*Hellfire and Delinquency*." Here these scholars argued that "there exists no relationship between levels of religious commitments and criminal behavior among youth." This work was both supported as well as refuted by subsequent researchers on similar grounds, but it must be noted that these scholars cited that these differences were basically a representation of the moral makeup of the community that was being studied under the sample group. Yet in another study Starks, Kent and Doyle suggested that "areas with high church membership and attendance rates were considered to be the representation of the moral communities whereas those with Low Church membership areas were a representation of secularized communities. This moral communities hypothesis predicted an inverse relationship between religiosity and delinquency in moral communities. But there was a negligible impact of religiosity on individuals in secularized communities."<sup>54</sup> It is this very theoretical perspective which became one of the most important principles that helped subsequent studies to understand

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<sup>54</sup> Rodney Stark ; Lori Kent; and Daniel P. Doyle, "Religion and Delinquency: The Ecology of a 'Lost' Relationship." *Journal of Research in Crime and Delinquency* 18 (1982): 4–24.



why some studies were able to establish an inverse relationship religion and delinquency while others failed to do so.

Rising rate of crime is an important problem that leads to serious results for both individuals and societies. That is why, researches recently have begun to examine the link between religiosity and crime, religiosity and social control, religiosity and drug using, etc., to see the effects of religious values on these problems (Grasmick, 1997). Empirical research findings demonstrate that there is an inverse relationship between religiosity, crime, and some social deviations. Although social control functions of religion have been considered as a crime preventing factor within the most of the social theories and mounting research evidence demonstrates that there is an inverse relationship between religiosity and crime, the relationship has long been a topic of controversy. But, quite a number of social scientists have also argued that “there is a positive relationship between crime and religion. This assertion is based around arguments that both strong religious convictions and criminality tend to be associated with low intelligence or low education level or social status.”<sup>55</sup>

However, most of this theoretical and empirical analysis between religion and crime is grounded in western society and culture which are mostly homogenous in nature and are quite developed politically, economically and socially. All societies have various mechanisms to encourage good behaviour and to control or punish bad behaviour. The social control comprises the whole range of legal and informal pressures directed to make people behave per legal and social rules. In this sense, religion has an important social control capacity because religious values can prevent some individuals from some criminal behaviours, as well as from some kinds of deviant behaviours, as a result of the social control functions of religion that have various dimensions. However, the inverse relationship between religiosity and crime is not so simple. If we consider a country like India which is so diverse, then this inverse relationship between religion and crime becomes so superficial to analyse and study the religion- crime problematic.

India is a highly religious society. According to the 2011 census, “79.8% of the population of India practices Hinduism and 14.2% adheres to Islam, while the remaining 6% adheres to other religions (Christianity, Sikhism, Buddhism, Jainism and various indigenous ethnically-bound faiths). Christianity is the 3rd largest religion in India. Zoroastrianism and

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<sup>55</sup> Ellis, L. (1987). Religiosity and criminality from the perspective of the arousal theory. *Journal of Research on Crime and Delinquency*, 24, 215–232.

Judaism also have an ancient history in India, and each has several thousands of Indian adherents. India has the largest population of people adhering to Zoroastrianism (i.e., Parsis and Iranis) and Bahá'í Faith in the world, even though these religions are not native to India.” Along with this wide diversity of religion we also various languages, castes, distinct tribal groups and the second largest population of around 1.25 billion population in which penetrates a great number of socio-economic inequalities. This study does not deny the relevance of the inverse relationship between religion and crime in the Indian context, but any study on religion crime problematic must also count on all the above-mentioned factors in order to get comprehensive results. This is what this of research intends to do in this chapter for studying crime in the context of religion in India. It is argued here that the nature of criminality based on religion in India must be explained as a consequence of its peculiar social-cultural, political and historical conditions.

Having said that let's go a brief in history to better reflect on the discourse between religion and crime in India. Islam and Hinduism are the second and the third largest religions in the world. Islam had a strict adherence to its customs, texts, and a single God. Meanwhile, Hinduism is accepting of a large number of different belief systems, which include many gods, an only God or even no God. But their mutual dislike is thought to stem from historical clashes as well as perspectives based on their religion.<sup>56</sup>

*“For several hundred years, Muslim empires spread across the world, at one point controlling some five million square miles. Their conquest of the Indian subcontinent saw the Mughal Empire take over a number of important kingdoms, creating severe resentment for the overwhelmingly Hindu region. This was followed by British taking over India, and splitting off a significant portion of the country to build a home for Muslims: Pakistan.”*

The 1947 partitioning of India has been called the largest mass migration in history and led to intense sectarian violence. This also left India overwhelmingly Hindu with a small Muslim Minority. Today there are about 175 million Muslims in India, the second highest population in the world. By comparison, there are roughly one billion Hindus. Since the 1950s thousands have been killed in provoked and unprovoked mob riots. In 2002 an attack on a train carrying Hindus was ostensibly carried out by Muslims. This led to a three-day

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<sup>56</sup> Discussion in 'Central & South Asia' started by Zhang Fan, Oct 31, 2015.-India- Pakistan Defence Forum

long massacre of as many as 2000 Muslims in Western India. Some 100,000 people were displaced by the riots. The violence between Muslims and Hindus also does little to help territorial disputes between India and Pakistan. The Kashmir valley which is almost entirely Muslim is located within India and lacks the level of autonomy they want. This religious tension has been seized upon by political parties, particularly the right-wing nationalist parties like Bhartiya Janta Party (BJP). In seeking to explain the persistence of communal violence in India Paul Brass draws on a functionalist theory and argues that “communal riots have functional utility and benefits a wide range of groups and organisations in society particularly the BJP and other political organisations affiliated to RSS (Rashtriya Swamsevak Sangh). He says Hindu-Muslim divide and polarisation which is rooted in the discourse of communalism and militant Hindu nationalism has been extremely valuable to the political fortunes of BJP” (Brass, 2005).

Zoya Hasan in her article “*Gender, Religion and Democratic Politics in India*” said that “both the Shah Bano and Ayodhya decisions, calculated to please, respectively, communally minded Muslims and Hindus, ended up giving a massive boost to the forces of the Hindu right, reflected in the BJP’s rise from a mere two seats in 1984 to 89 seats in the Lok Sabha (lower house of the Parliament) in 1989. Giving one concession to a particular community and then offsetting it by granting concessions to other communities was a process that left both Hindu and Muslim communities feeling they had lost something. Despite, or some would say because of, the concessions to religious group demands, the polity has been torn apart by competitive communalism and sectarian conflict. Even as Congress flirted sporadically with the politics of religion, it was eventually to become its principal victim, paving the way for the emergence of BJP as a major political force in the name of protecting the majority community against the excesses of minority and the vote-bank politics of the Congress” (Hasan, 2010).

Asghar Ali Engineer in his book “*Communalism and communal violence in India*” states that “communalism is a modern phenomenon and its fundamental causes are secular like competition for share in political power or government jobs. Religion is not its fundamental cause but an instrumental cause because it has great mobilizing power.” In other words he argues that one must distinguish between religious violence- the reason for which lay in sectarian or doctrinaire differences and communal violence- the reason for which lay in conflict over controlling power and economic resources between the elites of the two

communities (Engineer, 1989). Violence based on religion can also be the reason of class nature of society on the one hand and the underdevelopment of the economy and the scarcity of resources on other hand. One can argue that under the garb of religion creating false consciousness, a struggle for scarce resources, competition for jobs and instruments of ruling class politics etc., are some of the main factors behind rise in violence or crime based on religion and not because of the only that India is a deeply religious society. The good or bad consequences of economic growth and development is overall complicating the religious sphere of society and that can also be one of the main reasons for an increase in conflicts among communities.

According to the data available with the Home Ministry, “a total of 3365 communal incidents occurred in the country from 2011 to 2015 (till Oct). This is an average of about 700 incidents an year. The lowest number of incidents occurred in 2011 (580) and the highest in 2013 (823). The number of such incidents in 2012 and 2014 are 668 & 644 respectively.” The number of such incidents in 2015 (till Oct) is 650. “Eight states Bihar, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Rajasthan & Uttar Pradesh account for 85% of all the incidents. These states were ruled by various parties at different points in time in these 5 years and not a single party. Seven states did not report a single such incident in these five years and all of them belong the North East. The number of people killed in these incidents was more or less proportional to the number of incidents with the highest number of people getting killed in 2013 and the lowest in 2011. The same is true for the number of people injured. The increase in the number of incidents in 2013 could be attributed to the unusual rise in the number of such incidents in Bihar & Uttar Pradesh. Uttar Pradesh contributed for 30% of the communal incidents in 2013, which is very high for a single state. This unusual rise just before the 2014 general election could be because of the communal politics of various political parties.”<sup>57</sup>

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1 <sup>57</sup> Rakesh Dubbudu -“India had 58 communal incidents per month in the last 5 years & 85% of these incidents occurred in just 8 states” (DEC 1, 2015), Factly Media & Research, Telangana, India.

Figure- 4

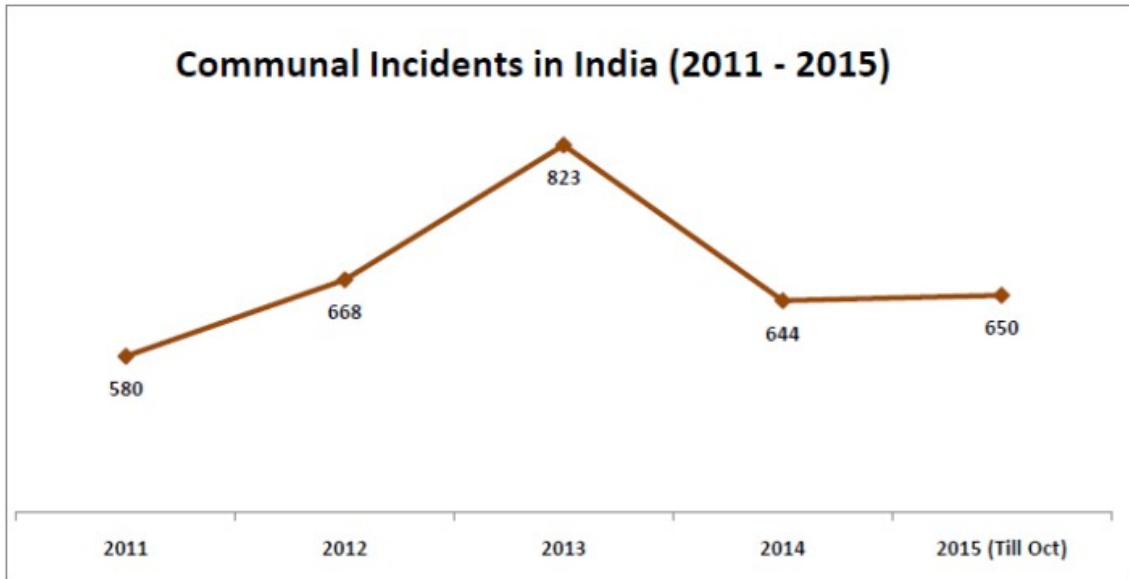
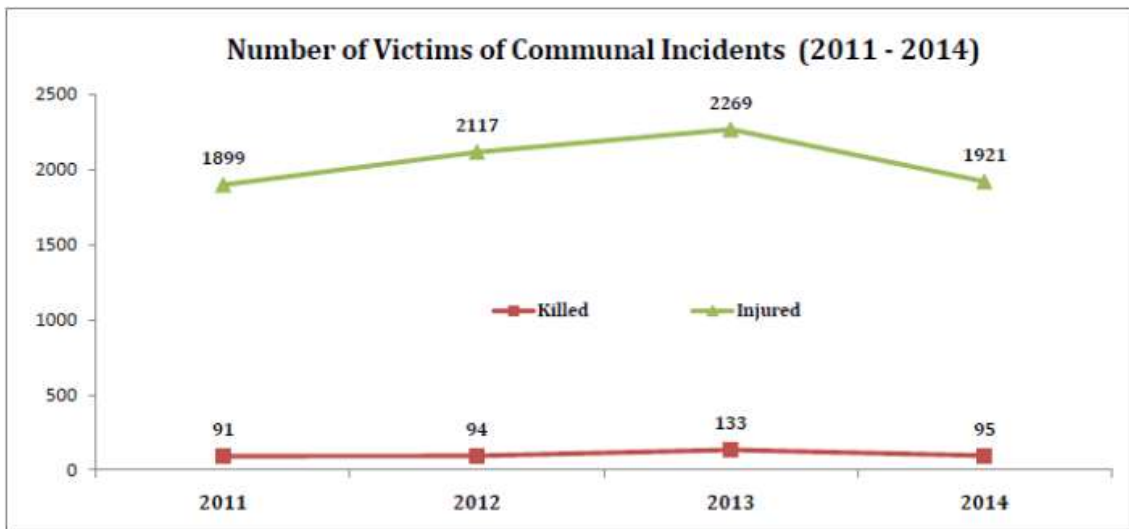


Figure-5



Source - Factly Media & Research

India ranked fourth in the world in 2015--after Syria, Nigeria and Iraq--as having the highest social hostilities involving religion, according to research by Pew Research Centre.<sup>58</sup> Katayoun Kishi, the study's lead researcher, told Huffington Post India in an email

<sup>58</sup> Pew Research Centre, an independent non-partisan polling and research organisation, publishes two indices--the Government Restrictions Index and the Social Hostilities Index. While the former measures government restrictions on the free practice of religion, the latter looks at hostilities between groups around

interview “that hostilities between Hindus and Muslims factored into the India's poor ranking. In India in 2015, there were instances of attacks by Hindus on Muslims due to alleged cow slaughter, rioting after clashes between Hindus and Muslims, and mob violence involving the two groups,” she said.<sup>59</sup> Government restrictions on religion in India are rated as “high” and increased over 2014. These include government interference in religious practices or proselytising, government hostility to minority religions and government inaction on complaints of discrimination. Ms. Kishi said “Much of the government restrictions were aimed at non-Hindus in India. For example, the ban on cow slaughter impacted Muslims during Eid al-Adha, and Christians complained about a lack of police action after incidents of religiously-motivated violence towards them. Lower caste Hindus faced impediments to education, jobs and some government services. Crimes against them often went unpunished by authorities, sometimes because the victims did not report the crimes due to fear of retaliation. When considering social hostilities, Hindus were sometimes the target of hostilities by Muslims as a result of long-standing tensions between the groups (and vice-versa, were sometimes the perpetrators of hostilities)” (Kishi, 2017).

In 2016, 869 cases of communal riots were recorded by the National Crime Records Bureau (NCRB). NCRB reported 336 cases of “offenses promoting enmity between different groups” in 2014, of which 323 are offenses for promoting enmity between groups based on religion and race. In 2015, the corresponding numbers were 424 and 378, respectively. According to an IndiaSpend database, the year 2017 recorded 11 deaths and the most incidents of hate violence (37 incidents) associated with cows and religion since 2010. Author and human rights organizer Harsh Mander told IndiaSpend<sup>60</sup> in a live interview on 13 December 2017- “These are just the tip of the iceberg, on the ground there are a much larger number of cases—many reported in the local papers—many not reported at all. But no doubt there has been an extraordinary rise in the number hate crimes across the country in recent years. There seems to be a kind of permissive environment for people to engage in

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the issue of religion. In 2015, it ranked 198 countries. The Social Hostilities Index- looks at 13 indicators including crimes motivated by religious hatred, mob violence related to religion, communal violence, religion-related terrorist groups, using force to prevent religious groups from operating, the harassment of women for 'violating' religious dress codes and violence over conversion or proselytising.

<sup>59</sup> [www.huffingtonpost.in/2017/04/13/on-religious-hostilities-india-ranked-just-slightly-better-than-Syria](http://www.huffingtonpost.in/2017/04/13/on-religious-hostilities-india-ranked-just-slightly-better-than-Syria)

<sup>60</sup> IndiaSpend is a non-profit and a project of *The Spending & Policy Research Foundation* located in Lower Parel in Mumbai, and registered as a Charitable Trust with the Charity Commissioner, Mumbai. IndiaSpend is the country's first data journalism initiative.

hate speech and to act out on hate. This plays out in terms of lynching, individual hate attacks, attacks on places of worship—especially Christian places of worship on priests and nuns—and attacks particularly on Dalits and Muslims (which has been going on for much longer).”<sup>61</sup>

“Since 2014, with BJP coming into power under Prime Minister Narendra Modi, Hindutva groups have raised the pitch over the trade and slaughter of cattle. In many states, existing laws against the sale and consumption of beef have been made more stringent. This has emboldened cow vigilantes, hurting livestock farmers and traders, but most of all, Muslim communities that depend on the meat industry for both their livelihoods and nutrition. The worst side of beef hysteria is the violence directed at Muslims. Despite the violence being predicated on religious grounds, across states, the police chose to ignore Section 153A of the Indian Penal Code while registering cases. Mob violence has occurred in other cases too, including attacks on Dalits suspected of illegally transporting cows, the killing of alleged child traffickers in Jharkhand, and the lynching of a police officer at a mosque in Kashmir. All these attacks are deplorable, and seem to indicate a weakening of the rule of law” (Dey, 2017). Therefore it can be inferred from all of this that India’s religious violence issue has less to do with religion and more to do with xenophobia. As with other minority religions in developing countries, Muslims find it difficult to get representation and support. Still, many Hindus have been known to stand up for Muslims in India and have even sheltered and protected them during riots. Although the two groups are currently at odds, it is hoped they can resolve their differences as India continues to grow.

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<sup>61</sup> Human rights activist Harsh Mander talks to Alison Saldanha, Assistant Editor at IndiaSpend about cow-related hate crimes in India (13 December 2017).

## 4.2. A Case Study: 2013 Muzaffarnagar riots (U.P)

Let's begin here with our case study of Muzaffarnagar riots (U.P) which can be considered as one of the biggest communal riot which took place at a very crucial juncture of this decade just before 2014 Lok Sabha elections. Not too far away from the national capital Delhi, Muzaffarnagar is just as urbanised as any other small town. Modern private schools where women driving scooters, concrete buildings and fashion stores are a common site. There are also common are the vehicles carrying sugarcane up for all, this is the biggest centre for production of Jaggery in Asia. But the year 2013 was a blot, as clashes and riots divided the district on communal lines. The Jaats and the Muslims both the backbone of the sugarcane sector became bitter rivals. The social fabric of the area was irreparably damaged. Burhana village was the worst affected. This locality saw the maximum killing and exodus of Muslims who had to stay in refugee camps for a large period. Today the refugee camps have turned into colonies. The tents have been replaced by the houses but the life is not the same and there are many more heart ranching tales here.

**The incident and its background-** 27<sup>th</sup> August is the date after which Muzaffarnagar a town of western U.P has or had been constantly in news riots, arson, killings, rallies, statements and counter statements that began this day continues even today. This is the day when 3 people were murdered there and gradually this entire issue took communal and religious colour. The echo of this incident shook the entire Muzaffarnagar. The politics on these unfortunate turn of events at Muzzafarnagar refuse to die down even today.

The original cause of the rioting is disputed according to bipartisan claims largely concerning the affected communities. In this case, the cause of this rioting alternates between a traffic accident and an eve-teasing incident.<sup>62</sup> According to the first version, "the cause was a minor traffic accident involving some youths which then spiralled out of control when it eventually took on religious overtones."<sup>63</sup>In the second version, "a girl from the Hindu Jat community was allegedly harassed in an eve-teasing incident by one Muslim youth in Kawal village. This girl tells her brothers Gaurav and Sachin that a guy named Shahnawaz from the adjoining village has been passing lewd comments on her. Later on Gaurav and Sachin confront Shahnawaz and they all get into the argument and this boils

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<sup>62</sup> The Mystery of Kawwal: Were Muzaffarnagar riots based on distortion of facts?". NDTV. 14 September 2013. Retrieved 13 July 2018.

<sup>63</sup> Raman Kirpal. "How SP, BJP, BSP politicians gave their blessings as Muzaffarnagar burned". First Post. 5 November 2013.



down to a major fight and eyewitnesses say that Shahnawaz threatened to abduct their sister. This threat worsened the arguments and the subsequent fight resulted in 3 deaths- Sachin, Gaurav and Shahnawaz. The date was 27<sup>th</sup> August 2013. The police did its job after this incidence.<sup>64</sup> The accused were arrested on the day of 27<sup>th</sup> August but on the night of the same day the SSP and the DM were transferred. According to police records, Gaurav and Sachin picked a fight with Shahnawaz over a motorcycle accident. While it has been widely reported that the fight was sparked off when Shahnawaz harassed Gaurav and Sachin's cousin sister, the FIR in the murder makes no mention of sexual harassment or molestation.<sup>65</sup>

The killing of the three youths in Kawal village started echoing across the district. The local Muslim and Hindu leaders added fuel to the fire by their incendiary speeches. On 30<sup>th</sup> August 2013 after the Friday prayers Muslim leaders in Khalapur locality gave provocative speeches. In the meanwhile local Hindus announced a panchayat (large meeting) on 31<sup>st</sup> August 2013 but after few hours of its announcements the administration forced Hindu leaders to cancel the panchayat. News about the cancellation of panchayat spread like a wild fire. The Hindus felt that the administration is acting in a partisan manner. The result was that even after panchayat cancellation around 60,000 Hindus gathered for Panchayat. Hindus gave a call to shut down Muzaffarnagar on 4<sup>th</sup> and 5<sup>th</sup> September 2013.<sup>66</sup>

The local administration was keeping an eye on all these developments. The administration had advance information that Hindus have called for a maha panchayat (mega gathering) on the 7<sup>th</sup> September 2013. Hindus had to go through Jolly Nahar to attend this mega gathering. On 7<sup>th</sup> September 2013 a large number of Hindu people started gathering on this day of Maha panchayat but after returning from there both the communities started clashing with each other near Jolly Nahar. This was the turning point and aftermath of this shook the entire Muzaffarnagar. To prevent the 'mahapanchat', the Muzaffarnagar district administration imposed prohibitory orders under Section 144, of the CrPC, in the entire district. Armed forces and the Rapid Action Force were deployed in Muzaffarnagar. A

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<sup>64</sup> Varma, Gyan (12 September 2013). "Communalism gains new ground in rural India". Live Mint. Retrieved 12 September 2013. The violence erupted after a girl belonging to the dominant Jat community was subjected to street harassment by some young Muslims in Kawal village. The incident led to clashes between Jats and Muslims in the village in which three people died.

<sup>65</sup> The Mystery of Kawal: Were Muzaffarnagar riots based on distortion of facts?". NDTV. 14 September 2013. 13 July 2018.

<sup>66</sup> Sreenivasan Jain (11 September 2013). "Muzaffarnagar riots: a meeting after Friday prayers exploited by politicians". NDTV. Retrieved 11 September 2013.

criminal incident that could have been stopped through immediate police action flared up into large scale communal riots. On 8<sup>th</sup> and 9<sup>th</sup> September 2013 communal riots engulfed several villages across Muzaffarnagar. In the year 2013 around 533 incidents of communal riots were reported and then Muzaffarnagar riots became a national issue. Sudden eruption of violence created anarchy like situation in the city.

“In the last two decades, this was the first incident of a communal riot in Uttar Pradesh, when the civil administration has had to bring in the armed force to grab control over the law and order situation. The last time such an incident took place, where the army had to be called for, was in December 1992, where communal forces erupted after the demolition of the Babri Masjid in Ayodhya. The Nagla Mandaur mahapanchayat was one of the first public meetings which led to mobilisation for the riots in the first week of September 2013. The BJP leaders rejected the charges as ‘politically motivated’ and ‘vendetta politics’ of the then Samajwadi Party government which slapped the hate speech case against them.”<sup>67</sup>

“The clashes between the Hindu and Muslim communities in Muzaffarnagar district of Uttar Pradesh, India in August–September 2013, resulted in at least 62 deaths including 42 Muslims and 20 Hindus and injured 93 and left more than 50,000 displaced.”<sup>68</sup> Supreme Court of India while hearing petitions in relation to the riots “held the Akhilesh Yadav led Samajwadi Party, prima facie guilty of negligence in preventing the violence and ordered it to immediately arrest all those accused irrespective of their political affiliation. Court also blamed the Central government for its failure to provide intelligence inputs to the Samajwadi Party-governed state government in time to help sound alerts.”<sup>69</sup> One of the most striking and disturbing fallouts of the muzaffarnagar riots has been the divide between the Jaats and Muslims the two politically dominant communities of western U.P who had until now a history of largely peaceful coexistence whereas this new dangerous divide based less on genuine grievances and more on grievances manufactured for political ends.

The Justice Vishnu Sahai commission, which made an enquiry into the 2013 Muzaffarnagar riots, “blamed members of the SP and the BJP for being involved in the violence. The

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<sup>67</sup> <http://dev.tehelka.com/what-led-to-the-muzaffarnagar-communal-riots/>

<sup>68</sup> "Fresh clashes in UPs Muzaffarnagar leave 26 dead, Army deployed in affected areas". The Hindustan Times.

<sup>69</sup> Anand, Utkarsh "SC holds Akhilesh govt guilty of negligence, orders arrest of all Muzaffarnagar accused," Indian Express, 8 April 2014.

commission also blamed senior police and administrative officials for errors which led to the escalation of the violence.”<sup>70</sup>

A report composed by a six-member team of the Center for Policy Analysis, comprising Harsh Mander, Kamal Chenoy, John Dayal, Seema Mustafa, Sukumar Muralidharan, and E.N. Rammohan, censured members of the Samajwadi Party(SP) and the Bharatiya Janata Party(BJP) for their role in the violence. According to the report, “the violence was seen to be a choreographed spectacle in which the SP and the BJP would create sharp polarisation on communal grounds, compelling the electorate to make a choice between them and squeezing out other parties which have been claiming significant shares of popular vote.”<sup>71</sup>

Ashutosh Varshney is one of those who has argued that there is a connection between rising incomes and declining rates of communal violence (Varshney, 2005). He basically says that riots will increasingly belong to India’s past and not to India’s future. The argument was that riots were also the consequences of how economy and societies were organized, but they also have a direct linkage and thus as India income grows there would be a decline in communal riots. Here the question arises then how much Muzaffarnagar episode breaks this script that many political theorists have in a sense endorsed. This research also argues that Muzaffarnagar breaks this theory to a certain extent, and it’s terrifying and if riots like this spread further it will be truly terrifying because for ten years before this riot India has followed the large theoretical, comparative script that with higher levels of income –the riots decline and the intensity declines and the incidents decline.

Ashutosh Varshney argues that “the Muzaffarnagar riots departed from our existing script of understanding. Over the last 15 to 20 years, ethnic conflict in different parts of the world, including India, has been studied extensively. We know a lot, but no theory could have confidently predicted the Muzaffarnagar riots. We should, of course, note that predictive accuracy is not a good way to judge social science theories. As in biology, social science theories tend to be probabilistic, indicating the odds, not proposing certainties. Just as not everybody who smokes cigarettes would get cancer, though a lot would, social science theories are better at explaining central tendencies, not departures from them. We just can’t get the precision of physics. Nonetheless, we need to understand why the Muzaffarnagar

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<sup>70</sup> "Panel finds Samajwadi Party, BJP hand in UP riots". Times of India. 24 September 2015.

<sup>71</sup> Muzaffarnagar riots: Report says SP and BJP behind violence". India Today. 17 September 2013.

riots were unusual and examined their larger implications. Why were these riots surprising? First, the Muzaffarnagar riots were mostly rural. While civil wars tend to be rural, riots are primarily urban. In civil wars, the insurgents generally attack the sovereignty of the state. They need to hide from the might of the state to attack it well; villages, mountains, and forests provide better hideouts for planning and protection than cities. In comparison, rioters attack communities, not the sovereignty of the state. Rioters are armed with lesser weapons, and houses in urban by lanes are a good enough cover. Second, prejudice of various sorts might be widely prevalent in Indian villages, but the countryside tends to have caste violence, not Hindu-Muslim riots. And when they do take place, rural riots tend to be small.”<sup>72</sup>

Other argument by Ashutosh Varshney is that while riots are basically considered as an urban phenomenon, not rural, but there is a major argument in the field, by Wilkinson, which applies to rural settings as well. In ‘*Votes and Violence*’, Wilkinson argues that “communal riots are unlikely to break out in a state where the government is heavily based on minority support. To keep the minority vote intact, the government would use its might to stop or contain riots.” The Samajwadi Party runs UP’s government; it depends heavily on Muslim support, yet riots took place, killing a large number of Muslims. One big exception, of course, does not invalidate a probabilistic theory, but it should be noted that ever since the SP government came to power, small riots have been occurring in UP with considerable regularity. A minority-dependent government seems unwilling, or unable, to stop them.

Ashutosh Varshney also says that “at higher levels of income, riots decline in frequency and intensity. France did have riots in 2005, and the US in the 1960s and again in 1992 in Los Angeles, but such rioting is episodic. In contrast, riots can be endemic at low levels of income. At higher levels of income, communal or racial prejudice may continue, but resentments, when violent, take the form of terror or hate crimes (which are individual acts of violence), not riots. As the Indian economy grew at high rates over the last decade and as big riots also disappeared after Gujarat 2002, India seemed to follow the larger comparative script. Accordingly this can be said that when well-established theory is undermined it is because of typically in the case of riots- it’s because political leaders from

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<sup>72</sup>Ashutosh Varshney- “ A strange fire- Why the Muzaffarnagar riots were a departure from past trends”- Indian Express dated September 20, 2013

across political parties for a whole variety of reasons find it convenient to polarise and to extract political advantage out of it” (Varshney, 2005).

Then the question is that why political parties are still invested in fomenting communal tensions because after all, there was a time when politics of polarisation yielded certain results there were inflection points in history where there were perceived threats of discrimination and identity politics tends to work much better in that backdrop. It has mostly been argued here given the phase India is entering given the emergence of young voters, identity politics should matter less and less, and governance should matter more. But one can see the politics of polarisation across the board especially in U.P at the time of elections but as a whole it does not discredit the larger theoretical domain as governance issues by and large for now dominate the electoral discourse there but along with the presence of politics of polarisation because political parties still believe there are political gains in identity politics discourse if the development or governance discourse is not going to yield political gains.

Van Der Veer notes “communal violence in India has to be understood in the context of the politics of sacred space. Riots and rituals have come to be linked in the construction of communal identities in public arena.”<sup>73</sup> What van der Veer is directing attention to here is how communal identities contest boundaries of public space, a contestation that leads to violence in the form of riots. Yet, he is also careful to point out that religion alone is not responsible for such forms of violence; politics also plays a role. He argues that politicians use religion as a “smokescreen” and call it communalism for their benefits. Politicians evoke nationalist sentiments among their voters through the promotion of religious identities and ritualized practices and secure particular religious affiliations to congeal against an “other.”

Given this context, Muzaffarnagar riots is an aberration, but the danger of Muzaffarnagar is that it comes in the context of mounting communal violence tensions in the whole of Uttar Pradesh at that time. There have been minor incidents throughout before these riots and the fact that it coincides with the assumption of power of Akhilesh Yadav and we should not lose side of this fact. Former C.M Mayawati (BSP Supremo) would have been responsible for a lot of things not least corruption, but there were no communal riots on her

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<sup>73</sup> Van der Veer, Peter. “Writing Violence.” Ludden 250-269. Print.

watch. This research tend to argue that there were certain specific features about U.P at this time which has enabled a new wave of communal antagonism to resurge. When people feel that there is not enough justice when there is selective indignation which is called vote bank politics that is only when existing tensions like for example eve teasing erupts into a major conflagration like Muzaffarnagar. What happened in Muzaffarnagar can't be directly ascribed to Mr. Modi because one should pay more attention to what BJP cadres or BJP local leaders were doing in Muzaffarnagar. Similarly one should also pay attention to what S.P local cadres and local leaders were doing unless we have a greater reason to link it to Akhilesh Yadav. It can be argued that S.P or B.J.P local cadres must have felt that this can be one of the ways to bolster support by creating first a sense of insecurity and then later to come as protectors. Sometimes these kinds of strategies can go horribly wrong and as result of this S.P lost in next Lok Sabha Assembly elections. It is mystifying that as S.P came to power, there were big riots in U.P after a very long time.

The debate around secularism is intrinsically linked to can India be ever riots free or is there in that context failure of secular establishment in providing counter-narrative to the politics of polarisation. Are we going back to 1990s which was perhaps one of the worst decades in terms of communal harmony and in records of communal violence? What worries about Muzaffarnagar riots is that it was known, it was foretold, not the place, not space specifically but it was reported for more than 2 to 3 months before this happened. It was all in the air that something big is going to happen and people would tell you the reason that why it would happen and the reasons pointed to two major parties BJP and SP. It was clear to everyone who was watching all of this who would be the natural beneficiaries should any incidence of that kind happen. On that basis, small incidents were picked and talked about and then it happened in a pattern. Given the nature of this thing, no evidence surfaces for a long time because of the nature of our political and legal system. One must be worried about these things because there is never a conclusive evidence for example for what Congress did in 1984 or what happened in Gujarat in 2002 and so on. The only reasoning is deductive reasoning which is to say you can only deduce who would be the natural beneficiary of something like this and then try and look at the local events because all communal situations in our country are always localized.

The larger question still remains why political parties still seek political advantage out of communal polarisation especially in a state like U.P. the question remains what does that

do to a theory that Indian voter is increasingly not interested in this kind of politics after all one of the modern theories of Indian politics is that anti-incumbency is now possible to buck with effective governance. This is what Narendra Modi has used effectively. If that is the case then why do we see a resurgence of identity politics all over India and inflammatory speeches made by almost all political parties in already fragile societal peace?

To answer this question this research would like to quote a few lines from Rabindranath Tagore's beautiful poem which says – "Where the mind is without fear and the head is held high. Where knowledge is free. Where the world has not been broken up into fragments by narrow domestic walls." These lines seem very relevant in today's context. We see this happening all around the world. There are certain features which all countries in the world share today. There is this explanation that through globalization barriers are breaking down and there is a difference in the way the job market works now. A certain number of people are feeling a way left out of this process of development. We can see this in both the so-called global north and the so-called global south. People are trying to defend themselves and are trying to revive their identities in the face of the open borders, mobilizing their cultural, religious and other forms of identities. Sometimes even one could call this movement around the world almost like an insurgency of the people who have been left out in the process of globalization and development. The political systems around the countries have not been able to address these issue, and hence they are also becoming a part of the problem as politicians are trying to build up their political careers out of this chaos. If we see all this in the Indian context, one can argue that there is a growing emphasis on mutual exclusiveness and mutual exclusion for narrow self-interests at both the individual level as well as at the community level. Whereas this is a very short-sighted approach because if we are talking about globalisation where borders are breaking down, we actually have to turn this what some may perceive as a challenge this plurality into an asset where physical borders are not that meaningful, and at least they cannot protect us from the challenges in what we are living.

### **4.3. Locating Gender in Religion-Crime Problematic**

While all religions primarily announce the equal essence of man and woman, on many occasions, the same religions declare woman as an agent of evil spirit. Women are seen as inferior to man both in intellect and character. In most of the religions, women are not allowed to participate in most of the significant religious performances. None of the religions allow women to head any religious institution. The restriction served a patriarchal society in two ways. First, by not allowing equal participation in one of the most vital institutions of the society, namely religion, the society places woman in an inferior position. Second, with domination in the helms of affairs of religious leadership, the society incorporates the patriarchal interests in religion through formulating norms and laws with gender bias. This study contend that religion portrays man and woman with same essence due to its fundamental egalitarian objectives. On the other hand, image with negative attributes of a woman or negative consequences for her is mainly due to the constant interplay between religion and social-economic norms and political practices. There is always a section of society for whom religion is instrumental in promoting their interests rather than spiritual source for inner enrichment. A multi religious and fervid society like ours bestows women on a higher pedestal; where they signify the ‘sanctity and dignity’ of the household and community. Perhaps, this is a reason the unfathomable burden of communal riots lies with the women the most.

During most wars and conflict situations, atrocities against women are ways of asserting power over the enemy – to show the other side cannot protect their women. We have our Partition stories, and more recently, the Godhra carnage. Dalit subjugation routinely takes the same form – by aiming at their women (Krishnaraj, 2007). It is common for women, who are considered to bear the "honour" of a community, to be specifically targeted during community riots in India, because attackers use violence against women and their bodies as a way to dishonour and shame the entire community they are targeting. This was also a case during Muzaffarnagar riots in Western U.P. This study posit that this was a case of ‘religionisation’ of sexual violence.

“The patriarchal notion of protecting women’s ‘honour’ was used to instigate communal riots in Muzaffarnagar. As a result, women’s bodies were used as battlegrounds to establish the superiority of one community over the other. The survivors of this sexual violence were systematically silenced because of religious and patriarchal pressures – erasing the acknowledgement of violence against women from public memory. Seven Muslim women,



one from Lankh village in Shamli district and six from Fugana village in Muzaffarnagar, eventually filed cases of gangrape with the help of activists and lawyers. These testimonies were recorded nine months after the incident. The legal trajectories of these seven cases are crucial since Section 376(2)(g) of the Indian Penal Code was specifically introduced through the Criminal Law Amendment Act, 2013, after the December 16 gangrape protests, just six months before the communal violence in Muzaffarnagar. It was introduced to deal with cases of rape committed during communal or sectarian violence as a form of aggravated rape. It is also to be read in conjunction with Section 114-A of the Indian Evidence Act whereby the burden of proof is shifted to the accused in consideration of the coercive circumstances by means of which rape is committed. Since the sectarian violence in Muzaffarnagar was the first such incident after the introduction of the new law, these cases of sexual violence, during communal violence, are precedents of sorts. The First Information Report for five out of the seven petitioners was filed within three weeks after the gang rapes in September, 2013. On March 26th, 2014, the Supreme Court, in an important judgment, Mohd Haroon and others versus Union of India, directed the state government to swiftly proceed with investigations and the arrest of the accused. It is crucial to note that all the seven women are married and above the age of thirty. None of the young, unmarried women had the social support to fight the stigma of rape publicly. In addition, all the seven women are from working class backgrounds (ironsmiths, agricultural labourers, carpenters etc) while the accused are from the dominant landowning Jat community who are significantly more influential in terms of money and influence over the state machinery (Dixit, 2015).”

Let us compare between the “narratives” of Gujarat and Muzaffarnagar riots in the context of gender. “In Muzaffarnagar, an alleged attack by the “other community” on the izzat of two brothers (by harassing their sister) turns out to be fake. But it still leads to a mahapanchayat called to protect “the honour of women.” This then spurs the violence (with inflammatory speeches, incendiary video, death and displacement, police inaction, omnibus FIRs, and truckloads of scared people fleeing their homes).”<sup>74</sup>

We saw a similar narrative structure in Gujarat 2002, and it was written about in two reports by women’s rights activists — Survivors Speak and Threatened Existence. In addition to the train burning at Godhra, there was a false news report on February 28 in Sandesh (a

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<sup>74</sup> “The Mystery of Kawwal: Were Muzaffarnagar riots based on distortion of facts?”. NDTV. 14 September 2013. Retrieved 15 September 2013

leading Gujarati daily), saying that Hindu women were dragged from a railway compartment by a fanatic mob. A fake follow-up on March 1, said some women's bodies were found with breasts cut off. A retraction, published much later by Sandesh, lay buried in a corner of the paper, while the fake news spread like wildfire, and became the justificatory rallying cry for what followed (Survivors Speak, pp 10-11). All of this — from Gujarat to Muzaffarnagar — is of a piece with the existing stock repertoire of the Hindu right — stories and myths about Muslim marauders, raping and defiling Hindu women, and by conflation, attacking the “izzat” of Mother India herself, provide eternal justification for “honorable” retaliation by Hindu men and the Hindu nation (Threatened Existence, p.39).

“Riots are always about the blame-game that follows; the action-reaction theory; the rationalisation for what is indefensible — the taking of human life, the rendering homeless of innocents, and the inevitable polarisation benefiting political parties. Women as commodities (of a piece with land and cattle), and women's bodies as repositories of patriarchal honour once again at the epicentre of Muzaffarnagar narrative. The women's bodies are at the centre of the narrative, not the centre of the violence that has been reported. This belt of western Uttar Pradesh is the home turf of the “dis-honor” killings, where the sex ratio is among India's lowest (Muzaffarnagar has a child sex ratio of 863 in the 2011 census); where the narrative of “women's honour” can be stirred so easily into the communal cauldron. One headline in a prominent internet news site screamed “Stalker's death triggered Muzaffarnagar conflagration,” implicitly justifying the murder of someone the reporter decided to call a “stalker,” though there was no evidence or charge of stalking (a serious crime after the Criminal Law (Amendment) Act, 2013) in the incident of August 27. The story opened with, Two brothers kill a man stalking their sister. The actions by the brothers were in this and many other variations normalised, even tacitly valorised. For that is what “real men” do when family honour is on the line. It is precisely the mindset that applauds the death penalty for rape, knowing it will solve nothing systemic. But who cares, for it satisfies the blood lust.”<sup>75</sup>

“The mahapanchayat on September 7, in violation of prohibitory orders, is variously reported as Beti Bachao Bahu Bachao maha panchayat or Beti Bahu Izzat Bachao maha panchayat. “Izzat (honour”) and “Bachao (protect”) are scary words in the macho

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<sup>75</sup> Farah Naqvi- “The chilling familiarity of Muzaffarnagar” -The Hindu (SEPTEMBER 18, 2013) - <https://www.thehindu.com/opinion/op-ed/the-chilling-familiarity-of-muzaffarnagar/article5138832.ece>

lexicon of western U.P. Here, women's sexuality is a tool to be deployed only in service to community and patriarchy. Many such intercommunity relationships, ending in murder, have been inter-caste. Now with inter-religious romance labelled "love jihad" under the Vishwa Hindu Parishad scanner, we need to be worried and watchful, as this game of izzat plays itself out. The "love jihad" construct of the Hindu right in one stroke raises the spectre of the "violent, enemy other, seducing by force" (Muslim jihadist) and condemns personal choice (i.e. "love"). And when protection and control over women's bodies are placed at the centre of any blood feud, one must fear the ground that communalists of all hues are preparing in our country."<sup>76</sup> While there is silence on a law to challenge impunity, new slogans of communalism are being crafted every day, embellishing the core of the "honour" narrative. One such slogan from Muzaffarnagar episode, according to one news report (HT, Lucknow, September 13), — "desh, bahu aur gai ko bachana hai toh Narendra Modi ko lana hai."

This study holds the view, it is true that patriarchy works under the broader premise of religion. It is with this conviction that Jayanti Alam in her book "*Religion, Patriarchy and Capitalism*" argues that "most of the oppressive structures that work against women are attributed to religion, which are further legitimised and sanctioned by the society at large. The primary control over this rests with a few powerful male members. Thus, it is further articulated that the separate personal law given on the basis of religion further works against them. The effect of patriarchy, religious laws and social obligations in the social realms hinders a woman's realisation of her rights. This unearths the social barriers faced by women that withhold their entry into the socio-political sphere that yield to the diktats of a patriarchal society. The stereotypical portraying of women in social customs and morals irrespective of their caste, class and religious background makes women submissive in the male dominated society. The politicisation of religion under the banner of a secular nation in a way engendered violence in our times. The fact that 'woman' is the most discriminated category — double discrimination — has not been a concern of the makers of the law of the land. The tearing of Women's Reservation Bill in Parliament shows how intolerant our representatives are towards the women's cause" (Alam, 2013).

Jayanti Alam touches on the varied dimensions of a woman's life in the contemporary Indian society under the larger umbrella concepts of religion and patriarchy. She takes on

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<sup>76</sup> Ibid.,

a general notion that “the religious scriptures promoted the practice such that the child preference in the family becomes highly unfavorable to women. This entrenched mindset furthers the idea of female infanticide, thus eliminating female infants at birth considering them as an economic burden. The dowry system and the notion of the girl child belonging to her husband – a kind of tying up of the woman to a man – treats women as an expensive and uneconomical commodity in her own family. Even at a time of societal progress in terms of science and technology, there is no benefit to the woman. Rather, what is observed is a reverse social dimension. Capitalism appears as a catalyst in strengthening the practice of patriarchy as wealth accumulates in the hands of the male” (Alam, 2013).

Zoya Hasan in her article “*Gender, Religion and Democratic Politics in India*” argues that “the Hindu religious politics and women’s activism associated with it provides a compelling example of the instrumentalisation of women to accomplish the political goals of the Hindu right. Against those who argue that, in the current communal conjuncture, reform within Muslim personal laws or Islamic feminism is the best strategy for enhancing the scope of Muslim women’s rights, she says that such an approach tends to freeze identities within religious boundaries. It shows how women’s and minority rights are used within the politics of religion to sideline the agenda of women’s rights” (Hasan, 2010).

Questions of women’s rights have entered into a complex situation especially when a basically liberal Constitution like India’s has allowed religious personal laws to continue as a part of its legal system. This was done with the basic intension of ‘national integration’ and ‘communal harmony’, overlooking the fact that most personal laws discriminate against women. It thus turns out to be a paradox for gender justice. On the one hand, the Constitution guarantees formal equality to women, and provides for non-discrimination on the basis of sex. However on the other, the all-important sphere of family law is left to be governed by codes that explicitly discriminate against women. The continuance of such discriminatory laws suggests that women are denied the fundamental right of equal protection of laws guaranteed by the Constitution. Martha Nussbaum observes: “It is less than ideal for India to guarantee women all sorts of rights in the Constitution and then turn the all-important sphere of family law over to codes that explicitly deny women the equal protection of the laws”.<sup>77</sup>

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<sup>77</sup> Martha Nussbaum, *Sex and Social Justice* (New York: Oxford University Press, 1999), p. 104

#### **4.4. Concluding remarks**

Is crime or violence based on religion just a breakdown of law and order? Clearly on one hand it is. It shows that these incidents can keep on happening and there is no fear of repercussion. And at the same time there is an atmosphere of impunity that exists. This dissertation contends that this is a breakdown of law and order which is being promoted by the ruling dispensation when they promote or when they applaud the killers of Akhlaq, when the Minister goes and drapes the tricolour around them applauds them etc. When Ministers goes around saying that we will break the bones of those people who kill cows etc. When Ministers goes around saying that Muslim boys are enticing Hindu girls and whenever you see a Hindu girl with a Muslim boy you should beat up that boy etc. When this kind of narrative is being spun out by those who are in power today when people who oppose these are being subjected to the filthiest of abuses. When killers of Gauri Lankesh are applauded on social media and the persons who are applauding the killers of Gauri Lankesh are the persons being felicitated and followed by the Prime Minister on twitter etc. This is clearly creating a climate and atmosphere where such crimes are bound to grow. On top of that when these killers are allowed to go away with impunity then there is going to be an extreme breakdown of law and order and it can prove very dangerous for the democracy of this country as it happened during the emergency of 1975. We as people need to ask ourselves about the destruction of civilized values and not to be proud of this.

Junaid a 17-year-old boy, was stabbed to death on June 22, 2017, when he board a train, which he had taken with his two brothers after Id shopping in Delhi. A group of men allegedly hurled communal slurs and attacked them after an altercation over seats. Given this context, the “Not in My Name” campaign began after a Facebook post by film-maker Saba Dewan against the stabbing of Junaid. She sought to “reclaim the Constitution and resist the onslaught on the right to life and equality.” Thousands of people across the country took to the streets in a citizens’ protest named ‘Not in My Name’ against the recent incidents of mob killings. Holding placards that read: “Break the Silence, No Place for Islamophobia, and Shed Hate not Blood among others, the protesters said they had gathered to send out a message that there was a need to unite for a cause.” Thousands of people across India gathered for protests just with one message: that mob violence is something we all have to fight and that we will not let this become the new normal. In the recent instances of mob violence, where most of the victims have been Muslims and where nearly all the reasons are linked to beef. These protests are not just about the murder of innocent

Muslims; they are against any kind of mob violence against anyone, irrespective of their religion or caste. But the mob violence against Muslims has been especially significant because there is a pattern and one can explain that through data. We've come to a point where we have to ask ourselves - what kind of country are we becoming? Do we want to turn into a nation of lynch mobs or has the time come to speak up and speak out and speak louder?

One article from Saba Dewan and spontaneously it grew, and it grew not only to Delhi but to 16 major cities across India. This is a very big step and the fact that it reposed faith in the civil society that they have got up, but one protest is not going to change everything. But it was a very important beginning and a very important message to the government that the people are not ready to take it lying down. These kinds of mob killings really bother everyone, and everyone needs to speak it out loudly. There should be more democratic gatherings, and people should be talking to other people and make them question their prejudices and what they feel about making India into a functioning democracy. The bigger questions and remarks that people from opposite sides are raised is that everyone participating in these kinds of protests are either leftists or anti-nationalists. The main point which is repeatedly raised by RSS, ABVP and the BJP is about the selective outrage issue. The question they put is that why do not we see voices being raised as strongly in the context of political killings, for example, happening in Kerala as we usually see in the case of Muslims or Dalits?

The point is do we principally condemn and stand against mob lynching. More than anyone else mob lynching should bother the government because of the fact that these people are acting in the name of the state. They are acting in the name of enforcing certain laws for example beef law. So they directly negate the authority of the state. In a sense, it is a parallel government being run. In fact, it is a parallel police. In Kashmir we have a policeman getting lynched, and the police could not do anything. In the case of train lynching, the police said that there was so much crowd that it could not control. The police is being made irrelevant here. That is why in this context a law against mob lynching is required to put everyone through litmus test because of this kind of mob lynching continues than nobody is safe. If the fear of the law disappears from the minds of the people than it's very dangerous for the law and order situation of the country.

Having said that let's also briefly touch upon the location of gender in the context of gender crime problematic. A multi religious and fervid society like ours bestows women on a higher pedestal; where they signify the 'sanctity and dignity' of the household and community. Perhaps, this is a reason the unfathomable burden of communal riots lies with the women the most. Communal disparity and religious violence in Muzaffarnagar riots led to the usage of women's bodies as the battleground and for the establishment of superiority in the society. In India, women are considered as honour and property of the family and people believe if you want to hurt someone, you need to strike at them. This notion, thus, makes women the first target. Also no one - the victims, her family, and the community - wants to admit the crime. A rape case is always tried to be hushed up by the society. Muting her voice, in such cases, reaffirms how patriarchy is deeply rooted in our society. Politicians also don't help the situation by blaming the victim or claiming such incidents are an exaggeration of media houses.

Thus, this not only makes the women an easy target in the scheme of sexual violence but also lets the criminals do the crime more freely. They have no fear as they know the very nature of the crime would ensure that it goes unnoticed. Also, the angst is generally directed towards a minority community. Women have been fighting this discrimination for a long time, but a society where the women are considered as the property of a man, this there seems to be no immediate solution. The problem of wide gender disparity in education and basic human rights need to be removed if we want to stop this. Also objectifying a woman and portraying her as a damsel in distress or as the weaker section of the society, need to end immediately. People need to understand a woman is capable of a lot more than they imagine her to be. Bilkis Bano's fight to get her perpetrators punished is one such example. And Supreme Court's judgment to uphold the conviction and life sentences of all the men in Bilkis Bano's case was a step towards that. Men need to understand that women are their equal counterparts. In a country, where the land is considered as Maa or the mother and where women are worshipped as goddesses, it's time we give what women deserve: liberation and empowerment.

Consider the propaganda of 'Love Jihad', where Muslim men woo Hindu women and eventually convert them to Islam, used by members of VHP (Vishwa Hindu Parishad) to inflame the passions is a very inflammatory narrative. There are some forced conversions let us be very clear about it but when the word Love Jihad is used that becomes a very infuriating kind of narrative which can provoke reaction and counter reactions. Therefore

there is an atmosphere that is politically being created that is enabling people to feel emboldened to do this and to feel that they can get away with this. We should be responsible enough to take into account that the communal temperature of this country is on rise and creates such kinds of reactions which will in fact provoke counteractions and everybody is unsafe in the long run be it Hindus or Muslims or any other religious community for that matter. The victim in Rajasthan was not a victim of breakdown of law and order. He was a victim of all pervasive environment that has been created where people are distrusting each other because of the religion they belong to. At the end of the day what we are losing is on humanity just because we are trying to show that we have a bigger job to do which is to protect our religion. We are making one religion fight against another not just in few states but across the country and this is only going to lead to further disaster.

“The effects of hate crime are deeper and more wide-ranging than those of other serious crimes such as murders and assault. They impact not only the immediate victim but also the community with which the victim identifies, affecting social cohesion and stability,” as IndiaSpend reported on 8 December, 2017. Attacks based on race, religion, caste or ethnicity in India often occur when the attackers believe they have political cover to safeguard them from state retribution. Therefore the political dispensation under which these crimes take place must be held accountable. State police departments must ensure that those responsible are brought to justice. Indian authorities must ensure that there is no impunity for those responsible for public lynching and other hate crimes against Muslims in several states. To prevent a cycle of revenge and violence, it is crucial for the state to respond immediately to establish the rule of law, and insist that any provocation or suspicion be handled by the criminal justice system and not through mob justice.



## Chapter – 5

### Conclusion

There has never been one conception of God in this country as we have multiple gods. All the people that we worship are people who have walked the geography of India at some point in time. They went through trials and tribulations that we are also going through. In fact, they faced much more drama than what is happening in most of our lives. Today many people say Sachin Tendulkar is a cricketing God. That is very much in line with our culture because here when we say “Deva” we mean someone who has excelled beyond certain limits. They have excelled in such a way that most people think that they are above humanity. A quote of Sadhguru<sup>78</sup> describes India as a “kaleidoscope of Chaos.” He says that we can have a society either like a manicured garden where you need a Gardener to trim it or to water it every day or you can have a society which is like a forest which will anyway last for a million years without making anybody concerned or scared of managing it. So Sadhguru argues India is like Jungle where nobody needs to manage it, somehow it goes on. However, according to this study, in this forest of diversity that India is there are few things especially in today’s context which should worry a concerned citizen of this country.

Given, this context, Sadhguru's metaphor is a perfect one because the problem that we seem to have these days is that there are some people who are coming into our jungle and trying to turn it into a manicured garden. A garden of a particular design and particular shape which admits no other shapes which is where this research argues the debate on pluralism and secularism starts. It is about the various ways in which people define themselves; religion is very much part of it. Identity in our country takes multiple forms. We have different sexual identities even though some of these are not recognized by our social and political system. We have regional identities which require pluralism. We have various caste identities which must coexist with each other. We do have religious identities and religious differences, and there are some who seem to say that people of certain religions have more rights in this country than those of other religions. We also have a diversity of people who are being considered as physically disabled. This study argues that all these

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<sup>78</sup> Jaggi Vasudev, commonly known as Sadhguru, is an Indian yogi, mystic and New York Times bestselling author. He founded the Isha Foundation, a non-profit organization which offers Yoga programs around the world and is involved in social outreach, education and environmental initiatives.

diversities are very much part of Indian pluralism, and we must accommodate and respect it in order to be a peaceful and progressive nation.

Having mentioned that the main question that arises is that are we really able to accommodate all these diversities in the same way as other prominent sections of society have been accommodated? Here the answer is no. As the process of inclusion of the diversity or multiple identities still remains incomplete even after having 70 years of the democratic system in our country. The faults in the process of inclusion is resulting in a lot of confrontation, insecurity, fear, violence, hate, vendetta politics, etc. The socio-political and economic domains in this country are becoming increasingly exclusive may be for reasons like scarcity of resources, power politics, increasing competition or may be changing global dynamics. The societies are becoming bitter as there is a revival of politics based on cultural identities like religion, language, caste, race, creed, etc. This study posits that these whole issues like these directly or indirectly are related to an increase in the phenomenon of crime and crime is also a social phenomenon. One can argue the nature of the society, its history and culture are significant variables to understand criminal behavior. Given this background, one can infer that the nature of various crimes and criminal behavior in India should be explained as a consequence of its peculiar social-cultural, political and historical conditions rather than merely a law and order problem in the state apparatus. Therefore this dissertation is centered on exploring the causes for criminal motivations in India. As the study of crime in itself is a wide subject, therefore this study has taken just two identities, i.e., gender and religion from the diverse cultural context of India in order to better reflect on the whole scenario of violence based on gender and religion in the Indian context. To get comprehensive arguments, this study has also reflected on various instances of crime post-2010 based on gender and religion. This dissertation in the three main chapters has described and analyzed the major reasons for criminality amongst offenders.

Criminality appears to be interwoven into the social fabric of civil life which can have political and economic implications. Understanding crime and causation can also be done through theoretical viewpoints. Therefore the second chapter entitled “*Theoretical Perspectives of Crime*” primarily deals with different theoretical perspectives of criminology. Classical and neo classical theories of criminology talk about questions of choice that people have free will and they make choices. Therefore classical and neo classical criminology have real implications for punishment- that is if we put in place the

right laws people will think about their action in a way that makes them choose not to commit crimes. Other types of criminological theories are positivist theories which mostly speak how crime is determined. Biologically for example perhaps we have genetic components prone to criminal behaviours and that is why we commit crimes. Therefore here people do not make choices as one can do in classical and neoclassical criminology.

Then there are a number of different sociological explanations for criminal behaviours that look at social class or environment. Some theories look at how criminal behaviour is learned, or life course theories, for example, talks about how turning points in our lives affect whether or not we commit crime. There are also critical criminological theories that instead of looking at crime and why does somebody commit a crime, it looks at why laws are created the way they are who benefits and who does not benefits. So for example that people who have power create the laws in their own interest. So that they do not end up being punished for things that they do but when other people who are powerless or have less power are punished for things that they do to keep them powerless. That the law is not something that we all agree on. It is not a consensus model. However, most criminological theories depend on this consensus model which suggests that we all agree on our laws and all these laws are in our best interest and therefore if we break them it is our responsibility. Critical criminology looks at laws from a sort of conflict perspective which suggests that power dictates who makes the laws. Then there was a brief discussion about gender and criminology. In the history of criminological theories women were left out mainly for reasons like most crimes were committed by men and therefore researchers finding it difficult to find women to do research with or they did not think it was important to include women because women were so rarely relative to men are engaged in criminal behaviour but that has been changing now. Now feminism has also been integrated into criminological methods as there is also an increase in female criminality for various reasons.

The third chapter of this dissertation titled “*Gender and Crime in India*” tries to study and analyse the broader gender-related questions which are resulting in an increase in crime rates and gender-based violence in India. It tries to study the gender-based violence in India by studying and reflecting on the recent few popular cases within the cultural and contextual realities of India. Here this chapter has mentioned that there is a growing awareness and reporting of sexual violence in India, but men of patriarchal and conservative mind-sets are not able to accept women’s increasing assertiveness and therefore uses heinous ways to punish them. India is full of brave and independent female icons. They have succeeded

despite cultural norms not because cultural norms encourage them to be independent or empowered. As the feminist movement rises in India and women fight for their rights more ferociously than ever before then what is visible to a laymen's eye is that crime against women has increased both in terms of severity and inhumanness.

There is also an attempt to study the interface between gender, law and society in India. Then there is also a brief mention of female criminality. Females are not just victims of crime but also perpetrators of crime. The consequence of patriarchy is the growing criminality amongst women. A plethora of research has indicated that the utmost reason for female criminality is their dissatisfaction with the unequal status of women in society. And the more these females get educated, the more willing they are to step outside the bounds of expected traditional social roles. Furthermore, research has also highlighted that strange personal interrelationships with husband and other family members or relatives or friends, deprivations, and denial of basic needs of life like affection and security were the main causes of ultimate criminal behaviour in women. It is also intriguing to note that some women are misusing laws that have been formulated for their own welfare against men. This epidemic would not change until gender-based violence or crime is challenged to its core.

The fourth chapter titled "*Religion and Crime in India*" basically tries to study religion-crime problematic in the context of select cases post the year 2010. This chapter mentions that religious violence operates at different levels, ranging from individual relations and interests to the local, institutional and national politics to communal riots. In the present scenario, the religiosity crime relationship is quite a resilient and an important relationship that has a great impact on both the theoretical level and the public policy levels. Empirical research findings demonstrate that there is an inverse relationship between religiosity, crime, and some social deviations. Although social control functions of religion have been considered as a crime preventing factor within the most of the social theories and mounting research evidence demonstrates that there is an inverse relationship between religiosity and crime. However, the relationship has long been a topic of controversy as some research also suggest that there is a positive relationship between religiosity and crime. This study does not deny the relevance of the inverse relationship between religion and crime in the Indian context, but any study on religion crime problematic must also count on factors like diverse religions in Indian society, its varied socio-cultural and political history along with socio-economic inequalities. In this chapter, it has been looked at how religious violence has

become a part of Indian political, social and cultural life and how this is being played out and who all are generally involved in it.

Religions have a kind of way in which they get divided into different sects or different types of denominations. And then what happens is that once these sects are formed there would be a certain kind of animosity that develops between these sects. This has happened in Indian history as well as present-day India for examples there are sectarian formations in Buddhism, Jainism, Hinduism, and Islam. Along with that, there are conflicts in between these religious groups as well which many of the times can take a severe form like riots. In cases of religious or communal riots, the main idea is drawing boundaries between who we are and who they are in very concrete terms. Thereby engendering a lot of misconceptions and confrontations in the social life. However many scholars believe that communalism is not necessarily a product derived out of religious feeling, it is a form of politics also.

Therefore in one section of this chapter an attempt has been made to study 2013 Muzaffarnagar riots (U.P) which can be considered as one of the biggest communal riot which took place at a very crucial juncture of this decade just before 2014 Lok Sabha elections. The original cause of the rioting is disputed according to bipartisan claims largely concerning the affected communities. In this case, the cause of this rioting alternates between a traffic accident and an eve-teasing incident. The Justice Vishnu Sahai commission, which made an enquiry into the 2013 Muzaffarnagar riots, “blamed members of the SP and the BJP for being involved in the violence. The commission also blamed senior police and administrative officials for errors which led to the escalation of the violence.”<sup>79</sup> “The clashes between the Hindu and Muslim communities in Muzaffarnagar district of Uttar Pradesh, India in August–September 2013, resulted in at least 62 deaths including 42 Muslims and 20 Hindus and injured 93 and left more than 50,000 displaced.”<sup>80</sup>

In next section an attempt is also made to study and locate gender in religion crime problematic. Here it was found that a multi religious and fervid society like ours bestows women on a higher pedestal; where they signify the ‘sanctity and dignity’ of the household and community. Perhaps, this is a reason the unfathomable burden of communal riots lies

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<sup>79</sup> "Panel finds Samajwadi Party, BJP hand in UP riots". Times of India. 24 September 2015.

<sup>80</sup> "Fresh clashes in UPs Muzaffarnagar leave 26 dead, Army deployed in affected areas". The Hindustan Times.

with the women the most. Communal disparity and religious violence in Muzaffarnagar riots led to the usage of women's bodies as the battleground and for the establishment of superiority in the society. In India, women are considered as honour and property of the family and people believe if you want to hurt someone, you need to strike at them. This notion, thus, makes women the first target. Also no one - the victims, her family, and the community - wants to admit the crime. A rape case is always tried to be hushed up by the society. Muting her voice, in such cases, reaffirms how patriarchy is deeply rooted in our society. Politicians also don't help the situation by blaming the victim or claiming such incidents are an exaggeration of media houses. Thus, this not only makes the women an easy target in the scheme of sexual violence but also lets the criminals do the crime more freely. They have no fear as they know the very nature of the crime would ensure that it goes unnoticed. Also, the angst is generally directed towards a minority community. Combating the multiple patriarchies in Indian society calls for complex strategic thinking. It should be noted here that caste, a boundary marker distinct from communal identities, have also generated forms of gendered violence and its own regional politics which have done a disservice to women especially to Dalit women.

Now let's briefly mention the different factors that affect crime and criminals in India that this study got to know after studying crime in the context of gender and religion altogether. One of them is criminality and poverty. Social research has very strongly indicated multiple times that acute poverty, economic and social inequality and lack of social security are related to high levels of crime. Urban inequality and poverty are the main economic determinants of crime and violence. The levels of urbanization, globalization and technological innovations are always associated with crime rates and their diversity. This shows the impact of sociology on crime. There is growing disorganization and disintegration of the family and society leading to a decline in the moral and ethical values of the people. Individual-level psychological factors like unhealthy parenting, maltreatment of children, domestic violence, alcoholism, etc., are also known to add the growing criminality along with factors like illiteracy and lack of social commitment and social consciousness. Another significant trend is the criminalization of modern politics in India to the extent that known history sheeters are being elected to Parliament and state assemblies and are referred as "Bahubali" M.Ps and M.L.As.

Gender-specific crimes of violence is increasing due to the failure of society as well as government to affirm the dignity of women. There is a lack of acceptability of women

empowerment in a rigidly conservative and patriarchal society. Zoya Hasan in her article “Gender, Religion and Democratic Politics in India” argues that “the Hindu religious politics and women’s activism associated with it provides a compelling example of the instrumentalisation of women to accomplish the political goals of the Hindu right. Against those who argue that, in the current communal conjuncture, reform within Muslim personal laws or Islamic feminism is the best strategy for enhancing the scope of Muslim women’s rights, she says that such an approach tends to freeze identities within religious boundaries. It shows how women’s and minority rights are used within the politics of religion to sideline the agenda of women’s rights” (Hasan, 2010).

“In India, violence to women, tribal, minorities and the other marginalized sections of society is a disturbing affair. Violence against women is prevalent in the family, woman's circle of known persons, even those she is taught to revere and confide in, like religious leaders, and in public spaces. The women of the Dalit, tribal or the so-called outcast communities are seen as weak and therefore "available," and hence are sexually exploited. Atrocities to Dalit and tribal women are very visible and committed with utter impunity. Their socio-economic status renders them voiceless. However, recently with their political empowerment Dalits have become aware of their status and value in the democratic game of the country. They are roughly around 17 percent of the Indian population, so politicians are reaching out to them with various political gimmicks often resulting in splitting the community” (Saldanha, 2016).

Violence against women is present across all religious and caste groups in India and is rooted in cultural attitudes of men superiority. The stories are like — beating, choking, smothering, (even during pregnancy), emotional violence, sexual violence, violence is also done to the girl children. But as a result of a strong women's movement along with progressive men helped a lot to bring changes in the law, women have access to legal help to file cases against various sorts of violence or exploitation done to them. There is a great need to break gender binaries. The gendering of sexuality and bodies does a lot of violence to women and LGBTQ persons. Religion in India excludes LGBTQ persons, and so does the political and legal system of this country. Their rights are not being recognized, and their choices are not widely appreciated. Therefore the issues of LGBTQ persons is still nascent in India. Without altering mind-sets, very little can change. There is a need for a massive campaign to boost awareness and create gender sensitivity programs and to

strengthen the outreach to women victims of sexual abuse and to fortify the Indian Women's Movement and LGBTQ movement.

This study argues that the core of crime, criminals and rising rates of crime can be condensed in a single factual sentence- “resources are limited.” The haves turn a blind eye towards this fact, and some of the have-nots turn a blind eye towards the rule of law consequently. Ensuring a standard quality of housing, food, employment, healthcare, and education will help bridge the socio-economic divide that is reinforcing the cycle of crime for generations. Education is indispensable for change. In education, there should be a focus on inclusion. We should not only target on maths, science, and technology in the curriculum but there should also be an emphasis on life skills human ethics, mental health, criminological behaviours, gender issues, disability and discrimination studies. At last on the basis of this study, it can said that the solution to crime is both socio-economic justice and the unbiased and proper use of the criminal justice system.



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