

**GENDER VIOLENCE AND CULTURAL TRAJECTORIES
IN COLONIAL AND CONTEMPORARY HARYANA**

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DECLARATION

I, Vineeta Kumari, hereby declare that the thesis titled 'Gender Violence and Cultural Trajectories in Colonial and Contemporary Haryana' submitted by me in partial fulfillment for the award of degree of Doctor of Philosophy from Jawaharlal Nehru University is my original work. The thesis has not been submitted so far in part or in full for any other degree or diploma to this university or any other university.

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Date: 22.7.2019

CERTIFICATE

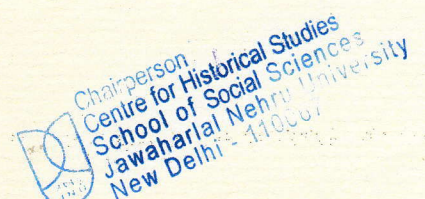
We recommend that this thesis be placed before the examiners for evaluation.

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*Dedicated to my mother and in the loving
memory of my father....*

and

A tribute to my grandparents...

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INTRODUCTION

As per the *United Nation Declaration on the Elimination of Violence against Women*, violence against women is defined as “any act of gender based violence that results in or is likely to result in physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life.”¹

Violence against women is commonly known as ‘gender violence’ or gender-based violence. It is a manifestation of gender inequality and the result of power imbalance of the sexes.² Thus, violence may be used as a tool for the assertion of power and to reinforce a women’s subordinate position in society. Essentially both the terms ‘violence against women’ and ‘gender-based violence’ directly relate to violence as a result of gender discrimination. This discrimination as often argued has been in the form of inequality in the basic things like access to education, resources and property. The notion behind has often been the age-old assumption of the superiority of masculinity over femininity.³

Violence against women has emerged as a global challenge in the recent decades due to the exponential increase in the magnitude of incidents across the world. Women across class, cultural and regional boundaries continue to suffer violence in different forms usually in sexual, physical and psychological forms.⁴ Age, education and financial background often do not act as determinants when it comes to crime against women. Among the different forms of violence against women, intimate partner violence is the

¹ The United Nations Declaration on Violence against Women was made at 85th plenary meeting, *United Nations General Assembly*, A/RES/48/104, December 20, 1993.

² Ibid, p.154, gender-based violence usually focuses on violence against women, however gradually it is acquiring a gender neutral character and data on violence against men are also being collected.

³ Gunilla Krantz, Claudia Garcia- Moreno, “Violence against Women”, *Journal of Epidemiology and Community Health*, London, 2005, vol.59, pp. 818-821.

⁴ *The World’s Women 2015: Trends and Violence against Women*, United Nations Department of Economic and Social Affairs, United Nations, New York, 2015, p.139.

highest occurring violence at the global level. Sexual violence including physical abuse, honour killing dowry murders, female genital mutilation are the other forms of domestic violence which occur with greater frequency.⁵ In war-torn zone or conflict affected areas women and girls are often trafficked for forced prostitution and economic exploitation. Unfortunately women become targets of violence even before they are born in the form of foeticide and continue to face various forms of violence like infanticide, sexual abuse, rape, acid attacks, 'dowry murder', 'honour' killing and numerous other kinds of violence in the garb of domestic abuse throughout her lifetime.

This study contextualizes gender based violence- its spread, causes and magnitude and efforts at its prevention in general for a global and national overview of the issue. But at the regional level it explores historical roots of crime against women in Haryana. It aims to study the changing perception of crime in the region.⁶ The changing nature and magnitude of the crime has to be viewed along with the larger historical processes which were going on in the region like the colonial codification of law and indigenous social reforms, land, revenue and administrative reforms. Changes in the educational set up, occupations and growth of manufacturing industries also needs to be accounted in order to develop a comprehensive understanding of history of the region. The present study looks at the cultural roots of the crimes namely- dowry murder, the issue of female infanticide vis-à-vis modern feticide, bride-purchase and bride trafficking, honour killing and sexual violence against women including rape and domestic violence. Other related issues which have been taken into consideration are the role and contribution of women in the agrarian economy and the evaluation of the status accorded to her. A close observation of the customary norms of this region across caste and class and the institutions which perpetuate and reinforce them has equally been taken into account.

The present thesis deals with some of the most significant issues of violence against women, her identity, representation and autonomy in colonial and contemporary Haryana. Crime against women in the region can be seen as an offshoot of the long standing gender-discrimination and devaluation of women in the region. As per Haryana

⁵ Femicide is a new term often used to highlight the killing of a girl on account of her gender.

⁶ One of the best example is the shift from cattle- trafficking to bride-trafficking

State Gazetteer “Haryana from being a food deficit state at the time of its inception has now emerged as a major contributor to the national pool of food grains.”⁷ The manifold increase in agricultural production in the state has been revolutionary in magnitude.⁸ In the post-independence period, the agricultural castes have emerged as the major beneficiaries and have been empowered by the increase in the production⁹. Haryana at present is one of the major hubs of manufacturing, retailing and business outsourcing. Haryana has consecutively been among the top 10 states in India, when it comes to Human Development Index.¹⁰

Nevertheless, beyond this development, lies a darker side of the picture. The 2011 Census¹¹ provides some important data which is useful in analyzing the present state of affair in Haryana.

The national sex ratio in 2011 is 943 females per 1000 males which have increased from 2001 which was 933 females per 1000 males. The sex ratio for Haryana has increased from 861 in 2001 to 877 in 2011, Punjab from in 876 in 2001 to 893 in 2011. It is important to highlight here that the slight increase in the sex ratio in the last decade is illusionary because demographers have explained that the adult mortality rates for males is more than that of females and this contributes in the improved figures. Further, if we look at the *Sex Ratio at Birth* one could easily see that it reflects adverse sex ratios unfavourable towards females.

Haryana ranks sixth in the country when it comes to overall crime against women with 9,446 cases which accounts for 2.9 percent to all India¹². Incidences of forced abortion of

⁷ *Haryana State Gazetteer*, Vol. II, Haryana Gazetteers Organization, Revenue Department, Chandigarh, 2001 p.38

⁸ *Ibid*; p.38

⁹ *Punjab State Gazetteer*, Gazetteer Organization, Revenue and Rehabilitation Department, Chandigarh, 1999. p.273

¹⁰ As per *Human Development Report 1981, 1991, 2001 and 2011*, published annually by United Nation Development Programme,

¹¹ *Census of India, 2011*, Office of the Registrar General & Census Commissioner, Ministry of Home Affairs, Government of India, New Delhi, 2012.

¹² As per *Crime in India 2015*, National Crime Record Bureau, Ministry of Home Affairs, New Delhi, 2016, p.84.

the fetus are well above the national average. The low sex ratio in the region is reflective of the status or position occupied by women¹³. Often couples are punished by “honor killing” for exercising their right to choose partner. Interestingly such cases are decided and still governed by *Khap* panchayats in Haryana. *Khap* panchayats are also known as caste panchayats or *gotra* panchayats, these are unconstitutional but exercise unrestrained influence in the social life of Haryana. Rape and crime against *dalits* is rampant in¹⁴ the region. These incidences have nearly shocked the conscience of civil society. However, the state government, political parties and *khap panchayats*¹⁵ seem to rationalize these crimes. Thus, the present work is an attempt to deconstruct the social and cultural contradictions displayed by the region in colonial and contemporary period. The study is divided into four chapters which have further been divided into various sub-sections.

¹³ The 2001 and 2011 Censuses registered a significant decline in the CSR across India (18 and 13-point decline respectively, suggesting that the rate of deterioration was slowing) ie from 927 to 914. Child sex ratios in Punjab (798 in 2001 to 846 in 2011) and Haryana (819 in 2001 to 830 in 2011), especially with the adverse sex ratio at birth of point towards rampant practice of female foeticide along with a certain amount of infanticide in these two states. Interestingly Punjab and Haryana are economically well developed and have recorded a fairly high literacy rate. This is contrary to expectation and needs to be examined.

¹⁴ In Haryana the deep patriarchal structures and institutions are mostly dominated by the agriculturally rich *Jats*, thus they exercise power over the other castes and especially the *dalits*. Rapes against *dalits* are therefore very common and unquestioned. The National Crime Records Bureau reports show that the number of rape cases where *dalit* girls/ women are the victims has consistently gone up from 21 in 2007 to 56 in 2011. While at the national level, the number of rape cases wherein *dalit* girl/woman are the victims went up by 15% over the period, the increase in Haryana was 167%.

¹⁵ They are sometimes *gotra* specific and sometimes area specific. The congregation of many *khap* panchayats is known as ‘Sarvkhap Panchayats’.

A brief outline of Chapters

Chapter 1, Dowry Murder

Much of the literature exploring gender bias in the fertility focuses on parental fears of financial burden in the form of ‘dowry’ given to the daughter. Therefore the changing meaning of dowry and its relation with the declining sex ratio has been explored. Interestingly, despite the legislative reform against dowry as early as in 1961, it has escalated over the years and the only change is visible is in the ‘form’ of dowry. Various legislations against the evil and its loopholes has been looked at beginning from the Dowry Prohibition Act of 1961 till the various amendment made to Section 498-A recently.

The first chapter has been divided into five sections, Section A, *Customary vs. Modern Perception of Dowry*, this section basically elaborates on the practice of dowry as it appeared in customary laws, shastric accounts and district and state gazetteers. Dowry customarily was associated with *kanyadaan*, *vardakshina*, *stridhan*. It primarily looks at the changing practice of dowry and how a practice which was supposedly ‘voluntary’ turned into ‘coercive’ demands.

Section B , *Shift from Bride-Price to Dowry*, this section looks the changes which led lower-castes to imbibe dowry because dowry which was historically associated with upper and middle caste is now widespread among lower castes as well which earlier practiced bride-price. It is important to underscore that the whole shift was based on the concept of shift from ‘non-ideal’ to ideal marriages.

Section C, *Causes and Adverse Effects of dowry*, this section discusses the causes of dowry in the contemporary period and the emergence of ‘dowry as a crime’. It is full of case studies which highlight the ill-effects of the same. This section also highlights the role of women as major negotiators of dowries. It also highlights the role of mother-in-laws as women patriarchs who play a crucial role in sustaining this evil practice.

Section D, *Campaigns Against Dowry*, this section looks at how the crime of dowry murder has been challenged and contested by Government legislations, women

organizations and NGOs over the years and their efficacy and what should be the way forward to handle the complex issue.

Chapter 2, *Son- Preference, Bride Purchase and Bride Trafficking*

In this chapter, I have looked at the historical roots of daughter killing .A central factor in explaining sex selective behaviour is preference for sons and the region of Punjab and Haryana has been notorious for the practice of infanticide and feticide on a large scale. The present chapter basically looks at the after-effects of the crime of infanticide vis-à-vis modern feticide. Among the adverse consequences of gender imbalance are - shortage of brides, trafficking of women for forced marriages, violence against women, perpetuation of male dominated institutions with a desire to have greater control over women. In this chapter, crime is considered as closely associated with the scarcity of women in the colonial and post-colonial period has been critically analyzed. The chapter is further divided into five different sections,

Section A, *Historical roots of daughter killing, in this section*, I have tried to analyze why the preference for sons has been so strong in the region by looking at the economy and social and customary norms in practice in the region. I have looked at the various legislations taken up to curb this evil in the colonial as well as contemporary period like evaluation of the 1870 Act and why it was repealed later. I have looked at the debates over historicity over the crime as well.

Section B, *Son-preference in Contemporary Haryana*, in this section I have looked at the continuity of son-preference in the post-independence period despite concerted efforts of the government against the crime like the MTP act 1972 and The PNDT 1994 act and the various amendments made to it. Misuse of technology has been highlighted in this section.

Section C, *Polyandry, Bride-Purchase in colonial Haryana*, in this section the consequences of female infanticide in the colonial has been discussed. The different ways through which the bride shortage was addressed has been explored namely polyandry, bride-purchase and trafficking of brides.

Section D, *Bride-shortage and Bride -trafficking in contemporary Haryana*, this section engages with the concept of male marriage squeeze as a result of continuation of bride-shortage in Haryana. This in turn resulted in the intensification of bride trafficking in Haryana. This section includes case studies of bride trafficking survivors as well as victims.

Section E, *Role of Agents vs. Role of Government and NGOs*, this section sheds light on the role of trafficking networks and agents especially in organization and perpetuation of the crime. On the other hand it also discusses the efforts of Government and NGOs in combating the trade.

Chapter 3, *Cultures Of Honour and Crime*

Historical evidences suggest that honour killings in ancient times have been prevalent across the world and have been practice by different religious and ethnic groups. Feudal patriarchal societies across nations have often been hostile to the concept of love. However, right to love is as much fundamental as the right to life for an individual. Violation of this right in the name of honour not only amounts to gross human right violation but also of constitutional right. The present chapter is an attempt to look at the historical roots of 'honour killing' in India, especially in the region of colonial Punjab and Haryana through court cases. It examines how control over women's sexuality remains at the core of the concept of honour in the region. Therefore it is generally a woman's conduct or behaviour which can uphold family's honour or put it at stake. My endeavour has also been to evaluate the role of khap panchayats behind these barbaric acts and question their legitimacy for doing so despite being unconstitutional bodies. The chapter 3 has five different sections- Section A, *Historical evidences of Honour Killing*, in this section evidences of honour crimes across nations and religion have been enumerated. The continuity of the crime has been argued and the statistical data over it has been presented.

Section B, *Traditional arranged marriages vs. love marriages*, this section engages with the presumed 'benefits' of arranged marriages and so called 'adverse impacts of love-marriages'. The importance of marriage as an institution and its relation with caste and

community has been comprehensively dealt. This section also deals with case study which highlights the fact that the concept of honour operates at the expense of blood ties.

Section C, *Tragic tales of love*, this section sheds light over the deification of victims of honour killing as heroes in folk tales of Punjab– Haryana as well as other regions. These stories continue to be performed in theatres. These tales highlight that communities have been intolerant of the concept of love.

Section D, *Khaps and their role in perpetuation of honour-killing*, this section looks at the caste panchayats also known as *khap panchayats* in Haryana and their traditional vs. contemporary roles in the society. They continue to be important bodies that punish couples for transgression of the customary and caste norms.

Section E, *Role of Media, NGOs, Police and Judiciary*, this section engages with the role of the NGOs, Women Organizations, Police and Judiciary in checking the crime.

Chapter 4, *Rape: Cultural and Legal Discourses*

Meanings of rape are thus produced and reproduced with changing times. Therefore the terminology of rape have been contested and reshaped by the various law amendments. Though the inclusion of many clauses such as other forms of penetration other than penile penetration is commendable, yet the present definition fails to encompass many aspects which need or demand attention like “marital rape”. Apart from having a critical view of the legal terminology my concern here is to place the crime of rape firmly in the context of power relationships and gender inequality. The crime cannot be isolated from other sexual offences which women face in their day to day life. Thus rape requires a deeper understanding of the patriarchal structures and institutions which provide the space where such crimes occur in an unrestrained manner. This chapter attempts at examination of the various laws related to rape and child marriage in the colonial period and post-colonial period. It also tries to accommodate the debate over the Age of Consent Act, 1892. This chapter has been divided into six sections -

Section A, *Ancient vs. Modern Laws on Rape*, This section traces the laws against rape in ancient and colonial and contemporary period because the colonial codification of law was based on an interpretation of the *Shastras* in some region and the customary laws in

other regions. This analysis enhances our understanding of crime and punishment in India and how different punishments were pronounced for different crimes in the Indian society.

Section B, *Rape, Honour and Society*, this section basically explores the intimate association of rape with 'honour' in society and how violation of this honour is duly addressed. It also analyses the stigmatization accompanied in cases of rape and the notion of 'victim blaming'.

Section C, *Normalization of Rape vis-à-vis 'rape culture'*, This section basically questions the 'normalization' of rape as a phenomena in patriarchal societies. It explores the psyche behind such assumption.

Section D, *Child marriage and the fear of Rape*, This section basically examines the apprehensions and fears surrounding rape and how it affects everyday life of children and their future in some regions

Section E, *The role of State and Judiciary*, This section basically analyzes the role of judiciary from the colonial to the contemporary period. Through an in-depth analysis of cases it has highlighted how the role of judiciary has changed over time in handling cases as sensitive as rape.

Section F, *Role of women organizations and the campaign against dowry*, This section basically explores the role of women organizations and the crucial role they have played in the campaign against rape and effectively pressurizing the legislature to amend the laws from time to time.

A general overview of the different forms of violence against women and their magnitude

Violence can be classified on the basis of the agency, that is, according to who actually has committed the violent act according to the world report on violence. Self directed violence, interpersonal violence and collective violence are thus the three forms of violence based on agency.¹⁶

¹⁶ "WHO report on violence and health", *World Health Organisation*, Geneva, 2002.pp.1083-8

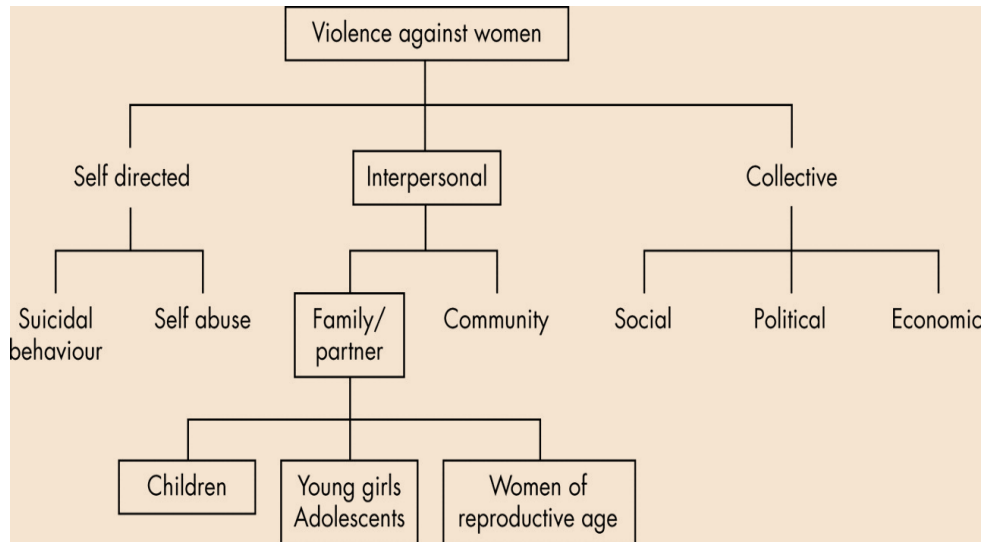


Fig.1. Classification of Violence against women adapted from the world report on violence and health, World Health Organization.¹⁷

Self –directed violence is one which is that violence in which an individual harms himself or herself. Interpersonal violence is that which is inflicted on others but often the offender is known to the victim. Family or intimate partner violence and community violence are the two forms of violence under interpersonal violence. When violence takes place between family members or between two partners it comes under family violence. Similarly, community violence place among the member of the community whether known or unknown to each other. Collective violence usually takes place when the offenders are more than one and the violence is directed against an entire group – social, ethnic or cultural. This classification offers an overview of the different forms of violence prevalent across society. It is relevant because of the fact that it is gender -neutral and cuts across age groups. Violence can also be categorized on the basis of its nature into three forms sexual, physical and psychological. Sexual violence may include all forms of sexual abuse like rape and assault. Physical violence includes violence against the body sexual or asexual. Psychological violence often is in the form of deprivation, discrimination and neglect.

The statistics available on violence against women do not provide the real picture because often these incidents go unreported and unaccounted. The methodology adopted

¹⁷ Ibid;

to estimate the magnitude of crime remains cumbersome. Among the different methodologies are adopted by different countries to estimate the magnitude crime, Health surveys and other surveys based on demography are the most common.

The *World Health Organization* in its recent study included fifteen sites in ten different countries to measure the prevalence of domestic violence and its impact on women's health.¹⁸ The findings of the survey reveal that around 15-71 percent of women in the age group of 15-49 who have ever been with their partners experienced sexual and physical violence at some or the other point in their lifetime by their partners. It is important to discuss here that among the women who suffered violence “less than forty percent reported the incident or sought any help.”¹⁹ Among those who did mostly looked forward to friends and family rather than police or health services. The reluctance on the part of women to approach the police and health services is very much related to the social stigmatization which is accompanied. This is a clear reflection of the ‘normalization’ and ‘acceptability’ of violence against women.

Thomson Reuter's Trust Law Women is a network for legal information and is a support system for women related issues. It conducted a survey in 2011 and ranked India as the fourth in the list of dangerous places for women in the world. The poll was conducted across five continents and it involved two hundred and thirteen experts from different fields in order to list the countries on the basis of determinants such as violence – sexual and nonsexual, regressive practices which may be rooted in religion, culture or tradition, health facilities and risks, human trafficking and how far access to resources was ensured.

Interestingly, the poll was by repeated in 2018 by the foundation and it ranked India as the most dangerous place for women in the world. It was ranked so because women were at higher risk of harassment and sexual violence, the danger of being trafficked for forced

¹⁸ Garcia- Moreno C et al *WHO multi-country study on women's health and domestic violence against women: Initial results on prevalence, health outcomes and women's responses*, World Health Organization, Geneva, 2005.

¹⁹ *The World's Women 2015: Trends and Violence against Women*, United Nations Department of Economic and Social Affairs, United Nations, New York, 2015, p.139.

sex, slavery and for domestic labour was much higher and practices rooted in culture and tradition were imposed and

danger of arising out of its transgression was greater²⁰. The most disturbing fact that emerged from the survey was that India fared only better than Syria and Afghanistan which basically are war-torn zones. Apart from this, the survey also revealed that Somalia ranked fourth and Saudi Arabia was fifth in the list. Somalia and Saudi Arabia are ranked fourth and fifth respectively in the survey. The poll was conducted online this time between 26th March and 4th May involving five hundred and forty eight people who specialized on women's issues. The survey was conducted across six continents America, South Asia, South East Asia, Africa, Europe and the Pacific. The survey was based primarily on questions related to as to which of the UN member states appeared most dangerous on determinants such as healthcare, existence of traditional or cultural practices which were regressive, access to resources, risk of sexual violence and trafficking.²¹

Apart from the global reports on crime against women, the National Crime Record Bureau reports, the National Family Health Survey reports, and the annual reports of National Commission and media reports in India equally paint a grim picture of the situation. As per the National Crime Record Bureau report, every two minutes a crime committed against women is reported in India and every hour as many as thirty nine such crimes were reported.²² In India women are far more vulnerable to violence by their intimate partners as per the data. It is suggested the chances of women being the 'victim' is fifty times more than that of being the 'perpetrators' of crime.²³ The National family

²⁰ Country summary as available in the report of the poll conducted by Thomas Reuter's Foundation; <http://poll2018.trust.org/country/?id=india> date of access 3/11/2018

²¹ <https://economictimes.indiatimes.com/news/politics-and-nation/india-most-dangerous-country-for-women-due-to-high-risk-of-sexual-violence-poll/articleshow/64748660.cms> , date of access 6/9/2018

²² As per *Crime in India 2015*, National Crime Record Bureau, Ministry of Home Affairs, Government of India, New Delhi, 2016.

²³ This is based on data available for the period of 2005-2006. Interestingly, the only country for which violence against men was higher than violence against women was the Phillipiness in the year 2013. There, the prevalence of violence perpetrated by women against men(16%) was slightly higher than that of men against women(13%)

health survey IV conducted in 2015-16, provides a somewhat similar picture where almost 30 percent married Indian women reported violence by the spouse at least once.²⁴ The total number of cases of crime against women reported between 2007- 2016 is 2.5 million. The percentage increase is 83 per cent.

Table1. Increase in crime against women 2007-2016

	Number of reported crime against women	Cases of crime against women per hour
2007	185312	21
2016	338954	39

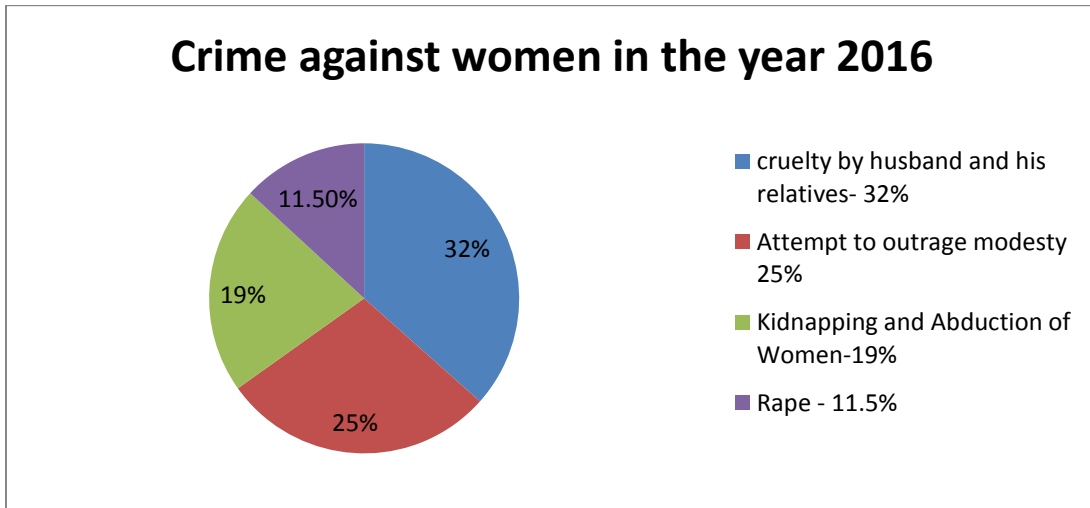
In the year 2016 the number of cases reported was much higher in comparison to previous years, but the conviction rate was as low as 18.9 percent²⁵. Often lower conviction rate are attributed to the lack of evidences, testimonies and delay in the judicial processes which allows an escape to the culprit. It should also be noted that lower conviction rates may sometimes be associated with false or fake cases but the ratio of the former to latter is generally high. It has also been observe that the number of cases of rape and sexual abuse in the newspaper is higher than ones reported to police or other state agencies.

Cases reported under section *Cruelty by Husband or His majority Relatives* accounted for 32.6 percent, *Assault on women with intent to outrage her modesty* accounted for 25 percent, *Kidnapping & Abduction of Women* 19 percent and Rape accounted for 11.5 percent. Rape was reported every four per hour. For a clear visualization of the same please see the pie-chart below.

²⁴ *National Family Health Survey -4*, Ministry of Health & Family Welfare, Government of India, International Institute of Population Studies, Mumbai, 2015-16.

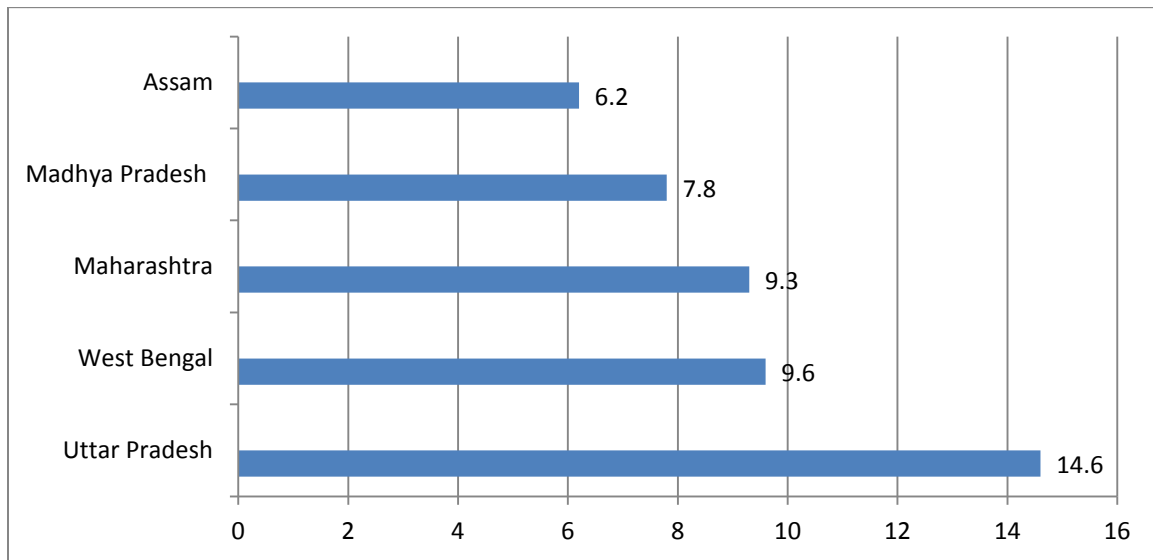
²⁵ <http://www.indiaspend.com/cover-story/crime-against-women-up-83-conviction-rate-hits-decadal-low-18239>; date of access 4/2/2019

Fig 2.The pie chart below represents crime against women in the year 2016



Source: Pie Chart has been developed as per the data available in *Crime in India 2016*, NCRB report²⁶.

Fig.3, Total Crime against Women in India and the percentage share of states.



Source: The above chart has been calculated as per the data from *Crime in India 2016*, NCRB.

²⁶ For details refer Table – 3A.2 (i), p.xix, *Crime in India 2016*, National Crime Record Bureau, Ministry of Home Affairs, Government of India, New Delhi.

The national average rate crime against women is 55.2 as per the latest NCRB data.²⁷ Uttar Pradesh reported the highest share 14.5 percent, 49,262 cases out of 3, and 38,954 total cases of crimes against women in India in 2016 among the states. Delhi registered the highest rate of crime of 160.4 among the Union Territories. Campaigners and social activists have often explained this rise in number as an increase in reporting of the crime rather than increase in the crime itself. Flavia Agnes²⁸, in her statement to India Spend, said, “more than the increase in crime rate, it is increase in reporting.”²⁹ She argued so because of her own experience with affected women. She further added that reporting is higher in areas where the women are better educated and more vocal about their issues. It has also been observed otherwise that reporting is better in areas where women organizations were developed and police was active.³⁰ However some lawyers like Monika Joshi who works with the campaign group *Maitri*³¹ in her statement argued, “for every woman who reports, there is at least one woman who suffers in silence”³². She basically suggests that though there is increase in reporting than before, yet there are women who still hesitate from reporting due to the stigmatization accompanied.

Causes behind the escalating figures

Violence against women as deep rooted and multilayered issue, it cannot be attributed to a single factor because it cuts across caste, class, region and other boundaries. It is difficult to identify a single pattern which could be used as a model to rectify the problem. Researchers have often used the ecological model produced by Heise to understand the complex interplay of different factors. According to Heise, “Violence

²⁷ See Table 3A.1, p.133; *Crime in India 2016*, National Crime Record Bureau, Ministry of Home Affairs, Delhi, 2017

²⁸ Flavia Agnes is a women’s right lawyer and co-founder of *Majlis*, an NGO in Delhi.

²⁹ <http://www.bbc.com/news/world-asia-India-29708612> date of access 5/9/2018

³⁰ In the words of Varsha Sharma, senior police officer of Crime against Women Cell, Delhi, “It’s a good thing” that the women are gradually refusing to suffer silently. She further added, “it’s not that there is more violence now: violence was always there, but now there is greater reporting.”

³¹ *Maitri* is a New Delhi based NGO which works for human rights issue like social and health inequalities.

³² a statement made by lawyer Monika Joshi to the BBC news.

against women is the result of complex interaction between individual, relationship, social, cultural and environmental factors.” Researchers have often argued that the reasons behind risks of violence cannot be generalized because while some reasons may be common, yet others are context specific and may even vary within countries. For instance, some common factors may be shared by a female who has experienced violence and a male who has perpetrated violence such as low literacy levels, experiences of domestic conflicts as a child.³³ On the other hand, violence could be a result of factors such as lack of education, been affected by alcohol abuse or having suffered sexual abuse or violence in childhood.³⁴ The above reasons may be included in the individual factors which may attribute to increasing violence against women.

Apart from these common and certain individual factors, scholars have equally stress on the socio- cultural factors like customary gender norms³⁵, the imbalanced status of women. The use of violence by communities to resolve feuds and conflicts aggravate risks of violence against women. This has been testified by studies across countries. Such norms may range from the age-old stereotype of considering males as superior to females, social sanctioning of violence against women in a relationship and acceptance of a man’s power to discipline and control women. The list further includes the belief that a man has absolute rights over women’s sexuality in a marriage and that it’s a woman’s responsibility to sustain and maintain her marital ties.

Thus, we observe that certain social and cultural stereotypes not only support but also reinforce and perpetuate crime against women. We can easily correlate this in Indian context, where we observe that crimes like infanticide, dowry murder and honour killing continue to grow even after array of legislations against these issues because of the social sanction they receive. Similarly crimes like rapes and sexual assault of minors thrive on the notion of power and control over a woman’s body. Patriarchy, feudal culture, socio-

³³ Jewkes R, “Intimate partner violence: Cause and Prevention”, *Lancet*, 2002, Vol.359, pp.1423-29

³⁴ “Preventing intimate partner and sexual violence against women: taking action and generating evidence”, *London School of Hygiene & Tropical Medicine*, London, 2010.

³⁵ Ibid;

economic backwardness and disparity, low literacy rates are generally considered factors behind such crimes. However at times, increasing economic development fails to translate into parallel social development and this gap in the two phenomena gives rise to various complexities. Such is the case of colonial Punjab and Haryana. It is therefore important for us to explore what makes the region culturally different from other parts of India. One needs to look at the colonial history of the region to have a wholistic view of the developments which took place during the nineteenth century in a comparison to the developments that were taking place in other parts.

Political and Cultural History of Colonial Punjab and Haryana

Punjab's geographical boundaries at the time of its annexation in 1849, by the British extended from Delhi to Peshawar³⁶. It comprised one tenth area of the British India. Haryana witnessed rather different experience in terms of reorganization of its boundaries³⁷. In 1803, it was made a part of the Bengal Presidency. It was called 'Delhi Territory'. In 1834, it became a part of the North-Western Provinces as 'Delhi division'. It was after 1857, it became a part of Punjab, known as 'Haryana region'³⁸. It was in 1858 that Delhi division was placed under Punjab. It included the districts of Delhi, Karnal and Gurgaon; and that of Hissar, Rohtak, Sirsa, and Jhajjar. The region of Punjab and Haryana remained integrated for about a period of 100 years (1858-1966), However they were neither geographically nor culturally homogenous³⁹. This remained an important reason for differential treatment of the two in terms of colonial policies ranging from agriculture, irrigation facilities, infrastructural development, educational institutions, and industries and so on. Haryana had often been treated as a colony of the Punjab; the

³⁶ It was 1901, when the areas north of Sind were separated, which came to be known as North West Frontier Province (NFWP). Delhi was detached from it in 1911 and converted into a capital.

³⁷ The organization and reorganization of provinces was devoid of any rational basis but was merely a result of circumstances according to the 1991 census; K.C.Yadav, *Modern Haryana History and Culture*, Manohar Publications, Delhi,2002.p.201

³⁸ *Journal of Haryana Studies*, Vol.XVI, Kurukshetra University, Haryana, 1984, pp.32-91.

³⁹ The region of Punjab was *doab* region fed by relatively more no of rivers and the southeastern region that is modern day Haryana was relatively arid, Punjab was Sikh dominated, while Haryana was *Jat* dominated region.

economy was in bad shape. Even, in the post- independence period Haryana continued to remain an appendage of Punjab. Thus a strong need for separation was felt and modern Haryana came into being on 1st November, 1966. Therefore Haryana's exponential growth and rise of crime has been looked at in a comparative framework of Punjab in the thesis.

The judicial and administrative developments which took place in the region in the mid and late nineteenth century remains important as this was the period when foundations of colonial legal system were laid all over. This period witnessed the codification of customary laws and the establishment of the Indian Penal Code in 1860. The Indian Penal Code was introduced in Punjab 1862 and the Punjab Chief Court was established in 1866. It is important to underscore the fact that this was the time when issue of female infanticide was being condemned and initiatives to suppress this were going on in Western India. In Punjab also the issue was discovered by Major Lake in 1851. It was in 1853 that a large gathering was called for and castes and communities held for practicing were made to sign on '*Ikrarnama*' by which they pledged to reduce marriage expenses and give up the practice of daughter killing. The Female Infanticide Act of 1870 came into effect only after these developments.

Other important developments of the period have also been taken into account like the formulation of the Punjab Civil Code in 1853, the introduction of police administration and the enactment of the Punjab Laws Act of 1872. In 1853 the Punjab Civil Code was introduced. The Punjab Civil Code set forth the principles of Hindu and Mohammedan law, such as the rules of inheritance, property of females, adoption and disposition of property.⁴⁰ In 1866, with the intention of introduction of uniform system of law, the code of Civil Procedure for India was introduced and the Punjab Civil Code was superseded.⁴¹ In 1868 administration of police was also organized. The rate of police to population was

⁴⁰ *National Archives of India*, Foreign Misc Department, s.no.156, paragraph 248-49,pp.356-59

⁴¹ Parliamentary papers, *Barkley's Non-Regulation of the Punjab*, Superintendent of the Government Press, Lahore,1871,p.1849

1 to 757, whereas the figures for Bengal remained 1 to 1633, NWFP- 1 to 1189 as per the Punjab Administration Report⁴², 1871-72.

It should be underscored that these changes in law did face resistance before the enactment of the Punjab Laws Act of 1872 which stated that “custom governs all questions regarding succession, betrothal, marriage, divorce, adoption ...” provide that custom be not contrary to justice. Hindu and Mohammedan law only become important if there is absence of customary law.⁴³

It is also important to look at the nineteenth century reforms in colonial Punjab and Haryana, because the late nineteenth century is also known as the age of reform in India and its upheaval in the region would be an interesting exploration. As far as the social reforms in Punjab are concerned, these were religious in nature. The two movements analyzed in this chapter would be the Arya Samaj Movement and the Ad-dharm movement in Punjab. The former is associated with upper and middle classes while the latter is essentially a low-caste movement. The Arya Samaj movement was in a part in response to the colonial legislations. Its ideology was shaped against the missionary efforts of conversion of Hindus and Sikhs to Christianity.

Women’s education remained a central concern in its agenda and it successfully established a large chain of Kanya Mahavidyalaya in Punjab. Arya Samaj looked at some important issues; child marriage was one of the most important among them. It opposed the practice of child marriage and it “fixed the minimum age at 16 for girls and at 25 for boys”. According to Dayanand “neither the widows nor widowers should remarry”, however, remarriage was allowed for both men and women under certain circumstances like- if the wife is incapable of bearing a child or “if the husband is impotent or if he deserts his wife” and so on. It did not support inter caste marriage. Its notion of modern woman was modeled upon the Victorian ideal of womanhood. Ad-Dharm was largely concerned with developing a separate identity for the Dalits and the women’s question

⁴² *Report on the Administration of Punjab and its Dependencies*, 1871-72, Superintendent of the Government Press, Lahore, 1873.

⁴³ as per the *Imperial Gazetteer Vol.I.*, Trubnor and Co., London, 1881,p.102

never became a central concern of this movement. The generation of collective identity and dignity remained the primary concern. Thus both of these movements brought about collective consciousness in society. The emergence of these movements and their efficacy in raising woman's status remains very crucial to understanding the condition of women in the colonial Punjab. The inherent contradictions observed in both the movements need to be analyzed.

Apart from the administrative history if we look at the social structure, one can observe that patriarchal structures and community solidarity have been very strong in the region. Maintenance of kinship ties and community structures has often resulted in strict control over women's sexuality and any failure to control her sexuality results in violence against her. Agricultural castes occupy a higher status in the caste hierarchy as opposed to the Brahmanical order which prevails in the rest of the country⁴⁴.

According to S R Mehta, "Jats occupy the highest ranks followed by the commercial castes such as Khattris, Aroras and Baniyas; priestly castes namely the Brahmins, the artisan castes and finally the untouchable castes of Chuhars and Chamars at the bottom."⁴⁵

However, this kind of understanding has been challenged by Nonica Dutta in her work⁴⁶ on Jat identity. She argues that the present Jat identity has been shaped by three important things- "community narratives, the role of Arya Samaj as a religious reform movement and the politics of Chhotu Ram through the medium of the Unionist Party". However, it has often been argued that, this vertical caste hierarchy is being called into question particularly by the lower castes. There is a far greater cohesion among the lower castes than in other castes therefore clashes between the Jats and the lower castes are quite

⁴⁴ *Punjab State Gazetteer*, Gazetteer Organization, Revenue and Rehabilitation Department, Chandigarh, 1999, p.271

⁴⁵ S.R. Mehta, *Emerging Patterns of Rural Leadership*, W.E.Pvt. Ltd, New Delhi, 1972

⁴⁶ Nonica Datta, *Forming an Identity- A Social History of the Jats*, Oxford University Press, New Delhi, 1999.

common⁴⁷. Though there are evidences of mobility in the region, it follows the reverse order of caste hierarchy which prevails in the region. Such mobility is highest among the priestly castes followed by artisan, commercial and agricultural castes in descending order⁴⁸.

Punjab and Haryana have been major centres of army recruitment. “The British military dependence on Indian soldiers circumscribed and constrained the operation of colonial rule in the subcontinent; at the same time however, the considerable advantages of military service limited the development of nationalist sentiment amongst sections of Indian recruits”⁴⁹. There was “*punjabization* of the army” whereby the number of soldiers recruited from the north- western Punjab was more than half of the total native soldiers after 1857 revolt. A considerable share of the budget in the colonial period was spent on military expenditure especially on colonial Punjab. Veena Oldenburg’s work discusses how strategic development of infrastructure facilitated agricultural growth and secured the agricultural castes because most of the recruits were drawn from these very castes⁵⁰. While the recruitment of young men in the British Indian Army deepened the preference for sons who would ensure a cash wage in the family, it was detrimental to women’s position in society. Women’s customary share in the ancestral property was affected and there was a considerable increase in the number of sex-selective infanticide⁵¹. “Awards of land and eventually pensions led to a preference for a ‘gender targeted family’”. All these parameters make the region of Punjab and Haryana an altogether different zone which needs extensive exploration. Therefore crime in the region cannot be divorced from the above climate. For me the objectification of women and her subordinated status has continued throughout the colonial and post-colonial period.

⁴⁷ *Punjab State Gazetteer*, Gazetteer Organization, Revenue and Rehabilitation Department, Chandigarh, 1999, p.271

⁴⁸ Prakash Singh Jammu, *Changing Social Structure in Rural Punjab*, Sterling Publishers, New Delhi, 1974, p.107.

⁴⁹ Rajit K Majumdar, *The Indian Army and the Making of Punjab*, Permanent Black, Delhi, 2011, p.281

⁵⁰ Ibid; Amritsar and Ambala were among the two major centres of army recruitment.

⁵¹ Veena Talwar Oldenburg, *Dowry Murder: The Imperial Origins of a Cultural Crime*, Oxford University Press, New Delhi, 2002, p.15

Historiographical Framework

A brief discussion of the works which have already explored the socio-political history of the region or have discussed the gender equations in the region have been discussed below in order to develop a nuanced sense of the crime in the colonial Punjab and Haryana region. I have roughly clubbed the works as per their genres to facilitate an easier understanding of the same. I would begin with the discussion of works provide a general history and culture of the region during the colonial and post-colonial period. I would roughly follow the chronology of my chapters and the works related to issues covered in them.

K.C.Yadav⁵² in his work offers a comprehensive political and social history of Punjab during this period. Its central concern is to show how the foundations of British government were laid in Punjab and how Sikh militarism, that is, *khalsa* was an eyesore for them. They in order to prevent any dissent in the region began with the disarmament of the 'Sikh soldiers'. It attempts to challenge the generally accepted notion of Punjab loyalty during the 1857 revolt. It offers an alternative history of the same. Apart from this it also traces the changes which occurred in Punjab during the period of reform and how Punjab was gradually resorted to the path of revolt in the early nineteenth century. It also covers the role and participation of Punjab during the national struggle till independence.

K.C.Yadav in his other work⁵³ on the history and culture of modern Haryana offers a comprehensive history of the same. It presents and suggests that Haryana throughout the period was one of the worst sufferers of British policies as well as policies of the government in the post- independence period till it became a separate entity. The author is of the opinion that the main reason behind this was Haryana's was tagged to Punjab. He suggests that socially, culturally, and linguistically, the two regions were different and as such received step-brotherly treatment from Punjab. He is of the opinion that Haryana remained underdeveloped during the colonial period and continued to receive

⁵²K.C.Yadav, *Punjab: Colonial challenge and Popular Response, 1849-1947*, Hope India, Gurgaon, Haryana, 2003.

⁵³ K.C.Yadav, *Modern Haryana: History and Culture, 1803-1966*, Manohar, New Delhi, 2002, p.297

maltreatment at the hands of Punjab government after independence as well. All these thus developed a movement for a separate state of Haryana on cultural and lingual basis, which finally resulted in the formation of the state.

G.S.Grewal and Indu Banga's work offer useful insights into the history of Punjab during the pre-colonial as well as colonial period. It takes into account the evolution of Sikh history and its various phases which began right from the birth of Gurunanak till the formation of khalsa. The papers by Indu Banga in the book especially discuss the period of Ranjit Singh and basically throw light on the formation of principalities and the emergence of a ruler. She discusses the shaping up of *Punjabi* identity and the amalgamation of military and civil organizations. The other papers in the book also deal with the social life during the colonial rule. The Gurudwara reforms, Akali movement and demand for Punjab Suba are also some issues which have been discussed in the book. Thus this book is crucial for having an overall sense of the developments which later appeared in Punjab.

As early as 1857 John Brown Cave, the then Assistant-Chaplain of Bengal Establishment wrote on the issue of infanticide. Though he acknowledged infanticide to be a world-wide crime, he observed that there were some motives which were peculiar to the Hindus "closely and deeply interwoven with their social or so-called religious system"⁵⁴. He noted that 'pride, poverty, and greed in league with superstition' were primarily responsible for the perpetuation of this crime⁵⁵. He argued that it was largely practiced by the high castes- especially among the Rajputs of Kangra, Bedis and Khatris. He said- "Every step we ascend this ladder of castes we find females become fewer and fewer till on reaching the top they altogether disappear."⁵⁶ His work is a comprehensive compilation of the motives, character and statistics of the crime. He uses Though the statistics, support the prevalence of infanticide among the high castes, interestingly the *Jats* are not

⁵⁴ John Cave Brown, *Indian Infanticide: Its Origin, Progress, and Suppression*, W. H. Allen and Co., Leaden hall Street, London, 1857, pp. 4-5

⁵⁵ Ibid;p.5

⁵⁶ Ibid;p.11

accounted for the crime, which clearly indicates the British prejudices against particular caste while undue support to the land-owning *Jats*.

In the early twentieth century, Malcolm Lyall Darling's *Punjab Peasantry in Prosperity and Debt*, is yet another work which helps us to construct the continuation and change of the practices in the region. He has also documented the changing relation of land to commerce, with increasing value of agricultural produce. He is of the opinion that, though money lending cannot be free from abuses it is crucial and necessary in an agrarian economy. He basically attempts at deconstructing the association of debt with poverty and rather argues that indebtedness can also be intimately associated with prosperity. He argues that "it is not indebtedness that is evil, but indebtedness for unproductive purposes"⁵⁷. He has pointed out three major reasons for peasant indebtedness – drinking, purchasing of brides and litigation. However, the purchase of brides was the chief, and then came litigation and drinking was tertiary one⁵⁸.

This increase in the purchase of brides is indicative of the continuation of the practice of infanticide. Darling in this regard argues that though the conditions were a little better than nineteenth century, but it was still practiced widely among the *Rajputs* and the *Jats*, who according to him, "would rather see their daughters dead than married beneath their station"⁵⁹ He argues that the shortage of women was so much in Punjab that people resorted to the practice of bride purchase and trafficking-"This buying and selling of wives has called into being a regular traffic in women, who are imported from the hills of Kangra and the deserts of Bikaner"⁶⁰. Thus, Darling's work is quite crucial for the tracing the practice of bride trafficking as early as in the early twentieth century. However, he has overemphasized the indebtedness of peasants due to marriage expenses and relatively glossed over the fact that loans for revenue payment remained a crucial feature of the time. Thus, though the colonial works provide a vivid picture of the times, a general bias

⁵⁷ Malcolm Darling, *Punjab Peasant in Prosperity and Debt*, Oxford University Press, London, 1928, p.ix.

⁵⁸ Ibid;p.51

⁵⁹ Ibid;55

⁶⁰ Malcolm Darling, *Punjab Peasant in Prosperity and Debt*, Oxford University Press, London, 1928, p.56

still persists in the works and they are not totally free from the larger framework of justification of the colonial rule in the region.

Jyoti Atwal in her recent work, *Real and Imagined Widows: Gender Relations in Colonial North India* has explored the larger domain of gender relations and the lives of the widows in colonial North India especially United Provinces. Her work remains different from earlier works on widowhood which have often explored the deplorable condition of widows in Mathura and Vrindavan area. She argues that experiences of widowhood have been different across the globe. She elaborates on how in rural areas caste issues, notion of 'honour', son preference, and struggle for maintenance and the disputes arising out of property claims situates widows in a completely different situation than their urban counterparts⁶¹. Through her work she has also emphasized how land is central to understanding gender relations, she gives the example of widow remarriage. She elaborates on how "class and caste determine the issues of her remarriage and existence in her deceased husband's house."⁶² She stresses on the need to understand how socio-economic deprivation and oppression of widows operate and perpetuate beyond a particular time and space. She essentially questions the Bengal-centric gender history which revolves around the documentation of the efforts of the "upper caste intelligentsia to deal with the question of social oppression of Hindu women"⁶³.

In her article ⁶⁴ Jyoti Atwal has also engaged with how the cases of *sati* were sensationalized and its relevance in the colonial United provinces in the nineteenth century. She centrally questions the ways the Hindu social reformers have engaged with the Hindu widow's condition and position. Interestingly, she discusses the two discourses produced in the process- one of 'living' and the other of 'dying' *sati*. Her varied understanding of pain is crucial to understand the British engagements with the law in the

⁶¹ Jyoti Atwal, *Real and Imagined Widows: Gender Relations in Colonial North India*, Primus Books New Delhi, 2016,p.2.

⁶² Ibid;p.5

⁶³ Ibid;p.7

⁶⁴ Jyoti Atwal, "'Foul Unhallow'd fires': Officiating sati and the colonial Hindu widow in the United Provinces", *Studies in History*, Vol.29, No.2, 2013,p.229-72

North-Western Provinces. It becomes very important here to underscore the fact, that Colonial engagement with women issues hardly involved a consideration of her consent.

Jyoti Atwal's and Iris Flessenkamper's edited volume⁶⁵ on the historical and contemporary perspectives of gender and violence is an excellent compilation of various articles each of which explore the different dimensions of violence. It incorporates the essential debates related to violence and both in public and domestic space. It covers issues ranging from 'deviant' sexuality, marital violence, violence against the marginalised and disabled. It explores the role of patriarchal forces behind the institutionalization of violence. The articles in the volume have taken up interesting case studies which helps in situating the crime in a particular time frame and region. Jyoti Atwal's article in the volume⁶⁶ essentially explores the politics of glorification of death of women who performed *Sati* and *Jauhar* and the use of *shahtas* to legitimize and delegitimise the practice. She discusses the Sati Prevention Act at length to discuss how the fear of punishment and rise in the level of education has resulted in the abolition of Sati as a religious practice. Apart from this her engagement with the notion of consent and the issue of child marriage and rape is quite crucial in understanding marital violence.

Mridula Mukherjee in one of her very recent work attempts to deconstruct the notion that Punjab was agriculturally prosperous than other parts during the colonial period. She rejects the notion that in Punjab indebtedness was a result of prosperity and not poverty. She discusses the different kinds of debts on peasant and their nature and its relation to land, labour, productivity and market. She considers how Punjab was different from eastern India in the colonial period and engages with the issue that Punjab defied the typical pattern which governed the other parts. She explores the "political and moral economy of Indian peasants during the colonial rule."

⁶⁵ Jyoti Atwal and Iris Flessenkamper's (edtd), *Gender and Violence in Historical and Contemporary Perspectives: Situating India*, Routledge :Taylor and Francis, London and New York, Forthcoming Volume due in 2020. (had access the unpublished version provided to me by the author)

⁶⁶ Jyoti Atwal, "Situating India: Challenges and Propositions", *Gender and Violence in Historical and Contemporary Perspectives: Situating India*, Routledge :Taylor and Francis, London and New York, Forthcoming Volume due in 2020

W.H. Rattigan in his *Digest of Customary Law*⁶⁷, has offered a brief history of the codification of laws in Punjab. He argues that there was hardly any written code of the customs which had been erstwhile practiced by the people in rural Punjab. These laws were largely enforced by the village or caste *Panchayat* in the central and south eastern districts. One should take note of the fact that the *Panchayats* of these times probably corresponds to the present day *Khap Panchayats*. Codification of the customs was an essential task given the fact that the customs in rural Punjab clearly differed from the Hindu and Mohammeden law⁶⁸. It was only after the annexation of the Punjab territory by the British in 1849, that codification of these customs was attempted which a time was taking process.

Meanwhile, in 1866, the judiciary was organized under the chief court and its important judgments were recorded in the Punjab Recorder. About ten years later, a treatise on the customary law of the Punjab was jointly prepared by Mr. Justice Bulnois and Mr. William Rattigan who were scholars and distinguished members of the Bar Council. It contained the decisions of chief court as well as reported and unreported cases. Later ‘*Riwaaz-I-Am*’, a compilation of the information collected by the revenue and settlement officers from the leading members of the dominant tribes was carefully analyzed by Rattigan and in 1880 *Digest of Customary Law* was composed. The digest has been regarded as a ‘book of unquestioned authority in the Punjab’ by Privy Council in 1941⁶⁹.

This colonial codifications and legal structures have been challenged or re-explored by several authors. In this context the works of Radhika Singha and Janaki Nair deserves attention. Radhika Singha has examined how the “rule of law” was created by the East India Company. She elucidates each beginning from that of regulations passed Warren Hastings’ tenure in 1772 to that of the draft of the penal code produced by Thomas Macaulay in 1835. She argues that on one hand, “the criminal regulations of the

⁶⁷ W.H. Rattigan, *A Digest for Civil Law for the Punjab chiefly based on the Customary Law*, Thirteenth Edition, The university Agency, Allahabad, 1953.

⁶⁸ H.A. Rose, *A Glossary of the Tribes and Castes of North-Western Frontier provinces*, Vol. I, II & III, Lahore: Printed by the Superintendent, Government Printing, Punjab.

⁶⁹ Mst. Subhani vs Nawab, All India Reprter 1941, Punjab Cases- 21,23.

Company formalized the claims of state upon individual subject, cutting through identities and claims which came in the way”⁷⁰ She thus opines that “the criminal law, its machinery and procedure, was therefore tied up with earlier institutions, personal and legal-sacred texts”⁷¹ It deals with homicide, slavery, female infanticide, sati, “thuggee” and *dacoity*, and other activities that involved the right to punish and the kind of punishment to be applied.

According to Janaki Nair, gender inequities were perpetuated or reinforced by the colonial state by the institutionalizing of plurality through the personal laws. To quote Nair, “there is no other single set of laws which discriminates explicitly on the basis of sex as do personal lawsSince such laws were considered as having a basis in religion; no attempt was made to legislate in ways that would reduce the plurality of laws that were upheld by communities Even when they were reformed, the concern was rarely to improve the status of women.”⁷² One of the major hurdles which comes when one tries to look at the gender relations in the region is absence of women writings about the issues concerning them in the colonial period.

Prem Chowdhry’s *The Veiled Women-Shifting Gender Equations in rural Haryana*, is one of the most important works which provides invaluable information about the socio-cultural customs of Haryana. Her work is probably one of the first works to question the contradiction which is often displayed by the customs in Haryana during the colonial period. Her central contention is the devaluation of women of Haryana, despite her extensive economic participation. She underlines the importance of women in agrarian economy in both productive and reproductive terms⁷³. She argues that the low growth rate of population, wide-scale recruitment to the British army and emigration of men were some of the important highlights of the period. She is of the opinion that practices

⁷⁰ Radhika Singha, *A Despotism of Law: Crime and Justice in Early colonial India*, Oxford University Press, Delhi, 1998, p.ix

⁷¹ *ibid*; p.x

⁷² Janaki Nair, *Women and Law in Colonial India*, Kali for Women, New Delhi, 1996, p.10

⁷³ Prem Chowdhry, *The Veiled Women- Shifting Gender Equations in rural Haryana*, Oxford University Press, New Delhi, 1994, p.120

like bride-price, widow remarriage; polyandry which is generally accepted to accord high status to women does not guarantee her such value in Haryana. In contrast she argues practices generally indicative of woman's backwardness like female infanticide, low female literacy rates, the custom of *purdah* or the *ghoonghat* and her absence from any power wielding equations co-exist with the above practices.

Her book takes up the socio-economic dimension of these mutually contradictory social customs and attitudes and analyses the dominant peasant cultural ethos which has sanctified it and granted it acceptance. In this connection, she also highlights the role of administrative policies and reform movements like Arya Samaj which reinforced these customs. She also attempts to explore the social implications of these customs and the reasons behind the ostensibly liberal dimension imparted to the existing attitudes towards women in the context of marriage, remarriage and sex, etc. All these factors are seen in the historical context of the overall colonial domination, the adoption of certain policies which although not directly connected with women, nevertheless had profound effects on issues specifically relating to women. As such, this study also highlights how the colonial period helped in consolidation of the prevalent customary norms. She has used a wide range of historical and literary data in her work specially folk songs and proverbs extensively.

However, reliance on "folklore", as it is reported in colonial compilation should always carefully handled because folklore was selectively contextualized in these as a means of justifying the colonial rule of a people supposedly unthinkingly wedded to "custom." Though Prem Chowdhry provides valuable insights on the ways colonial and post-colonial state has influenced and shaped a rural women's life, she somewhere stops when it comes to crime against women. She does not integrate the issue of infanticide with the practices like polyandry, bride-purchase and bride trafficking.

In a later work however she has taken up the issue of "contentious marriages", that is marriages which take place without parental consent and which generally challenge the caste and *gotra* norms. In emphasizing the importance of marriage she argues that "marriage provides the structural link-up between kinship and caste a closer surveillance

is accorded to the marital alliances. Kinship linkages provided by marriage and relations established through marriage, give a caste group its strength, recognition and leverage in wider society and polity.” Therefore she argues that the central concern behind the codification and enforcement of customary laws aims at controlling women’s sexuality which is ultimately related to caste purity, caste status, power and hierarchy.

When one tries to look at the marriage negotiations in the traditional or customary form, dowry remains one of the most contested issues. Veena Oldenburg interestingly in reassesses the custom of dowry through a discussion of her own experience when she was working with women groups and organizations in Delhi. Apart from this she has also used archival sources for understanding colonial Punjab. She has focused on three interrelated themes- the British revenue policy and its impact on practices such as female infanticide, the change in marriage practices specially dowry and the value of daughters. Oldenburg argues that the colonial period had an adverse affect on women’s customarily recognized share in the property. She argues that the high land revenues were demanded by the British which in a way impoverished the peasants and pushed them at the margins where there was no option left for them but to borrow from the money lenders. Often they failed to pay back the debts and as such lost their lands. The alienation of land was equally harmful for women who erstwhile could have a share in the property. The need for supplementary incomes, recruitment in the army and the pensions deepened the desire for more sons. While investigating dowry, she argues that dowry as a crime emerged only in the colonial period due to the collusion between the patriarchal forces and the imperial state. In her words, “they reconfigured manly ideals and patriarchal values ever more strongly”⁷⁴ in the colonial Punjab.

However, it is very essential to underline the fact that though dowry may have occupied positive meaning in earlier times, it never enhanced women’s value and as it appears in the customary laws of the region, women hardly could independently use at her own

⁷⁴ Veena Talwar Oldenburg, *Dowry Murder: the Imperial Origins of a Cultural Crime*, Oxford University Press, New Delhi, 2002,p.3

discretion⁷⁵. Moreover as late as today, we come across cases where parents openly acknowledge that they kill their daughters, because of the dowry issues and the marriage related expenses. Unfortunately, they are still perceived as financial burden⁷⁶.

However, Anshu Malhotra in a way challenges the notion of ‘dowry’ as an essential component of marriages across castes and argues that it was a high caste or upper caste practice which was projected as an ideal for the other classes through colonial intervention⁷⁷. In her work, she has explained the new identity formation of middle-class among the Sikhs and the Hindus in the colonial period. Her work focuses on diversities that her method accommodates: gender, caste, religious identities and elements of popular culture. She has unraveled how these together had an impact upon the reordering of class in colonial Punjab. She is very clear about the paradigms that she intends exploring - middle class, urban Punjab and the emergence of the notion of being ‘high caste’ among Hindus and Sikhs. The range of source materials seen by the author is truly impressive. Besides conventional sources, she incorporates Gurumukhi, Hindi and Urdu material especially the literary and reformist tracts. Besides, her dependence on oral evidence has undoubtedly enriched her study. Exploring features associated with the colonial project that reinvented caste, the author delineates specificities related to Punjab. She argues, that the nineteenth century witnessed the reconfiguration of the role of women by the higher castes, in an attempt to display modernity.

Somewhat similar argument is offered by Sumit Sarkar who argues in the 19th century Bengal, *bhadralok*⁷⁸ men attempted inter-personal adjustments within the family as a means of ‘survival in a hostile world’. However, he argues that with the rise of nationalism, the middle-class interest in women’s question declined in the latter half of

⁷⁵ For details see the chapter on *Marriage, Divorce and Dower*, in W.H .Rattigan’s, *A Digest for Civil Law for the Punjab chiefly based on the Customary Law*, Thirteenth Edition, The university Agency,Allahabad,1953

⁷⁶ For details see the case of Mukesh of Sangrur district, Punjab which appeared in *The Tribune* , Chandigarh, India, 10/11/2011

⁷⁷ Anshu Malhotra, *Gender, Caste and Religious Identities: Restructuring Class in Colonial Punjab*, Oxford university Press, New Delhi, 2002, p.62

⁷⁸ educated middle class

the nineteenth century. A decline in interest in the social reform could also be witnessed. Patriotism at times encouraged social conservatism and nationalism was increasingly expressed in the language of religion⁷⁹.

Tanika Sarkar argues that “the word ‘reform’ itself conjures up the names of a few great individuals; always Hindu, always upper caste and educated, always from the cities, and always apart from one or two exceptions- men.”⁸⁰ In other words most of the works on social reform have often been written around the icons, therefore there is need to look at the social reforms from a much wider perspective.

Mark Juergenmeyer’s⁸¹ *Religious Rebels in the Punjab* is yet another book which is invaluable for making a sense of different reform movements which resulted in the formation of religious identities and raising collective consciousness. It provides important account of the development and popularity of the Ad-Dharm. The Ad-Dharm⁸² was a movement associated with the development of Dalit consciousness in Punjab in the early 20th century. It envisioned the possibility and potentiality of social change for schedule castes. The author in this book provides discusses at length the relation of Ad Dharm movement and its relation with other movements like Arya Samaj ,Gandhian movement and the Ambedkarite movement. The author is of the opinion that it was the Shuddhi movement of Arya Samaj which gave way to the development of a separate religion for lower castes in Punjab and it was the Ambedkarite movement for the upliftment of Dalits which subsumed a large section of Ad-Dharmis into its fold. Thus the book is very crucial for understanding how social consciousness in the region was shaped by the Ad-dharm movement.

⁷⁹ Sumit Sarkar, *The Women’s Question in the nineteenth century Bengal in A Critique of Colonial India*, 1985, Calcutta.

⁸⁰ Sumit Sarkar , Tanika sarkar edtd., *Women and Social reform in Modern India*, Orient Blackswan, New Delhi, 2011.

⁸¹ Mark Juergenmeyer, *Religious Rebels in the Punjab:The Social Vision of the Untouchable*,Ajanta,Delhi,1988.

⁸² Ad- Dharm was one of the religions which were taken into account for the first time in the census of 1931.

Nonica Dutta in her work⁸³ on the shaping up of *Jat* identity, argues that the Arya Samaj had a special role in the identity formation of the Jats. Apart from this Chhotu Ram and the narratives accorded by communities also played an important role. She argues that as far as the religious narratives and their practices are concerned, they were very simple and earthy and they called it 'kachha mazhab' as opposed to 'pucca mazhab' of the high castes. Thus according to her the Jats never regarded themselves as upper castes rather they were placed much lower in the Hindu caste hierarchy. According to her the basis shift in the "Jat pyshe" was a result of the advent of Arya Samaj.

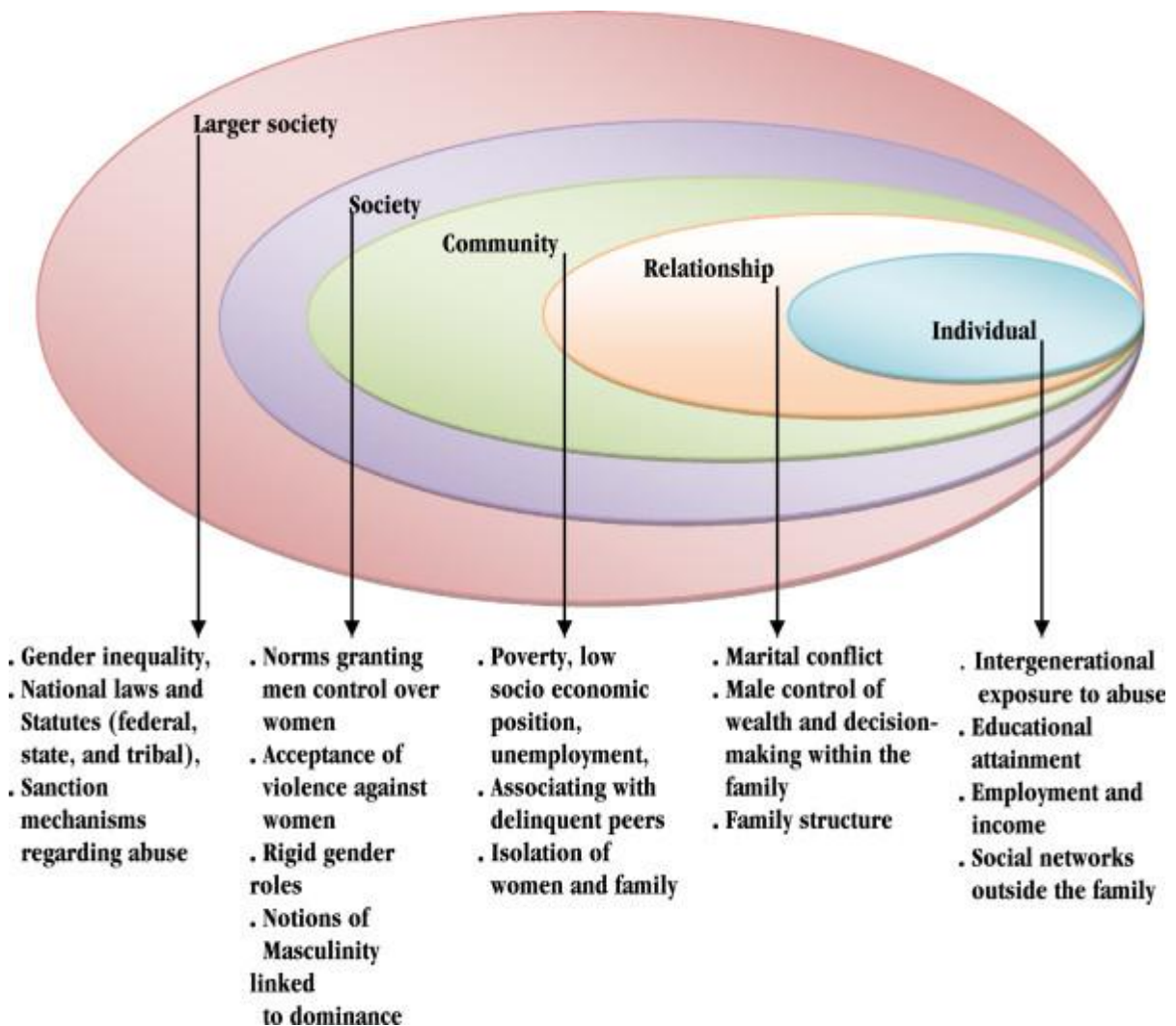
Mattias Larsen's is one of the latest works which has examined the problem of 'missing girls' in India. The central argument offered is that the crime of infanticide vis-à-vis modern feticide is intimately linked to the processes of development in which culture plays a significant role. At its core is the changing face of the Indian family where, despite a generally improved valuation of daughters, the relative importance of sons has increased and the space for daughters has continued to diminish because no alternatives seem available to aged parents apart from the hope of care from sons, even as this is increasingly experienced a misplaced belief in itself.

Rajit Mazumdar in his work comprehensively analyses the relation of the British policies in Punjab and recruitment of a large number of army from the region. He deconstructs the working of 'colonial project'. He defines the relationship between the peasants of colonial Punjab and the colonial state as that of 'advantageous reciprocity' whereby the recruitment in the army was beneficial for the peasant and loyalty on the account of this was beneficial for the colonial state. He uses the term 'weak nationalism' to define the loyalty engendered by this employment. Unfortunately he does not talk about the factors which eventually disrupted this coalition later. According to him the communal hold in the region resulted in the weakening of coalition rather than the emergence of national sentiments. He does not really substantiate his position when it comes to his argument on 'weak nationalism' in Punjab.

⁸³ Nonica Datta, *Forming an Identity- A Social History of the Jats*, Oxford University Press, New Delhi, 1999.

Thus, the above scholarships have been very relevant to the themes explored in the thesis. They have introduced me to the social, cultural and administrative history of the region. They have helped me develop an understanding of the customary practices of the region and their encounter with the colonial regime.

Fig.4, Heise's ecological model⁸⁴ : reasons for violence against women.



Source: The figure⁸⁵ has been adapted from social ecological model from Heise, 1998.

⁸⁴ Krug et al, eds, *World Report on violence and health*, World Health Organization, Geneva,2002

⁸⁵ https://www.researchgate.net/figure/Social-ecological-model-adapted-from-Heise-1998_fig1_233417667
date of accession 25/9/2018

Chapter 1

DOWRY MURDER

*Women killed over dowry 'every hour' in India*⁸⁶

*Every third day a married woman commits suicide*⁸⁷

Headlines like 'dowry suicide every third day', 'in-laws burn woman to death', 'domestic discord, dowry behind suicides' have become daily occurrence. It has become quite common to come across cases of dowry death every now and then in India. On the contrary, the impact of modernization and social change has not been able to make the desired impact. The Dowry Prohibition Act, 1961⁸⁸ defines "dowry"-

"as any property or valuable security given or agreed to be given either directly or indirectly-

- a) by one party to a marriage to the other party to the marriage; or
- b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before the marriage as consideration for the marriage of the said parties but does not include dower or *mahr* in the case of persons to whom the Muslim Personal Law (Shariat) applies."⁸⁹

Dowry murder, a term aptly used by Veena Talwar Oldenburg as substitute for 'bride burning' or 'dowry death' has continued to be one of the most horrendous forms of crime

⁸⁶<https://www.telegraph.co.uk/news/worldnews/asia/india/10280802/Woman-killed-over-dowry-every-hour-in-India.html>

⁸⁷ <https://www.indiatoday.in/magazine/indiascope/story/19800715-haryana-tops-list-of-dowry-deaths-every-third-day-a-married-woman-commits-suicide-821266-2014-01-20>

⁸⁸ Dowry Prohibition Act, Indian law, enacted on May 1, 1961, intended to prevent the giving or receiving of a dowry.

⁸⁹ The Dowry Prohibition Act, *The Gazette of India*, extraordinary, part II, Section I May 22, 1961, Ministry of Law, New Delhi.

against women even after fifty seven years of legislation against it. Her work⁹⁰ remains invaluable and any work on dowry will be incomplete without its discussion. In her book, she shares her own experience where she nearly escaped being burnt.⁹¹ Her case illuminates the complex reasons behind bride burning in India and also the fact that Dowry Prohibition Act at that time offered many women escape from an otherwise oppressive marriage in absence of the Domestic Violence Act. What clearly emerges from this is that the problem of dowry is a complex phenomena and the crime it engenders cannot be deterred by laws alone. Therefore, an investigation into the institution of dowry - its origin, widespread social sanction, reasons for its expansion and inflation, its adverse consequences is required.

This chapter provides a historical and understanding of the customary practice of dowry and reasons behind its widespread prevalence in the region concerned i.e., colonial and contemporary Haryana. It is important to highlight how there was a change in the customary practice of bride-price and dowry in the region because unlike in other parts of India, where prevalence of dowry was a general norm, there were other acknowledged forms of marriage in the region. Apart from this, with the help of cases I have tried to emphasize that dowry has adverse effects on women and society. Part of my endeavor has also been to analyze role of women organizations, NGOs and society as a whole in combating with the problem.

A. Customary vs. Modern Perception of Dowry

Dowry also known as *dahej* in Hindi and *daaj* in Punjabi is the customary practice of providing voluntary gifts or valuables by the bride's father to the bridegroom, or the bride herself or to the conjugal household. '*Daaj*' traditionally signified dowry gifts given by the bride's father to the bridegroom in the presence of community elders while '*vari*'

⁹⁰ Veena Talwar Oldenburg, *Dowry Murder: The Imperial Origins of a Cultural Crime*, New York University Press, 2002

⁹¹ Veena Talwar Oldenburg, 'A remembered Tragedy, chapter 6, *Writing lives, Underwriting Silences: Understanding Dowry Death in Contemporary India*' *Dowry Murder: The Imperial Origins of a Cultural Crime*, New York University Press, 2002; pp. 182- 200

comprises of clothes and ornaments presented by the groom's side to the bride.⁹² The Punjab State Gazetteer offers a very detailed account of the occasion and process through which the act of dowry giving takes place. As per the tradition while women keep singing the song meant for the occasion, the bride's mother brings all that has been decided to be given as gift to the bride. The father in all his humility often says- "*I am a poor man. I cannot give much. Kindly accept this small gift.*"⁹³

What remains essential in this whole affair is the fact that usually the gifts were voluntary and were given as per individual capacity. We have examples where poor families made settlement by presenting 'one hundred and one rupees' in a brass plate.⁹⁴

Descriptive account of dowry in Patiala District-

*"The items of dowry are exhibited and shown to all the guests of both the parties of marriage in a special ceremony. This dowry is prepared by the contribution of girl's maternal (Nanka chhak) as well as paternal side (Dadka chhak). Thereafter, the 'brat' returns to the boy's house along with the bride and dowry. The bride is received by the bridegroom's mother with shagun."*⁹⁵

Among the Sikhs, marriage used to be performed according to Hindu rites prior to 1909. With the introduction of *Anand Marriage Act 1909*, marriages are now performed by the *Anand karj* rites in the presence of *Guru Granth Sahib*.

The customary practice of dowry has hitherto been believed by scholars and sociologists to be associated with the ritual of *kanyadaan*, *vardakshina* and *stridhan*.⁹⁶ All the above

⁹² *Punjab State Gazetteer*, Gazetteer Organization, Revenue and Rehabilitation Department, Chandigarh, 1999, p.288

⁹³ *ibid*; p.288

⁹⁴ *Punjab State Gazetteer*, Gazetteer Organization, Revenue and Rehabilitation Department, Chandigarh, 1999, p.289

⁹⁵ *Ibid*; 289

⁹⁶ *kanyadaan* -gift of the virgin bride, *vardakshina*-voluntary gifts given by the bride's father to the groom and *stridhan*-voluntary gifts given by relatives and friends to the bride.

terms need an explanation in order to understand the nature of dowry in the pre-colonial period. The scholars who uphold such views have been discussed below-

Paul Hershman argues that gift giving was intrinsic aspect of the rituals associated with marriage, an important obligation to be fulfilled by the family of the bride. In 'ideal marriages' the bride herself was the most perfect gift, that of a virgin, whose gifting formed the central ritual ceremony of *kanyadaan*⁹⁷. The ritual status of dowry as part of *kanyadaan* was part of imposing a hegemonic Brahmanical structure.

Padma Srinivasan also believes that dowry has its root in *Kanyadaan*, *vardakshina* and *stridhan*.⁹⁸ It is important to note here that all the three practices were traditionally practiced by upper castes. Thomas Trautman provides a shastric account of the custom of *kanyadaan*. He argues that "the idiom of *kanyadaan* is the patrilineal idiom of complete dissimilation of the bride from the family of her birth and her complete assimilation to that of her husband."⁹⁹ *Kanyadaan* as per Shastras has been considered *daan*, i.e., giving of highest order. The religious concept of *kanyadaan* was also linked with the ritual of *vardakshina* which was the practice of giving gifts or cash by the bride's parents to the bridegroom¹⁰⁰. As per the ancient custom *kanyadaan* was followed by ritual of *vardakshina*, "which was a nominal amount, decided unilaterally by the girl's father according to his financial position, *yathashakti*¹⁰¹. It did not comprise of any evil motive of extracting money or gifts from the bride's parents."¹⁰²

There has been unanimity among scholars about the "special property" of females or *stridhan*. According to P.V. Kane, there is a mention of *stridhan* in Vedas. W H Rattigan's customary law offers a comprehensive details of the concept of *stridhan* as found in the accounts of ancient law makers like Manu and Narada.

⁹⁷ Paul Hershman , *Punjabi Kinship and Marriage*, Hindustan Publishing Corporation, Delhi, 1981, p.194.

⁹⁸ Padma Srinivasan & Gary R Lee, *The Dowry System in Northern India: Women's attitudes and Social Change*, Journal of Marriage and Family,66, December 2004,p.1108

⁹⁹ Thomas Trautman, *Dravidian Kinship*, Alta Mira Press,1981,p.291

¹⁰⁰ Vijay Sharma, *Protection to Women in matrimonial home*, Deep and Deep Publications, 1994,p.49

¹⁰¹ As per an individual's capacity

¹⁰² Shobha Saxena, *Crime Against Women and Protective laws*,Deep and Deep Publications,1995,p.116

According to Manu and Katyana-

“what was given before the nuptial fire what was presented in the bridal procession, what has been conferred on the wife through affection, and what has been received by her from her brother, her mother or her father, are ordained the six-fold ‘stridhanam’ or woman’s property.”¹⁰³

Narada’s six kinds of Stridhanam –

“what is given before the nuptial fire, what is presented in the bridal procession, likewise her husband’s donation (daya) and what is given by her brother or by her parents are ordained the six fold stridhanam.”¹⁰⁴

The above accounts provide the customary perceptions of dowry as it existed in ancient period, but the modern form of dowry reflects a change and has no resemblance to the customarily practiced dowry because the presentation of gifts no longer remains voluntary. Today, the very term ‘voluntary’ has lost its meaning in case of dowry. In present times dowry basically comprises of the gifts demanded by the bridegroom’s family from the family of the bride. Modern dowry includes gifts not just to the bride, but to the groom, the in-laws, his relatives as well as furniture, household goods, bears very little resemblance to traditional *stridhan*. It may be in the form of cash, gold, property, furniture and the list goes on. Contemporary dowry is very different from customary forms of dowry. It hardly bears similarity to the customary similarity apart from the traditional *stridhan*; rather it has become more of an investment made to ensure strong connections and high status in society. It is often believed that if a daughter is married into a well to do family, it not only secures her future but also helps in establishing her native family members. This makes dowry and “advantageous” deal or contract.

Marrying a daughter into a well-connected family, which demands and accepts dowry, could mean upward mobility for her natal family, especially brothers, who hope to secure

¹⁰³ W.H .Rattigan, *A Digest for Civil Law for the Punjab chiefly based on the Customary Law*, Thirteenth Edition, The university Agency,Allahabad,1953 p.771

¹⁰⁴ Ibid;pp.771-775

benefits through this connection. Perhaps the only components of dowry that still retains similarity to traditional *stridhan* could be the bride's trousseau, gold jewellery, household goods and any property her parents may put in her name. According to Madhu Kishwar, "It is not uncommon for a groom's family to keep a part of this dowry for their daughter's wedding or treat the household goods as offerings to the family, rather than just the bride."¹⁰⁵

The amount of dowry demanded nowadays depends on the status and social connections of the would-be groom's family. Better the family's socio-economic status higher is the demand. Interestingly it has become very common to use marriage as an occasion and dowry as a tool to compensate for the money invested in the education of the groom. The earlier practice of hypergamy persists and has acquired the form of upward mobility. This practice is more visible among the upper and middle classes. The bride's family is under constant pressure to fulfill the demands of the groom and his family and often results in debts and loans or selling of properties. Now, it is no more restricted to upper castes but is practiced across castes and region.

After dwelling over the differences between customary and modern version of dowry there is need to provide a historical account of changes which occurred in the social climate that drove the erstwhile communities and castes practicing other forms of marriages towards marriages involving dowry. The factors and motives behind this shift needs to be questioned and comprehended.

B. Shift from Bride-Price to Dowry

Before, we enter into the much debated shift from bride-price to dowry we need to understand that the whole shift was based on the concept of shift from 'non-ideal' to 'ideal marriages'. The notion of ideal marriage in general emanated from the concept of Manu's eight forms of marriage - the forms in which gifts were presented to the bride

¹⁰⁵ Madhu Purnima Kishwar, *Strategies for combating the Culture of Dowry and Domestic Violence in India*, Manushi India, 2005, p. 16

were considered *dharmya*¹⁰⁶ form of marriages and others as *adharmya*¹⁰⁷ forms. These eight forms are discussed below briefly-

Brahma, in one in which the bride is given as a gift to the groom along with ornaments; *Prajapatya*, in one in which the bride is given away, *Arsa* is one in which the grooms father gives away “two cows and a bull” to the father of the bride but it is still different from the practice of bride price. *Aiva*, is yet another form in which the bride is given first to the priest who performs the religious ceremonies and then to the groom¹⁰⁸. These four forms were considered as *dharmya* form of marriages and were regarded as ‘ideal’ because they were mostly arranged by family members. In such marriages the expenses incurred on marriage ceremonies were completely borne by the bride’s father. Though *stridhan* was considered to be sole possession by the brides, these rights were not actually guaranteed on the practical level.

The other four forms were- *Gandharva*, one which was based on the voluntary union of the bride and the groom; *Asura*, one in which bride price was accepted by the bride’s family and did not include *stridhan*. *Rakshasa* was yet another form, it include abduction of the bride by the groom. *Paisacha*, was one in which the girl was intoxicated or seduced. Interestingly these forms were considered ‘adharmya’ marriages and people who practiced these came to be looked down upon. It is important to note here that often customs were framed and moulded as per suitability.

M. N. Srinivas looks has discussed at a length about why there was a distinction and consequent discrimination towards some forms of marriages. According to him, considering marriages other than the Brahmanical form of marriage as non- ideal was part and parcel of imposing the *Brahmanic* supremacy and ideology over other castes¹⁰⁹. He argues that while the marriages involving *kanyadaan* and dowry were glorified other popular forms of marriages involving bride-price were dubbed as ‘adharmya’ or ‘asura’.

¹⁰⁶ Righteous, ideal

¹⁰⁷ Non-ideal

¹⁰⁸ See Prabhati Mukherjee, *Hindu Women: Normative Models*, Orient longman, Calcutta, 1994.

¹⁰⁹ M.N.Srinivas, *Some reflections on dowry*, Oxford University Press, Delhi, India, 1994

For instance, it should be noted that these customs and notions of ideal marriage, honour and expenses were indeed found only among a section of the society in nineteenth and early twentieth century Punjab.¹¹⁰ There were other accepted forms of marriage as well.

The 1905 gazetteer of Hoshiarpur district spoke of three kinds of marriages among people. These were *pun* ‘without price’, *takka* ‘for a bride-price’ and *vatta* ‘by exchange involving a reciprocal betrothal.’¹¹¹ Though the marriage of *pun* was the ideal, marriages involving bride-price were common and openly acknowledged among the large Jat population of Punjab¹¹². The significance of a Jat women’s agricultural labour as well as a low female sex ratio within the population were seen as reasons behind this practice. Bride price was also practiced among the higher castes especially “when the groom was old, disabled or widower”¹¹³. Marriages by exchange or *vatta-satta* marriages were also popular among large sections of society as also validated by Denzil Ibbetson. *Chadar* is also one of the informal forms of marriages practiced in the region.

It should be noted that among the upper castes like Rajputs the only ideal form of marriage was ‘*pun*’. But even within the Rajputs the lower *gotras* practiced other forms involving bride price. Among the other castes such as *Jats* and *Suds* marriages involving bride price was also practiced.¹¹⁴

“It is not uncommon for a man to pay a sum of money in public before witnesses for a girl, taken and return until the marriage comes off a bond for the amount.”¹¹⁵

¹¹⁰ Anshu Malhotra, *Gender, Caste and Religious Identities: Restructuring Class in Colonial Punjab*, Oxford University Press, New Delhi, 2002.p.62

¹¹¹ Punjab District Gazetteers, *Hoshiarpur District*, Vol.XIIa; Part A, Punjab Government Press, Lahore,1905,p.33

¹¹² *ibid*,p.33

¹¹³ Anshu Malhotra, *Gender, Caste and Religious Identities: Restructuring Class in Colonial Punjab*, 2002.p.62

¹¹⁴ *Punjab District Gazetteers*, Hoshiarpur District, Vol.XIIa; Part A, Punjab Government Press,1905,p.33

¹¹⁵ So that if the girl’s father refuses to consummate the marriage the money can be sued for as an ordinary bonded debt.

About Jats and *Sainis* it is usually argued that they do not look at caste while buying wives. They do hesitate in buying wives from lower castes like *lohars*, *chamars*, *jhiwars* and *labanas*. This is probably because it is generally believed that a woman enters her husband's gotra after marriage and therefore the children born out of such marriages are recognized as legitimate. This kind of union is known as '*dhrel*' and a proverb runs-

"dhrel ran khari buri

*Dane mukhe uth turi"*¹¹⁶

(Whether good or bad, off she goes when the grain bin is empty)

Prem Chowdhry offers some very useful insight about the institution of marriage and practice of bride-price in Haryana. She argues that women's role in the agrarian economy made the institution of marriage an acknowledged "economic necessity"¹¹⁷. She argues that women work shoulder to shoulder in the fields among Jats. Therefore the physical strength of the would-be bride remained much more important than her age, height and physical appearance. It was a family's labour requirement which remained primary during bride-selection. An interesting quote regarding this-

"Badi bahu bade bhag

*Chhota bandra ghane suhag"*¹¹⁸

It has often been argued that bride-price, practiced among Jat was mostly because their women contributed not only in household but also in fields. However, it is crucial to understand here that bride price was not limited to Jats but was universal among the lower castes, except a few better families¹¹⁹. Here it can be observed that though the practices of bride selection and custom of dowry had been inverted, yet this inversion

¹¹⁶ *ibid*;p.34

¹¹⁷ Prem Chowdhry, *The Veiled Women- Shifting Gender Equations in rural Haryana*, Oxford University Press, New Delhi,1994, p.63

¹¹⁸ *Ibid*;

¹¹⁹ *Ibid*;

was in tune with patriarchal needs. It is important to question here as to why the practice of bride-price was replaced with dowry in the region. Was this a conscious shift or changes in the economy made this change inevitable? Therefore, one needs to deconstruct the reasons behind this shift.

One of the important trends in the nineteenth century was that marriages involving bride-price began to be condemned. Reformers by the end of the nineteenth century began to style marriages involving bride price as “selling of girls”. The constant reference to Shastras and resorting to quotations from the *Satyarth Prakash*¹²⁰ became common among reformers for condemning bride-price marriages. The idea was to promote dowry marriages as the only ‘honourable’ form, presented as the meritorious pun wedding. It is significant to note that the condemnation of selling of girls occurred at a time when trade in women, or *bardafaroshi*, was on the increase in Punjab.¹²¹ Anshu Malhotra provides three important reasons for the rise of *bardafaroshi*- the development in the colonial period of absolute propriety rights in land, i.e., allowing buying and selling of land for various purposes including weddings. A second most important reason was the settling of new areas. The Jat male migrants bought brides not only from among Jats but also from lower castes. Another major cause that fed women to the *bardafaroshi* was the colonial legal structure that systematically deprived women of their meager rights in land. Widow’s lifetime rights in land, for example came to hinge upon their being able to prove their marriage with brother-in-law in order to protect patrilineal rights over land.¹²²

The colonial state criticized the rise in *bardafaroshi* after the case of selling a child-bride. It was the reformers who chose to condemn the ‘selling of daughters’, however their primary concern appeared not to eradicate the trade itself but rather that it had seriously

¹²⁰ It is a book written in 1875 by Swami Dayanand Saraswati, a renowned religious and social reformer and founder of the Arya Samaj. The major portion of the book is dedicated to reformist advocacy of Dayanand Saraswati.

¹²¹ Anshu Malhotra, *Gender, Caste and Religious Identities: Restructuring Class in Colonial Punjab*, 2002;p63

¹²² Prem Chowdhry, *Contesting claims and counter-claims: questions of inheritance and sexuality of widows in colonial state, contributions to Indian sociology*, pp. 65-85

affected the upper classes. They projected upper castes who accepted bride-price as daughter sellers. What needs to be investigated is whether the practice of ‘selling’ of daughters was on the increase among the upper classes or did the colonial government chose to see bride-price in these terms now. This could reflect a new disapproval of the bride-price and a desire to wipe it out. At the same time it must be kept in mind that the pressure to marry with a sizeable dowry was on the increase. Bride-price and dowry co-existed, however the reformers were driving towards the promotion of dowry and its association with *pun* marriage.

Interestingly dowry was not universal among every community in Punjab and Haryana but today nonetheless it has become widespread and is practiced by majority in the region. There are several reasons for this conscious shift and there has been contentious debate over the issue. A host of historians and sociologists are of the opinion that ‘dowry’ as a crime can be traced back to the colonial period when significant changes in the economy and society was occurring. Some of these have been discussed below in order to understand the present dowry system and the social evils it entails.

Veena Oldenburg interestingly looks at dowry in very different way. To quote her, “in absence of demands from the groom’s family, a bride’s dowry is reckoned as an index of the appreciation bestowed upon a daughter in her natal village, and the ostensible measure of her status in her conjugal village.”¹²³ She argues that dowry was an indicator of social status and thus it served as a ‘safety net’ for her. For her dowry is more of a support for women rather than a problem. She considers that dowry was an important asset for women in the pre-colonial as well as post –independence period. She argues that since marriages usually used to patrilocal, dowry provided a kind of security for women in their marital villages. Dowry served as resource in difficult times because women at least had some control over it.

According to her, it was due to the collaboration of the colonial state and *Punjabi* men that the patriarchal ideals and values were reinforced and much more strongly

¹²³ Veena Talwar Oldenburg, *Dowry Murder: The Imperial Origins of a Cultural Crime*, New York University Press, New York, 2002,p.9

consolidated. This was the time according to her when violence was increasingly associated with dowry. She goes on to elaborate that the colonial government brought a revolution in the property rights that transformed the social and economic world of the peasant. The idea of land as a commodity and therefore entirely alienable, by sale or foreclosure, also gave men precise titular ownership at the cost of all subsidiary claims or entitlements that were traditionally ordained. In her words “the customary rights of women were the heaviest casualties of this transformation of a peasant moral economy into an unevenly modern and capitalist one.”¹²⁴

It is important to understand that the introduction of market economy completely changed the earlier equations, obligations and reciprocation among the community members who collectively shared the land. This was also reflected in the changing customs for example customary forms of dowry was replaced by ‘modern dowry’ and thus voluntary gift-giving was replaced by aggressive demands by the groom’s family.

As far as impoverishment of peasant is concerned scholars are divided on this. In the works of British officials like Malcolm Darling and Cave Brown we often observe that dowry is the most cited reason for the condition of the peasants. However scholars such as Oldenburg have rejected the notion that dowry was the reason behind the poor financial condition of the peasant or behind increase in violence in the nineteenth century in the form of foeticide or dowry murder.

Oldenburg argues that the colonial period had an adverse affect on women’s customarily recognized share in the property. As per her high land revenues were demanded by the British which in a way impoverished the peasants and pushed them at the margins where there was no option left for them but to borrow from the money lenders. Often they failed to pay back the debts and as such lost their lands. The alienation of land was equally harmful for women who erstwhile could have a share in the property. The need for supplementary incomes, recruitment in the army and the pensions deepened the desire for more sons. This preference for son was essentially responsible for violence against

¹²⁴Veena Talwar Oldenburg, *Reinvestigating a Cultural Whodunnit*, Penguin Books, New Delhi, 2010, p.3.

women in their own family and in that of their in-laws. Gender inequality was further consolidated by the colonial agrarian and revenue policies. One of the worst consequences could be seen in the “increase in selling of brides during the period”. As per the British officials’ account it was due the practice of bride-purchase that many couldn’t find a suitable bride for them and remained bachelors. What is astonishing here is the fact that loans was sanctioned by the colonial officials in the name of bachelors who wanted to purchase brides¹²⁵. What remains ignored in this discourse is the fact that these loans were often sanctioned usually when ancestral land or property was kept as collateral. Also one needs to understand the double standards of the British when they emphasized on ‘saving’ women from their own practices but not from the adverse consequences of the British economic policies.

Jonathan parry has worked on colonial Kangra, while discussing a market situation in the region he argues that among the Rajputs “fathers disposed of their daughters to the highest bidder.”¹²⁶ This clearly reflects that bride purchase had become a very common mostly among those communities which had low sex ratios. This also explains the noticeable increase in bride-sales during the colonial period. Indira Rajaraman similarly treats bride-price as a “compensatory payment to the family for the production loss they suffer on her departure”¹²⁷. M.N.Srinivas is of the view that practices were not uniform even within caste. If the higher ranks within a caste used to practice dowry while on the same time the lower sub-castes practiced bride price. Thus the compensation theory doesn’t hold true for different castes. Thus whether it was dowry or bride-price, both could not enhance the value of women in the region. Females were often regarded as financial burden and at times moral burden by different communities.

¹²⁵ Prem Chowdhry, “Contesting claims and counter-claims: questions of inheritance and sexuality of widows in colonial state”, *Contributions to Indian Sociology*, p.68 refers to Indian cases,1931, vol.131,p.634

¹²⁶ Jonathan Parry, *Caste and kinship in Kangra*, Routledge and Paul,1979,p.243-46

¹²⁷ Indira Rajaraman, “Economics of bride-price and dowry”, *Economic and Political Weekly*, Feb 1983

It is an irony that bride-price despite being positive in its outlook could not ensure higher value for women.¹²⁸ This was partly because bride-price was dubbed as something only practiced by the *shudras*. This notion resulted in a sense of shame and humiliation by those who practiced it and they eventually began emulating other upper caste practices to overcome the same.

C.Causes and Adverse Effects of Dowry

In the contemporary period the acceptance and prevalence of dowry needs to be questioned because it has often been argued that dowry no more serves the customary functions it used to and rather has become a practice which often results in violence and cruelty. Not a single construct can explain the continuity of dowry in the contemporary period. The *hypergamy* theory is often used to explain why families agree to provide dowry. Also hypergamy “places the families of bridegrooms in a position of ritual and economic superiority...thus the dowry was the sweetener, one could say, or in today’s terms the incentive.”¹²⁹ The amount of dowry offered has increasingly become a criterion for bride ‘selection’ because the groom’s family often has an edge if they have a better reputation and status. Demographers often point out that families in high societies are the one who lead in lower fertility rates¹³⁰ which reduces the number of suitable grooms available in the market creating a marriage squeeze.¹³¹

An insight into the marriage negotiations in especially in North India would help us in understanding the contemporary scenario. Marriages are usually arranged and it is the bride’s family which initiates the negotiation. Mostly it is both sides of the family which

¹²⁸ Prem Chowdhry, *The Veiled Women- Shifting Gender Equations in rural Haryana*, Oxford University Press, New Delhi,1994,p.72

¹²⁹ Rajni Palriwal, “The Spider’s web: Seeing Dowry, Fighting Dowry”, in *Dowry : Bridging the Gap Between theory and Practice*, edtd. By T Bradley, E.Tomalin and M.Subrahmaniam, Women Unlimited, New Delhi,2009, pp.144-176

¹³⁰ M.S.Billing, “ the marriage Squeeze on high caste Rajasthani women”, *Journal of South Asian Studies*,vol.50,1991,p.306.

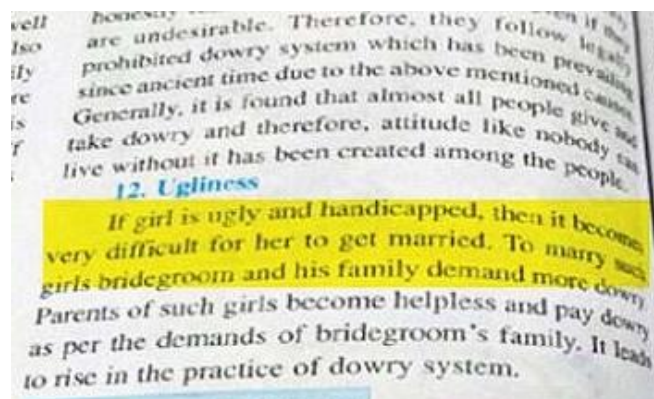
¹³¹ Bhat, P.N. Mari and Shiva S Hali, *Demography of brideprice and dowry:causes and consequences of of the Indian Marriage Squeeze*,Population Studies, vol.53(2),1999,pp. 129-148

and the groom who are benefitted in this process because brides usually have no agency in either selecting the groom or selecting the family. The income and status of the groom are usually the determinants while for the bride to be, it is usually the physical appearance and the size of dowry which determines her chances of 'selection'. Also amount of dowry ensures that the girl receives better treatment at her in-laws place.¹³²

If the bride to be is not 'beautiful', it can be bargained by fixing the amount of dowry. A recent interesting issue in this regard was the Maharashtra textbook controversy. "A textbook for class XII in Maharashtra has cited ugliness and physical handicap of a girl as a reason behind the dowry issue present in the country."¹³³ This appeared the textbook of sociology of the state board meant for higher and secondary education.

Interestingly, apart from other common reasons usually believed like caste, social prestige, and religion, "ugliness" was cited as one of the important reasons behind increasing demands from the groom's family. Such assumptions must be thoroughly criticized; however, it is only reflective of the larger mindset of our society. What was written in the textbook continues to be practiced by our society widely.

Fig.5 Dowry as a compensation new paper report



Source:<http://www.dailymail.co.uk/indiahome/indianews/article-4185714/Textbook-cites-ugliness-girl-dowry-issue.html>

¹³² Ranjana kumari, *Brides are not for Burning: Dowry Victims India*, New Delhi, Radiant Publishers, 1989, p.43-44

¹³³ "Maharashtra textbook says 'ugliness' is reason for dowry demands", *The Hindu*, 3 February, 2017.

Thus from the above discussion it emerges dowry in modern times has emerged as a form of compensation whereby the girl's family compensates the other family by paying for the investments they have done on the education of the groom and on the other hand the groom's family compromises on the 'physical appearance' of the girl if they receive an adequate amount of dowry. These criteria underline the premises under which marriage negotiation takes place. It should also be noted that dowry is not a one-time investment rather it is the continuous flow of gifts which can take place even long after marriage, especially in the initial years of marriage. There are different occasions and ceremonies of giving gifts which usually takes place before and after marriage.¹³⁴ These ceremonies have been so carefully designed so as to ensure the flow of gifts on different occasions from the bride's family to the groom's. To quote Ranjana Kumari-

“After the wedding, ritual gift giving from the bride's family to the groom's family takes place when the bride goes home for the first time after the marriage and when she returns to the marital home. Gifts are given for each child when it is born, named, first shown to the maternal grandparents, first eats solid food, and so forth. Family, celebrations on both sides is also occasions for gift giving.”¹³⁵

Sudha Goel's case was one of the first cases in India in which the death sentence was awarded for dowry murder by the Trial Court. It is also one of the best examples to explain how the demand for dowry continue even after marriage and failure to meet the demand can result in violence against the wedded wife. Sudha Goel, 20 years, was the wife of Laxman and was basically belonged to middle class merchant family of Calcutta. Laxman was a shopkeeper and the couple had married in 1980 and resided at Ashok Vihar with Subhash¹³⁶ and his wife Madhu. Laxman's mother, Shakuntala Devi usually stayed in Meerut with her husband that is Sudha's father in law but used to come to Delhi at regular intervals to stay with her sons. Not even a month had passed by after marriage that Sudha began to be ill treated by her husband, her brother in law and her mother-in-

¹³⁴ Ranjana Kumari, *Brides are not for Burning: Dowry Victims India*, Radiant Publishers, New Delhi, 1989, p.43.

¹³⁵ Ibid;p.43

¹³⁶ Elder brother of Laxman, also one of the accused in the case.

law. They used to taunt her that she had not given enough dowry. She was continuously being pressurized to demand a scooter and cash of around ten thousand from her parents at her brother's marriage. What is crucial here that Sudha was in the third tri-semester of her pregnancy and her delivery was due in a week. As her delivery was approaching her mother-in-law along with her husband and brother planned to kill her and set her on fire using kerosene. On the fateful day, she was asked to boil milk. As soon as she went to boil the milk her mother-in-law poured kerosene on her and set her on fire. Her brother-in-law assisted his mother Shakuntala. Sudha's screams were heard by neighbours who came to her rescue and took her to hospital. Sudha made statements where she clearly mentioned that her mother-in-law had burnt her in front of the witnesses.

The trial court awarded death sentence to the accused, Shakuntala Devi, mother-in-law and Subhash, brother-in-law of Sudha. It was after this case that section 304 B, "dowry death" was inserted by an amendment to the existing law. The accused were charged with Section 302/34¹³⁷ I.P.C, during the trial. The Delhi High court differed from the trial court and the respondents were acquitted. Its decision was opposed and challenged by 12 women organizations¹³⁸ and they appealed in the Supreme Court. The Supreme Court sentenced life imprisonment to Shakuntala Devi Laxman Kumar but acquitted Subhash.

The above case clearly highlights the involvement of women in violent crimes such as dowry murder and the fact that a pregnant daughter-in-law was brutally murdered by her mother-in-law, essentially another woman. The fact that women patriarchy endorse patriarchy and perpetuate heinous crimes despite being a woman herself is also reflected in the case. Apart from the above argument this landmark case is also highlights that the greed for dowry can not only results in abuse but violence as fatal as even death. In India marriage is usually considered a sacrament and often the burden of holding it despite problems in the marriage is on women be it mother, daughter, daughter-in-laws or mother-in-laws. In case of discord or dissolution in the marriage, women are expected to save the marriage at all cost and thus upkeep the family 'honour'. The use of violence has

¹³⁷ Section 302/34 of the I P C includes cases of Conspiracy to murder.

¹³⁸ *Indian federation of Women Lawyers, Mahila Dakshata Samiti, Manushi, Saheli, Centre for Women's Development Studies* and others who appealed in the Supreme Court.

become central to dowry demand especially the ones which are made post-marriage. The number of incidents of alleged death associated with dowry demands have been increasing and to stop the menace various laws have been instituted against the practice but most of the laws have not been able to make the desired impact on reducing the number of dowry deaths and violence against women in the name of dowry.

It would be interesting to discuss another case here, where frequent demand of dowry continued even after four to five years of marriage and ultimately resulted in dowry murder-

The present case of *Subhash and Ors Vs State of Haryana*¹³⁹ is a case where Sant Kala aged 20/21 years old was married to Subhash in the year 1982. The deceased went to her matrimonial home in the year 1985. Subhash, his mother's sister Bhartho and her son named Shamser Singh all three were accused for allegedly harassing Sant Kala for bringing more dowry. Subhash brought Rs2100 from his father-in-law on 15th June, 1986 on the pretext of purchasing a bullock. Nearly two weeks before the occurrence in the beginning of April 1987 Subhash again contacted his father-in-law in village Doomarkhan and demanded Rs 10,000/- on the pretext of purchasing land. Than Singh¹⁴⁰ when contacted Chhaju Ram¹⁴¹, he learnt that they did not intend or propose purchasing any land. Than Singh, therefore, dropped the idea of parting with Rs. 10,000 which he had actually brought with him when he visited his daughter at her in-laws' place on 13th April, 1987. Despite of being repeatedly told by the deceased therein that in case he did not give the money to Subhash, all three accused aforesaid would kill her. All the three accused also allegedly taunted Sant Kala in the presence of her father "Your father has given sufficient dowry. Therefore, he loves you much." Sant Kala died an unnatural death on the night intervening 16th and 17th April 1987 and was hurriedly cremated by the accused on 17th April, 1987 without informing her parents.

¹³⁹ *Subhash and Ors vs State of Haryana on 25 April, 1990*; Punjab- Haryana High Court.

¹⁴⁰ Father of Sant Kala, village -Doomarkhan.

¹⁴¹ Father of Subhash, village- Khanpur, Jat by caste.

All the three accused were charged with offences under Section 304B read with section 34 of the Indian Penal Code and Section 201 of the IPC. They rejected all charges against them and pleaded that they were not guilty of the crime. Three persons namely Bhai Singh, Zile, Kitab Singh and Lal Chand who allegedly attended the cremation of Smt. Sant Kala were also charged under section 201 of the IPC.¹⁴² They were later absolved of the charges and acquitted by the trial court on 12th January 1988. The trial court convicted all the three accused named Subhash, Smt. Bhartho and her son Shamser and sentenced all of them and punished them with life time imprisonment. They jointly appealed in the Punjab-Haryana High court. We would go through the statements of important witnesses in order to have a sense of the gravity of the case.

Than Singh, father of deceased stated that Sant Kala was one of his daughters and her marriage was solemnized with Subhash 4/5 years ago. He claimed to give everything that was customary in their brotherhood while performing the marriage. After about three and a half years her *muklawā*¹⁴³ was performed. In his words-

“When she came for the first time from her matrimonial home, she told that the three accused Subhash, Smt. Bhartho and Shamser were harassing her not bringing sufficient dowry. Bhartho is the real sister of the mother of Subhash and accused Shamser is son of Bhartho. I told Sant Kala that I would persuade her in-laws not to harass her and that I would be giving them articles as per our custom. After about 7/8 months before her death, accused Subhash came to me in my village and demanded Rs 2100 from me for purchasing bullock. The money was not ready with me. I therefore, borrowed that amount from Sat pal, regarding which I made an entry into the *bahi* which is I had agreed to pay interest at the rate of 1.50% per month. I gave that sum of Rs 2100 to Subhash.”¹⁴⁴

¹⁴² Which deals with the provision of punishment for destruction of evidence.

¹⁴³ Muklawā is that occasion when a bride goes to parents home after marriage and father gives clothes and other gifts to daughter.

¹⁴⁴ *Subhash and Ors vs State of Haryana on 25 April, 1990*; Punjab-Haryana High Court, 1990, pp.1-2

He further added that about twenty days before Sant Kala's death, accused Subhash and Shamsar had brought Sant Kala from her father's home to Khanpur.¹⁴⁵ After 10 days of this event, Subhash went to Than Singh and demanded 10,000/- for purchasing land. Than Singh told him that he did not have that amount with him but he would soon arrange and give it to him. Than Singh arranged 6000/- from his uncle Ganga and took 4000/- lying in the house. He took 10,000 and went to Khanpur where he met Chhaju Ram; he was shocked to learn from him that they had no plans of purchasing land. On hearing this he dropped the idea of giving the money to Subhash. When his daughter came from the field, she asked Than Singh to give the money if he had brought and that Subhash was harassing her for the same, but he said he would talk to Subhash and ask him not to harass her. When Subhash came, he talked to him also but did not give the money. He spent the night in Khanpur and came back to Doomarkhan the next morning. When he was about to come Sant Kala again asked for the money, when he refused to give, she even said that if he did not give the money they would kill her.

After 3/4 days of his return he was informed by Dharmpal, who had gone to Gurana in a wedding that Sant Kala had been murdered. Soon, Than Singh along with Balraj and Rajpal came to Khanpur and inquired from the villagers about the incident, they informed that Sant Kala had been murdered 3/4 days ago in the night. When, Than Singh and others went to Subhash's house they were not there. They were not given any information regarding the death of Sant Kala, and by the time they reached Khanpur she had already been cremated. Than Singh gave in details of the amount of dowry he had spent over her daughter's marriage in Court-

“I had spent about Rs.40, 00/- on the marriage of Sant Kala. I had given her gold ornaments weighing five and a half tolas.”¹⁴⁶

¹⁴⁵ That time, she had stayed for about a month in her father's house. This points need to be emphasized because probably to escape the harassment she was at her father's house. They had come to take her so that they could have a bargaining edge.

¹⁴⁶ Subhash and Ors vs State of Haryana on 25 April, 1990; Punjab- Haryana High Court, p.2

Smt. Bhartho and her son both asserted in the course of their statements under section 313 of the Criminal Procedure Code,

“I am living separately from Subhash. Our ration card is separate and our house is separate. We pay Chula tax separately. We have no concern with Subhash. We have never demanded any dowry nor did we ever harass Sant Kala.”¹⁴⁷

In cross-examination, Than Singh also agreed to the fact that Subhash alone had come to Doomarkhan demanding Rs 10,000/-. Even taunting attributed to the two accused was against the witness and not the deceased, therefore Shamsar and Smt. Bhartho got exonerated from the charges framed against them by the Trial Court and both of the consequently got acquitted after the appeal in the high court.

In order to absolve himself of the charges framed against him by the trial court Subhash stated as follows-

“I have been falsely implicated in this case. My wife Sant Kala had been ailing since long and was under treatment of Dr. Inderpal Pawar of our village. Her condition deteriorated, she died and intimation was sent to her parents by us on 17-4-87 through Manphool Singh Dung. She died a natural death after protracted illness. We waited for her parents to come. Her father Than Singh and her brother came and only thereafter her body was cremated. From 18-4-87 to 21-4-87 the complainant party has been pressurizing us in various Panchayats for returning the articles of dowry. This dispute could not be resolved and therefore Than Singh threatened to take the articles through the police. We never demanded any dowry from her and we were satisfied with whatever she had brought, I never asked for Rs 2100/- nor was any such amount given to me for purchasing the bullock. I never demanded Rs 10,000/- for purchasing the land.”¹⁴⁸

Five defense witnesses were examined in order to substantiate the explanation put forth by the accused, Subhash -

¹⁴⁷ *ibid*;pp.2-3

¹⁴⁸ *ibid*;p.3

Chhaju Ram his own father asserted that he did not require any money either for the purchase of bullock or for purchasing land. Here his father being an interested witness does not operate to exculpate¹⁴⁹ Subhash.

Dr. Inderpal Pawar contradicted Subhash by asserting that Sant Kala did not breathe her last in his presence. Also, Sant Kala's name does not find mention in the register of treated patients maintained by the doctor. Besides, the witness was trembling in the court while making the statement.

Manphool Singh also negates the assertion of his having been sent to Than Singh for informing him of the death of his daughter, Smt. Sant Kala by admitting in cross-examination. To quote him, "I do not know where the house of Than Singh is situated."¹⁵⁰

Had the witness gone to Than Singh's house he would certainly have been in a position to state the situation and location of the house of Than Singh in the village in course of cross-examination.

Thus explanation offered by Subhash was not substantiated by the witnesses, and it was envisaged under Section 113 B¹⁵¹ of the Indian Evidence Act that Sant Kala died an unnatural death in her matrimonial home on the night intervening 16th and 17th April, 1987 as dowry death envisaged in Section 304B of the IPC. Therefore conviction of accused appellant Subhash recorded by the trial court vides its impugned judgment of January 12, 1988 was affirmed.

This case has been chosen for discussion because the above case clearly reflects the helplessness of a daughter who in order to put an end to harassment and threat to life,

¹⁴⁹ Show or declare that someone is not guilty of wrongdoing.

¹⁵⁰ *Subhash and Ors vs State of Haryana on 25 April, 1990*; Punjab Haryana High Court, 1990, p.3

¹⁵¹ Section 113B reads that- when the question is whether a person committed the dowry death of a woman and it is shown that soon before her death such women had been subjected by such person to cruelty or harassment for, or in connection with any demand for dowry the court shall presume that such person had caused the dowry death. Explanation of "dowry death" in this section will have the same meaning as in Section 304B of the IPC.

requests her father to provide the amount whenever demanded. On the other hand it also represents the deteriorating financial condition of a father who lands into debt despite providing the demanded dowry at the time of his daughter's wedding. In this case, it clearly emerged that it is often not only the husband but his near relatives also play a key role when it comes to dowry related harassment.

It would be interesting to quote the findings of a survey¹⁵² which was concerned with the reasons for the continuation and expansion of dowry. This survey was conducted by All India Democratic Women's Association. The opinion expressed by the respondents have been discussed below-

“Different people gave different reasons for supporting the dowry system, some young girls and parents said that it was because of the rigid custom prevalent in their society. Young girls considered it their right. They said that as they did not get any share in their parents' property this was the only way they could have some part of it. Most of them said that it was because of tradition that they will take dowry. If they did not take any dowry they will not get any respect in their matrimonial homes.”¹⁵³

Thus, the above report highlights yet another reason for the continuation of dowry, i.e., because dowry was seen as a status symbol by some girls who believed that it was their right to get dowry. Some believed that it was unavoidable due to the societal norms which endorsed it while the others argued that dowry was a sort of compensation which compensated for their share in family property. As far as the parents were concerned they argued that a good amount of dowry ensured them a good son-in-law and their daughter a better position in her new family. It has otherwise also been observed that usually the daughter-in-laws from well to do families or who have brought handsome amount of

¹⁵² *Expanding Dimensions of Dowry*, a survey by AIDWA in 2003, reveals how the scope and spread of dowry have widened over the last decade.

¹⁵³ *Ibid*;

dowry are often treated well in their new marital home.¹⁵⁴The division of household chores is also determined to a great extent on the amount of dowry.¹⁵⁵

If we consider the opinion of young men as per the survey it reflected their hope for instant upward mobility which they believed could be easily assured through dowry. Marrying a girl who can afford huge dowry was seen as a securing one's life, as a kind of insurance which would work whenever there was a financial crisis or otherwise. This view completely reiterates the fact that often in arrange marriages the general capacity of the parents is assessed rather than what they provide during the wedding.

As Ursula Sharma observes, “when they arrange the marriage of a son, parents do not just look forward to the dowry they will receive at the wedding. They look at the bride's general capacity to give.”¹⁵⁶

Evidences suggest that dowry has emerged as an important cause of different forms of violence against women ranging from the prevalence of low sex ratio, cruelty against women by husband and his relatives and other forms of domestic abuse including physical and psychological violence. This violence may even result in death of the woman in some circumstances or act as a primary cause of suicide.

Dowry historically has been unfavourable for women. Historically politics around dowry and marriage remained an important cause of low sex ratios. Infanticide and modern foeticide have been considered as one of the worst consequences of dowry. Shastras and religious scriptures have often been used to suggest that keeping an unmarried daughter could be a source of shame and a matter of humiliation in the family. This was probably related to the purity and chastity of the daughter. Even, today in most of the rural areas parents prefer to marry their daughter as soon as they reach puberty in order to protect or preserve her 'virginity'.

¹⁵⁴ This usually holds true in urban areas while in rural areas daughter-in laws who bring good amount of dowry are burdened less with household responsibilities than the ones who bring less.

¹⁵⁵ Ursula Sharma, “Dowry in North India: Its consequences for women” in Patricia Oberoi(edtd.) *Family, Kinship and Marriage in India*; Oxford University Press, New Delhi, p.343.

¹⁵⁶ Ibid, p.343

The customary system of hypergamy made the situations even more complex because the availability of grooms of high status was usually scarce and even if one managed to find one the dowry demanded was high and not every family could afford to give the required amount. The groom's family always had an edge because they could bargain over dowry and ultimately choose the highest bidder. Thus the parents of a girl always feared a situation where they would not be able to marry their daughters and thus the honour of the family would be at stake. It has often been argued that dowry and expenses associated with wedding ceremonies were a factor as important as the desire for sons behind the crime of infanticide or foeticide.

Lalita Panigrahi argues that nothing much has changed even in the contemporary period.¹⁵⁷ Daughters are often considered as investments with no material gain or equivalent return, therefore the rates of infanticide and foeticide remain high in many parts of the country.¹⁵⁸ It would be useful to discuss a recent case in which an infant was murdered by her very own father. Mukesh Kumar of Sangrur district had killed his four day old daughter. During the trials Mukesh openly confessed that he was not happy with the birth of a girl child and there when he found her alone, he gagged her. Judge M.S. Chauhan awarded capital punishment to the father. This was one of the first cases of infanticide where capital punishment was awarded. While pronouncing the judgment M.S. Chauhan said-

“Gallows for a father who scripted the obituary for his daughter's much before she was born....”¹⁵⁹ Highlighting the graveness of the crime he further added-

“...This is the story of an unnamed infant; probably this is the first decision which cannot even refer to the victim by her name. She was eliminated before she could have one! Her brief existence in the world was reduced to a piece of mere statistics - A number stood added to the population of the world, a number stood added to the female

¹⁵⁷ See Lalita Panigrahi, *British Social Policy and Female Infanticide in India*, Mushiram Manoharlal, New Delhi, 1972, pp.135-136.

¹⁵⁸ Monica Das Fuhta, “Selective discrimination against female children in rural Punjab”, *Population and Development Review*, 13, India, 1994, pp-77-100

¹⁵⁹ Statement made in an open court in Sangrur district by sessions judge M.S Chauhan on 9/11/2011.

population of the world, a number stood subtracted from the population of the world, a number stood subtracted from the female population of the world, the male-female ratio got further imbalanced in India, a credit entry was made in the Register of Births, and a debit entry was made in the Register of Deaths.”¹⁶⁰

Unfortunately this is not the only case in India when a girl child has been killed or eliminated by her own father but millions of girls face a similar fate. What remained unique in the case was that Mukesh while examination said he killed his daughter because he would not be able to pay for her dowry and therefore he felt it was better to get rid of her.

Apart from the issue of infanticide and foeticide, cruelty against wives by her husband and his relatives is yet another widespread crime which has its root in dowry demands and associated problems. As per the National Crime Record Bureau data, cruelty by husband and his relatives, a crime covered under the section 498-A, is “the most reported crime against women across the country at the rate of ten cases per hour”. A total of 909,713 cases have been registered under this section over the last decade. Similarly around 66,000 cases or more have been registered under the Dowry Prohibition Act, 1961 over the last decade.¹⁶¹ There are several reports of violence against women by husbands and his family because they are considered to have brought insufficient dowry.¹⁶²

Table 2 *Number of cases registered under the Dowry Prohibition Act, Charge sheet and Conviction rate for the same.*

	2011	2012	2013	2014	2015
Registered cases	2,28,650	2,44,270	3,09,540	3,37,922	3,27,394
Charge sheet rate	94%	93%	92%	92%	90%
Conviction rate	20%	15%	16%	13%	14%

Source: the table below has been compiled by consulting the NCRB data from the year 2011-2015

¹⁶⁰ “Female Infanticide: Gallows for Infanticide”, *The Tribune*, Chandigarh, India 10/11/2011.

¹⁶¹ [http://scroll.in/Crime against women reported every two minutes in India](http://scroll.in/Crime%20against%20women%20reported%20every%20two%20minutes%20in%20India); Date of access 14/1/2018

¹⁶² Ranjana Kumari, *Brides are not for Burning: Dowry Victims India*, New Delhi: Radiant Publishers, 1989, p.43-44

However the figures often do not represent the real numbers and are underestimated numbers because such crimes are still underreported due to the social stigma associated. One of the important debates which have been surrounded by several controversies and contradictions is women's agency in perpetuation of crime such as dowry despite of the fact that she is a woman herself. One is bound to wonder why despite the several adverse consequences women assume the role of perpetrators of this crime. Women often play a central role in dowry negotiations for their sons specially in determining the amount to be demanded, the way it should be spent and the how much it should constitute cash and much should be in the form of jewellery or kind and also in encourage or persuading their daughter-in-law for demanding more dowry after marriage.¹⁶³ It therefore becomes essential to analyze the attitudes of women towards dowry in order to understand its continuation and perpetuation in contemporary period.

As already observed in the survey¹⁶⁴ daughters may also support dowry because it involves a transfer of considerable amount of cash and other items of household which could be used by the new couple to set up their new home. The growing consumerism has led to the development of a culture where people have become very materialistic.¹⁶⁵ Also if we take into account why women in the groom's family support this system then we can easily notice that at times the jewellery and cash received from the daughter-in-law may be used as a dowry for their own daughter's wedding. This greed for dowry often results in different forms of abuse and violence against the daughter-in-law of the family who is expected to convince her parents to fulfil the demands of her in laws.

A portion of Tihar Jail no. six is dedicated to housing women accused in dowry related atrocities. Around 1200 women usually the mother-in-law and sister-in-law of the affected women enter this cell every year. The in laws constitute for more than 26% of arrested women in Tihar. The conviction rate is very rare in cases of harassment charges.

¹⁶³ Ranjana Kumari, *Brides are not for Burning: Dowry Victims India*, New Delhi: Radiant Publishers, 1989, p.43-44

¹⁶⁴ "Expanding dimensions of Dowry", *All India Democratic Women's Association*, New Delhi, 2003.

¹⁶⁵ Padma Srinivasan, "The Dowry System in Northern India: Women's attitudes and social Change", *Journal of Marriage and Family*, Vol.66, Dec.2004, pp.1108-1117.

Ten percent of women who are arrested in dowry cases are convicted. The idea of separation of mother-in-law barracks came up in 2000 when Kiran Bedi was inspector general of prisons. She wanted that the veteran criminals such as those arrested in kidnapping and immoral trafficking should not influence women arrested in dowry related cases.

D.Campaigns against Dowry

Campaigns against dowry deaths have successfully translated the feminist assertion of “personal as political”. The otherwise atrocities, harassment and deaths which used to take place within the confines of the four walls were opened up in public space through these protests and campaigns which challenged the institution of dowry. The 1980s was one of the most important phases of women’s movement in India when crimes such as dowry murders and rape were contested and opposed vehemently.

This phase also involved the formation of important platforms such as the *Dahej Virodhi Chetna Manch*, *Mahila Dakshta Samiti* and *Stri Sangharsh*.¹⁶⁶ These groups included women of different political ideologies; it was a formation of women across class, caste and regional boundaries. Mahila Dakshta Samiti was one of the first women’s movement in Delhi against the practice of dowry.¹⁶⁷

Interestingly, different people came forward for their own reasons to support the anti-dowry campaign like some males who supported the campaign often supported since they regarded their duty to protect their wives. Similarly some organizations opposed the patriarchal structures and notions but avoided getting associated with the critique of the institution of marriage itself. In the words of Srimati Basu, “Perhaps this range in points of identification explains why it has been one of the most prominent aspects of the recent

¹⁶⁶ for detail see Radha Kumar, *The History of Doing: An illustrated Account of Movements for Women’s Rights and Feminism in India, 1800-1900*, Delhi: Zubaan, 2015, pp. 115-126.

¹⁶⁷ Ibid;

women's movement: it incorporates the domains of economy, marriage and the 'cultural', and violence against women."¹⁶⁸

Madhu Kishwar while discussing her own experiences during the campaign argues that protests against dowry included very unconventional methods like *gheraoing* the police stations, face to face confrontations with the accused or suspects. The complicity of the local police was often questioned or they were pressurized to take swift action against the cases. What is special was the participation of common public because they never opposed or questioned while the demonstrators protested outside the house of the affected women often demanding a social boycott¹⁶⁹ of the suspected family. Infact, they often joined in the protests. The police silently supported the campaign by not stopping or *lathi*-charging the protestors.

In the words of Madhu Kishwar, "Our demonstrations rarely faced hostility, even when we invaded neighbourhoods without prior notice or warning. In most cases, the men and women of the neighbourhood joined us spontaneously to endorse our call for social boycott. Even the police watched quietly, instead of trying to prevent us from holding demonstrations outside homes that had witnessed murders or even outside police stations."¹⁷⁰

Nearly three decades have passed that the streets of Delhi resonated with the anti-dowry campaigns and marches. "Streets have fallen silent, but violence has not waned."¹⁷¹ It is very important that we discuss that dowry related violence has not ceased and in fact with the onset of liberalization and the consumerist culture, they have acquired new dimensions. The list of dowry has lengthened and the items in the list have been replaced by modern versions of those items and often items of luxury have become prominent in the list replacing essential household articles. LCDs, LEDs and home theatres have

¹⁶⁸ Srimati Basu, *Dowry and Inheritance*, Women Unlimited, New Delhi, 2005.

¹⁶⁹ The fear and shame of losing honour within the community, on the other hand, often was a more effective strategy that indictment by law. Communities through history have practiced this way of punishing the guilty.

¹⁷⁰ Madhu Purnima Kishwar, "Strategies for combating the Culture of Dowry and Domestic Violence in India", *Manushi India*, 2005,p.21-22

¹⁷¹ "Marching Together: Revisiting Dowry in India", *Jagori*, New Delhi, 2009,p.2

replaced the normal black and white television sets, the modern food processors have replaced the mixer grinders and Honda City and other luxury cars have replaced the Maruti 800.

While modern consumerism has contributed in changing the dimension of dowry it would be wrong to hold it as the only reason behind its continuation. It would be too simplistic to assume so. The modern form of dowry has become very complex and defies all assumptions regarding its survival. Scholars of various genres, researchers and activists have tried to deconstruct and unlayer the survival of the practice. Some of the most common reasons which emerged were traditional and cultural obligations towards the practice, economical equations and sudden upward mobility by opting for hypergamy. Often each of these reasons intersects with each other and works in conjunction with each other. Given the complex nature of the issue, new ways of protest have also emerged to pressurize the state mechanism to take stringent actions against cases of dowry.

In May 2003, 21 year old Nisha Sharma called the police complaining of dowry harassment minutes before her marriage. She said that her father had been assaulted by the bridegroom who wanted more dowry. This incident gathered media attention and Nisha was applauded by public for her action against the issue. In yet another example twenty two years old Puja Chauhan, from Rajkot Gujarat used a very different mode of protest by stripping down to her underwear on the street, running and protesting against dowry harassment.

Pooja Chauhan said “she had taken to this unique protest after being constantly harassed for not bringing dowry and for giving birth to a girl-child. The effect was immediate. The police arrested husband Pratap Singh Chauhan, parents – in- law after she threatened to scale up her protest and arch nude to the police commissioner’s office if she did not get justice.”¹⁷²

However the results of this protest was that Police lodged a case against Pooja’s “indecent” behaviour. To quote, K Nityanandanam “the arrests were made on the basis of Pooja Chauhan’s complaint. We are also planning to take action against Pooja for

¹⁷² “Mumbai needs a Nisha Sharma” ,*Times of India*, 28/5/2003

indecent behaviour in a public place. However, we will examine her mental condition before taking any action.” said Rajkot police commissioner K Nityanandam. Pooja’s case is an excellent example of the police and their mindset which is often observed to be in complicity with the patriarchal norms.

The present case i.e., *Jagdish Chander vs. State of Haryana*¹⁷³ reflects the loopholes in legal system and the insensitivity with which dowry cases are most often treated. Savitri Devi who was married to Jagdish in the year 1980. After her marriage to Jagdish, the appellant, a daughter was born to them and was about three years old at the time of the incident. After about four years of this marriage, she was brought to Civil Hospital Rohtak at about 2:30 a.m on 31st July 1984. At about 7:10 a.m. the same day she succumbed to her injuries. On 3rd August 1984, statement of Kashmiri Lal¹⁷⁴ was recorded. According to this statement, Kashmiri Lal had three brothers, the eldest of them being Nand Kishore, the one younger to him was Bhagwan Dass and the next was Hukam Chand. Kashmiri Lal was youngest. Mrs. Savitri Devi, aged about 21 years, was the younger sister of Kashmiri Lal. She was pregnant for the last 6-7 months. The appellant used to take liquor and harass her and give her beatings. She complained to Kashmiri Lal and his brothers about this several times and they tried to prevail upon Jagdish and his father but all in vain.

On 31st July, 1984, Nebh Raj, nephew of Kashmiri Lal gave information to Kashmiri Lal and his brothers and all four of them reached Rohtak. It was learnt that Savitri Devi was being harassed on account of inadequate dowry. When they reached Rohtak they were informed that Smt. Savitri Devi had been burnt and Jagdish misbehaved with them. It was also revealed that she did not put herself on fire but had rather been burnt. The case was registered under section 306, Indian Penal Code. Thereafter, the investigation was initiated and after its completion, challan was charged and the appellant, Jagdish was convicted for trial before the session court.

¹⁷³ *Jagdish Chander vs State of Haryana on 29 October, 1987*, <http://indiankanoon.org/doc/1524427>, date of access 3/11/2017

¹⁷⁴ Brother of the deceased, son of Aru Singh Arora, resident of 280, ward no.12, Mohalla kassiwala, Hissar.

Charges were framed against Jagdish during the trial under section 302 of the Indian Penal Code. During the trial as many as 17 witnesses were examined by the prosecution. In the post-mortem report conducted by Dr. D.K.Sharma it was observed as under:

“there were burns from scalp to the toes. Scalp hair, auxiliary and pubic hair all were burnt. The subcutaneous tissue was exposed. Peeling of the skin at places over the body was there, with hundred percent burns at places they were deep burns.”¹⁷⁵

In the opinion of the doctor, the cause of death was “shock and toxæmia as a result of burns which were sufficient to cause death in the ordinary course of nature”. He further stated “it was a case of 100 percent burns and there was a smell of kerosene oil.”

According to Dr. Subodh Kumar, Mrs. Savitri Devi was brought in the casualty ward of the hospital by Jagdish on 31st July, 1984 at 2:40 a.m. and she was examined at 2:45 a.m. She was found to be semi-delirious, not answering to any question, had un-recordable blood pressure, the pulse being not palpable.¹⁷⁶

Two eye-witnesses were cited by the prosecution- Ved Prakash who was given up as won over and Bhagwan Devi. When Bhagwan Devi was examined, she stated that she was living as a tenant along with her son in a room on the same floor as Jagdish. According to her, no quarrel even took place between Jagdish and Savitri in her presence and they lived peacefully. She further stated that she was present on the day of occurrence,

“at about 10:30 p.m Jagdish came to the house and asked his wife to prepare meals and he went downstairs with his daughter. When he came upstairs after sometime, he shouted all of a sudden and the witness came out of her room to find Jagdish putting a blanket on the body of his wife.”

As per my opinion, Bhagwan Devi was rightly declared hostile because its sounds strange that she did not hear the screams of a person who had been set on fire but the shouting of

¹⁷⁵*Jagdish Chander vs State of Haryana on 29 October,1987, Punjab Haryana High Court; Criminal Law Journal, 1988, p.1.*

¹⁷⁶*ibid, p.1.*

Jagdish. And her statement that no quarrel ever took place between Jagdish and his wife also falls under suspicion as Kashmiri Lal, her brother stated that Jagdish was a habitual drinker and used to fight with Savitri. In answer to further cross-examination by Public prosecutor Bhagwan Devi admitted that Savitri had enquired of Jagdish as to why he had taken liquor on the fateful day. She also clarified that Savitri used to prepare evening meals at about 6:00/7:00 p.m. and Jagdish used to come very late to the house and until his arrival she would not take her meals.

This version of the story resonates with Kasmiri Lal's statement and points to the fact that Savitri was a quite caring and fulfilled her duty as a wife quite well. It was the ways and habits of Jagdish which used to upset her. To a court question Bhagwan Devi denied knowledge of the origin of the occurrence and she could not say if this was due to bursting of the stove or anything else. On cross-examination by the defence she stated that Jagdish had brought three-wheeler tempo and took Savitri to the hospital and that she had taken her share out of the property of her in-laws.

The trial court concluded that evidence was not sufficient enough to prove that Jagdish had burnt his wife Savitri by pouring kerosene oil on her and committed the crime under section 302, of the Indian Penal Code. It did not rely upon the prosecution version that three months before the occurrence, Jagdish had demanded money from the brother of the deceased. This finding was in respect of the statement made by Kashmiri Lal that a couple of months prior to the occurrence, the appellant had demanded a sum of Rs 1500/- & Rs 2000/- This information about the occurrence was sent to Khem Chand, a cousin of the deceased who lived nearby and has been examined. He stated that he went told him the Civil Hospital Rohtak and has also tried to show that Savitri Devi had called him and that she had been burnt by her husband and she died 10 to 15min after that. This statement of Khem Chand has not been believed by the trial court in view of the statement of Dr. Subodh Kumar.¹⁷⁷

¹⁷⁷ That she was found to be semi-delirious, not answering to any question, had un-recordable blood pressure, the pulse being not palpable.

The death took place at 7:10a.m of 31st July, 1984 and the information had already reached Kashmiri Lal and others at Hissar. Kashmiri Lal and his wife Kanta Rani along with others came to Rohtak and attended the cremation of Savitri Devi which took place in the evening of that day and then they went back to Hissar, the same night. It was only during the night intervening 2nd and 3rd August 1984 that Kashmiri Lal went to the police and made a statement and the case was registered.

According to the Sub-inspector Balbir Singh before 3rd August 1984, no relative of the deceased approached him about this occurrence nor did he refuse to record the statement of any such person. He further stated that he did not receive any complaint bearing endorsement of the C.M and that neither the S.P nor the Assistant S.P visited the spot till 3rd August 1984. This statement negates the statement of Kashmiri Lal and Kanta Rani that they approached the police for the registration of the case but nobody listened to them and that on 2nd August 1984, the C.M had come to Hissar when they met him, that the CM gave them a letter addressed to the S.P Rohtak and then they went to Rohtak and met the latter and the A.S.P visited the house of the Jagdish.

The Punjab- Haryana high court opined that this lapse of about 60 hours from the time of the incident could be enough to come out with any version whatsoever. The trial court ignored this delay by holding that the same had been satisfactorily explained satisfactorily. It held that

“...there was no evidence on the record to show the commission of the murder of Smt. Savitri Devi by the appellant and therefore he was not convicted under 302 of the Indian Penal Code rather was guilty under Section 306¹⁷⁸ or Section 498A.”¹⁷⁹

The high court held that harassment or use of hot words against the deceased where after she committed suicide does not amount to abetment and therefore no offence was made under Section 306 IPC. It concluded that Savitri Devi committed suicide or may be this

¹⁷⁸ Section 306 of the Indian Penal Code is regarding cruelty by husband or relative.

¹⁷⁹ Whoever being the husband or relative of the husband of the woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

was due to bursting of stove but this was not result of any instigation or incitement by the appellant. She was probably a sentimental women and did not like the drinking habits of the appellant who cannot be held responsible for her suicide. Therefore in view of the observation, the appeal was accepted and the appellant acquitted of the charges.

My concern behind taking up this case is clearly how despite all the bad habits of the appellant he is not judged or held responsible for triggering the events or even fuelling the course of events rather the deceased is declared sentimental and even though not proved the case is considered of suicide rather than of murder or provocation . What needs to be underscored here is that if the accident was due to the bursting of stove, the absence of husband and daughter during the bursting of the stove may raise some suspicion over this accident even being planned. The fact that the woman was 6-7th month pregnant and was undergoing husband's callous treatment has been glossed over by the legal system and its loopholes.

In the above case, despite the fact that no suicide note was found, not even any witness testified the fact that it was a suicide or accident, the accused was exonerated of all charges. Even he was not punished for fuelling the events which took the lives of two innocent - the woman and the child in her womb. Thus, it appears that complex issue like dowry awaits a change in mindset apart from the legal legislations against it.

The problem of dowry is no more customary and it defies all assumed constructs behind its practice. It is not any more exclusive to the upper-caste Hindus rather its demand and acceptability is widespread and cuts across religious idnetites. It has permeated to different religious communities like Muslims, Christians and other tribal communities. According to Brinda Karat, "... the plurality of marriages among the various castes, regions and classes is being shifted in favor of homogenous Hindu upper caste model encompassed by the devaluation of women, the giving and taking of dowry and virilocal marriages."¹⁸⁰

¹⁸⁰ "Expanding dimensions of Dowry", *All India Democratic Women's Association*, New Delhi, 2003.

Despite the Dowry Prohibition Law since 1961 and efforts to make the law more and more punitive, dowry and dowry related violence are rampant. It appears that single strategy or use of law as sole redressal mechanism would not work. Awareness creation was one of the effective strategies used in the past and it may still work due to widespread access to media and availability of various digital platforms. Using different cultural mediums can still work like street plays, posters, poetries and songs.¹⁸¹ Cinematic representations of the problem and a positive and effective solution to the same can be quite helpful in addressing the issue because public response to cultural media is much better than scholarly articles or newsletters. Besides legal intervention, there is need of proactive and interactive discussions by women's group.

The protests in the 1970s and 1980s resulted in various positive amendments in the dowry prohibition law but in the contemporary scenario if we need better and advanced strategies to prevent violence against women as a result of dowry. The campaign against dowry needs expansion and the involvement of men in the same has become crucial. "Men need to be encouraged to speak and act against dowry. Young men who refuse to take dowry need to be made role models and their action publicized. There are many communities who have taken the initiative in organizing marriages without dowry. Their examples need greater exposure."¹⁸²

¹⁸¹ "Marching Together: Reviving Dowry in India", *Jagori*, New Delhi, 2009,p.3

¹⁸² Brinda karat argued that in Kerala, young men have come together in an association called 'Men Against Dowry'. They are encouraging their male colleagues not to take dowry; "Expanding dimensions of dowry", *All India Democratic Women's Association*, New Delhi, 2003.

Chapter 2

SON PREFERENCE, BRIDE-SHORTAGE AND BRIDE-TRAFFICKING

Son-preference refers to an attitude which prefers birth of a son over that of a girl child. Historically speaking, in India the birth of a son is considered auspicious and is often celebrated while birth of girl is met with grief and sadness in societies which adhere to this idea. Sons are often considered future heads of the family in patriarchal societies and thus great importance is placed upon the continuity of the male line. The preference for sons can be seen as a result of various social, economic, religious norms that favour males and makes the females 'less desirable'. Sons are often looked upon as assets and are assumed to add to the economic worth of family while girls are counted as liabilities because expenditure over them in the form of dowries are regarded as 'drain'. The last rites of parents have been regarded as son's duty in certain religions, therefore sons are looked upon as a necessity for the execution of these rituals. Apart from this patrilocality¹⁸³ of marriages remains an important concern as far as daughters are considered. "Daughters are seen as offspring born to depart and thus their place doesn't remain in family community. They are regarded by parents as a transient being who may eventually leave them."¹⁸⁴

The idea of son-preference is rooted in gender inequality and is prevalent across religion and classes. Although this phenomenon prevails in varying degrees in many parts of the world, the attitude is exaggerated in particular cultures. For example, it is more apparent in patriarchal societies and in countries where poverty is widespread. India had been ranked as "the fourth most dangerous place for women in the world according to a survey

¹⁸³ In social anthropology it refers to the social system in which the married couples reside with or near the husband's parents.

¹⁸⁴ Jeanne Brooks Gun et al, "Child Development in the context of family and community resources:An Agenda for National Data Collection", *Interrogating Federal statistics on Children*, National Research Council, Institute of Medicine, 1995.

conducted by Thomson Reuter's Trustlaw Women¹⁸⁵ in 2011. India ranked fourth primarily due to female foeticide, infanticide and human trafficking.”¹⁸⁶

The poll was by repeated in 2018¹⁸⁷ by the foundation and India this time turned out to be ‘the most dangerous place’ for women in the world. It was ranked so primarily on three fronts- “the risk of sexual violence and harassment against women, the danger women face from cultural, tribal and traditional practices, and the country where women are most in danger of human trafficking including forced labour, sex slavery and domestic servitude.”¹⁸⁸ The most disturbing fact that emerged from the survey revealed was that India fared better than only Syria and Afghanistan which happen to be war affected zones. Interestingly, Somalia and Saudi Arabia were fourth and fifth which signified they were “safer” for women as per the survey.

In the survey respondents were asked as to “which five nation out of the 193 UN member states they thought were the most dangerous country for women and which country was

¹⁸⁵ It is the philanthropic arm of Thomson Reuters, the world's biggest news and information provider. They are registered as an independent charity both in the UK and in the USA; a hub of legal information and legal support for women's rights.

¹⁸⁶ As per the above report, *International Child Abduction, Relocation and Forced Marriages Conference*, organized by the London Metropolitan University, 30th June-2nd July 2010. The poll involved 213 experts in the field from five continents to rank countries on their overall perception of danger as well as by six key categories of risk, health threats, sexual violence, nonsexual violence, harmful practices rooted in culture, tradition and religion and above all lack of access to economic resources and human trafficking.

¹⁸⁷ This time the poll consisted of 548 experts on women's issues. It was conducted online, by phone and in person between March 26 and May 4 with an even spread across Europe, Africa, the Americas, South East Asia and South East Asia and the Pacific.

¹⁸⁸Country summary as available in the report of the poll conducted by Thomas Reuter's Foundation; <http://poll2018.trust.org/country/?id=india>

worst in terms of healthcare, economic resources, cultural or traditional practices, sexual violence and harassment, non-sexual violence and human trafficking.”¹⁸⁹

The preference for sons sometimes become so pervasive that daughters not only become less desirable but are systematically eliminated at birth through the practice of infanticide or foeticide. The practice of ‘daughter killing’ apparently is not a new or recent phenomenon but has been in practice for centuries in India. Even if we overlook the survey, our census reports over the century shows a “marked gap between the number of males and females. This gap which has nationwide implications, is often the result of decisions made at the most local level like family.”¹⁹⁰

Table 3. *Changing sex ratio in India, 1901- 2011*

census year	Females (per thousand males)	Change in the ratio (per census)
1901	972	-
1911	964	-8
1921	955	-9
1931	950	-5
1941	945	-5
1951	946	+1
1961	941	-5
1971	930	-11
1981	934	+4
1991	927	-7
2001	933	+6
2011	940	+7

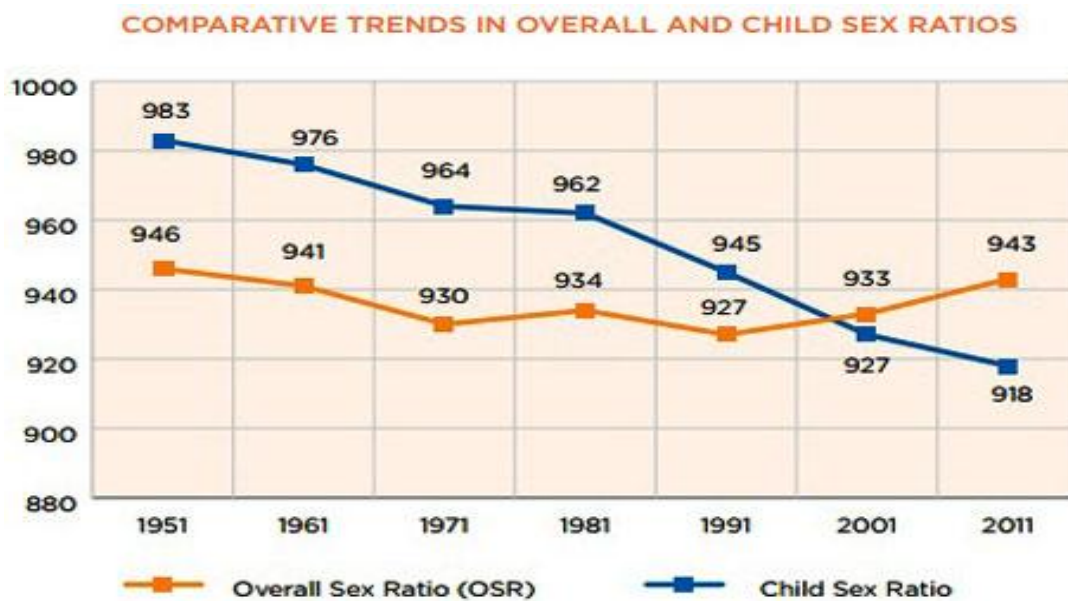
Source: Census of India 2001, p.85, the data for 2011 has been added on the basis of census 2011

¹⁸⁹<https://economictimes.indiatimes.com/news/politics-and-nation/india-most-dangerous-country-for-women-due-to-high-risk-of-sexual-violence-poll/articleshow/64748660.cms> date of access 18/1/2019

¹⁹⁰ <https://www.unfpa.org/resources/son-preference-and-daughter-neglect-in-india> , date of access 29/6/2013

The table above clearly reveals that in India the sex ratio has continuously declined from 1901, it is only in 1951 that it witnessed a marginal rise. In the next two decades it continued to decline and reached a critical level of 930 per thousand males in 1971. With a minimal rise again it reached a level of 927 per thousand males in 1991. It is necessary to note that the marginal improvements in the sex ratio recorded towards the end of the last century are the outcome of a narrowing gap in gender differentials in adult mortality.¹⁹¹ In other words, though there has been an increase in the last two decades yet this increase can be explained in terms of lower female death ratios and increased male mortality because the child sex ratio (0-6) years has continuously declined from 1961 onwards.¹⁹² The graph below will help in understanding the decline.

Fig 6. Child Sex ratio 0-6 years and overall sex ratio, India, 1961-2011



Source: *Final Population Totals: Census of India, 2011*¹⁹³, p. 90

¹⁹¹ N Krishnaji & K S James, "Gender Differentials in Adult Mortality :With Notes on Rural-Urban Contrasts" *Economic and Political Weekly*, November 16, 2002 , p. 4633.

¹⁹² *Child Sex Ratio (CSR)* was introduced for the first time in the 1991 census; however the figures for earlier period i.e. 1961 onwards were later calculated.

¹⁹³ *Final Population Totals, Census of India 2011*, Office of the Registrar General and Census Commissioner, India, Ministry of the Home Affairs, Government of India, New Delhi, p.90.

While there has been an overall decline in the number of females in the country, the region of Punjab and Haryana are among the states where this figures have been worst. The region of colonial Punjab and Haryana has been notorious for the practice of infanticide on a wide-scale. In order to historically locate the roots of this crime there is a need to understand the social and customary practices of the region.

A. *Historical Roots of Infanticide or Daughter Killing*

In the colonial period, the practice of infanticide was first discovered by Jonathan Duncan in Jaunpur district of Benaras in 1789 among the *Rajkumar Rajputs*.¹⁹⁴ He observed that “it is no infrequent practice among the tribe of Rajkumar to destroy their daughters by causing their mother’s to refuse them nurture.” In this regard he also refers to his conversation with several Rajkumar Rajputs, “all unequivocally admitted that they put their female infants to death though all did not fully acknowledge its atrocity.”¹⁹⁵ Similar practice was reported by him among the Jadeja *rajputs* in Kathiawad and Kutch.¹⁹⁶ Thereafter, similar discoveries were reported from Western and Northern India.

John Lawrence, the Commissioner of the Jullundur Doab found in 1846, that the practice of infanticide was very common among the *Bedis*.¹⁹⁷ According to him, “there was not a single girl among 2,000 *Bedi* families.”¹⁹⁸ Throughout Punjab *Bedis* were known as *kuri-mar*, the daughter slaying race. “They even freely confessed that they killed their daughters... by neglecting them from their very birth.”¹⁹⁹ Immediately after the discovery, a circular was issued in 1851 by Sir John Lawrence in the Punjab the region, exhorting that:

¹⁹⁴ “Jonathan Duncan to Cornwallis, December 1789”; J W kaye, *The Administration of the East India Company*, (reprint), 1966, p. 554.

¹⁹⁵ *ibid*;

¹⁹⁶ John Wilson, *History of Suppression of Infanticide in Western India*, 1855, pp.29-30.

¹⁹⁷ The *bedis* were an influential caste of *Sikh Khutris* and also claimed high rank among *Sikh Khutris* and claimed to be descendants of the founder of the Sikh faith, Guru Nanak.

¹⁹⁸ Lalita Panigrahi, *British Social Policy and Female Infanticide in India*, Munshiram Manoharlal, New Delhi, 1972, p.25.

¹⁹⁹ *ibid*, p.26.

“beva mat jalao, beti

mat maro, kori mat dabao

(Do not burn widows, do not kill daughter, do not bury lepers).”²⁰⁰

Similarly Major Lake, the Deputy Commissioner of Gurdaspur district in 1851 reported the prevalence of infanticide among the Bedees in Dera Baba Nanak in his district.²⁰¹ In reporting the case of a little girl, whose death was at first thought to have taken place under suspicious circumstances, he directed the attention of the Board of Administration to the frightful prevalence of the crime among the Bedees in Dera Baba Nanak. Around the city of the founder of their family and their faith he believed it to be universal.²⁰² To quote him -

“... there are a thousand families of Bedees who for the last four hundred years have destroyed all their female offspring: humanity demands that special measures should be taken for the suppression of this barbarous and unnatural custom.”²⁰³

Though Major Lake’s report attracted the attention of the colonial state, before any adoption of strict measures by the Board it was feared that the Bedees were by no means the only class in the Punjab who perpetrated the crime. Before any general system could be introduced for its suppression, further information was necessary, not only suspecting the Bedees, but suspecting all the classes who might be associated with the practice. Thus, with a view to obtaining this, a circular was addressed to the Commissioner of each of the divisions of the Punjab, directing him to ascertain whether the crime prevailed in his district, and, if so, to what extent, and to suggest what measures he thought most likely to be effectual in suppressing the practice. The result of this general reference

²⁰⁰ Lalita Panigrahi, *British Social Policy and Female Infanticide in India*, Munshiram Manoharlal, New Delhi, 1972, p.25.

²⁰¹ Anshu Malhotra, *Gender, Caste and Religious Identities: Restructuring Class in Colonial Punjab*, Oxford University Press, New Delhi, 2002, p.49.

²⁰² John Brown Cave, John Cave Brown, *Indian infanticide: Its origin, Progress and Suppression*, WH Allen and Co, London, 1857, p. 134.

²⁰³ *ibid*;p.134.

tended to show that comparatively few classes were free from the crime. The castes which were held to practice this were mostly the high caste *Khattris*, especially the *Bedis* and *Sodhis*, the Rajputs, the Moyal Brahmans, the pure *Pathans* and spurious Muhammadans.²⁰⁴

Different ways were adopted by different caste to do away with their daughters. The *Bedis*, throughout Punjab were known as “*kuri-mar* and they freely confessed that they killed their daughters by neglecting them from their very birth.”²⁰⁵ *Munhas Rajput* buried their infants alive. There was also a practice to place the body in an earthen vessel and the top was covered with a thick paste. At times, “the child’s mouth was covered with cow dung or the head was immersed in cow’s milk and at times a small dose of opium was given to cause immediate death.”²⁰⁶ The widespread prevalence of the practice of infanticide among the high castes has been also suggested by John Cave Brown who argues that the statistical research supports the fact that –

“...every step we ascend up this ladder of castes we find females become fewer and fewer till on reaching the top they altogether disappear.”²⁰⁷

Mr. D. F. McLeod, who was then Commissioner, and Major Herbert Edwards, the Deputy Commissioner of the Jullundhar District prepared very valuable reports regarding the position of the Bedees and of the Khutrees generally²⁰⁸. In 1853, near Jullundhur a large meeting of the Bedees and *Boonjaee Khutrees* of the neighbourhood was organised, with a view to discuss the various differences which hitherto prevented their intermarriage. At this meeting an agreement was entered into regulating the marriage expenditure in future, which was prefaced with this remarkable admission:

²⁰⁴ John Brown Cave, John Cave Brown, *Indian infanticide: Its origin, Progress and Suppression*, WH Allen and Co, London, 1857, p.135

²⁰⁵ Lalita Panigrahi, *British Social Policy and Female Infanticide in India*, Munshiram Manoharlal, New Delhi, 1972, p. 26

²⁰⁶ *ibid*;p.26

²⁰⁷ John Cave Brown, *Indian infanticide: Its origin, Progress and Suppression*, WH Allen and Co, London, 1857,p.11

²⁰⁸ “H. Edwards to McLeod, June 30, 1852”, no.134, ‘Series B’, *National Archives of India*

“It is without doubt that the Bedee, Khutrees are, from time immemorial, of the same stock as the Boonjaees, and, from the period of Baba Nanuk, when the Bedees assumed the priestly office, there has been a slight estrangement between the Bedees and Boonjaees, and the bad practice of female infanticide was practised by the Bedees, nevertheless, friendship and communication continued with the Boonjaees. Under the British Government infanticide is strictly forbidden. We now all, of our own free will, and according to the wishes of Government, have given up this wicked practice; it has become, consequently, necessary for us to settle this slight difference, and to provide marriages for our daughters.”²⁰⁹

Robert Montgomery, the Judicial Commissioner of the Punjab suggested that the great principle which was based on voluntary reduction of marriage expenses had been ‘so readily’ adopted by the Bedees and *Rajpoots* at the Jullundur and Hosheypore meetings, that it should be introduced in other areas.²¹⁰ He strongly emphasized that “the ‘infanticidal races’, especially the high-born hill Rajputs and priestly Bedis must be inspired with alarm and impressed with the conviction that the government was thoroughly earnest about the suppression of infanticide.”²¹¹ To this end, the great meeting at Amritsar during Diwali was proposed. Thus, a three day meeting was convened at Amritsar with the idea of persuading the casts involved to reduce their marriage expenses which was held to be the “major cause” for the crime of female infanticide. The extravagant expenditure,

²⁰⁹ “E. Thornton to R Montgomery, Selections of Public Correspondence of the Punjab administration, March 6, 1854”, Vol. II, no.IX, *National Archives of India*, p. 517.

²¹⁰ John Cave Brown, *Indian infanticide: Its origin, Progress and Suppression*, WH Allen and Co, London, 1857, p.142.

²¹¹ *ibid*, pp.138-52.

“...hitherto considered indispensable, has certainly been the main incentive to the commission of this crime; and the removal of the one affords the surest hope of the eradication of the other, in the course of time.”²¹²

The Amritsar gathering in October, 1853, marks a major point in the history of the anti-female infanticide movement because it was a huge gathering attended by a large number of people from Amritsar and adjoining districts. It included “independent Rajahs and tributary Jagheerdars; high Rajpoots of Kangra and Jummoo, and Munhas from the plains ; wealthy Bedees of Derah Nanuk and Gogaira ; Brahmans, and Khutrees, and Mahomedans; the commercial and municipal heads of every city of note, and delegates from the agricultural and trading communities of every district within two hundred miles of Umritsur.”²¹³

The practice of infanticide thus became an issue of moral condemnation by the British and its criticism often included a systematic attack on the customary practices in place. Such campaigns were taking place not only in the Punjab region but also the other northern and western region concerned. What was crucial was the employment of *Shastras* and *Puranas* by them in many regions to criticize this practice. For example, Jonathan Duncan referred to female infanticide as “a great crime as mentioned in Breteno Bywurt Puran” which roughly can be translated as *Brahma Vaivarta Puran*; he quotes the from the same *Puran* –

“.....killing even a foetus was as criminal as killing a Brahmin and that for killing a female or a women the punishment is to suffer in ‘narak’ (naraka or hell) called ‘kul sooter’ for as many years as (number of) hairs on that female's body and that afterwards that person shall be born again and become a leper and be afflicted with ‘zakham’ (wound) and whereas the British government in India whose subjects we are, have an

²¹² E. Thornton to R Montgomery, “Selections of Public Correspondence of the Punjab administration, March 6, 1854”, Vol. I, *National Archives of India*, p. 440.

²¹³ John Cave Brown, *Indian infanticide: Its origin, Progress and Suppression*, WH Allen and Co, London, 1857, p.142.

utter detestation of such murderous practices, and we do ourselves acknowledge that although customary among us, it is highly sinful we do, therefore, hereby agree that to commit any longer such detestable acts and any among us who shall be hereafter guilty thereof... shall be expelled from our tribe; and we shall neither eat nor keep society with such person or persons besides suffering hereafter the punishments denounced in the above purana and shastra... ”²¹⁴

John Wilson has equally extensively provided quotations from Puranas that the practice had even been criticised in scriptures.²¹⁵ Thus, different methods were adopted in the other regions to dissuade the practice like agreements were signed by the Rajkumar Rajputs in Benaras. Similar agreements were signed by the Jadeja Rajputs in Kathiawar persuaded by Alexander Walker.²¹⁶ What is important is among the punishments “caste boycotts of those Jadejas who continued to practice female infanticide is also included in the agreement.”²¹⁷

Thus from the date of discovery of female infanticide in 1789, till the passing of the *Female Infanticide Act* by the Viceroy’s council in March 1870, it remained the subject of elaborate correspondence and reports.²¹⁸ To suppress the murder of female infants, the colonial governments passed a law in 1870. The Act required heavy surveillance of pregnancies, births, and deaths, and involved hiring small platoons of *chowkidars*²¹⁹ whose salaries had to be paid by the residents of the suspect villages to report questionable deaths and keep track of all the births and deaths. Every village that had a

²¹⁴ “Infanticide Correspondence 1789-1820”, *Parliamentary Papers*, Paper 426, 1824, *National Archives of India*, p.8

²¹⁵ John Wilson, *History of Suppression of Infanticide in Western India*, Smith Taylor and Co., Bombay, 1855, pp.29-30.

²¹⁶“Alexand, Walker to J Duncan, March 15, 1808”, *Selections from the record of Bombay government*, No. XXXIX, Pt.II, *National Archives of India*, pp.333-34

²¹⁷ *ibid*;

²¹⁸ For details see, L S Vishwanath, “Efforts of the Colonial State to Suppress Female infanticide: Use of sacred Texts, Generation of knowledge”, *Economic and Political Weekly*, May 9, 1998,pp.1104-1111

²¹⁹ Guards for surveillance and security

ratio of female children lower than 40 percent was proclaimed as “infanticidal”.²²⁰ Midwives were recruited to help the government keep track of sex ratios at birth. The amount paid to these was fixed by the government and was recoverable as arrears of land revenue. A police manual detailed the respective duties and penalties of family heads, land owners, police officers, village watchmen and midwives. The law ironically made no provision for urban families, even though the *Lahoreen khatris* were the ones considered most reprehensible in their demand for dowries.²²¹

One needs to be critical while looking at the British efforts in suppressing the practice because the very act was repealed in 1906 with a claim that infanticide was no longer practiced. This came as a real exposure of the motives behind the Act of 1870 and its failure because the sex ratios continued to decline. Though some changes may have come but the results were not promising. The colonial administrative reports while citing the reasons of failure of the Act suggests that the most distinguishing feature of the Punjab system was the holding of large-scale meetings and throwing the entire influence of the government in “striking at the roots” of the evil.²²² The report suggests, this was the reason that even after the Act of 1870 was passed things did not change. However, Oldenburg is of the opinion that it was in the wake of the droughts in the second half of the nineteenth century in eastern Punjab and the loss of 1.25 million lives it fuelled that the Act of 1870 was repealed. In other words, agrarian discontent had made the situation explosive and thereafter British tried to pacify the would-be peasant unrest by repealing the Act.

The other contention of the historians has been the colonial classification of certain caste for the practice of female infanticide and the contradictory exemption of *Jats* by the British among the castes notorious for female infanticide. Among the various explanations offered by the British for the practice of infanticide among the upper castes

²²⁰ Veena Talwar Oldenburg *Dowry Murder: The Imperial Origins of a Cultural Crime*, Oxford University Press, 2002, New Delhi p.66

²²¹ *ibid*;

²²² Lalita Panigrahi, *British Social Policy and Female Infanticide in India*, Munshiram Manoharlal, New Delhi, 1972, p.110

were dowry, marriage expenses and the practice of hypergamy, while all the other reasons were overlooked. Dowry, which could be money, clothes, jewellery given to the daughter at the time of her wedding was considered to rob her parents of their wealth. Most of the British administrative reports attributed dowry as the primary force behind female infanticide. Dowries they reported had impoverished Punjabi peasant families and brought them to the brink of ruin because they became heavily indebted in trying to marry off their daughters in the style demanded by the upper-caste Hindu culture. They concluded that the fear of future expenditure motivated peasants to kill their daughters. Ironically the same reports hinted at the true concern of the British: “these same peasants who committed female infanticide were also defaulters on revenue payments and their land was therefore, up for auction by the government.”²²³ Also the practice of dowry as the central reason behind infanticide also fails to explain the co-existence of infanticide along with the practice of bride-price by several castes. The contradiction emerges because *Jats* and several families from Hindu lower castes and Sikhs who received bride-price, and Muslims who did not follow the practice of dowry, were all found guilty of committing female infanticide.

The second most important reason attributed for female infanticide was hypergamy²²⁴, it should be noted that the custom of hypergamy was popular among the middle class and not so much among the other classes and as far as the practice of infanticide is considered it was much popular among the high caste where the isogamous²²⁵ marriages were preferred and not necessarily hypergamous. Denzil Ibbetson in 1881 did not note “a tendency towards hypergamy amongst the high castes in Punjab, but tried to show that it was isogamy that was the established practice amongst most groups including the high castes.”²²⁶

²²³ Veena Talwar Oldenburg, *Dowry Murder: The Imperial Origins of a Cultural Crime*, Oxford University Press, New Delhi, 2002, p.6

²²⁴ The practice of giving their daughter in marriage to a family which is higher in status than one's own status.

²²⁵ The practice of giving their daughter in marriage to a family which is within the same status group.

²²⁶ D C J Ibbetson, *Census of the Punjab -1881*, Calcutta, 1883.

Interestingly, except a few, *Jat* majority was ignored in their enumerations.²²⁷ This hinged on a single fact that they did not give dowries. On the contrary they received bride-price, for their daughters worked in the fields unlike Kshatriya and Brahmins. It was therefore assumed that daughter must have been valued by them and could not possibly be eliminated at birth. The British efforts in sparing the *Jat* community of this crime definitely reveal the colonial reluctance in any serious interference with the agriculturally rich tax-paying majority.²²⁸ However, Malcolm Darling observed the practice of polyandry among the Jats in the period which clearly indicates their involvement in the evil practice of infanticide.²²⁹

Prem Chowdhry also suggests the *Jat* preference for males during the colonial period. She argues that the region of Haryana was rainfall-dependant region that was prone to drought and had a large *Jat* population engaged in subsistence farming. She explains that the landowners, lacking other resources were entirely dependent on family labour and this situation greatly reinforced, what is perhaps common to peasant economies generally a strong desire for male progeny. This is widely reflected in its folklore and sayings a male child came to be regarded as essential as life -giving rain. A popular local saying maintained:

“Meehn aur bettya te koon dhappya sai..”²³⁰

(Who can be satisfied without rain and sons; for cultivation both are necessary)

Highlighting the colonial interests, she argues that the military and agriculturalist skill of the Jats were in high demand. Thus they became a statutory “agriculture tribe” protected from alienation of their lands to moneylenders of trading castes.²³¹ The usefulness of girl

²²⁷ Yogesh Snehi, “Female Infanticide and Gender in Punjab: Imperial Claims and Contemporary Discourse”, *Economic and Political Weekly*, October 11, 2003

²²⁸ *ibid*;

²²⁹ Malcolm Lyall Darling, *The Punjab Peasant in Prosperity and Debt*, Oxford University Press, New Delhi, 1928, p.54

²³⁰ Jainarayan Verma, *Haryanvi Loktiyan: Shastriye Vishaleshan*, Delhi, 1972, p. 123

²³¹ Prem Chowdhry, *The Veiled Women: Shifting Gender Equations in Rural Haryana 1880-1900*, Oxford University Press, New Delhi, 1994, pp.46-62

was also acknowledged, but daughters were considered to be more productive for the family she would be married in. Therefore it was not daughter but rather the daughter-in-law who was desired because all peasant families required a wife's labour and her reproductive capacity to produce male progeny.

It has often been argued that the agrarian policies of the colonial government virtually led to the profound loss of women's economic power and social worth.²³² The property rights of peasants, inflexible tax demands and collection regimes precipitated the worsening gender inequality. These developments made women more vulnerable to violence in both their natal and marital homes. In other words, colonial state paved the way for the formulation of a 'masculine' economy in which the preference for a male child was inherent. If the other side is considered, it also tended to foster the overt or hidden murder of girls among certain sections in the region. Similarly, the deprivation of women from ancestral property was worsened by the recruitment policy in the British Indian Army followed by the imperial government has been cited as another important factor by almost all the historians in the post-colonial period. Following the policy, the colonial government stuck to its policy of heavily recruiting from Punjab, particularly from the landed class of the *Jats*. Thus, the *Jat* dominated areas served as recruitment grounds for the British. The recruitments in British Indian Army generated a demand for strong young men who would be employed with a cash wage. Awards of land and eventually pensions led to a preference for a 'gender targeted family' and this could be done through selective female infanticide.

The role of colonial policies in creation of 'masculine economy' has been debated. Those who are critical of this view argue that preference for sons was prevalent in the pre-colonial period as well and this was possibly executed through female infanticide. While those who endorse the view argue that though the practice of female infanticide cannot be completely denied during the pre-colonial period, notice its intensification during the colonial period. They are of the opinion that strategic and moral imperative for peasant and warrior families in pre-colonial times was dictated by the existential needs to

²³² For details see Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia*, Cambridge University Press, London, 1994.

reproduce the ideal family to defend their lands and their rulers, to subsist, to seek opportunities for advancement and for economic security in old age through the labour of sons. In the words of Oldenburg, “Male children were critical to the prolonged well-being of the family; sons were future soldiers and farmers of the soil to which they belonged.”²³³ Daughters were also important, but their crucial role as reproducers obliged them to marry at puberty and move to the villages of the husbands. Both the sexes were needed, but the struggle was to achieve the unnatural but logical mix of several more sons than daughters.²³⁴

Thus there emerges two discourses- colonial interpretation of female infanticide which locates it back to the pre-colonial period and the other being the criticism of colonial policies and laws which are held to be responsible for the intensification of the crime, by the historians in the post-colonial period. In the British official papers we find discourses which suggest that they tried their best but failed to completely eradicate these evil, historians have considered that it was the very policies of the British which increased and enhanced this practice on a wide scale. There is a consensus among historians on the fact that the remarkable gap in the sex ratio of the undivided Punjab became highly visible mainly during the 19th century, particularly after the British Government efforts in re-configuring the patriarchal values to serve their mutual interests.

B. Son Preference in Contemporary Haryana

While the role of colonial policies and the significant transformation brought about the commercialization of agriculture cannot be denied, to trace the origins of this crime in the colonial period would equally be unjust. It can be argued that if the British government was solely responsible for this evil, this practice would have gradually decreased in the post-independence period. Contradictorily the post-independent period presents a much more critical picture when it comes to daughter elimination.

²³³Veena Talwar Oldenburg, *Dowry Murder: The Imperial Origins of a Cultural Crime*, Oxford University Press, New Delhi, 2002,p.17

²³⁴ *ibid*;

Table 4. The sex ratio in undivided Punjab during the colonial period 1868-1931

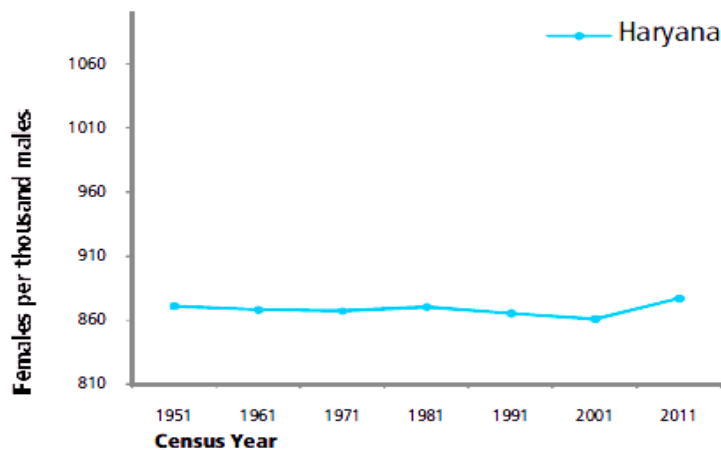
Year	Sex ratio (female per thousand males)
1868	835
1881	844
1891	851
1901	854
1911	817
1921	835
1931	831

Source: calculated on the basis of Census of various years (1868-1931)

In stark comparison to the late 19th and early 20th century figures, sex ratio has, as per 2001 census data, reached the alarming level of 777 in Chandigarh, and below 800 in both the Punjab and Haryana despite profound positive changes in during the past 60 years. A critical look at the sex ratios in the post –independence Haryana would be of help. The graph below shows that in the post- independence period also Haryana did not witness any significant rise in the sex ratio, rather the ratios remained almost stagnant with marginal rise or decline. It is quite depressing that in the post-independence period the heinous practice of infanticide instead of declined transformed itself into a new form where innocent daughters increasingly aborted or eliminated at their foetal stage. Thus the previous practice of infanticide acquired the new form of ‘foeticide’.

Therefore I feel, there is a need to move beyond the issue of colonial policies in order to understand the contemporary scenario where the practice seems to transcend the urban-rural, educated vs. uneducated and regional and caste boundaries. Definitely the reasons behind such a heinous practice seem to be much larger than the policies of a particular period. In order to have a comprehensive understanding of the practice one needs to understand the various phases it witnessed and the subsequent changes which came about in its nature and execution.

Fig. 7 Sex ratio trends in Haryana: 1951- 2011



In order to have a sense of the declining sex ratio in contemporary Haryana one needs to look at the various laws which simplified the practice of female foeticide. The Medical Termination of Pregnancy Act (MTP), was passed in 1972 and abortion thus became legal. The act was implemented in the major states of India except Sikkim²³⁵. As per the Act, abortion is legal if the pregnancy that it terminates endangers the life of the woman or causes grave injury to her physical or mental health or is likely to result in the birth of a baby with physical or mental abnormalities or is a result of rape or contraceptive failure. The act further stated that abortions could only take place in government approved health facilities specifically approved for conducting abortions and by a registered medical practitioner.

In 1975, sex determination technologies arrived in India for determination of genetic abnormalities after the enactment of the MTP Act. However, these techniques came to be widely used for determining the sex of the foetus and subsequent abortions if the foetus was female. Though women's oppose this test noticing its results but the results were not promising. "It was in 1982, when a male foetus was mistakenly aborted at the Bandar

²³⁵ M Karakal, "Abortion Law and the Abortion Situation in India", *Issues in Reproductive and Genetic Engineering*, Vol.4 No.3, 1991, pp 223-30

clinic in Amritsar, the existence of these commercially run clinics was first brought into public attention by popular national weekly magazine...²³⁶

Interestingly, the movement against sex determination technologies gained public support only when a male foetus was mistakenly aborted. The campaign in 1982 was initiated by Veena Mazumdar and Lotika Sarkar who were members of the Centre for Women Development Studies.

Campaigns were followed in Maharashtra by Forum Against Sex Determination and Sex Pre-Selection in 1985²³⁷. It lobbied to regulate the practice of sex determination by formulating a separate legislation instead of modifying the MTP Act, 1972 because it had the danger of curtailing women's right to abort. The initiative of FASDSP differed from earlier and less successful efforts in that it attempted to tackle the problem more broadly and at multiple levels. Thus, the question of sex determination and sex pre-selection was seen as an integral part of the oppression of and the discrimination against women; as misuse of science and technology against people in general and women in particular.²³⁸

It was due to their efforts that the Maharashtra government enacted the Maharashtra regulation of the *Prenatal Diagnostic Techniques (PNDT) Act* in 1988. This act was repealed by the enactment of a central legislation based on the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 by the government of India. Under this law, the availability of facilities for sex determination was banned and a doctor in an unregistered clinic conducting such a test was liable to be imprisoned for three years with a fine of Rs 10,000. This was brought into force in 1996 and has been amended twice since then, first in 1996 and again in 2003.

²³⁶ Raka Ray, *Field's of Protest: Women's movement in India*, Kali for Women, New Delhi, 2002,p.103

²³⁷ Similar campaigns came up in Tamil Nadu like Campaign Against Sex Selective Abortion (CASSA)

²³⁸ Using Technology, Choosing Sex: The Campaign Against Sex Determination and the Question of Choice, Forum Against Sex Determination and Sex Pre-selection,p.91

The National family Health Survey 1992-93²³⁹ included several questions that shed light on the degree of son preference among currently married Indian women. When asked to describe their ideal family composition, Indian women as a whole said they wanted 50% more sons than daughters. Women in every state wanted more sons, but the preference for sons was particularly strong in Punjab, Rajasthan, Uttar Pradesh, Bihar and Gujarat. It was weakest in Kerala, Delhi, Assam, Goa, Karnataka and Tamil Nadu.²⁴⁰

The National Family Health Survey results showed that women in every state were more likely to practice family planning if they had two sons than if they had two daughters. According to this measure, Rajasthan stood out as having particularly strong son preference. Son preference appeared relatively weak in Kerala, Andhra Pradesh, Goa and Tamil Nadu.

Son preference appears to be strongest in northern and central regions of India and weakest in the south. If son preference is strong, then a woman with sons should be more likely to want to stop having children than a woman with daughters. By this measure, it was discovered by the survey that son preference was strongest in Haryana and Rajasthan and weakest in Kerala.

Other indicators of son preference, discrimination in the care of young children based on their gender confirms this pattern. In this context it is worth quoting Barbara Miller, “Even if there is no deliberate design of hastening a girl’s death, there is, no doubt, that, as a rule, she receives less attention than would be bestowed upon a son. She is less warmly clad, and less carefully rubbed with mustard oil as a prophylactic against cold and chills to which the greater part of the mortality amongst children in India is due: She is not so well fed as a boy would be, and when ill her parents are not likely to make the strenuous efforts to ensure her recovery.....”²⁴¹

²³⁹ *National Family Health Survey 2*, Ministry of Health & Family Welfare, Government of India, International Institute of Population Studies, Bombay, 1992-93

²⁴⁰ *NFHS Bulletin, Number 4, January 1997*, Ministry of Health & Family Welfare, Government of India, International Institute of Population Studies, Bombay, 1998-99

²⁴¹ Barbara D Miller, *The Endangered Sex: Neglect of Female Children in Rural North India*, Oxford University Press, Delhi, 1997, p.65.

Though the survey reveals important aspects, yet it should be remembered that the evidence of sex-selective abortions in India are scarce because most of the abortions are not reported because of being illegal. Therefore it becomes difficult to comprehensively assess the magnitude of these abortions. However, a survey conducted in Jind district of Haryana has brought into light some significant facts. “There were all-together 40 health facilities including 18 private nursing homes. Interestingly out of these 18, 12 were established during 1991-2000. This was the time when the technologies introduced to detect genetic abnormalities became commonly available in India. With regard to sex-determination technologies, it was found that many of the nursing homes or clinics had colour sonography²⁴² machines as well. Mobile ultrasound facilities were also available in villages.”²⁴³

The present day sex ratio and the increasing use of new diagnostic technology for sex-selective abortion highlights the age old desire for families to have more sons. Monica Das Gupta argues that the discrimination against female children should be seen as part of family building strategies. She highlights that this could be the reason for the persistence of sex discrimination in Punjab, despite the rise in income and nutritional levels, increase in female education and health care facilities. She is of the opinion that “...better educated women are better able to manipulate their fertility and their daughter’s mortality and thus are better equipped than others to achieve the family size and composition they desire.”²⁴⁴ Laws are not likely to be effective in societies where the preference for a son is strong and deeply embedded in patriarchal structures and hence, unless the patriarchal norms of the society are challenged, the desire to do away with girl children will remain.

There is need to spread awareness about the importance of girls to the family, community and economy at large. The skewed sex ratios resulted in various other evil practices

²⁴² Sonography is a painless medical procedure which uses high frequency ultrasound waves to produce visual images of organs, tissues etc. Thus it is highly useful in determining the age of the foetus.

²⁴³ Sayeed Unisha , Sucharita Pujari, R Usha , “Sex Selective Abortion in Haryana: Evidence from Pregnancy and Antenatal Care”, *Economic and Political Weekly*, January 6, 2007, p.62.

²⁴⁴ Monica Das Gupta, *Sex Selective discrimination against female children in rural Punjab, India*, 1987, p.94

which were adopted to address the issues in colonial period. It should be noted that the region of Punjab and Haryana has historically suffered from low female sex ratios and this resulted paucity of brides also known as bride-shortage in common wisdom. They as a society resorted to different practices like polyandry, bride purchase during the colonial period.

C. Polyandry, Bride-Purchase in Colonial Period

Polyandry generally refers to that form of polygamy in which one woman is married to several men at the same time. This practice had been observed in the colonial period by John Brown Cave²⁴⁵ as early in 1857. He observed “Polyandry, so general among uncivilised races, prevailed commonly among these Juts, especially in the lower classes”²⁴⁶ Polyandry as a practice to address shortage of brides has been observed by Malcolm Darling, Denzil Ibbetson and H.A.Rose as well. Nearly all of them have commented on the practice of Polyandry especially among *Jats, Gujjars, Ahirs* and *Lohars*. P.J. Fagan, a district level British Official commented that “...it is not uncommon among Jats and lower castes for a woman to be shared in common by several brothers, though she’s recognised as the wife of only the eldest of them.”²⁴⁷

British administrator Malcolm Darling noted the prevalence of polyandry in colonial Punjab due to spousal shortage, with brides often purchased from the hills of Kangra and the deserts of Bikaner.²⁴⁸ He recorded that a married brother’s wife could be shared by the other brothers as well. This practice has also been condemned as a beastly practice in the gazetteers of the period.

“..This institution is probably the first stage in development of a savage people after they have emerged from a mere animal condition of promiscuity. It is concomitant of female

²⁴⁵ John Cave Brown, *Indian infanticide: Its origin, Progress and Suppression*, WH Allen and Co, London,1857,p.21

²⁴⁶ *ibid*;

²⁴⁷ *Hissar District gazetteer*, Superintendent of Government printing , Civil and Military Gazette, Lahore,1908,p. 65

²⁴⁸ Malcolm Lyall Darling : *The Punjab Peasant in Prosperity and Debt*, 1928,Oxford University Press ,New Delhi, p.54

infanticide...The family is the first organisation, when all things, including the wife are owned in common. The eldest brother is the head of the house, but younger brother have their rights...’’²⁴⁹

One of the involved women condemned it as ‘an animal life’ where she had sexually to ‘satisfy three men’. This kind of exploitation did not always go unchallenged and at least one criminal case of adultery came up early twentieth century in which the accused cited in his plea the existence of this social custom which allowed him sexual access to his brother’s wife.²⁵⁰

The practice of polyandry has also been discussed in the work of Prem Chowdhry and Paul Hershman. Prem Chowdhry cites an oft-repeated story of those days related even now to show what a marital association entailed in the past-

“A new bride had four or five jeth or dewar .All of them had free sexual access to her. After fifteen or twenty days of her marriage, the bride requested her mother-in-law to identify her husband from among them. Upon this the mother-in law came out in the gali and started howling loudly, when asked about it she replied: ‘It is difficult for me to live in this house anymore. I have been married for forty years, yet even now I have never asked anyone to determine the identity of my husband. This fifteen-day-old bride is already asking about her?’ ”²⁵¹

The story provides an insight into the popular perception of sexual exploitation as it existed in those days. And the extent to which it was accepted as common knowledge. Women’s awareness of this exploitation is highlighted even more directly and in a very perceptive manner in a *lok geet* (folk song), not commonly sung these days sung by a young bride. While recounting her enormous work load, she is made to tackle in her in-

²⁴⁹ *Rohtak District Gazetteer*, 1910,III-A,Lahore,Superintendent of Govt. Printing, Civil and Military Gazette,1911, p.88

²⁵⁰ *ibid*; the details of the case and the verdict has not been mentioned.

²⁵¹ Prem Chowdhry, *The Veiled Women- Shifting Gender Equations in rural Haryana*, Oxford University Press, New Delhi, 1994, p.114

law's house every day, the bride revealingly discloses: "Beaten and forced to live with my brother-in-law in sin, amending house work has emaciated me, oh God!"²⁵²

The proverb originates from the earlier practice, given above, which shows, the brother-in-law to have sexual access to the sister-in-law.

The works of Hershman, on Punjab also reveal that polyandry was prevalent among the landowning castes due to spousal shortage and concerns about land fragmentation²⁵³. Prem Chowdhry is of the opinion that there is hardly any evidence of the continuation of the practice. However, Paul Hershman²⁵⁴ and K.P. Singh²⁵⁵, Joyce Pettigrew²⁵⁶ have shown its continuation among the *Jat-Sikhs*.

Unfortunately, it was not only brother- in-law who had free sexual access to sister-in-law but even the father-in law was not above the sexual exploitation of his daughter –in-law. That this was customarily practiced was recorded by British officials in the late 19th century.

Bride purchase was one of the practices which emerged out of the need to find a suitable bride in a scenario where the amount determined the quality of the bride. Bride purchase was common in the central Punjab in the pre- colonial period²⁵⁷ but nonetheless the phenomena gradually rose during the British period. In nineteenth century, except a few better families, this custom was observed to have been universal not only among the Jats

²⁵² *ibid*;

²⁵³ Paul Hershman, *Punjabi Kinship and Marriage*, Hindustan Publishing Corporation, Delhi, 1981, pp.176-188

²⁵⁴ *ibid*;pp.176-88

²⁵⁵ K.P.Singh '*Polyandry among the Jat Sikhs India*', in Manish Kumar Raha (ed.),*Polyandry in India*, Delhi, Gian Publishing House,1987,pp.161-5

²⁵⁶ Joyce Pettigrew, *Robber Nobelman: A study of the Political System of the Sikh Jats*, Routledge and Kegan Paul, London, 1975,p.53

²⁵⁷ *Report on the revised Revenue Settlement of the Lahore District*, Lahore, 1858, p. 11

but also among the agricultural and the lower castes.²⁵⁸ It can also be ascertained by the fact that “a large number of lawsuits, civil and criminal, practically turn on the question whether the mother or the uncle of a fatherless girl is entitled to the profits of mating her.”²⁵⁹

The purchase of bride has generated several debates. It has been mostly argued that for the agricultural communities marriage was not only a religious duty, but also an “economic necessity.”²⁶⁰ This is because in agrarian communities, women’s labour extends beyond the household and reproductive labour into the realms of agriculture and animal husbandry. To meet the requirement of women’s labour, Darling notes that “a *Jat* will sometimes marry almost any woman he can.”²⁶¹

Prem Chowdhry also argues that the wide acceptance of the prevalent custom of sale and purchase of brides among the economically distressed peasantry can partly be explained by the important role played by women in the economy.²⁶² However it can be seen that the practice had acquired universality and was not limited to agricultural communities, rather it was practiced by the *Rajputs* as well which clearly indicates that it was largely practiced among communities with low female sex ratios. Also, one can observe a rise in price of the bride was directly proportional to declining sex ratio and greater in communities with low female sex ratios than in the ones with relatively better female proportions.

²⁵⁸ *Punjab District Gazetteers*, Volume VII, Part A, Ludhiana District, 1904, Superintendent Government Printing, Punjab, 1904, p. 50- ‘*the custom is almost universal . . . and only a few of the better families abstain from it.*’

²⁵⁹ *Punjab District Gazetteers*, Volume VII, Part A, Shahpur, 1917, Superintendent Government Printing, Lahore, 1917, p. 75

²⁶⁰ Malcolm Lyall Darling, *The Punjab Peasant in Prosperity and Debt*, Oxford University Press, New Delhi, 1928, p. 58

²⁶¹ *ibid*;

²⁶² Prem Chowdhry, *The Veiled Women- Shifting Gender Equations in rural Haryana*, Oxford University Press, New Delhi, 1994, p. 66

With the declining sex ratio, the demand for brides had increased and as such their price also steadily rose. The rise in the price of the bride had risen exponentially. In Rohtak, for instance, where in 1918 influenza carried off 10 per cent of the people, the price rose from Rs. 500 to Rs. 2,000. In Hissar, on the other hand, the prolonged drought of 1919-21 reduced it from Rs. 2,000 to Rs. 500.²⁶³ In individual case the prices varied depending upon the age and look of the bridegroom and also the bride concerned. These prices explain the boast of the president of a village bank, who said that one eye of his daughter, was worth Rs. 4,000. However, the prices also varied with both tribe and religion. A *Muhammadan*, it seems, can generally get what he wants for four or five hundred rupees, but the Sikh Jat has to pay one or two thousand.²⁶⁴

As far as the *Rajputs* were concerned it is said that the buying and selling was relatively less among them, but nonetheless even they could not completely deny paying for the brides. Darling illustrates his conversation with a *Rajput*:

“What can a man do? Can he prevail against his neighbours? Hard are our lot, and when the envoy comes and says that nothing will be done if nothing is given, the price is paid. So is our caste fallen from its pride, for in days gone by, when a daughter was wed, the father would not so much as drink water in the bridegroom's house, lest he should seem to take anything for her in return.”²⁶⁵

Among the other practices bride trafficking also prevailed but not on a wide scale. We do get evidences of this practice in the work of Malcolm Darling who observed- “This buying and selling of wives has called into being a regular traffic in women, who are imported from the hills of Kangra and the deserts of Bikaner.”²⁶⁶

²⁶³ Malcolm Lyall Darling, *The Punjab Peasant in Prosperity and Debt*, Oxford University Press, New Delhi, 1928 p. 55 “Two wives have I wed, and one has died. Both I bought eight or ten years ago for a hundred rupees; but now, if I would take a third, three or four times this price must I pay... Cloth, too, is dear, but it has not risen more than the price of a bride.”

²⁶⁴ *ibid*;

²⁶⁵ ,p.5 Malcolm Lyall Darling, *The Punjab Peasant in Prosperity and Debt*, Oxford University Press, New Delhi, 1928, p.56

²⁶⁶ *ibid*;p55

This fact has been also corroborated by gazetteers of the period. From the same source we also come to know, that it was common among petty and landless *jagirdars* to import wives.²⁶⁷ “...trafficking in women is the chief crime. A large number of women abducted from the hills are purchased and married by the Jats.”²⁶⁸

Apart from the above practices one also get evidences of inter-caste unions. Malcolm Darling notes, that the need for women’s labour often compelled men to transcend caste boundaries in finding wives. The history of agricultural communities shows that not all families were able to conform to ideal marriage norms and many a times settled for less-preferred matches. Unable to wed, the *Manjha Jat* too often companies with the daughters of menials.²⁶⁹ Illustrating the colonial government’s attitude to inter-caste marriages, Prem Chowdhry notes that “inter-caste marriages – both between high-caste men and low-caste women and vice-versa – have existed in Punjab-Haryana and these were duly supported by the guardians of the women involved though were frowned upon by the British officials”.²⁷⁰ She notes how Jats were particularly noted for marrying women from lower caste groups such as the *Nai, Mali, Jogi, Jhemar* and very often from among the *Chamars*²⁷¹. She also argues that though taking wives from low caste never became a norm, it was practiced by those agriculturists who were economically too weak. A proverb related to the difficulty in obtaining wife goes like this-

“Beta laega Chamari , Voh bhi bahu kahegi hamari.”²⁷²

²⁶⁷ here it is usually refers to the Jats of the Manjha

²⁶⁸ *Punjab District Gazetteers*, Volume VII, Part A Ambala District,1923-24, Lahore, Superintendent Government Printing, Punjab,1925, p.118

²⁶⁹ Malcolm Lyall Darling, *The Punjab Peasant in Prosperity and Debt*, Oxford University Press ,New Delhi,1928 p. 56

²⁷⁰ Prem Chowdhry, *Contentious Marriages, Eloping Couples: Gender, Caste and Patriarchy in North India* , Oxford University Press, New Delhi,2007 ,p. 46

²⁷¹ *ibid*;47

²⁷² Prem Chowdhry, *The Veiled Women: Shifting Gender equations in Haryana*, Oxford University Publication, New Delhi 1994, p.126

The proverb above roughly can be translated as- “If my son should marry a low caste woman she would still be called my daughter-in-law.” However, it should be noted that, though a man could go for an inter-caste liaison with women from menial caste, frequently *Chamar*, there were cases where if a Jat women was involved with a *Chuhra*, she was thrown out of the house for this reason.²⁷³

During the colonial period, owing to the shortage of brides and subsequent rise in bride-price, many men failed to find a bride for them and remained unmarried. Though , bride shortage was definitely a reason behind increase in unmarried bachelors in Punjab and Haryana, it was also not uncommon to find households where men were deliberately forced to stay single which Ravinder Kaur refers to as “involuntary bachelorhood”. As early as 1881 it was noted that in most Jat and *Rajput* families in Ludhiana, one could find “one or two men who have remained single”²⁷⁴. Similarly Bhalla notes that in Bairampur ‘a large number of males remain unmarried.’²⁷⁵

Malcolm Darling while in a *Rajput* village of Shakargarh found that out of twenty-three men of marriageable age, seventeen were unmarried. Incidentally it may be remarked that the six who had married had spent an average of Rs. 1,500 each on their marriages. In a Sikh village near Kasur it is said to be fifteen years since a boy was married. The people are too poor to buy brides, and too notorious as burglars and dacoits to be given them for nothing.²⁷⁶

Thus, as it is evident gender imbalance apart from being a critical problem in itself results or induces many other social evils. Among the most common adverse consequences of gender imbalance are - shortage of brides, trafficking of women for forced marriages,

²⁷³ E. Joseph, *Customary Law of the Rohtak district*, Superintendent of the Govt. Printing Lahore, 1911 p.42

²⁷⁴ *Punjab District Gazetteers*, Volume VII, Part A, Ludhiana District, 1904, Lahore, Printed by the Superintendent Government Printing, Punjab, 1904, p. 38

²⁷⁵ G.S. Bhalla, *Changing Agrarian Structure In India: A Study of the Impact of Green Revolution in Haryana*, Meenakshi Prakashan, New Delhi, 1974, p.139

²⁷⁶ Malcolm Lyall Darling : *The Punjab Peasant in Prosperity and Debt*, 1928, Oxford University Press, New Delhi, p.56

violence against women, perpetuation of male dominated institutions with a desire to have greater control over women.

D. Bride-shortage and Bride-Trafficking In Contemporary Haryana

Bride shortage is one of the major challenges faced by the state of Haryana. Though this problem had emerged in the colonial period itself, its magnitude has increased exponentially in the contemporary period. Widespread infanticide and foeticide largely results in the birth of surplus males over females and ultimately when these males become of marriageable age they are faced with the challenge of finding a suitable bride for themselves. As a consequence of bride-shortage the number of unmarried men is continuously increasing. This phenomenon is also referred to as “male marriage squeeze” by demographers. It highlights the fact that lesser the number of females, easier it is for patriarchal institutions to control and subjugate them. More masculine an economy is, more women are vulnerable, when it comes to regulation of her sexuality. Prem Chowdhry in her article²⁷⁷ also engages with the complexity of masculinities in present Haryana, generated by increasing numbers of unmarried, unemployed men as well as elderly men and the relation this bears to power relations.

The post-colonial period rather than showing an improvement in the sex ratios further deteriorated and the shortage of bride deepened. This resulted in intensification of the practice of bride purchase and trafficking of women for coerced marriages. The National Crime Record Bureau data shows that “more than 22,000 girl children and women between the ages of 10 and 30 were kidnapped for marriage in 2012.”²⁷⁸ Statistics from India’s National Crime Records Bureau show that nearly 25,000 girls and women ages 15 to 30 were kidnapped and sold into marriage across the country in 2013. This data clearly reveals that number of unmarried men are increasing and resorting to forced marriages. In Haryana it has reached a critical stage and in order to address the issue, people of this state are resorting to bride imports or bride trafficking²⁷⁹ from distant and poverty-ridden

²⁷⁷ Prem Chowdhry, “Crisis of masculinity in Haryana: the Unmarried, the Unemployed and the Aged”, *Economic and Political Weekly*, December 03, 2005

²⁷⁸ ‘*Crime in India*’, 2012, National Crime Record Bureau, Government of India

²⁷⁹ The most severe form of trafficking in Haryana is for coerced marriages, also known as bride trafficking

states like Assam, West Bengal Jharkhand, Bihar and Odisha. According to the NCRB, a total of 8,132 cases of human trafficking were reported in the country the year 2016, while the figure for 2015 was far lower at 6,877 cases. West Bengal at 3,579, accounting for nearly 44 per cent of the cases. Rajasthan Delhi, 1,422 cases that is 17.9 per cent of all such cases reported. Unfortunately, of the 15,379 persons trafficked in the year, 58.7 per cent were children.²⁸⁰ The above figures are reflective of the fact that West Bengal remains a major source state of trafficking, while Rajasthan has emerged as one of the major destination states.

While on the one hand Haryanvi society inflicts extreme violence on its own youth for breaching the norms of caste and *gotra* endogamy, on the other, it brings in brides from distant lands whose caste backgrounds are very often ignored, unknown, or difficult to ascertain given the regional variation in caste names. This apparent contradiction in the attitude of Haryanvi society towards local and cross-region inter-caste alliances is seen in allowing needy local men to break the norms, while policing local women more stringently. Caste, exercises a greater control on women than men in marriage. Evidence shows that women's marriages have always been policed more strictly by families and communities, and their attempts to marry a man from a lower caste is always discouraged as it signifies an attempt to weaken caste boundaries. Parents in Haryana strongly prefer to marry their "own" daughters in "appropriate" marriages.

By giving away their own daughters in conventional marriages, families succeed in preserving their local standing and reputation. However, in bringing in "other" women as cross region brides, families often put forth the logic of the absolute necessity of having a woman to run a household –

"Roti pani k kivad to aurata te hi khule sae",

*"Only a woman can open the doors to food and water"*²⁸¹.

Thus, as Paro Mishra argues it is under the effect of a long-standing sex ratio imbalance, that the customary rules of caste endogamy, exogamy and hypergamy are being

²⁸⁰ The data has been drawn from *Crime in India*, 2015 & 2016, National Crime Record Bureau

²⁸¹ Paro Mishra, "Sex Ratios, Cross-Region Marriages and the Challenge to Caste Endogamy in Haryana", Vol. XLVIII No. 35, *Economic & Political Weekly*, August 31, 2013 p.74.

compromised.²⁸² In the marriage market, many men particularly- the uneducated, unemployed, disabled and landless are being left out.²⁸³ As such, many more men than earlier are resorting to cross region marriages. Cross-region marriages are not restricted to one or two particular caste groups. There is ample evidence of these marriages occurring among all caste categories – the landowning ones, the ritually higher ones, and the lower castes.²⁸⁴ Such marriages are on the rise in Haryana and are being gradually accepted as “normal” in the face of necessity and do not face societal and familial violence, as local inter-caste marriages tend to. It is important to explore the conditions under which violation of caste endogamy is tolerated, especially in the wake of the extreme violence that has been meted out to some men and women who have entered into marriages of their own choice breaching the norms of caste endogamy.

She has provided three concrete reasons - first, these marriages are not self-choice marriages but driven by circumstances. So they are not interpreted as rebellious or seeking to challenge familial authority. It is the need for a woman to maintain the family that drives men to transcend normative boundaries. Second, unlike local inter-caste marriages, these marriages do not negatively affect the local caste hierarchy and family prestige as the bride’s family is in a distant region. Third, concealing the caste background of a cross-region bride is easy as hardly anyone except the immediate family knows about the caste of the bride’s family. If awkward questions are asked, the men sometimes justify their marriages by saying, “She is from our caste, but they have a different caste name there.” Finally, the overarching discourse that surrounds these marriages is that women do not have a caste of their own “*biran ki kai jaat*”.²⁸⁵ Before marriage they are members of their father’s caste group and after marriage they acquire

²⁸² *ibid*, p.72

²⁸³ As per the 2001 Census, in the 15-59 years age group, the number of never-married males in Haryana was 32.28% while the number of never-married females was 16.27%.

²⁸⁴ Ravinder Kaur, “Across-region Marriage: Poverty, Female Migration and Sex Ratio”, *Economic & Political Weekly*, Vol.39 No.25, 2004, pp. 2596-603.

²⁸⁵ Ravinder Kaur ‘Marriage and Migration: Citizenship and Marital Experience in Cross-border Marriages between Uttar Pradesh, West Bengal and Bangladesh’, *Economic & Political Weekly*, 47 (43), 2012, p.84.

membership of their husband's caste. Interestingly, this point is never made in relation to local inter-caste marriages.

The present situation of Haryana can be gauged from the fact that it has become impossible to find a bride for each man, and 'importing a bride' has become the only solution. The demographic situation of these states has become so skewed that it will take many years to stabilise the situation. The demand for "marriageable age" girls is so intense that organised trafficking rackets have started operating in Haryana, Punjab and Uttar Pradesh.²⁸⁶

A field study on the impact of sex ratio on the pattern of marriages in Haryana by *Drishti Stree Adhyayan Prabodhan Kendra*, an NGO covering over 10,000 households, revealed that over 9000 married women in Haryana were bought from other states. The study which covered 92 villages of Mahendragarh, Sirsa, Karnal, Sonapat, and Mewat districts said that most of the people accepted it as a common practice, but denied having bought a bride in their family. Bride trafficking is not a homogenous phenomena and even the source states²⁸⁷ () varies as per the destination points.

Though all over in Haryana and Punjab there are women and minor girls from all the source states i.e. Assam, West Bengal, Bihar, Jharkhand, Odisha, Madhya Pradesh & Uttar Pradesh there is a marked change in their proportion in different region of destination states and with the purpose of trafficking. There are about 5-10 thousands women forced into marriage by coercion or trade in Rewari and Faridabad district alone in Haryana²⁸⁸. In the village of Kharakramji the Paros are mainly from Maharashtra and in the village Shillakhedi the Paros are mainly from West Bengal.²⁸⁹ In Mewat region of

²⁸⁶ United Nations Office on Drug and Crime 'Current Status of Victim Service Providers and Criminal Justice Actors in India Report on Anti Human Trafficking 2013', p.10

²⁸⁷ Source states are the states from which the brides are brought and the destination points are those places where they land up.

²⁸⁸ "Trafficking In India Report 2004", *Shakti Vahini*, An NGO in Faridabad, Haryana, 2004 p.35; Shakti Vahini is working for human rights issues especially trafficking, honour killing and domestic Violence

²⁸⁹ "Campaign Against Bride Trafficking", 3/10/2010 by *Empower people*, an NGO working with bride trafficking survivors

Haryana there are about 10,000 women; maximum number of these women is from Assam and West Bengal, the proportion of West Bengal women increases moving towards the surrounding areas of Mewat though the number of West Bengal girls in total remains less than those from Assam. Moving towards Punjab in the districts adjoining Haryana the numbers of girls from West Bengal surpasses the number of girls from Assam.²⁹⁰

While the maximum number of women forced into marriage is from Assam and West Bengal, a sizeable number of the girls and women trafficked for domestic work, bonded labour like conditions and slavery, are from Jharkhand, Bihar, Odisha, Madhya Pradesh and Uttar Pradesh. Gurgaon and Faridabad are the major destinations for the girls and women trafficked to Haryana for domestic work and a large number of them even become victims of sexual exploitation, as per the report. The trafficked domestic helps, mostly minor girls, are supplied in Haryana by the placement agencies operating in Delhi and once these children land up in their employer's house they end up in slavery. In many cases, these children become the victims of sexual exploitation at the hands of either the placement agency owner or the employer themselves. The placement agencies illegally run their business and have good links in the source areas. The agency owners bring girls from the source states with the help of their organised network and employ them as bonded labour. Most of the victims are trafficked through railway routes and they are transited via Delhi. These women and girls are also sent to the border areas of Rajasthan from Haryana.²⁹¹

Most of women and girls for forced marriages come from poverty –ridden villages of Assam, West Bengal, Jharkhand, Bihar and Odisha, because their families need money and hence fall in the trap of traffickers. Shafique Ur Rehman²⁹² rejects the argument that parents sell their daughters out of poverty. He says “the only person who gets money in

²⁹⁰ “Trafficking In India Report 2004”, *Shakti Vahini* (An NGO in Faridabad, Haryana), p.36

²⁹¹ “Current Status of Victim Service Providers and Criminal Justice Actors in India Report on Anti Human Trafficking 2013”, United Nations Office on Drug and Crime, 2013, p. 94.

²⁹² Founder of the Empower People, an NGO working with bride trafficking survivors

the process is the middle man”²⁹³. However this seems to be untrue in some of the cases discussed below in the case of Lakshmi-

Apart from the fact that their parents need money, usually these girls belong to areas where the demand for dowry is so high that the parents fail to arrange their daughters’ marriage and therefore when they are offered a ‘dowryless’ wedding of their daughters they easily agree. Often projected as voluntary marriages, every year, thousands of young women and girls are lured into the idea of a happy married life with a rich man in Punjab or Haryana. They are bartered at prices that vary depending on their age, beauty and virginity. The price also varied in accordance to the look and age of the male.

These ‘purchased brides’ are known as Paros or *Molkis* Paro or *Molki*²⁹⁴ are terms used for women who have been purchased from other states and brought to Haryana on false premises. These women or girls are usually promised marriages but when they land up in these places, they are often forced to work like bonded labour; they are exploited, denied basic rights, often duplicated as domestic servants by the agents or men who marry/buy them. There are also instances of girls being resold to other persons after living a married life for a few years.²⁹⁵ Usually these Paros are helpless because they are cut off from their native places and are mostly from poor families. Once married they are confined and hardly have options to assert their right.

Case 1-

It would be worth discussing the case of Ghausia khan, who turned out to be a fighter among the helpless Paros. Ghausia khan, 58 years, is a member of the district legal aid authority, she helps women in distress to find lawyers and provides them with legal information and at times, monetary assistance. But more than any of these, it is her moral support, she says, which enables victims to overcome the trauma. She has intervened in the cases of local women as well as Paros trapped in involuntary marriages. At one level,

²⁹³ “Campaign Against Bride Trafficking”, 3/10/2010 by *Empower people*, an NGO working with bride trafficking survivors

²⁹⁴ Literally means ‘one who has a price’

²⁹⁵ “Bride Purchased ,then exploited in Punjab & Haryana”, *The Hindu*, 26/08/10

she is fighting a battle to get rid of her past because at 14, she herself was brought from Hyderabad around 1,000 miles from Haryana. Eventually, she was married to Rusdaar khan who grazed cattle. Ghausia gave birth to their first child at 17. Out of financial crisis she took up jobs at a carpet workshop and then a biscuit making factory before joining Empower people, an organisation that works with the bride trafficking survivors.

“Initially, I used to get nervous as my job involves interfering in family affairs and regular interaction with policemen and lawyers. But all that is past. Now, I am no less than police women,” Ghausia says, “I can relate to their woes as I share their past.”

She wants to develop a network of survivors whom she can train to take up new cases. Once that is achieved, she says, she would move on to a bigger, political role. “I wish to contest the upcoming assembly election as an independent candidate. As a legislator, I will be able to work for these women in a more meaningful way,” she says, adding that none of the political parties would give her a ticket as he is a Paro, and is therefore considered an outsider. The present case clearly highlights the courage and boldness of Ghausia who managed to create a separate identity of her own unlike others who succumb and accept the situation as their fate. The above case also shows that bride trafficking is not a recent phenomenon, rather it has been in practice from decades because Ghausia who is now 58, was trafficked at the age of 12. The above case is of the exceptional cases, with others reflecting mostly vulnerability and helplessness of the trafficked women.

Case 2-

Yet another case of bride-trafficking survivor is discussed here. This is story of Sunita (not her real name) from Jalpaiguri who was trafficked to Haryana but fortunately was rescued by Shakti Vahini team on the complaint of her sister.

Growing up in a poor tribal family in the lush floodplains and Himalayan foothills known as the Dooars in West Bengal, Sunita lost her father before she turned eight. There were days when her family of five, sustained by her mother who did odd jobs and an elder brother who worked in the nearby tea estate, would go hungry. Tea estates are the main source of jobs in the Dooars but between 2002 and 2004 more than 20 shut down, leaving

hundreds jobless. Stories emerged of people starving to death and of gangs trafficking in girls, selling them as brides and domestic workers in northern India.

Sunita was one of them. In her home district of Jalpaiguri, with a population of less than four million, around 200 missing girls and women have been reported missing over the last three years. “Almost 20 per cent of them are trafficked brides, according to non-profit group Shakti Vahini. They are either duped by the traffickers or sold by poor parents for sums as low as Rs.10,000.”²⁹⁶

At 25, Sunita was raped by a married neighbour and then sold for Rs.70,000 to a vegetable vendor. “When I think of what happened to me, I want to die,”²⁹⁷ said Sunita. In Sunita’s case, she was tricked by a man from the northern state of Haryana who had married a local Bengali woman. He offered to help the family get Sunita treated in Haryana for a stomach ailment but after the 1,600 km journey, he locked her in a room and raped her in front of his wife, who did not say a word, said Sunita. “He said I had to get married and he would set me on fire if I didn’t agree.” In a matter of weeks, a 45-year-old vegetable seller bought her as a bride.

The trafficked brides are expected to do the housework and bear children but get little respect as in the case of Sunita, “He married me to make me work in the house and to look after his elderly mother and three-year-old son, from a first marriage,”²⁹⁸ said Sunita while speaking about her husband. She had no say in family matters, was not allowed to make friends or even step out of the house. Local traditions that she found strange, like covering her face in the presence of men, were imposed on her. In her four months of confinement, she made three attempts to escape. Once she spent the entire day in the maize fields, waist deep in mud, as her husband and other villagers combed the area. She managed to run to the next village but was caught and sent back to her husband. “He

²⁹⁶ <https://shaktivahini.org/bride-trafficking-rife-in-poor-indian-states> ,15/7/2015

²⁹⁷ <https://shaktivahini.org/bride-trafficking-rife-in-poor-indian-states> ,15/7/2015

²⁹⁸ *ibid*;

twisted my hand, asking me why I had run away. He made a fist and hit me. And then he picked up a stick and started beating me on my hands and legs,”²⁹⁹ said Sunita.

Back in her home in eastern India, Sunita’s eldest sister made many trips to the local police station, for news of her sister. Eventually, the non-governmental organisation Shakti Vahini managed to locate and rescue Sunita. “She was so thin and was malnourished and had bruises all over. I brought her back home and got her treated,” said Sunita’s sister.

The above case reflects the kind of torture a women goes through once trafficked. Even after being rescued, they cease to lead normal life or the societal behaviour reminds them of their suffering.

Case 3-

Similarly, plight of Rashmi in yet another trafficking case is discussed here. The story of 19 years old Rashmi³⁰⁰, from Village- Dumri, District Mau, Uttar Pradesh is an example of how girls are trafficked in Haryana on false premises of marriage. Rashmi belonged to a poor family and resided in Shakti Chowk slum area of Delhi. She was married by her family to Virendra of Faridabad, who left her and disappeared after making her pregnant. While she was living with her family after being deserted by her husband, in Shakti Chowk, Kamal Singh of Sherada, Jind, Haryana, befriended her family and started frequenting to her house. Taking her family members in confidence he proposed to get Rashmi married to a good person from a well off family in Haryana. Kamal Singh brought her to village Popada, District Karnal, of Haryana and sold her to Subhash for Rs. 35,000. To give sale a cover of marriage a photographer was called and garland exchanging photographs were taken in a small room in the house of Subhash.

Rashmi sensed the fakeness of her marriage, thus refused to stay and demanded that she must be send back to her family, for which she was beaten and when she disagreed to

²⁹⁹ *ibid*;

³⁰⁰ https://www.unodc.org/pdf/india/publications/htvs_miniweb/situational_report_shakti_vahini.pdf .p.4-5

allow to consummate the so called marriage she was forcibly raped by Subhash and his family abetted it. Even then, she kept resisting and was thus starved by her in laws.

After about 15 days of captivity, Rashmi found an opportunity to escape taking route from the roof of adjacent house but soon she was caught by Subhash and his family, a few kilometres away from the village. To not give an occasion to her to escape again, she was chained with a cot using chain meant for buffalo and was let loose only for few minutes to attend her natures call, that too surrounded by 4-5 persons.

When police raided she was found chained with the help of two locks in a small dark room. She was unable to tell her exact address at Delhi. Subhash, though arrested had not been charged for rape. The villagers were very clear in that a grave wrong was being done by police and NGO to Subhash, as he had right to keep the girl against her will because he had paid Rs. 35,000 for her.

The above case clearly reveals that women's position is still not more than cattle in Haryana where she is considered a mere reproductive being. A great number of these women are sold and resold to several persons successively and only few are lucky enough to enter into settled marital life permanently. Ghausia khan, herself being a bride trafficking survivor and a member of a district legal aid authority of Mewat revealed that, on an average, a girl is sold between two to five times. "You will never find a Paro staying with the man who brings her into Haryana or to a neighbouring state," She said.

The selling and re-selling of Paros or molkis is so common that these areas have sayings like "It's impossible to find a Paro's grave as she is passed on from man to man and so doesn't stay in one place for a long."³⁰¹

There are cases where the girls have been sold to several persons commonly to be a sexual slave for them. The women in this process are treated as mere commodities which are transacted but do not have a say in the process. Most of the times she lands up in being a sex slave. Her chances of being accorded the status of a wife are very less and completely depend on the inclinations and circumstances of the buyer.

³⁰¹"When women become cheaper than cattle", *Hindustan times* , 23/3/ 2014

Even of those, who are settled at a point of time, without valid marriage, are always at the mercy of their buyers, because at any point of time they can be rejected and thrown out! Socially too, they are looked down as ‘Kept’ or ‘*Rakhel*’ and have to bear the stigma of being a *Paro* throughout her life. Having children is no guarantee for such women forced into coerced marriage that she will not be sold further. There are cases where mother of three children have been sold with children not once but many times to different persons. Thus Razia’s case³⁰² represents such a situation.

Case 4-

Razia a *Paro* from Mewat originally belongs to Bhagalpur district of Bihar. She was brought to Rajasthan when she was 14. She doesn’t even remember the face and features of the man who had brought her. Yet what happened to her remains indelible in her memory-

She said “he was the first to rape me. It continued for three days. Then he sent me to other place where I lived may be for a month”. She was again raped there by at least five men she said. She eventually landed up in marrying a man named Shahnawaz in Akheda village in Mewat, Haryana. Shahnawaz was already married and possibly he married Razia for a male child. Razia said “His only son from his first wife was not keeping well for two years. Doctors in the village declared that he would not survive.” Razia said that when she was three months pregnant with her second child, Shahnawaz had left her with a family in a nearby village and lied to her saying that she had to help them at a family wedding. When he did not contact her for a long time she got suspicious and later learnt that she had been sold for Rs 25,000.

Though no police complaint was lodged, the Panchayat interfered and admonished Shahnawaz; it was then that he took back Razia along with him. But as soon as Shahnawaz and his first wife passed away, Razia’s step son threw her out. Shahnawaz has several shops near the *Madarsa* where Razia presently cooks meal at the rate of 3000 a month for students of the *Madarsa* but unfortunately she does not have any control over her husband’s property. Even her elder son, Hamid, 19 years old runs a tyre puncture

³⁰² *ibid*;

shop nearby. Razia says “This Empire of my husband which is now with his sons. And I am made to live like a beggar.”³⁰³

In the present case, one can see how a women is used for one’s own need and subsequently resold once again so that the amount spend on her till now could be reimbursed. It is also quite evident that she is a treated as a mere commodity .It also clearly comes out that not only *Paros* but even their children suffer from discrimination and hardships and do not enjoy the same property rights as children from local wives. Thus, neither Paro nor her children ever get the status which is accorded to local wives and children born of them.

While having children does not imply security and safety for the women, the life of children comes to at risk because the buyer may not be willing to accept liabilities of the children. Such children become highly vulnerable for trafficking, abuse and exploitation. Costing less than cattle, no one cares for them if they are sick and in need of treatment and medication, because it makes better economic sense to buy a new virile girl than to spend on sick, exploited and weak woman.

Case 5-

There are cases where minor girls have died out of pregnancy related problems unattended by any medical professional.³⁰⁴ Such is the case of 16 year old poor *dalit* girl Kanika³⁰⁵ of Assam who was lured and taken to Rewari, Haryana in 2000 by a local woman Deepa Das married and living in Rewari district of Haryana, on promise of giving job and marriage to a rich land owner at Haryana. Associates of Deepa Das and members of her family at Assam had contacted Kanika’s mother, landless and poverty ridden widow and mother of six daughters, Omari Das for marriage of her daughter Kanika to a rich gentle man from Haryana. The offer came as a heaven sent help for the poor widow

³⁰³ *When women become cheaper than cattle*, Hindustan times, 23/3/ 2014

³⁰⁴“Female Foeticide, Coerced marriage and bonded labour In Haryana & Punjab”, *Shakti Vahini Report*, 2003,pp.52-53

³⁰⁵ Kanika Das, D/o Shri Dandi Das (caste- Namesuthra), R/O Village - Keyajeni, Dist. Kamrup, Assam; https://www.unodc.org/pdf/india/publications/htvs_miniweb/situational_report_shakti_vahini.pdf, p.3

woes who had lost her husband, a daily wager and the only bread winner, for the family of eight, 7 years ago in accident in which a fall of log crushed him during loading log.

Omari for whom the only source of income is weaving, married her elder daughter in a social marriage and the second daughter was a lucky enough, for whom help came from the family of a senior bureaucrat where she uses to work as a domestic servant. The bureaucrat moved by the poverty of the girl's family took her to Delhi and now she was then receiving education in IGNOU. Inhibitions of Omari to give her daughter to an unknown lad from distant place were won over by telling her that she will not only receive money in exchange for her daughter but her rich "son in law" will extend a regular monetary help for Kanika's younger sister and "mother in law".

Apprehensions and fear grew in Kanika as she learnt about the offer from her mother, and to resolve that she insisted that she would not go unless she has seen the "prospective groom" personally. A youthful good and prosperous looking man was brought to meet Kanika and who promised her a good life filled with love. The man was told to be Pappu Singh *Ahir* of village Kufurpur in district Rewari of Haryana. Rs. 1600 were paid by Pappu Singh to Kanika's mother and for marriage it was said that it will be performed at Haryana following local traditions.

Once left, nothing was heard of Kanika until by chance, her mother came across Deepa who had visited again in the area for procuring girls for marriage in May 2001 and if it was not for her educated sister Babita who would insist on meeting her sister. When asked about Kanika, Deepa told that she is happily living with Pappu. Babita asked for her address or a telephone number so that Kanika can be contacted but when Babita made a call in the provided number, she was told there is no such woman named Kanika in the village. Again Deepa told a new story that since Pappu Singh was making trouble Kanika was married to another good man and gave a new phone number and asked Babita to make a call after few days when she has reached there so that she can bring Kanika to attend the call. When she made a call as directed and from the other side Deepa

informed her that Kanika is dead due to pregnancy related problem³⁰⁶. Now Babita rushed to Haryana in search of her sister and asked help from *Shakti Vahini*.

On inquiry Pappu Singh was found to be a poor, sick & drug addict looking 45 years old person with a small holding of land and to her surprise Babita found another minor girl Pronita of her area living with Pappu Singh. Pappu Singh denied going to Assam and bringing Kanika. However under threat of police action he revealed that Deepa Das has sold Pronita to him for Rs. 10,000 and was black mailing him regularly to pay money or she will take away Pronita.

Finally nothing could be found out of Kanika, and even police refused to register an FIR. It was only under pressure from media reporting and the NGO; it conducted several face saving inquiries with contradictory conclusions. Babita and family members of Kanika feared that Kanika had been sold to some brothel. However it is very likely that she may have died out of giving birth for her under nourished health and tender age was not yet fit for bearing children.

Thus, although trafficking of women and girls has become a lucrative and expanding trade in these regions, it routinely escapes effective administrative and social sanctions and the general response is to deny the existence of any such problem. The police though being aware of the whole scenario do not take any action. It is also evident from the above case that the Paros are hardly in a position to complain, and even if they complain their pleas are throttled down by police and society. The SP of Mewat, Anil Dhawan said “we are yet to get a single complaint where a girl alleges that she was bought. Even for suo-moto action, we have to follow some leads. But there exists none”³⁰⁷

It becomes very difficult for NGOs and other social bodies as well to help or intervene in the cases of Paros for lack of complaint on their part. As such these cases most of the times remain limited to mere documentation. Given the paucity of cases in High Court or Supreme Court of these Paros, discussion of some of the cases from Mewat from the

³⁰⁶ https://www.unodc.org/pdf/india/publications/htvs_miniweb/situational_report_shakti_vahini.pdf, p.4-5

³⁰⁷ “When women become cheaper than cattle”, Hindustan times, 23/3/ 2014

newspapers would help us gain some insight into the plight of these women. Mewat is one of the districts, which has maximum number of such women. It has one of the most imbalanced sex ratio among the 21 districts in Haryana.³⁰⁸

E. Role of agents vs Role of Government, NGOs

Trafficking in human beings, especially in women and children has become a matter of grave concern in India. It is an organized crime which thrives on human misery and agency. Despite the strong steps taken by the government of India, the trafficking rackets and gangs have become more organized and expanded into newer forms of trafficking. The crime has expanded in such a way that today almost every state is affected with social and criminal menace.³⁰⁹

In June 2010, a marriage racket was exposed in Kolkata. The accused was arrested along with a fake groom from Haryana who specialised in fake marriages. One common aspect in these marriages was that the girls used to be from North 24 Parganas region and the grooms used to be from Haryana and Uttar Pradesh. Police investigations have found that the accused had arranged countless marriages and he had close links with a gang operating from Uttar Pradesh. Some parents had also complained to the police about their daughters who have never returned after getting married³¹⁰. Similarly one more marriage racket came to the notice of the police with the arrest of a pimp in Delhi. Investigations have unfolded a harrowing tale of two sisters, aged 13 and 8 years, who had been kidnapped from New Delhi and thereafter trafficked. The arrest of one woman trafficker was a major breakthrough as she is suspected to have trafficked dozens of girls to Haryana and other states³¹¹.

³⁰⁸ 879 women for every 1000 men against the national average of 927 to 1000, as Census of India 2001

³⁰⁹“Current Status of Victim Service Providers and Criminal Justice Actors in India Report on Anti Human Trafficking 2013”, *United Nations Office on Drug and Crime*, 2013 p.9

³¹⁰“Girl trafficked from Jharkhand rescued in Delhi”, *Times of India*, 26/03/2010

³¹¹ “Trafficking racket Busted, six held”, *The times of India*, 05/05/2012

The placement agencies providing domestic help are rampant in Delhi and these agencies supply children for domestic help in Haryana. Due to the nuclear family system there is a huge demand of maid servants which is being fulfilled by trafficking of maids from poorer states. Once these children land up in their employer's house in Haryana via Delhi, they end up in slavery. These children are not even allowed to be in touch with their families. They are mostly kept as bonded labour. The children employed as domestic help mostly belong to the poor families and they always keep quiet even if they are being tortured by the employer.

There are many cases in which the children also become victims of sexual exploitation at the hands of either the placement agency owner or the employer themselves. Gurgaon, Faridabad, Panipat and Rohtak have a big problem of child labour. The placement agencies illegally run their business and have good links in the source areas and with the help of their organized network, they bring girls from the source states and employ them as bonded labour in the colonies and these placement agencies collect the money out of their work.³¹²

Ironically enough though there are no Red light areas in Haryana, but mobile sex workers are common to be found in the districts along the Highways and in the cities like Faridabad, Gurgaon, Panipat, Sonapat, and Ambala etc. Commercial sexual exploitation is also done through the call girl rackets, massage and beauty parlours.³¹³ In the last five years (2007-12), many sex rackets have been uncovered by the police. Raids on sex rackets have been reported from almost all the districts in Haryana. Recently, Karnal police raided a prostitution racket and rescued 5 girls who were brought from West Bengal and forced into prostitution in Karnal. All the girls were brought on the pretext of providing them good jobs.³¹⁴

It has also been discovered that a *Paro* who has been imported from a particular village becomes link to get other *Paros* from the same village. In most cases the husbands of these *Paros* serve as brokers or '*dalal*' in local language who arrange girls from other

³¹² "Maid Racket busted in Yamunanagar", *Times of India*, 09/02/2012

³¹³ "Trafficking In India Report 2004", Shakti Vahini (An NGO in Faridabad, Haryana),2004.

³¹⁴ "Two minor girls working as helps rescued in Gurgaon", *Times of India*, 27/04/2010

states or *Paros* for the other unemployed or unmarried men of his and neighbouring village. Hari Om (name changed) proudly admitted that he owns a *Paro*. He said he was continuously in contact with other *dalals* of the city and was interested in bringing more *Paros* for those who were in need of a *Paro* and contacted him.³¹⁵

Not only Hari Om but even a member of the *panchayat* of the same village admitted that they imported *Molki* for their sexual satisfaction and she could be shared with other brothers as well. Additionally they had a bride to show to their neighbours. Not only the husbands of these *Molkis* but in most of the cases, other relatives also are engaged in this trafficking business and are in regular contact with agents in Hissar, Sonipat and Jind which remains the epicentre of trafficking. These agents basically reside in the village itself. Sometimes they are truck-drivers or the people who are continuous out- goers.

The Haryana Government has been implementing various schemes of the Government of India for the welfare of trafficked victims. Since 2007 the Haryana Government has taken proactive steps for the expansion and strengthening of the shelter homes. The State Government has approved seven Swadhar³¹⁶ Homes in Haryana. The government has also proposed two Ujjawala³¹⁷ homes. The State Advisory Committee for monitoring the various schemes on rehabilitation and combating trafficking has been constituted in 2008. The State Government has also constituted District Vigilance Committees under the Bonded Labour Act. For the rehabilitation of trafficked victims and sex workers, the

³¹⁵ “Campaign Against Bride Trafficking” 3/10/2010 by *Empower People*, an NGO working with bride trafficking survivors

³¹⁶ ‘Swadhar Homes’ are shelter homes usually with capacity of 30 women. The scheme proposes to rehabilitate women in distress economically and emotionally and to act as a support system that understands and meets various requirements in order to start their life afresh with dignity and conviction. For big cities and other districts having more than 4 million population or those districts where there is a need for additional support to the women, more than one ‘Swadhar Home’ could be established.

³¹⁷ ‘*Ujjawala*’ is a comprehensive scheme for prevention of trafficking and rescue, rehabilitation and re-integration of victims of trafficking for commercial sexual exploitation. The scheme launched in 2007 has been conceived primarily for the purpose of preventing trafficking on the one hand and rescue and rehabilitation of victims on the other. As per the latest data available there are 228 projects supported by the Ministry in 21 States, under which 117 are Protective and Rehabilitative homes.

Haryana Government has formulated a new scheme and created a corpus fund for providing marginal money to the victims so that they can start their entrepreneurship activities after receiving skill development training. The State Women Development Corporation has been nominated to be the implementing authority.

The Haryana Government has started implementing the Integrated Child Protection Scheme. All District Child Protection Units have been constituted. The Child Welfare Committee in most of the districts has been constituted under the new model rules and the Child Welfare Committees have been provided office space. The Haryana Police has created the Special Juvenile Police Unit in all the districts. The state level training programmes of the district Child Protection Units has been conducted. The State Commission of Protection of Child Rights has also been constituted. The State Government has also conducted a Regional Prosecutors Training programme on Human Trafficking. The Childline network was also expanded from Gurgaon to four more cities.

Though Haryana has initiated various schemes for the care and protection of children, there is an absence of monitoring mechanism and minimum standards of victim care and protection and it was highlighted when the National Commission for Protection of Child Rights team detected cases of selling of infants and sexual exploitation of girls at a State-supported “*Swadhar*” Home in Rohtak recently. The High Court took cognizance of the same and issued notice to the Haryana Government. Also the High Court ordered a CBI enquiry into the matter. The raid at the ‘Home’ was preceded by two raids at ‘*Drone Foundation Home*’ in Gurgaon and also a ‘Home’ being run for children named ‘*Suparna Ka Angan*’. These two homes also faced complaints of sexual exploitation. Another home in Karnal called *Apna Ghar* was sealed by the administration.³¹⁸

Following intense media reportage and also severe criticism, the Government of Haryana ordered a detailed enquiry into each and every child’s home running in Haryana. It was only after these cases were highlighted did the Haryana Government issue notification

³¹⁸ “Current Status of Victim Service Providers and Criminal Justice Actors in India Report on Anti Human Trafficking 2013”, *United Nations Office on Drug and Crime*, 2013, p.96

that all shelter homes need to be registered under the Juvenile Justice Act³¹⁹. The case of Haryana clearly shows how important the monitoring of the shelter homes is, and also the minimum standards of care and protection.

The formation of the AHTUs is a positive step seeing the increase in trafficking cases being reported from across the state. Haryana has established six AHTUs³²⁰ across the state. The AHTUs created have undertaken raids and rescue operations though there is no convergence with local district police authorities. The advisories sent by the Ministry of Home Affairs have been widely distributed across all district police units. The AHTUs have also collaborated with various other state police in interstate police cooperation which is needed in cases of human trafficking.

Though the above schemes can be seen as a positive step against trafficking of women and children for coerced marriages, the demographers say that for the population to stabilise and come to its natural ratio, it will take another 50 years even if it is ensured that a single sex determination test does not take place. Till then, Haryana will continue to have a shortage of brides. The demand for marriageable age girls will be much more intense in the coming years and the demand will be met by interstate marriages. The challenge before the State of Haryana as well as the regions of Western Uttar Pradesh, Punjab and Rajasthan is to ensure that the bride demand is not catered through human trafficking.

³¹⁹ *ibid*;

³²⁰ Anti Human Trafficking Units

Chapter 3

CULTURES OF HONOUR AND CRIME

*One out of every five honour killing occurs in India*³²¹

As per, United Nations Population Fund the annual world-wide number of “honour killing” victims is 5,000.³²² Historical evidences suggest that honour killings in ancient times have been prevalent among a wide variety of ethnic and religious groups throughout the world.³²³ Though we have numerous examples of punishments or crime in the name of honour, the term “honour killing” came to be first used by a Dutch scholar Ane Nauta in 1978. Historically, honour killings were mostly directed against women, but in India suggest that men can also be targetted by the family members of the girl they are perceived to have an ‘illicit relationship’.³²⁴

As per the Human Rights Watch, “Honour crimes are acts of violence, usually murder, committed by male family members against female family members who are perceived to have brought dishonour upon the family. A woman can be targeted by her family for a variety of reasons including, refusing to enter into an arranged marriage, being the victim of a sexual assault, seeking a divorce (even from an abusive husband) or committing

³²¹ “Love under the shadow of Honour”, *The Hindu*, 17/2/2014.

³²² But that is probably an underestimate since many cases go unreported, while many more are disguised as suicides, accidents and disappearances. Between 2000 and 2004 the UN General Assembly adopted three resolutions reflecting international commitment to working towards the elimination of crimes against women in the name of honour, with the third acknowledging that girls, too, are victims of such crimes.

³²³ The data over historical evidences on honour killing has been borrowed from *Crime and Punishment In Ancient India* by Ram Prasad Gupta, and some details are also available on *Honour Based Violence Awareness Network, International Resource Centre*, <http://hbv-awareness.com/history>

³²⁴ “Afghan couple stoned to death: ‘Outrage after Taliban stones a man and a woman to death over alleged love affair’”, Alzajeera and agencies.

adultery. The mere perception that a woman has acted in a manner to bring “dishonour” to the family is sufficient to trigger an attack.”³²⁵

A. Historical and Contemporary evidences of Honour Killing

The Assyrian law dated 6000BCE, stated ‘that the father of the girl who lost her virginity should punish his daughter in whichever way he liked’. Similarly, The Hammurabi code of law, which came around 1790 BC, suggested that couples guilty of adultery should be drowned. There are similar examples in Bible as well. Within the Bible, the figure called Phineas slays both a man and woman in the temple for marrying across racial boundaries, which ends plague and guarantees priesthood to his lineage. In ancient Rome, peculiarly, the laws were not only against females guilty of adultery but also against their family members who failed to punish them.³²⁶ In Geneva, during John Calvin’s control, adulterous women were drowned in the river Rhone. The Ching dynasty in China also allowed fathers and husbands of women to kill their daughter or wives who were deemed to have dishonoured them.

The First Law Commission³²⁷ of pre-independence India, sympathized with men whose honour was violated if someone had slept with his wife and sister. Killing was termed as manslaughter and not murder. The First Law Commission was established in 1834 by the Charter Act of 1833 under the chairmanship of Lord Macaulay. It suggested various enactments to the British Government, most of which are passed and enacted and are still in force in India. Thus, we can say that honour killing was not only practiced but also encouraged by society. The above examples clearly suggest that honour killings have been practiced worldwide and have long standing cultural and traditional roots. Another important feature is that it was historically against females, although today it loosely covers both males and females.

³²⁵“Women Rights ‘integration of the human rights of women and the gender perspective: Violence Against Women and Honor Crime”, *Human Rights Watch*, World Report 2001

³²⁶ Mathew A. Goldstein, *The biological roots of heat of passion crime and honour killings*, Politics and the Life Sciences, 2002, p.29

³²⁷ One of the important recommendations made by it was that on IPC, first submitted in 1837 but enacted in 1860 and still in force

Honour killings continue to be a global phenomena even today. Statistically honour related murders are on the rise in the recent decades despite greater legal awareness and economic development. According to the Special Rapporteur to UN of the year 2002³²⁸, that “honour killings had been reported in Jordan, Lebanon, Morocco, Pakistan, United Arab Republic, Turkey, Yemen and other Persian Gulf countries.” It further stated that it also takes place in western countries such as “France, Germany and the U.K mostly within the migrant communities. Apart from the countries named above, honour killings occur in Bangladesh, Brazil, Ecuador, India, Israel, Italy, Morocco, Sweden and Uganda” as per the UN commission on Human Rights.

However, it is alarming that.³²⁹ More than 1000 young people in India are being killed every year due to honour killings. In India Punjab, Haryana and Western Uttar Pradesh alone account for about 900 ‘honour killings’ with another 100 to 300 occurrences in the rest of the country.³³⁰ This fact has also been corroborated by other sources as well. According to the All India Democratic Women’s Association, AIDWA, “the total number of cases across Haryana, Punjab and Uttar Pradesh would be 900 per annum”³³¹. In Haryana, districts such as Sirsa, Hissar, Jind, Bhiwani, Fatehabad, Rohtak, Sonapat, Karnal and Panipat, Kaithal have been especially highly notorious for the crime. Narnauli, Mahendragarh, Rewari, Jhajjar comes next in magnitude and then comes the districts such as Panchkula, Ambala, Yamunanagar, Kurukshetra. What is important here is that these regions happen to be mostly dominated by Jats and Yadavs.

³²⁸ “Working towards elimination of crimes against women in the name of honour”, *United Nation Human Rights Commission*, Report, Geneva, 2002.

³²⁹ “Love under the shadow of Honour”, *The Hindu*, 17/2/2014.

³³⁰ As per a report prepared by Anil Malhotra and his brother Ranjit Malhotra, legal experts in child custody, marriage and adoption issues and their report a presented at a conference named ‘*International Child Abduction, Relocation and Forced Marriages Conference*’, organised by the London Metropolitan University, 30th June-2nd July 2010. They also said that they happen in Muslim, Sikh and Hindu communities.

³³¹ “No Honour in Murder”, *The Hindu*, 23/05/2010.

In the absence of regional and national records, these figures are of great help. Since honour killing till 2014 was not a crime classified separately under the Indian laws, no data is collected separately regarding this crime by the National Crime Records Bureau, and the same was covered under “murder”. They continue to be recorded under cases of murder, assault, homicide etc. if one of the affected partners happens to be dalit, then cases are recorded under the caste atrocities act. Thus, it is difficult to identify or classify an honour killing or crime as such in any given case of murder, since the reasons are often not revealed.

There was a huge spike in reported cases from 28 in 2014 to 251 in 2015. It followed changes which meant police record the killings separately from murder. Surge in figures could also reflect willingness to report the crimes. But state officials and women’s groups are calling for action. Highest number of honour killing was recorded in U.P last year.

Women activists say that two hundred and seventy nine cases of honour killings were recorded in two years, still vastly underestimate the actual numbers. “There is severe under-reporting of such honour crimes. Families are often ashamed to report such crimes”, said Amin Raja of the National Federation of Indian Women. She further added that there has been a backlash of conservatism. Similarly Ranjana Kumari³³² said that the “Indian society is unwilling to accept the choices made by young women when it comes to their marriage.”

It has also been observed that social changes were creating friction in communities, as more women step away from traditional home making roles to join the outside workforce. This makes them more likely to want to delay marriage, while also increasing their chance of finding partner outside their community. While, murder is not the only form of honour crime, other crimes such as acid attacks, abduction, mutilation, rape, beatings also are part of the umbrella term. It is important to explore when and where and how violence against women gets named as specific crime called ‘honour killing’. It is equally important if the word continues or changes conceptually.

³³² A renowned social activist and academician, Director of Centre for Social Research, a Delhi based think tank.

Most of the feminist work seems concerned with how patriarchy serves as the cause of ‘honour killings’ but not with how crimes come to be understood as ‘honour killings’. Lama Abu-Odeh³³³ argues that the notion of purity organizes honour society and that violence is seen as protection in such contents. Honour killings refer not simply to a cause of death, but also as the work of patriarchy. It enables the articulation of this patriarchy in some sites, locations and communities but not in others, the term sticks to a crime by certain by certain bodies against other bodies. “It seems to have a little explanatory value for societies seen as ‘western’ but a great deal of meaning is produced if the concept is yoked to ‘Middle east or South Asian bodies and groups’.”³³⁴

Pratiksha Baxi³³⁵ suggests that the ‘honour killings’ reflect the conflicts between multiple sovereignties, politics and communities that reify honour as empirically real as expressed by the media, the Panchayats, the internal press and the victims as well. This is a nuanced approach that reflects a new zone of power and the conflicts between these as responsible for violence.

Prem Chowdhry³³⁶ has examined the emergence of honour killing in the state of Haryana in both colonial and post-colonial period and has argued that the contemporary moment has forged a new notion of ‘honour’ among rural elites, predominantly of Jats, who feel threatened about the changes brought about by globalization. Her work has contributed to understandings of how honour is being used to control women’s sexualities in both cities and villages. Bringing together the economic issue of property and inheritance with the ‘crisis of masculinity’ argument, the notion of honour becomes visible as both economic and political linked to state support to rural high caste patriarchy. Her work provides the

³³³ As mentioned in Inderpal Grewal, “Outsourcing patriarchy”, *International Feminist Journal of Politics*, vol.15, No.1, 2013, p.6

³³⁴ Inderpal Grewal, “Outsourcing patriarchy”, *International Feminist Journal of Politics*, vol.15, No.1, 2013, p.6

³³⁵ Pratiksha Baxi, “Habeas Corpus in the Realm of Love: Litigating Marriages of Choice in India”, *Australian Feminist Law Journal*, 2006, vol.25, pp-59-78.

³³⁶ Prem Chowdhry, *Contentious marriages, Eloping Couples: Gender, Caste and Class in Northern India*, Oxford University Press, New Delhi, 2010, p.67.

theoretical base to the phenomena, however the exclusive focus on Jats of Haryana does not accord with many cases of ‘honour killing’ mentioned in the media, some of which concern those outside Haryana.

B.Traditional Arranged Marriages vs. Love Marriages

Marriage has been an institution of utmost importance and therefore it is essential to understand the shame or dishonour attached to inter-caste, intra- *gotra* and love marriage. “Marriage in the traditional sense of the term is much more than social sanction for establishing a family, it also leads to the expansion of the kinship unit.”³³⁷ In Punjab the extended kinship is known by two names- *biradari* and *shareeka*. *Biradari* refers to the immediate kin and caste persons with the locality whereas *shareeka* is the kinship structure that exists around a family involving kin of both husband and wife. It is usually said in Punjab that, “after marriage, even real brothers become, *shareeka*.”³³⁸ *Shareeka* is also known as *shareeka -bhaichara* signifying that *shareeka* is closer to the family in terms of kinship ties than *biradari*. These community bonds and social life remain very vital to rural life because of the protection and security it provides. Thus, compulsions to uphold honour, are immense even, if one has to resort to violence.

Love marriages are believed to threaten existing family arrangements and to have the characteristic feature of being a rebellion. Since family and community are connected to each other in terms of solidarity, the family is under constant pressure to comply with the normative order. The failure to do so can result in the permanent condemnation of the family because the implications of such a situation are not temporary and are hardly forgotten by *biradari* and *shareeka* for generations. In other words, for most families involved the only way to defend one’s honour is to eliminate the “source of shame”. It is crucial to understand here that the “source of shame” is usually a girl. A girl’s rebellion poses a much bigger threat because it is “her” actions that results in loss of honour and

³³⁷ Paramjit S judge, “Love as shame and Rebellion: Honour Killings in the Punjabi Literary Imagination”, *Economic and Political Weekly*, Nov 2012, Vol. XLVII No.44

³³⁸ Paramjit S judge, “Love as shame and Rebellion: Honour Killings in the Punjabi Literary Imagination”, *Economic and Political Weekly*, Nov 2012, Vol. XLVII No.44

humiliation. Interestingly, “shame”, “dishonour” and “loss of face” accompany the situation in which a daughter violates the normative order and surprisingly not, when it is violated by a son.

The social “benefits” of killing for honour are abstract and permanent. After the family undertakes this extreme step, the *biradari* and *shareeka* does not say anything that could cause shame, thus this shame is permanently put to rest. Sociologists also have tried to understand the concept of honour killing vis-à-vis the idea of kinship. Veena Das explains that the concept of honour operates at the expense of human sentiments and values. According to her, it demands a sacrifice of the natural ties created by biology, and kinship morality stresses their transcendence³³⁹. Thus honour is often preserved or maintained at the expense of family and blood ties. Prem Chowdhry explains, “Marriage provides the structural link-up between kinship and caste, therefore a closer surveillance is accorded to the marital alliances. Kinship linkages provided by marriage and relations established through marriage, give a caste group its strength, recognition and leverage in wider society and polity. Therefore any breach in these caste linkages brings down the status of the only the immediate family but also the clan and finally the entire caste group.”³⁴⁰ Thus it is very important to underscore the fact that honour and pride related to caste lies behind the strict enforcement of caste and sexual codes in Haryana. The codes and customs are generally concerned with the control of female sexuality because it is ultimately women’s sexuality through which “caste- purity” is retained. Those who go against these caste and kinship norms are dealt with extreme violence. Any infringement of this selectively prescribed code of honour invites group pressure and violence.

There is a crucial difference in the nature of kinship and community structure in Punjab and Haryana. While we come across *biradari* and *shareeka* in Punjab, in Haryana we have caste councils also locally or popularly known as *khap panchayats*. There is a need

³³⁹ Veena Das, “Masks and Face: An Essay On Punjabi Kinship” in Patricia Oberoi (ed.) *Family Kinship and Marriage in India*, Oxford University Press ,pp198-224

³⁴⁰ Prem Chowdhry, “Enforcing Cultural Codes, Gender And Violence In North India”, *Economic & Political Weekly*, May 10, 1997, Vol.32, No.19 p.1019

to understand the importance of *khap panchayat* comprehensively in order to understand the kind of authority and legitimacy it enjoys.

One of the very crucial case of modern day of Punjab is -the case of Lt Joginder Singh in 1957 in village Piplanwala in Hoshiarpur district proves to be a perfect example of this phenomena. G D Khosla³⁴¹ the then the Chief Justice of the Punjab High Court .has provided comprehensive details of the case. Lt. Joginder Singh was a recently commissioned young army officer of 24 and was also known as Jogi by his family and friends. Gurbaksh kaur also known as Bashi was a young girl pursuing her B.A. degree in a women's college at Hoshiarpur and was approxiamtley 2-3 years younger to Jogi. Jogi and Bashi belonged to the same village in Central Punjab and had grown up together as neighbours and friends. However, the need for higher education necessitated their leaving the village. Jogi migrated to Hoshiarpur, where he completed his secondary school course and joined the doaba College. While, Bashi moved to Piplanwala with her parents, completed her matriculation there and took admission f or B.A. degree in women's college in Hoshiarpur. Jogi's father was a schoolmaster in a high school and apart from Jogi had a younger son. Bashi's father was a landowner and had enough land and livestock for comfortable living. They owned a tractor of their own and had farm house as well. Bashi had three brothers, the eldest one was Gurbaksh. Bashi's father was broad minded because he was among the very few families who sent his daughter for higher education as he sent his sons. Moreoever when Jogi began coming to his house along with his sons and when he conversed with Bashi apart from her brothers, he never was opposed to their friendship. However, Bashi's elder brother Gurbaksh did not approve of any other kind of relation other than brotherly affection between the two because they belonged to the same village in childhood and had grown up together. But Jogi and Bashi developed love for each other and were keen on getting married.

In 1952 Jogi was selected as an Army cadet and in 1954 he received his commission. Things appeared quite simple because Bashi's parents would not hesitate giving their

³⁴¹ G.D Khosla, *The Murder of the Mahatma and Other Cases from a Judge's Note-book* , , London: Chatto & Windus ,1963, pp. 56-82.

daughter in marriage to a young army officer and Jogi's father had already given his accent obliquely to the relation when the matter was mentioned to him.³⁴² The only major obstacle in their marriage was Gurbaksh's disapproval of their relation. Gurbaksh's violent opposition to their relation was a constant topic of discussion. Bashi kept Jogi informed of things happening at home. What appears from most of her letters was that even Bashi's parents were getting influenced by Gurbaksh's attitude and were not taking any firm decision in Bashi's favour. Things were worsening from Bashi's family side, however the couple though frustrated over their behaviour always discussed positive ways of convincing them and not of eloping or rebelling. Joginder Singh possessed an amazing degree of patience and reasonableness. Whenever Bashi used to be disheartened and sad over her brother's attitude it was Joginder who would boost up her morale , he always asked Bashi to be calm and be inert to her brothers' tantrums.

Jogi had to go away for an army course towards the end of October 1956, therefore the couple wanted that they should be atleast betrothed before Jogi leaves for the course. The betrothal ceremony took place in the schoolmaster's house at Hoshiarpur on October 19. Bashi's parents and her grandfather were present. A few neighbours including a local advocate, a college Professor and a doctor were invited. Bashi's brothers, all the three declined to participate and stayed away from the ceremony. Jogi's effort to win over Gurbaksh had completely failed. His opposition to the relation continued unabated. The injury to his personal ego was magnified to the proportions of a family dishonour, and there was only one way it seems of vindicating it. In February 1957 Jogi's regiment was to be stationed at Hoshiarpur for a whole month, and the couple was quite happy because they would have frequent opportunities of seeing each other. On the morning of 10th Jogi came to Piplanwala and spent a few hours with the family. Gurbaksh disliked his presence and walked out while the other two brothers stayed back but gave the impression that they suffered his presence. The atmosphere remained strained. During the

³⁴² This we come know through one of the letter's written by Jogi to Bashi where he mentions that he had already convinced his father of the relation and she should also persuade her mother and her elder brother Gurbaksh Singh.

next four weeks Jogi and Bashi met each other quite often but in the knowledge of the family members and not secretly.

Gurbaksh in the meantime consulted sages, sadhus and fakirs so that they could do some miracle which would brainwash his sister. He spent several hundred rupees over these things to convince his sister to leave Jogi but his efforts were of no avail and the attachment between the couple continued unabated. On April 1 Jogi came to the farm-house and sent a message to Bashi in Piplanwala that he was waiting for her. Surprisingly, Inderjeet went to his fetch his sister and when he delivered this message to Bashi, Gurbaksh was also present but he as well did not react and remained calm. Bashi and Inderjeet went to the farm house where Jogi and Surjit were waiting. Jogi and Bashi spent some time together, Inderjeet and Surjit also joined in the conversation. In the evening , Surjit took back his sister to Piplanwala, leaving her at home he went back to the farm-house. Surjit and Inderjeet were to spend night with Joginder at the farm house. The story may now be continued in Bashi's own words from the statement which she made before the magistrate³⁴³:

“I had promised to meet Joginder singh at the farm house at 7 a.m the following morning. When I was getting ready to go, Surjit came to the house. It was around 6 a.m. He said that Jogi had left early in the morning and he would write to me as soon as he could. I told Surjit that it was impossible that he should go away without seeing me and saying good-bye... At 8 a.m. I went to the farm house. My brothers, Surjit and Inderjeet, met me outside the door but would not let me enter. I asked them to accompany me to the Cantonment at Jullunder where they said Joginder had gone but they refused to accompany me. I could not stop myself and boarded the bus to Jullunder and went to Lt. Joginder Singh's house. There I met Sardara Singh, who was formerly orderly to Joginder Singh. He told me that 'Sahib' had gone to Hoshiarpur and was not expected back till next morning. I sent Sardara to the house of Joginder Singh's father at Kala Bakra. Sardara returned back in the evening and told me that sahib was not there. I stayed the night at jullunder, and waited for the whole next day which was April 3. Joginder

³⁴³ G.D Khosla, *The Murder of the Mahatma and Other Cases from a Judge's Note-book* , London: Chatto & Windus, 1963, pp.74-75.

Singh had to report back to duty that day and when he did not make an appearance by 9 a.m., I became worried. My brothers, Inderjeet and Surjit, now arrived and took me back to Piplanwala. Seeing my anxiety they sent two telegrams. Surjit wrote out one; it is the one shown to me, and Gurbaksh the other one. I identify the writings of my brothers.”³⁴⁴

There was no response to these telegrams, and Bashi waited for two more days, her anxiety increasing each moment till it reached the proportions of panic. To continue Bashi’s narrative-

“On April 6 my brother Inderjeet came and said I was wanted by Sant Singh (Jogi’s father) at the farm house. But when I went there I found him gone. On 7th I took Inderjeet and went to Kala Bakra to see Sant Singh. He told me that he had searched for his son everywhere but had found no news or trace of him.”³⁴⁵

On the morning of April 7 all hope of finding Joginder Singh was alive was given up, and Sant Singh alive was given up, and Sant Singh made a report of his son’s mysterious disappearance to the police, giving details of the circumstances in which he had left Jullundur to go to Piplanwala. This report was made at Jullunder Cantonment Police Station. A few hours earlier another report had been recorded by the Sub-Inspector of a village police station situated three miles from Piplanwala. The police went to the spot, early on the morning of the 7th, and made an inventory of the articles lying at the spot. The recovery was immediately connected with Joginder Singh’s disappearance, and in the course of next twenty-four hours six arrests were made. All three of Bashi’s brothers, their cousin Achhru, their servant Tulsi and their friend Mohinder Singh were interrogated one by one and taken into custody. By the evening of the 9th the investigating officer had succeeded in extracting the entire story of the manner in which Joginder Singh was put to death and his body disposed of. Mohinder Singh was the first to break down. Since there was no eye-witness of the murder, the police thought that the evidence might be considered insufficient by a court of law. They accordingly persuaded

³⁴⁴ G.D Khosla, *The Murder of the Mahatma and Other Cases from a Judge’s Note-book*, London: Chatto & Windus, 1963, pp.74-75.

³⁴⁵ *ibid*;

Mohinder singh to accept a conditional pardon and become an approver. To this he readily agreed. He was thereupon produced before a magistrate where he gave a complete account of the murder.

The story that finally emerged was that Gurbaksh had planned to murder Joginder Singh and for this purpose had secured the assistance of four other persons. It was intended to carry out the plot when Joginder Singh visited Piplanwala in February. The scheme, however proved abortive because Joginder Singh left the farm house before the plan could be executed. When Joginder Singh arrived at the farmhouse on the 1st of April, Gurbaksh called Mohinder Singh and Achhru and it was decided that they could murder Joginder while he was asleep during the course of night. Joginder Singh was attacked in the middle of the night and fatally stabbed and his body burnt at a nearby place.

The case against Gurbaksh, Surjit, Inderjeet, Achhru and Tulsi was tried by a senior member of the state Judicial service. The trial began on December 30, 1957, and lasted till January 9, 1958. Seventy-five witnesses in all were examined by the prosecution, and a large number of documents was produced. The most important piece of evidence was the approver's statement. He described the whole manner in which the murder was planned and carried out, as also the steps taken to dispose of the dead body. There was ample corroboration of the approver's testimony in almost every material particular. Bashi had fully supported the case against her brother at the time of preliminary enquiry by the magistrate, but at the trial when asked Gurbaksh's attitude towards her relation with Joginder she began to qualify her earlier story. She said that though her brother initially opposed their (Jogi's and Bashi's) union because the two had lived and grown up together in the same village, however, according to her new version he had withdrawn his objection and never uttered a word against Joginder afterwards. The Public prosecutor submitted to the court that the witness turned hostile. He said "blood was thicker than water, her lover could not come back and she could not swear away the lives of her brothers and aggravate the tragedy of her love." He sought the Judge's permission to cross examine Bashi. He was granted. Torn between her loyalty to her family and her love for Joginder she failed to make any consistent statement.

The prosecution had lost an important witness, but there was still ample evidence to prove the charge of murder. The court took two days and announced acquittal of all the accused persons. The state did not accept this decision and preferred an appeal to the High Court alleging that the findings of the judge were perverse and erraneous. The appeal was heard by Mr. Justice Tek Chand, a Bachelor of Civil Law of the University of Oxford and Mr.G.D.Khosla, Chief Justice of Punjab. After reviewing the evidence and taking into consideration all the circumstances of the case, they came to the conclusion that Gurbaksh and Achhru were clearly guilty of murder, and Tulsī was guilty of destroying the evidence of murder in as much as he had procured a tin of kerosene oil and helped to burn the dead body. With regard to Inderjeet and Surjit, they did not interfere with order of their acquittal. Thus, Gurbaksh and Achhru were sentenced to life imprisonment and Tulsī to four years' rigorous imprisonment. Thus the very case is an example of punishments against village endogamy³⁴⁶ where Joginder Singh is murdered for the same.

C. Tragic Tales of Love

The literature and folk tales of Punjab reflects that honour killing has a long standing history in Punjab and the contradictory attitudes towards love in this region. Love has and occupies a paradoxical location in the Punjabi cultural space. It is clear that though love between a man and a woman could acquire divine status as in the narrative of Heer-Ranjha or Mirza Sahiban, there is a socio-cultural context, while attributing the same relations as rebellion and the reason for shame or loss of honour to the girl's family. Here it is important to underscore that the tale of Heer-Ranjha still continues to guide the emotions of lover and the rebellion continues to be one of the strongest till today.

The Heer-Ranjha story begins with the depiction of the good-for-nothing son of a Jat landlord named Dhido (Ranjha). After Ranjha's father dies, his older brothers give him a piece of poor quality land as his share of the inheritance. Since his brothers' wives mock him constantly, he leaves his village, Takhat Hazara, to marry the beautiful Heer of Jhang-Mangiana. He wins her love with the blessings of the five pirs. When Ranjha

³⁴⁶ To marry within one's own village is prohibited

reaches Jhang, he becomes a shepherd in the service of her father for 12 years, during which the two falls in love. When Heer's parents come to know about the affair, they hurriedly arrange her marriage with Saida, the son of a landlord of the Kheda village... When Heer tells her mother that she will not marry Saida, the latter coaxes her daughter to agree to the match by telling her that her brother Sultan would kill everyone if he came to know of the affair. So despite saying "no" during the nikah, Heer is married to Saida. Helpless and confused, Ranjha is persuaded by Heer to become a Hindu jogi. So when Ranjha pleads with Bal Nath Jogi – the head of the Dera (sect) – to let him become jogi, no religious crisis seems to emerge either with the author or Ranjha or Bal Nath. After Ranjha is initiated into the jogi tradition, Bal Nath exhorts him to observe celibacy and treat all women as mothers and sisters, but Ranjha clearly and unambiguously informs his guru that he has become a jogi in order to reclaim Heer and that he has had sexual relations with her. Bal Nath goes into a trance only to discover that Ranjha has received the blessings of five pirs so far as Heer is concerned, which paves the way for his consent. Ranjha jogi manages to meet Heer and finally the two elope but are captured and the matter is brought before the king. The judge (qazi) decides in favour of Heer's husband and the king rules that Heer can go with Ranjha. At this point, Heer refuses to accompany Ranjha to his village and insists she will go only as his legitimately wedded wife. Heer's parents readily agree to the arrangement. However, after Ranjha leaves for his village to prepare for the marriage, Heer is poisoned by her uncle Kaidon. When Ranjha hears the news of Heer's death, he collapses and dies.³⁴⁷

The story of Mirza has an altogether different trajectory of events from that of Heer. In this tale, Sahiban is Mirza's childhood beloved. Mirza and Sahiban seem to have studied together in a mosque suggesting that Mirza lived in her village and was related to her. Sahiban was first betrothed to him before her parents cancelled the engagement. Mirza is then married to someone else and lives some distance from Sahiban's village. When Sahiban's marriage is fixed, she sends message to Mirza to come and take her away. Mirza becomes ready to fetch Sahiban. Mirza's father tells him that it is not wise to love women; they fall in love easily and betray easily. However, at the same time he tells

³⁴⁷ Fredrick Usborne, *The adventures of Hir and Ranjhi by Waris Shah*, Peter Owen Ltd. 1973

Mirza that if he abandons Sahiban, he would lose all respect. Mirza rides to Sahiban's village and takes her with him. However, her brothers follow the couple and when they stop to rest; they catch up with them and kill Mirza. Sahiban's fate is not clear but it is said that she too is killed along with Mirza.³⁴⁸

There are tremendous similarities between these two tales mentioned above: Both couples, that is, Heer-Ranjha and Mirza- Sahiban, belonged to the Jat caste and were Muslims, and both stories are set in rural Punjab. Despite the commonality of caste and religion, the parents of both female protagonists refuse to let them marry according to their choice, and both male characters end up losing their lives for love. It is important to underscore the fact that in the matter involving a woman's love, her brothers or uncle become key players because they are not swayed by parental love and emotions because they are the custodians of the family's honour. So despite saying "no" during the nikah, Heer is married to Saida, showing the domination of social hierarchy and sense of honour over religious traditions. The foremost element in this regard is the gender of the victim because in all cases except a few, the killings are orchestrated by men. In all cases, when the victim is a woman, she is related to the killers by blood – she is either a sister or daughter of the persons who has carried out the act. On the other hand, the male victim is mostly not related to the killers.

Interestingly, such tales are not only found in region of Punjab and Haryana but Tamil folklore is full of tales of 'honour killing'. Ironically, many victims have become folk heroes with stories of their love and loss recalled in Kaniyan Koothu and Villupattu performances during festivals of folk deities in southern Tamil Nadu. "*Kaanichaavu*, a folk literature, describes these murders as *Theetu sadangu Kolai*³⁴⁹. Special meetings were held to plan the murder of those who married outside their caste," says folklorist A.K. Perumal³⁵⁰, who has collected many of these stories.

³⁴⁸ Judge, Paramjit S, *Love, Shame and Rebellion, Honour Killings in the Punjabi Literary Imagination*, Economic & Political Weekly, Nov.3, 2012, Vol.47, No 44

³⁴⁹ murders of untouchability ritual

³⁵⁰ Dr. Perumal's collection includes as many as 50 such stories .

Most of these stories belonged to the 16th century. Even though the stories are from southern districts, they reflect the overall trend and society's approach to inter-caste marriages.

One of the story has been mentioned below-

The story of Arya Muthupattan, a Brahmin, who married two Dalit women, has an interesting twist. According to the legend, he gave up his Brahmin identity on the advice of his father-in-law, and led the life of a Dalit. "But the conversion could not prevent him from being murdered,"³⁵¹ said Dr. Perumal, explaining the storyline of Muthupattan Kathai, now performed by Kaniyan Koothu and Villupaatu artistes.

Over the years, the stories have undergone modifications and Kaniyan Koothu performer V. Muthuperumal adds another layer to Muthupattan's tale, saying his two wives Pommakka and Thimmakka were actually Brahmins, but were brought up by a cobbler, Vazga Pagadi. "Muthupattan, a great scholar, led the life of a cobbler for the sake of his wives. He was killed while he was cleaning swords in the Thamirabharani,"³⁵² Mr. Muthuperumal said.

Then there is the story of Kaathavarayan, a Dalit, who fell in love with Aryamala, a Brahmin woman, only to be impaled to death. Thus what apparently emerges from the above tales is that caste rigidity and its inherent violence did not spare even kings. Vengalarasan is said to have chopped off his daughter's head when she was abducted by the King of Travancore, who fell in love with her. Dr. Perumal points out that though these stories were interpreted to suit the changing times, the fact remains that those who married outside their community, irrespective of their caste hierarchy, were victims of honour killing. "Society was very particular about maintaining the purity of each caste and those who violated it had to pay a heavy price,"³⁵³ he points out.

³⁵¹<https://www.thehindu.com/news/national/tamil-nadu/Tamil-folklore-replete-with-tales-of-honourkilling/article16078898.ece>, date of access 4/3/2019

³⁵² Ibid;

³⁵³ Ibid;

The story of Chinnan also provides insight into the rigidity of the caste system. –

“He was a local chieftain, known for his bravery. He married a minor girl from his community and the elders of the family allowed him to have concubines from a caste far lower in the hierarchy. He was very attached to his concubine and declared her his wife. The entire village hatched a conspiracy and the local king turned a blind eye to their designs.”³⁵⁴

The common thread across these stories is that those who violated caste norms in marriage were killed, though many later were resurrected as folk heroes. These folk tales have no more been confined to plays rather are modern day realities as it will be clear with cases we discuss.

D.Khaps and Their Role in Perpetuation Of ‘Honour Killings’

The first Census report based on religion and caste was prepared in Jodhpur in the year 1890-1891, thereby dividing the people of India on the basis of religion and caste. Even the castes were divided on the basis of *gotras*. *Mardamshumari Raj Marwar* was the census that divided the people of all castes in the year 1891 into ‘*gotras*’- meaning thereby *Khaps*.³⁵⁵ The word ‘khap’ has come into existence in the said Census report. When it was translated into Hindi, the word class instead of being coined as ‘*gotra*’ was termed as ‘*khap*’. Different *khaps* of the Jat caste have been described. Khap panchayat means the panchayat of the villagers who belonged to the same *gotra*. Thus different *gotras* had their own khap panchayats. Khap Panchayats believe themselves to be autonomous from the state and claim to represent all members of that particular community.

The *Jats* rely on Pandit Kanha Ram’s handwritten *pothi* to legitimize the historical role of the khap panchayat. This *pothi* claims that there had been a total of 24 meetings of

³⁵⁴ <https://www.thehindu.com/news/national/tamil-nadu/Tamil-folklore-replete-with-tales-of-honourkilling/article16078898.ece>, date of access 4/3/2019

³⁵⁵ Suraj Bhan Bhardwaj, “Myth and reality of the khap panchayats:a historical analysis of the panchayat and khap panchayats”, *Studies in history*, vol.28,no.1,2012,pp.43-67.

Sarvakhap Panchayat from 1252 to vs. 1817 (1195-1760 AD). To further their claims of legitimacy, out of these, 8 meetings were held during the reign of Mughal Emperors and the rest prior to the reign of Akbar.³⁵⁶ Some of the dates mentioned herein do not tally with actual historical dates. Apart from these dates, the incidents described in this *pothi*, again do not correspond to contemporary historical sources on the basis of which these events can be co-related with facts.³⁵⁷ At present, this *pothi* is in possession of Chaudhari Kabul Singh of Shauram village in the district of Muzaffarnagar. The authenticity of the *pothis* needs to be examined on the basis of linguistic characters as well to rule out any ambiguity. Since the *pothis* claim long-standing historical legitimacy, it is but natural to expect that the language will correspond to contemporary traditions. Interestingly it is written in modern Hindi. The languages of these *pothis* make it amply clear that these were nineteenth century. Moreover, the *pothi* claim repeatedly that the khap panchayats fought against the atrocities of the medieval rulers. However, it is surprising to note that historically validated incidents of Jat revolts do not figure in these *pothis*.

Khap panchayats at present however are essential part of the rural social architecture³⁵⁸. Prem Chowdhry argues that the effectiveness of statutory panchayats remained “shallow” whereas traditional panchayats have made their presence felt on social issues. The main work of traditional panchayats revolves around issues threatening the peace of villages, disputes over property and inheritance and sexual or marital transgressions. These traditional panchayats remain active in Haryana and Uttar Pradesh but have lost their influence in Punjab.³⁵⁹

The institution of khap panchayats continue to exercise a deep influence on marriage norms. However reasons for decreeing and sanctioning a murder differ from case to case.

³⁵⁶ Kanha Ram, untitled *pothi* as cited in Suraj Bhan Bhardwaj, “Myth and Reality of the Khap Panchayats :A historical Analysis of the panchayat and Khap Panchayat”, *Studies in History* vol. 28 No.13

³⁵⁷ *ibid*;p.46

³⁵⁸ There are four kinds of traditional panchayats in rural north India - caste *panchayat*, village multi-caste panchayat, the farmer-retainer *panchayat* and any single- purpose panchayat. The four cornerstones of rural life are aikya (unity), *izzat* (honour), *biradari* (community) and *bhaichara* (brotherhood).

³⁵⁹ Prem Chowdhry, *Contentious Marriages, Eloping Couples: Gender, Caste and Patriarchy in Northern India*, 2007, Oxford University Press, New Delhi, p.96.

The punishments the traditional panchayats hand out for transgressions are archaic. These punishments could be fines nominal or substantial to be deposited in a common fund of the panchayat, ritual expiation, public humiliation³⁶⁰, ranging from blackening of the face, to rubbing the victim's nose into dust, shaving of the head and dipping the victim's nose in human urine forcing him or her to host a feast; subjecting the victim to a beating; forcing him or her to visit the elders in the village and give a public assurance not to err in the future. Banishment from the caste was the harshest punishment and it was seldom resorted to earlier.³⁶¹

However as Prem Chowdhry argues, this form of punishment is used frequently in recent times. She says the trend of decisions taken by caste panchayats worries her: “.....The open exhibition of its power is evidenced in the attempt of the panchayat to change relationships and impose those of its liking, subsume the individual or family will to that of the village or collective, and prioritise the village and *biradari's izzat* over that of individuals....”³⁶²

This creates a need to question as to why inspite of the *khap's* vital role in honour killings they still continue to be one of the strongest institutions and hardly opposed by state and masses of Haryana. This is possibly because khap panchayats generally consist of powerful elements of the dominant caste. They are full of retired senior citizens who wish to be considered as upholders of village norms, custodians of social culture and guardians of public morality. Therefore, they have great hold both at local and provincial levels. The social legitimacy of the Jat- dominated khaps has been strengthened by the near absence of *Panchayati Raj* institutions in Haryana and is also combined with the fact that khaps have been tapped by political parties for building “vote bank”, because at the time of elections the powerful elements of the dominant caste in khap panchayats mobilise aggressively.

³⁶¹Bhupendra, Yadav '*khap panchayats: stealing freedom?*', *Economic & Political Weekly*, Dec 26, 2009, p.17.

³⁶² Prem Chowdhry, *Contentious Marriages, Eloping Couples: Gender, Caste and Patriarchy in Northern India*, Oxford University Press, New Delhi, p.100.

“.....The untrammelled power that the *khap panchayats* wield without any legal basis to it, the obstructionist and dogmatic attitude of the people at large in villages, the shocking inaction of the police, the reluctance of the state government to catch the proverbial bull by the horns shows that Haryana still has a long way to go in jettisoning outdated belief of caste and gotra....”³⁶³

The case of Darshana Gehlot who married Ashish Dagar³⁶⁴ in village Jondhi in 2004 is one of the examples of the role of the caste panchayat. The Gehlot *gotra panchayat* declared the couple to be “brother and sister”, despite their two year old son. Dagar’s family asked for a review of the case from a bigger mahapanchayat. One of the uncles of the husband put his headgear or *pagri* (symbolising honour) on the ground and another held his ears in repentance. They pleaded for leniency in the name of the son of the couple. The mahapanchayat established an eleven member committee which did not condone the marriage but did not dissolve it either. Darshana was thrown out of the Gehlot *gotra* and her husband’s family was to be banished from the caste for two years. The couple was debarred from entering the village for life but their son could visit his grandparents who were allowed to continue in Jondhi.

The way caste panchayats address issues and decides matters speaks more of patriarchy than of social justice. In order to evaluate the *khap*’s role behind the death punishments awarded to couple who go against caste and marital norms, discussions of some more recent case would be useful. Some case are discussed as below-

Manoj, who ran electronics repair shop at Kaithal, eloped with Babli, a resident of Karoran village, in May 2007³⁶⁵. According to the police, the girl’s relatives dragged the couple out of a Karnal- bound bus in June 2007 and murdered them. It should be noted that despite of the fact that the Haryana High Court had ordered police protection for the couple, Manoj and Babli were possibly murdered on 15 June, 2007.

³⁶³ The Tribune , Chandigarh, 13/08/ 2009

³⁶⁴Prem Chowdhry, *Contentious Marriages, Eloping Couples: Gender, Caste and Patriarchy in Northern India*, Oxford University Press, New Delhi, pp.104-105

³⁶⁵ *The Hindu* ,New Delhi,31/03/2010

Their bodies were found in a canal, with their hands and legs tied. This is the first case in which the boy's family moved the court against the honour killing after the khap panchayat had ruled against the couple's marriage.

Karnal Additional District and Sessions Judge Vani Gopal Sharma, in a landmark judgement, awarded the death penalty to five persons and life sentence to one for murdering a couple on the diktats of "khap panchayat" for marrying against societal norms in 2007.

All five who have been given the death sentence are relatives of the girl. They include her brother Suresh, cousins Gurdev and Satish and Uncles Baru ram and Rajender, *khap* panchayat leader Ganga Ram was awarded the life sentence, while the driver, held guilty of kidnapping, was given a jail term of seven years.

What remains important is barely a few days after the court took such a strong decision against honour killing that a "*mahapanchayat*" was held in Kurukshetra in Haryana demanded that the Hindu Marriage Act be amended to ban marriages within the same gotra and also within the same village³⁶⁶. This is tantamount to a confession to society that all these years the khaps have been punishing people for marrying in the same gotra, which is not illegal under the Hindu Marriages Act. They also demanded that the recognition given by the Arya Samaj to the weddings of 'eloping couples' conducted in temples should be disallowed.³⁶⁷

In 2009, Ved pal and his wife Sonia in Kaithal district was yet another couple who suffered at the hands of the khap panchayat. Ved Pal, twenty-three year old son of Hari Kishan was lynched by a crowd for marrying a girl from the neighbouring village. Ved Pal and his wife Sonia's marriage was accepted by both the families as they were of the same caste although the *gotras* differed. But later the 'khap panchayat' instigated Sonia's family to forcibly marry the 17-year girl to a 50-year old man and later killed Ved Pal.

³⁶⁶ Ibid;

³⁶⁷ "Honour killings: what needs to be done", *The Hindu*, 26/04/2010.

“My son was killed by a mob because a panchayat felt that marrying a girl from the neighbouring village was ‘incest’. And I was expected to make peace with this explanation?”

After this verdict I feel that unlike the politicians and the police, the law is not going to be unjust to us. But the *Sarpanch* Ganga Ram, should have been given death penalty as he was the root cause of the trouble”, said Mr. Hari Kishan.

Mr. Hari Kishan who has cancer, said he too was approached by the *Sarpanch* of Sonia village for a compromise. “They offered me Rs.25 lakhs. They think a father can forgive his son’s murderer just because he is poor. I will fight this case till the last drop of blood”. This father then cried out aloud and asked: “Because of the khap so many families have lost their breadwinners. Why didn’t they let them live? What honour comes from giving widows and orphans to homes that were otherwise happy?”³⁶⁸

Recently on 14 January 2013, *SarvKhap panchayat*, a conglomerate of 67 khaps in Haryana’ Rohtak district told the Supreme Court somewhat chillingly, the reasons behind honour killings. The panchayat said, “The main culprits for honour killing are not the representative of the khaps but the near and dear ones of the couples and more so the relatives of the girls, when they cannot resist the social pressure of the locality and the taunts of relatives.”

“Such love marriages being socially, customarily and traditionally prohibited relationships against the age-old custom and tradition of marriages, their relatives and friends cannot withstand the hostile taunts of their companions and public at large and this aspect forces them to commit such heinous crime of killing the couple on the pleas of saving the honour of their families in the eyes of the villagers and the villages around,” it said.

The outfit produced a police certificate that no khap panchayat had been found to have been associated with honour killings in Haryana as per records since January 2001 till December 2011. After explaining the reason for honour killings, the panchayat said, “The

³⁶⁸ Ibid;

khaps are not against inter-caste marriages, whatsoever. The companion can be of any religion, caste or creed and of any age group and may belong to any state.”³⁶⁹

Thus it can be seen that despite being the main culprits and perpetrators of such heinous crime, their power as an institution remains unchallenged and is infact supported by self-centred politicians and the police.

E.Role of Media, NGOs, Police and Judiciary

In the past decade the honour killing cases have received greater attention both by media, women organizations, human right activists and NGOs. The press, magazines and television have played an important role in spreading awareness among people on the issues involving the khaps. Analytical pieces viewing ‘honour killing’ from different angles have appeared in various magazines and newspapers. Thus, they have helped in increasing the visibility of crime by reporting about the crime extensively. This could also be because of greater reporting of the crime than ealier.The NGOs haveworked tirelessly towards spreading awareness among the people about these incidents and their impact on future generations.

In India, Human Rights NGO like Shakti Vahini attempts to reduce honour crime by providing courts with reports and relevant information. Shakti Vahini’s report ‘Honour Killings’ provides a comprehensive outline of the number of honour killing by region and by category, such as inter-caste or inter-religious. In their report, Shakti Vahini calls on state governments to identify the specific villages where honour killings have occurred as well as where khap panchayats have convened in order to curtail violence against women in the future.³⁷⁰

Similarly women organizations like AIDWA has helped immensely in evaluating the frequency of the crime in different parts of India. It has also acted as a source of relief in the case of Manoj and Babli, where his family was boycotted by the whole village and Manoj’s sister Seema and his mother were fighting against their son’s murder.

³⁶⁹ *The Tribune*, Chandigarh, 15/01/2013

³⁷⁰ Promoting and Defending Human Rights in India, Shakti Vahini.

In most of the cases, the crimes are committed in public. Police, due to lack of evidence and at times due to involvement in crime takes no action in their opinion social issues must be resolved by the caste leaders or the caste panchayat and not the law of the land, which applies a different form of justice.³⁷¹ Indeed there is complicity between the perpetrators and of violence and the police about the “justice” done for the sake of “honour”. The police action or inaction has created nervousness among different communities, especially lower castes, who fear open partiality and hidden biases in reporting the case or in not obeying the decision of powerful high caste panchayat.

Police in northern India, heavily drawn from upper caste dominating groups, is acknowledgedly casteist and in law-keeping, the socio-political role of such a force has proved to highly dubious. The police action or inaction has created nervousness among different communities especially nervousness among different communities ,especially lower castes, who fear open partiality and hidden biases in reporting the case or in not obeying the decision of powerful high caste panchayat. Caste members see the killings as “executions as just punishment” awarded for breaking caste norms and boundary”. In all cases village *izzat* is prioritized by the villagers in general and leaders in particular.

The state says that rather than providing couples legal protection in accordance with the Special Marriage Act obstructs the efforts of eloping couples, displaying a strong adherence to patriarchal values and notions of honour.³⁷² The state enters into the matter mostly when a complaint is filed when a complaint is filed by the parents of the girl against the boy or husband alleging abduction. Couples are hunted from place to place and once found are presented before the court where the complete focus shifts towards the scrutiny of the age of the girl in order to ascertain the status of legal marriage. If a girl is below the age of 18 and has chosen her own marriage, her choice is overruled by the court. Many a times the outcome of many cases is that the girl is pressurized by her family to label her husband a kidnapper while she herself is either eliminated or married

³⁷¹ Prem Chowdhry, “Enforcing Cultural Codes, Gender And Violence In North India”, *Economic and Political Weekly*, May 10, 1997, p.1020

³⁷² Prem Chowdhry, *Contentious Marriages, Eloping Couples: Gender, Caste and Patriarchy in Northern India*, Oxford University Press, New Delhi, 2007, p.173

off to someone else. Thus we see that the state in a way not only delegitimizes but also criminalises individuals who choose unconventional alliances.³⁷³

The judiciary has played a crucial role but it has its limitations too. It ordered the police across the country to take stern actions against those resorting to violence against young men and women of marriageable age who opted for inter-caste and inter-religious marriages.

On a writ petition filed by Lata Singh from Lucknow, a two-judge bench comprising Justice Ashok Bhan and Justice Markandey Katju observed: “We sometimes hear of ‘honour’ killings of such persons who undergo inter-caste or inter-religious marriages of their own free will. There is nothing honourable in such killings, as in fact, they are nothing but barbaric and shameful acts of murder committed by brutal, feudal-minded persons, who deserve harsh punishment.” The judges added: “Only this we can we stamp out acts of barbarism”. They added that “This is a free and democratic country, and once a person becomes a major, he or she can marry whomsoever he/she likes....If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage, the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot harass the person, who undergoes such inter-caste or inter-religious marriages.”³⁷⁴ Similarly, Vani Gopal Sharma, district judge of Karnal district awarded death sentence to five members of the family in the Manoj and Babli Barwal case, 2007.

Indian media, the news coverage refuses the western media claims of an ahistorical, undifferentiated Indian patriarchy or of a patriarchy produced by globalization and outsources, suggests that the problem lies within rural cultures.

The problem of continuing inequalities in India across gender, sexuality, caste and religion is ignored by containing the problem within one region or caste, or by seeing it

³⁷³ Prem Chowdhry, *Contentious Marriages, Eloping Couples: Gender, Caste and Patriarchy in Northern India*, Oxford University Press, New Delhi, 2007, p.173p.174

³⁷⁴ “Honour killings: what needs to be done”, *The Hindu*, 26/04/2010,

as a rural problem in which the neo liberalized or global modern³⁷⁵ is absolved of its participation in such violence. This categorization of honour crimes related to rural cultures would be dismantled if we look at some of the contemporary cases of honour killings from urban areas. One such case is of Bhawna Yadav and Abhishek Seth³⁷⁶ -

Bhawna Yadav was allegedly killed for marrying a man against her family's wishes. Bhawna Yadav lived with her parents in Bharat Vihar colony - a neighbour of Delhi's middle-class Dwarka area. She did not let her humble background hold her back from hoping for a better life. But Bhawna's dreams were shattered when she was allegedly strangled to death, three days after she married her boyfriend, 24-year-old Abhishek Seth. Her parents - her property consultant father Jagmohan Yadav and mother Savitri - were against her marrying outside their caste.

Ankur Jain of BBC Hindi met the woman's husband and neighbours to piece together her story³⁷⁷. Bhawna's husband while speaking about her death said "She had small dreams. Her parents wanted to get her married after school but she wanted to wear jeans and shirts and go to college, she managed to get into Venkateswara College, one of Delhi's finest. On top of her wish list after our marriage was to taste wine and go to a beach for our honeymoon." said her husband.

Mr Seth, who works at the Rashtrapati Bhavan (President's House) in Delhi, says "Bhawna's parents had arranged for her to be engaged on 22 November "to a man she had last met when she was six years old". So the couple decided to get married before the engagement. "I knew my family would accept Bhawna once we got married. We knew her family would resist a bit, but we thought they would eventually give in," said her husband.

³⁷⁵ Tejaswi Niranjana "Nationalism Refigured: Contemporary South Indian Cinema and the Subject of Feminism", in *Community, Gender and Violence: Subaltern Studies XI*, (eds.) Partha Chatterjee and Pradeep Jeganathan, Permanent Black, Delhi, 2000.

³⁷⁶ <https://www.bbc.com/news/world-asia-india-30141719> date of access 4/3/2019

³⁷⁷ Ibid;

The couple married in a temple on 12 November without informing their families. They were together only for a few hours before Bhawna's parents took her away, saying they would arrange a "grand wedding" for the couple in a few days. Abhishek Seth, her husband wanted her parents to be hanged for the crime. "They have no remorse and should be given the death sentence," he said. "I still can't understand the honour for which they killed their daughter, my wife."

Police said the parents have confessed to the crime. They said they drove her body to their village in Rajasthan, 150km from Delhi, and cremated her, a police official said. Delhi police official Suman Goyal said the parents strangled Bhawna on Sunday morning. "They called a family friend and told him that she was bitten by a snake and needed to be taken to their ancestral village for treatment. They wrapped her body in a blanket and drove for three hours and cremated her," Ms Goyal said.

Most of the family's neighbours don't want to discuss the incident and shut their doors upon seeing a journalist. And those who do speak, defend Bhawna's parents. Hargyan Singh, who often met Jagmohan Yadav to share a smoke, says: "He was a religious man and every evening sat outside his house smoking a hookah...the girl [Bhawna] must have done something really bad. But there are a lot of snakes in the colony, she might have been bitten by one. Police might be framing the parents."

Bhawna's murder has shocked many because such so-called 'honour crimes' rarely involve middle-class educated families in big cities.

Yet another case is of a father kills his daughter over suspected relationship with a dalit boy in Ludhiana last year.³⁷⁸ Baljit Singh, 42, allegedly killed his daughter Ramandeep Kaur who was mere seventeen years of age on the suspicion that she was involved in an affair with a boy of lower caste. When Baljit confronted his daughter, they got into a heated argument and as a result Baljeet slit her throat in rage.

³⁷⁸ *Ludhiana: Suspecting relationship, man kills daughter*, The Indian Express, 23/5/2016.

The girl's mother Binder Kaur rushed her to the hospital where she was declared 'brought dead'. Binder lodged a complaint against Baljeet in the police station at Boha. Baljeet Singh was consequently arrested and his statement recorded. He accepted his crime but unfortunately did not regret killing his daughter, said Pritpal Singh, S.H.O. Boha. Pritpal added that Ramandeep Kaur was engaged to a boy from Bhatinda's Lehra Mohabbat village, three months ago. Ramandeep had just passed XII examinations with 80 percent marks.

The above case clearly is a case where a teenager girl died at the hands of her father in the name of honour. It is important to underscore here this case take place in an urban setting and the family is liberal enough to educate their daughter, however their background fails to ensure that they would forgive their daughter for falling in love.

As Amnesty International statement notes, "The regime of honour is unforgiving: women on whom suspicion has fallen are not given an opportunity to defend themselves, and family members have no socially acceptable alternative but to remove the stain on their honour by attacking the woman."³⁷⁹

Susheela Kumar and her unborn baby miraculously survived the attack. Heavily pregnant Susheela kumar was shot three times while she slept in an attempted honour killing in Mahaveer Colony in Haryana on November 18, 2016³⁸⁰.

A heavily pregnant woman was shot three times while she slept in an attempted honour killing - but she managed to survive and delivered the baby with the bullets still inside her. Susheela Kumar and her unborn baby miraculously survived the attack.

Susheela Kumar, 27, from Mahavir Colony, Sonapat in Haryana, and her husband Pradip were attacked by gunmen as they slept at their home. Pradip and his parents died instantly in the attack on November 18, 2016 night. But Susheela, who was nine months pregnant

³⁷⁹ "Broken bodies, shattered minds: Torture and ill treatment of women", Amnesty International, 2001.

³⁸⁰ "Pregnant woman shot in failed honour killing", www.dailymail.co.uk/indiahome, date of access, 21/11/2016

survived despite being hit by three bullets which - one of which sliced her arm, the other passed through her mouth and the third bullet had pierced through her pancreas. When the attackers left, neighbours called for help and she was taken to a nearby hospital where doctors saved her and delivered the baby by C-section. The baby was fully grown and weighs 2.2kg.

Susheela was a Jat and had married Pradip, also 27, four years ago against her family's wishes. The couple fled their village to start a new life, but returned to Pradip's family home when she became pregnant. Authorities suspected that the incident was an attempted honour killing.

Police officer Karambir Singh said they were trying to ascertain if the assailants used a white SUV to reach the incident site. He said: 'Three people including Pradip and his parents Suresh Kumar, 47, Sunita 45 were killed in the incident. We have suspicion on Susheela's brother Monu. We have learnt that he has been using a stolen white Duster for a while now. Though a murder case has been registered against unidentified people, we believe Susheela's family members may be behind the crime.'³⁸¹

The police later arrested a man in Kharkhoda honour killing case³⁸², in which 27-year-old Pradeep Kumar and his parents were shot dead, while his pregnant wife Susheela and younger brother Suraj survived with bullet injuries. The accused has been identified as Sonu, elder brother of Susheela. The police said he has been charged with criminal conspiracy under Section 120-B of the IPC³⁸³.

³⁸¹ "Pregnant woman shot in failed honour killing", www.dailymail.co.uk/indiahome, date of access, 21/11/2016

³⁸² "Sonapat 'honour killings: brother-in-law arrested", *Hindustan Times*, 22/11/2016

³⁸³ As per Section 120-B of the Indian Penal Code, 1860, "(1) whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."

“He was nabbed from Bidhana village in Jhajjar. We produced him in local court and procured his five-day remand. Susheela’s another brother Monu and his accomplice are yet to be arrested,” Sonapat SP Ashwini Shenvi said.

Police have been probing the honour killing angle since deceased Pradeep had an inter-caste love marriage with Susheela, a *Jat*, from Jhajjar. The girl’s family was against the wedding. “Initially the FIR was lodged against unidentified people. But now we have booked Monu for murder,” Kharkhoda SHO Karambir Singh said.

Police got to know that the assailants used a white Renault Duster SUV to commit the murders. Monu had been using a stolen white Duster car, pointing to his involvement, the police said. “We will know the involvement of more people in the case after arresting Monu,” Karambir said.

The above case is not only reflective of the brutality but clearly highlights the “unforgiveness” of the community against the couples who had married against the customary norms. The regime of community honour does not even spare those who even wish to marry. The case below will help understand the phenomena.

A young couple in Rohtak district, Haryana was brutally murdered because they were planning to marry. This is the story of Dharmendra Barak 23, and Nidhi Barak, 20 of Garnauthi village who were allegedly killed by the girl’s family. Dharmendra was dismembered alive while Nidhi was Beaten to death. The police officers said his “hands were cut of legs chopped of and head severed from the body”³⁸⁴.

The reporter from BBC Zubair Ahmed informed that when he reached the village about two dozen people were waiting for Nidhi’s body to be cremated. He further stated these same people had lit the pyre of her boyfriend an hour ago. The two pyres were burning side by side. The girl’s and the boy’s family together were attending both last rites. Nidhi’s parents were arrested by the police on suspecting double murder as an

³⁸⁴ “Honour killings’: Paying the price for falling in love”, 20th September 2013, India, BBC news, <http://www.bbc.com/news/world-asia-India-24170866>, date of access, 4/1/2019

‘honour crime’. A relative of Nidhi said “who wants to kill their own children? But whatever God wanted, happened.”³⁸⁵

There was no remorse on any one’s face on the cremation ground or otherwise. Nidhi’s uncle when asked to explain why the couple has been brutally murdered, got furious and replied “what was done to them was the right thing to do. We had to set an example.” An example for other young men and women to not to fall in love.

“Our culture is not like you have in the city. Here our women live behind curtains”³⁸⁶ a young man in the crowd spoke of the rural-urban divide. Another man in the crowd further added “the village doesn’t approve of love affairs here. They were from the same caste, lived in the same lane in the same village.” Yet another explained politely that they belonged to the Jat community from the same gotra, therefore they were brother and sisters.

It appeared that most of them and even the neighbouring villages approved of the murder. They said they would not allow young men and women to fall in love as this would “dilute the values”. ‘The distance between Delhi and the village is less than 100km. But chasm in values and mindset is much deeper’ said Zubair.

The above case is reflective of the brutality with which couples are punished by their own family and kinsmen for bringing ‘disrepute’ and ‘dishonour’ to their family. It is essential to highlight the intolerance towards *sagotra* marriages in the above case. *Sagotra* marriages however are not prohibited by law. The Hindu Marriage Disabilities Removal Act, 1946 declared that marriages between the Hindus belonging to the same ‘gotra’ or ‘pravara’ or different sub-divisions of same caste should be considered legally valid³⁸⁷. Therefore the act was enacted in order to remove any doubts in this regard.

³⁸⁵ Ibid;

³⁸⁶ *ibid*;

³⁸⁷ *Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework*, The Law Commission of India, Ministry of Law and Justice, Govt. of India, New Delhi, Report no 242, p.6.

There is a crucial difference in the nature of execution of honour killings in Punjab and Haryana. The perpetrators usually in Punjab are close family members usually father and brother of the girl, while in Haryana involvement in the crimes extends to kinsmen and sometimes even the entire village. Thus marriage in Punjab remains exclusively under parent's wishes whereas in Haryana caste panchayats also locally known as khap panchayats come to play a significant role. There is a need to understand the importance of *khap panchayat* comprehensively in order to understand the kind of authority and legitimacy it enjoys.

Honour killing which has been practiced by societies historically continues to sustain today as a practice because of the social sanction it receives. This is not to undermine the efforts of the people who have fearlessly reported and fought against the issue but criticise the continuation of such heinous crimes in an area of global connectivity and technology. There is a need to look at these crimes in a different light divorcing it from any notion of honour in order to analyse its causes and impacts. It can be argued that honour killing borrow and thrive on the notions of caste and community. It has been truly said that “where the slaying of women and men with the justifications of family ‘honour’ is a collective enterprise, and the acts of dead are considered to have brought shame to the family, there is a huge motivation for family and community to cover up murders. Thus victims are erased from the society and the existence and prevalence of the violence is difficult to access.”³⁸⁸

³⁸⁸ Honour based Violence Awareness network, International Resource Centre, <http://hbv-awareness.com/history>

Chapter 4

RAPE: CULTURAL AND LEGAL DISCOURSES

Rape can be defined as unwarranted and non-consensual intrusion over an individual's body by another individual. It has often been perceived as a crime perpetrated by males against women. In India and in most of the countries rape is still not a gender-neutral³⁸⁹ crime and thus its women who are often at the receiving end of this violence. Deepa Dube argues that rape is 'forcible seizure or the ravishment of women without her consent',³⁹⁰ and it often involves the use of force. She further argues that rape by no means is a form of outrage and an unlawful intrusion of the sanctity of female. It is not only a blow to her honour, but her dignity, integrity and her very being. Sexual violence apart from being a dehumanizing act, also offends her self esteem. In my understanding rape remains one of the most brutal act of violence with the intention of assertion of authority over a woman's body, mind and psyche. The use of force has been one of the important aspect which reflects imposition of 'masculinity' over 'femininity'. The core objective of rape often remains devaluation of women and making her feel powerless.

Rape at present is one of the primary issues which concerns women's safety. The information on the reported cases of rape was not compiled till 1970. It was from 1971 that the National Crime Record Bureau began collecting data on rapes. The total number of rape cases reported during 1971 in the country was 2,487, out of which 45% were reported in the two states of Uttar Pradesh and Madhya Pradesh together³⁹¹. Out of the total number of 59 cases in all the UTs together Delhi registered as many as 51 cases³⁹².

³⁸⁹ Rape is no more only against females but males and especially young children have been worst sufferers of sexual assaults. Therefore is no more gender-specific

³⁹⁰ Deepa Dube, *Rape Laws in India*, Lewis Nexis Butterworths, New Delhi, India, 2008, p.1.

³⁹¹ *Crime in India 1971*, National Crime Record Bureau, Government of India, New Delhi, 1972, p.16

³⁹² *ibid*;

The total number of rape cases were 2,487 for 1971 which increased to 24,206 in 2011 registering an upsurge of 873.3% from 1971-2011³⁹³. As per the latest National Crime Record Bureau Data 2016 rape constituted 11.5% of the cases under crime against women, the total number of cases being 38,947.³⁹⁴ Among the top three states were Madhya Pradesh– 4,882, Uttar Pradesh-4816 and Maharashtra-4189 cases. Haryana ranked eighth when it came to cases of rape in 2016, with total number of 1187 cases out of which 191 cases were of gangrape³⁹⁵.

It must be remembered that these figures are indicative of the reported cases and not the actual figures, since thousands of such cases go unreported due to fear of social stigma, ostracism, family honour etc. Another aspect worth mentioning is that crime statistics have shown an alarming trend of incest rapes. The popular notion that rapes are largely perpetrated by strangers has also been dealt a blow with statistics suggesting that offenders often known to the victims. Most of the offenders are parents, close relatives or neighbours of the victims³⁹⁶.

While much of the cases go unreported those which are reported often meet dreadful plights. The insensitive and callous attitude of the investigations, prosecution and finally the judiciary, sometimes leave the survivor more traumatized and insecure than the incident itself.

A. Ancient Vs Modern Laws on Rape

Sexual offences were regarded as not only as offences against person but also against morality and matrimonial rights. They were divided into two classes, rape- *sahasa* and adultery- *strisamgraha* though the term *strisamgraha* was generally used to denote both

³⁹³ Snapshots 1953-2011, *Crime in India 2011*, National Crime Record Bureau, Government of India, New Delhi, pp.12-13

³⁹⁴ *Crime in India 2016*, National Crime Record Bureau, Government of India, New Delhi, 2017, p.xiv

³⁹⁵ Table 3A 2(i), *Crime in India 2016*, National Crime Record Bureau, Government of India, New Delhi, p.138

³⁹⁶ *ibid*; pp.38-40

the classes³⁹⁷. *Stri-sangrahanam* was also used for incest apart from adultery and rape³⁹⁸ in ancient Indian laws. The various lawbooks like the Dharmashastra, Brihaspati Smriti, Katyayana Smriti and Narada Smriti considered *strisangrahanam* as one of the most heinous crime and punishments were imposed accordingly. Force, cheating and unrestrained passion were considered as factors that may lead to ‘Stri-samgrahanam’. The act may take place when there is ‘enjoyment’ of woman in a lonely spot against her will, or when she is intoxicated, insane, or when she ‘shouts’. Interestingly the use of the term ‘enjoyment’ for rape reflects that it was part of fulfillment of male desire. Further this kind of definition also emphasizes that rape could be used as a tool for ‘silencing’ women because the term ‘shouts’ clearly denotes expression of women’s autonomy.

Strisangrahanam could take place at three levels- trifling, medium and grave. Touching of the ornaments, garments, smiling constituted the first kind. The second kind could include sending flowers, incense, food, cloth etc and secret conversation. Lying on the same bed, kissing and embracing amounted to the third kind.³⁹⁹ One of the most important factor dividing sexual offences was consent. If a man held any intercourse with a woman with force or fraud, i.e., without her consent it was regarded as a more serious offence. Consent extenuated the guilt to a greater extent, though not fully⁴⁰⁰. Forcible sexual union was regarded as the gravest offence.⁴⁰¹

Interestingly the nature of punishments heavily depended on the caste and marital status of women. If the women happened to be of the same caste as that of the offender, the property of the latter was confiscated and after cutting off his genital organ and testicles, he was taken round on the back of an ass. The punishment prescribed became half if the women belonged to lower caste than that of the offender. On the contrary, if the woman

³⁹⁷ Ram Prasad Gupta, “Offences against the human body”, *Crime and Punishment in Ancient India*, Bhartiya Kala Prakashan, p.73

³⁹⁸Suresh Chandra Banerjee, Ch.XV ‘Stri-samgrahana’, *Crime and Sex in Ancient India*, Nayo Prakash, Calcutta,1980 p.57

³⁹⁹ *ibid*;

⁴⁰⁰ Ram Prasad Gupta, “Offences against the human body”, *Crime and Punishment in Ancient India*, Bhartiya Kala Prakashan p.72

⁴⁰¹ Brihaspati, SBE Volume , 33, Verse 10 , p.366

was of higher caste than the offender, he could be sentenced to death or could lose his entire property⁴⁰². There was provision of fine as well. According to Katyayana, in such case, the punishment for women was half. For example, if the offender was punished with death, the woman had to have a limb cut off. Narada Smriti suggested that if a pregnancy was caused by forceful sexual intercourse other than husband, it came under the category of 'aparadha'. Thus, the concept of rape originated 'not to protect the autonomy of women, but rather, to protect male interest in women, akin to property rights'⁴⁰³. However, we witness a change in the later vedic period where women were treated not more than property of men and any invasion of her body was regarded as infringement of the owner over his property. Usually the laws were strong if a virgin was raped because it offended the family pride and honour. It was not uncommon that to claim back 'honour' of the family by marrying the victim to their perpetrator/offender. The Babylonian and the Mosaic laws are classic examples of this. In the Babylonian law the punishment for rape on another man's wife was, residing in her father's house was rape. Similarly in the Mosaic law "capital punishment was prescribed for committing rape on a betrothed damsel"⁴⁰⁴ but if the damsel was not engaged, "the ravisher had to pay 60shekels of silver to her father and to take her as wife". In ancient Athens a man who committed rape might be punished with death, if it pleased the jury⁴⁰⁵. Thus we observe that rape is one of those crimes which has been condemned globally and the offender was punished with death in most of the countries including Rome, France and England but unfortunately often the crime could be completely absolved if the offender married the victim.

It is important to underscore the point that rape acquired different meanings at different periods of time due to the social, economic, political and legal processes of that time. Definitions of rape have thus been produced and re-produced with changing times and reflective of the particular sexual mores of a time. Therefore the terminology of rape have

⁴⁰² *ibid*;p.366

⁴⁰³ Deepa Dube, p.2

⁴⁰⁴ Engaged but unmarried young woman

⁴⁰⁵ For details of punitive laws in various countries please refer to Ch. Offences against the human body, Ram Prasad Dasgupta, *Crime and Punishment in Ancient India*, Bhartiya Kala Prakashan, p.72-73

been contested and reshaped by the various law amendments. Historically rape was often conceived as loss of virginity or in other words, violation of women's chastity.⁴⁰⁶ Fortunately this kind of terminology has been challenged over the decades because rape not only causes grave physical harm but violation of a woman's dignity, chastity and integrity. *The Criminal (Amendment) Act 2013*⁴⁰⁷ has amended section 376 of the Indian Penal Code and the present definition of rape has been expanded to include other related offences within its ambit-

"A man is said to commit "rape" if he-

- (a) *Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or*
- (b) *Inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or*
- (c) *Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of the body of such woman or makes her to do so with him or any other person; or*
- (d) *Applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,*

Under the circumstances falling under any of the following seven descriptions:-

"First- Against her will.

Secondly- Without her consent.

⁴⁰⁶ Arvind Narrain, "Violation of Bodily Integrity: the Delhi Rape Case among others", Economic and Political Weekly, March 16, 2013, Vol XLVIII NO 11.

⁴⁰⁷ *The Criminal Law (Amendment) Act 2013*, The Gazette of India, Ministry of Law and Justice, New Delhi, 2013,p.5

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

Fourthly –With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes to be lawfully married.

Fifthly- With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly- with or without her consent, when she is under eighteen years of age.

Seventhly- when she is unable to communicate consent.⁴⁰⁸

“Explanation 1- For the purposes of this section, “vagina” shall also include labia majora

Explanation 2- Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non- verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1- A medical procedure or intervention shall not constitute rape.

Exception 2- Sexual Intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.”⁴⁰⁹

⁴⁰⁸*The Criminal Law (Amendment) Act 2013*, The Gazette of India, Ministry of Law and Justice, New Delhi, 2013;p.6

⁴⁰⁹ *The Criminal Law (Amendment) Act 2013*, The Gazette of India, Ministry of Law and Justice, New Delhi, 2013;p.6

The present definition has thus been one of the latest in the process. The inclusion of many clauses such as other forms of penetration other than penile penetration is commendable, yet the present definition fails to encompass many aspects which need or demand attention like “marital rape”. The legal definition of rape thus defines rape as sexual intercourse by a male with a female, other than his wife, without the consent of the woman and effected by force, duress, intimidation or deception. The spousal exemption in the law, which still remains in effect, means that a husband cannot be guilty of raping his wife, even if he forces intercourse against her will⁴¹⁰. The implication of the loophole is that violent, unwanted sex does not necessarily define rape. Instead, by definition rape is illegal sex- that is, sexual assault by a man who has no legal rights over the woman. Thus in the eyes of the law, violence in legal sexual intercourse is permissible but sexual relations with a woman who is not one’s property is not. From their inception it clearly appears that rape laws have been established ‘not to protect women but to protect a man’s right over woman as his property’⁴¹¹.

Apart from having a critical view of the legal terminology my concern here is to place the crime of rape firmly in the context of power relationships and gender inequality. Also, the crime cannot be isolated from other sexual offences which women face in their day to day life. Thus rape requires a deeper understanding of the patriarchal structures and institutions which provide the space where such crimes occur in an unrestrained manner.

B. Rape, Honour and Society

Rape as an offence of honour and as stigmatic or shameful for the woman is a powerful construct since the stigma is often assumed to be transmitted from the woman to the woman’s family, community or even nation, depending on the political context. In such discourse the honour of men is traced through the purity and chastity of women and thus the responsibility of “upholding family honour” also rests on women. It has often been observed that the common wisdom suggests that rape is worse than death or that rape must be experienced as shame on one’s self. It is here where the disciplinary power of the

⁴¹⁰ Dianne F Herman, “The Rape Culture” , *Women: A Feminist Perspective* , McGraw Hill, 1994,p.46.

⁴¹¹ *ibid*;

discourse articulates itself and the existing social discourses on shame and stigma, further act to retrench it. The proposition is further strengthened, that a good woman would rather die than be raped or sustain life threatening injuries trying to resist rape.

A raped woman is socially condemned, ostracized and boycotted, ignored and widely believed to be responsible for their own rape.⁴¹² This very notion is popularly known as ‘victim blaming’⁴¹³. Thus, rape as a crime has emerged as one of the worst fears in a woman’s psyche because it is not only about the physical violence that one might undergo but also the fact that one could be possibly be held responsible for it. It consciously or unconsciously continues to determine our daily course of life where we have internalized that our schedule if changed to a ‘safe mode’ could help prevent it. The discourse has been so built over the years by the society that we have been disillusioned with the idea that a particular lifestyle and behaviour is actually responsible for such crime and it can be prevented if certain code of conduct is followed. In the aftermath of an attack, many victims develop post traumatic stress disorder. The rape survivor may also confront a number of emotions related to shame. Some may begin believing that they somehow caused the assault, while others become preoccupied thinking about how the rape could have been avoided. Thus we see that victim blaming or self-blaming are often rooted in social conceptions of rape and victimhood. Rape remains one of the most underreported crimes and is mostly kept secret due to societal dishonour associated with it. Ironically the victim is further victimized and the perpetrator might eventually escape punishment.

The case below is a recent example of how social stigma acts as a constraint against reporting of the crime. In a case⁴¹⁴ which surfaced in October 2012, Haryana a 14 year girl claimed that she was sexually assaulted in Sunariya village. According to the

⁴¹² Ambaraya Gundappa and Dr. P.B. Rathod, *Violence Against Women in India: Preventive Measures* : Indian Streams Research Journal MAY ; 2012

⁴¹³ When the victim of a crime, an accident or any type of abusive maltreatment is held entirely or partially responsible for the transgressions committed against him or her regardless of the whether victim actually had any responsibility for the incident.

⁴¹⁴ “Many shades of Rape Cases in Delhi”, *The Hindu*, October 26, 2012

complaint, the minor was raped by Sunil in Sunariya village in August, but due to the pressure of her mother the girl did not inform police about the crime, district police spokesman Ved Singh Nain said. The mother reprimanded her daughter rather than informing the police about the incident. When the minor went to her relative's, residence at Lakhbuana village in Panipat district and informed one of them about the incident, her relatives approached the Superintendent of Police, Panipat, and asked for an action against the accused. The Panipat police chief asked his Rohtak counterpart to register a case against the accused, thus the Rohtak police then arrested the accused identified as Sunil along with the victim's mother, who faces charge of criminal conspiracy. This is not the only case where survivors have preferred to keep silent or have been silenced by the family or community members.

In yet another case⁴¹⁵, a teenage girl was raped by her father and the village elders had her whipped. This case is from Mauje Jawalwadi village in Maharashtra where a girl who was probably 15 years used to perform in her father's acrobatic show for which she was given Rs.20-30. She had never been to school and usually spent most of her life doing chores at home, occasionally begging for food even. After the death of her mother Anusuya Chavan, begged to go to live with one of her older siblings, but her father, Shivaram Yashvant Chavan, told her that he needed someone to cook, keep house and earn for him and therefore she had to live with him.

One night in January, her father came home from his job (playing a steel drum in a wedding band) drunk on a local hooka. She was sound asleep on the ground along with her sister. He got down on the ground, put his hand over her mouth and raped her. In early March, a farmer and local labour activist named Sachin Tukaram Bhise was headed to a nearby village to find day labourers when he heard a village council was to be called by the members of the Gopal community⁴¹⁶, near Mauje Jawalwadi. As Bhise watched, people from around the area gathered in the main square of the village amid tin-roofed sheds. The teenager girl and her father were brought to kneel before the council. Chavan

⁴¹⁵ "An Indian teen was raped by her father", *The Washington Post*, May 9, 2016

⁴¹⁶ The Gopals are a largely illiterate, impoverished group who were once nomads making their living as cow herders and itinerant street performers.

bowed his head and admitted what he had done and said he was ready for whatever punishment the council would give him. Interestingly, the council issued its verdict- a fine of some amount and a whipping of fifteen sticks for the father and five sticks for the girl. Then the elders turned to the girl and began to berate her. They said, “it was the girl’s fault, that the father was drunk and he was not in his senses”⁴¹⁷ The panch said, “you’re useless, you’re the culprit”, she was crying”⁴¹⁸.

“One of the man wags his finger angrily at her. He rages this girl must be punished. A villager ties her waist with rope , holding the other end, and lifts a tree branch into the air. She bows her head. The first lash comes, then another, then another, ten in all. She lets out a wail. Eventually the crowd starts murmuring, enough, enough. Finally the man throws down the stick.”

This whole episode was captured on a cellphone by Bhise. He took the evidence to the police, who later arrested all seven members of the council and charged them with conspiracy, extortion and assault. The father was held on the charges of child abuse. The above case clearly reflects the existence of parallel judiciary in the country which not only issues feudal verdicts but punishes and terrorizes the victim to such an extent that no girl or women would further dare to disclose if anything like this happens to her.

C. Normalization of rape vis-à-vis ‘rape culture’

“Rape culture is a sociological concept for a setting in which rape is pervasive and normalized due to societal attitudes about gender and sexuality”⁴¹⁹. Behaviours which could be commonly associated with rape culture include victim blaming, slut-shaming and sexual objectification, trivializing rape, denial of widespread rape, refusing to acknowledge the harm caused by sexual violence or some combination of these.⁴²⁰ It has been used to describe and explain behavior within social groups, including prison rape and in conflict areas where war rape is used as psychological warfare. Entire societies

⁴¹⁷ The Washington Post, May 9, 2016

⁴¹⁸ *ibid*;

⁴¹⁹ Sharna Olfman, *The Sexualization of Childhood*, ABC-CLIO, 2009,p.9

⁴²⁰ Dianne F Herman, “ The Rape Culture” ,*Women: A Feminist Perspective* , McGraw Hill, 1994

have been alleged to be rape cultures⁴²¹. The notion of rape culture was developed by second-wave feminists⁴²², primarily in the United States, beginning in the 1970s and was applied to contemporary American culture as a whole. During the 1970s, second wave feminists had begun to engage in consciousness-raising efforts designed to educate the public about the prevalence of rape. Alexandra Rutherford⁴²³, argues that before this most Americans assumed that rape, incest and wife-beating rarely happened. The concept of rape culture posited that rape was common and normal in American culture, and that it was one extreme manifestation of pervasive societal misogyny and sexism. Critics of the concept dispute the existence or extent of rape culture, arguing that the concept is too narrow or that, although there are cultures where rape is pervasive, the idea of a rape culture can imply that the rapist is not at fault but rather the society that enables rape.

Sexual and physical violence through the mechanism of rape is ‘normalised’ in Indian society.⁴²⁴ Men’s uncontested rights over women’s bodies are assumed in everyday lives. Though the discourse on male desire is often veiled, it is most often assumed in cases of rape that it was possibly enacted out of natural desire for a women’s body. The imagery of sexual relations between males and females in books, songs, advertisement and films is frequently that of ‘sodomachistic’ relationship thinly veiled by a romantic facade. Thus it is difficult in our society to differentiate rape from “normal” heterosexual relations. “If healthy heterosexuality were characterized by love, warmth and reciprocally satisfying

⁴²¹ Upendra Baxi, “The Second Gujarat Catastrophe”, *Economic and Political Weekly*, Vol.37, No.34, pp.3519-3531

⁴²² Second wave of feminism refers to a period of feminist activity and thought that began in the United States in the early 1960s and lasted roughly two decades. While first wave feminism focused mainly on suffrage and overturning legal obstacles to gender equality like voting rights and property rights, second wave feminism broadened the debate to include a wider range of issues: sexuality, family, the workplace, reproductive rights, defacto inequalities and official inequalities.

⁴²³ Alexandra Rutherford, “Sexual Violence Against Women: Putting Rape Research in Context”, *Psychology of Women Quarterly*, Vol.35, No.2, pp342-347

⁴²⁴ Veena Das discusses in detail about the normalization of rape in “Sexual Violence, Discursive Formations and the State”, *Economic and Political Weekly*, September, 1996

actions, then rape could be defined as sex without consent, therefore involving either domination or violence”⁴²⁵.

The judicial phrases uttered in judgments, clearly show that the concept of nature is deployed to first define man’s desire for female bodies as ‘natural’. Since male desire for female bodies is seen as ‘natural’ almost as a counterpart of rape being seen as an offence that violates the order of nature, the offence of rape continues to be normalized by society. Sometimes, the judicial discourse on male sexuality is engaged in the creation of a ‘social savage’.⁴²⁶ Thus we see how the concept of nature deployed to justify the brutal and heinous act by men is instrumental in creation of perpetrators.

What is crucial is that the society is very particular in constructing male desire. Desire in the males is schooled through the various rules of culture. Women who are submissive and who follow rules and regulations and of particular affiliation as ‘upper caste’ or belonging to well to do families are considered to possess character and if male desires set by the society violate their chastity or character, its only then that the society feels that something wrong has occurred. On other occasions women apart from these categories are thought to be women of easy virtue or low character and if such women are raped it is by default understood that it must have occurred only upon her provocation or invitation. The social and judicial construct of a ‘natural sexuality’ residing in the male is particularly striking in face of the fact that women whom are classified as of ‘easy virtue’ are never seen to be acting out any natural instincts which would be symmetrical to the construction of desire in the male. Thus the judicial construct of ‘young male acting out his natural sexual instincts’ is deployed in the sentencing structure in the course of hearing on mitigating circumstances granted to the accused. It may be evoked in the context of acquittal or even in cases when judges are laying out their reasoning as to why the offence should be treated as a grave one.

⁴²⁵ Dianne F Herman, “ The Rape Culture” ,*Women: A Feminist Perspective* , McGraw Hill, 1994, p.46.

⁴²⁶ Veena Das “Sexual Violence, Discursive Formations and the State”, *Economic and Political Weekly*, September,1996

Unfortunately most of the rapes that take place can hardly be seen as spontaneous or natural, most of the cases are rather consequences of deliberate intention and previous planning. Women's bodies have been and continue to be seen as a prime site and resource for asserting hegemony of one kind or another. There is an emerging political culture in which sexual violence plays a central role in establishing the dominance of one group over another -whether it be the army in Manipur, Hindu fundamentalists in Gujarat, Communist Party of India (Marxist) cadre in Nandigram or "local" upper caste/middle class youth in Guwahati.⁴²⁷ There have been numerous accounts when women have been raped just because they have supposedly violated the traditional and cultural norms. Rape in such cases mostly seems to be a kind of punishment for exercising sexual autonomy or asserting other political rights. The case below is an excellent example of how women who seem to be asserting autonomy are punished with harsh consequences-

On November 24, 2007 in Guwahati the *adivasi* woman who was part of the protest was by *adivasi* and tea tribe communities seeking scheduled tribe status and other political rights was stripped and beaten by "local" youths in Guwahati. Both the brutality at which the *adivasi* protest was punished by "civil" society and the circulation of images of such brutality clearly show how such violence is celebrated by society when it comes as punishment for the women who seem to assert their right. Not only did most who witnessed this brutal assault in the Guwahati case not intervene to prevent the assault, they found the spectacle of humiliation useful as an image to be captured on their mobile phones.

And it is unfortunate that protest against such violence, when it takes place, remains confined to the courts or to women mainly in the metros and glosses over the repeated violence faced by women at the margins of our society. There have been many painful such instances and the rape and violation of women's bodies have become routine.

⁴²⁷ Uma Chakravarti, Urvashi Butalia, Pratiksha Baxi, Xonzoi Barbora, Ashley Tellis, Anand Chakravarti, Mohinder Singh, N. R. Levin and Sarovar Zaidi, "Rape Culture", *Economic and Political Weekly*, Vol. 42, No. 50

In Haryana, the abysmally low sex ratio further worsens the situation because low sex ratio results in male marriage squeeze, and thus the number of unmarried males keeps on increasing. Though no direct relation can be established between the increasing crime against women and the increasing unmarried males but the trends of the past decades definitely shows that the two are directly interlinked. In Haryana, the custom of polyandry prevails where a wife is commonly shared by the brothers of a family. Thus it seems situations like this definitely increase the chances of sexual violence where a woman is objectified to such an extent. Another crucial aspect is the interplay of power and caste in most of the cases. In his history of sexuality Foucault⁴²⁸ understood by power as essentially that which seeks to dictate its law to sex. This means first of all that sex is placed by power in a binary system of licit versus illicit and permitted versus forbidden sex. He suggests that sexuality in modern societies is not so much about judicial and political prohibitions but more about power which lies behind these discourses.

This appears to be true in the cases of rape, where the offenders are of upper or dominant castes and the victim of lower caste in Haryana. In Haryana the deep patriarchal structures and institutions are mostly dominated by the agriculturally rich *Jats*, thus they exercise unwielded power over the other castes and especially the *dalits*. Rapes against *dalits* are therefore very common and unquestioned. *Dalits* live in perpetual fear of *Jats* in Haryana. Unlike the dominant *Jats*, the *dalits* are poor and without protection. They can be easily terrorised by the upper castes, which exert pressure on the family of a rape victim not to report the matter to the police. If the family still approaches the police, the family is dissuaded by them as well and the case is not easily registered. It is only under public pressure that the police register crimes against *dalits* and arrests the culprits. Even after the case is registered, most victim families are pressurised by the family of the accused to go in for an out-of-court settlement. On refusing so they face their anger and violence in different forms.

⁴²⁸ Michel Foucault, *The History of Sexuality, Vol. 1: An Introduction*, translated by Robert Hurley, Vintage Books, New York 1980.

Dalits have traditionally relied on the state as a neutral negotiator and hoped for justice to be meted out have mostly been betrayed. The state has not only been callous, it has also itself been a perpetrator of atrocities. In most of the atrocities that come to light, the role of the state as a complicit or active perpetrator has emerged. The state has consistently acted against the poor of which the dalits have been a preponderant part.⁴²⁹

The National Crime Records Bureau reports show that the number of rape cases where *dalit* girls/ women are the victims has consistently gone up from 21 in 2007 to 56 in 2011. While at the national level, the number of rape cases wherein dalit girl/woman are the victims went up by 15% over the period, the increase in Haryana was 167%.

In September 2012 alone, there have been 19 cases of gang-rapes of dalit girls. Among these, there was the case of a 16-year-old girl who was gang-raped by a dozen upper caste men in Darba village of Hisar district on 9 September. The rapists had filmed the horrific act and circulated the video. Unable to cope with the situation, her father committed suicide.

Another dalit girl of the same age, who was also gang-raped in Sachcha Kheda village in Jind district, burnt herself to death. A five-month pregnant dalit woman was abducted and raped by two youths in Kalyat. Practically, the gangs of *bahubalis*, with the patronage of politicians, can rape and kill dalit girls with impunity. Haryana has witnessed such rape cases in several districts, including Rohtak, Hisar, Jind, Bhiwani, Yamunanagar, Panipat, Sonapat, Ambala, Karnal, Faridabad and Kaithal in September 2012.

In yet another case, where a 19-year-old Dalit girl was gang-raped allegedly by three boys from the dominant caste Jats , the Station House Officer of Ellanabad police station in Haryana's Sirsa district refused to register a complaint of rape made by her relatives despite of the fact that all the accused were known to her.

⁴²⁹ Anand Teltumbde "Haryana's Rapist Regime", *Economic and Political Weekly*, Nov.2012

In fact, “when the girl mentioned the names of the boys, a woman police officer intimidated her into not revealing their names,” said Rajat Kalsan, advocate with Human Rights Law Network, who gave her version of the incident⁴³⁰.

The first year B.A student was waiting at a bus stop on her way to college when the three boys, riding a car, offered to give her a lift. But they took her to an isolated spot and took turns to rape her. Then they drove to another location and were attempting to rape her again when one of the boys got a call on his cell phone. The caller said that “the relatives of the girl had gone to the police and they might get into trouble”. On hearing the phone message, the boys forced her to take a sedative and drove off. The girl’s relatives later found her unconscious at a secluded location and went to the Ellenabad police station but the SHO refused to register a complaint of rape. When the relatives and local activists protested, an FIR was filed under Section 365 (kidnap) of the Indian Penal Code.

The girl was then taken to a hospital in Sirsa for medico-legal inspection, where, according to the advocate, she was subjected to a two-finger test. (The Supreme Court has held the conduct of this test on victims of sexual assault intrusive and advised the government against it) People accompanying the girl were horrified and decided to take her to the Post Graduate Institute of Medical Sciences in Rohtak for an examination.

One of the examples is 16 October 2002 lynching of five dalits by a large and violent mob on the main road outside the Dulina Police Post, near Jhajjar town in full view of the police and several senior district officials. Such is the terror of the *Jats* that the then district commissioner of Jajjhar had expressed his helplessness to a visiting team of activists of the People’s Union for Democratic Rights, saying that no administration could function in the area without pacifying the sentiments of organisations like the Vishwa Hindu Parishad, and negotiating with the *khap panchayats*.

On 27 August 2005, 55 to 60 dalit houses were burnt down by a violent mob of 1,500 to 2,000 *Jats* in Gohana with full support of local police. On 21 April 2010, two dalits were killed in Mirchpur and their houses set ablaze. In the year, 70 dalit families of Bhagana

⁴³⁰ “Dalit girl raped by known persons, no arrests yet in Haryana”, *The Hindu*, September 24, 2013

village in Hisar were ousted following their social boycott by the *Jats*.⁴³¹ In all these cases, there was arrogant support for the perpetrators of crime by the state. This state of affairs in cases of brutality and violence against Dalits can be seen as assertion of power and an attempt to push them back to the margins .

D. Child Marriage and the Fear Of Rape

Rape and the issue of child marriage is quite a complex one. While child marriages still prevail in India, the concern raised by the 19th century reformist movement is no longer valid. Rather than dictates of *brahmanical* patriarchy, the contemporary concern over child marriage needs to be located within socio-economic factors such as extreme poverty among the urban and rural poor, lack of access to education for girls, and fear of rape and sexual abuse⁴³².

Much more than the elite and middle classes, it is the backward castes, the dalits and Muslims who are burdened with these concerns. At times it is observed that the increasing violence against young girls and the societal dishonour associated with such victims leave the parents with a choice that is marrying them early which according to them seems to be the best one. However, in doing so they definitely gloss over the fact that girls when are married at an early age or to say under age, they become vulnerable to sexual violence and rape at times within the marriage itself.

In rural Karnataka in January 2013, a young girl on her way back from school on a bicycle was gang-raped and thrown into a well. She was saved by passers-by who noticed her struggling for life. Thereafter, the entire village has stopped sending girls to schools outside the village. These girls will soon be married off, despite a law in place that stipulates the minimum age for marriage is 18. According to news reports perturbed over recurrent instances of sexual harassment of teenage girls, the panchayats of six villages in Haryana decided not to send their girls to school. Around 400 girls were affected by this

⁴³¹ *Dalit girl raped by known persons, no arrests yet in Haryana*, The Hindu, September 24, 2013

⁴³² Flavia Agnes, "Controversy Over Age of Consent", *Economic and Political Weekly*, July 20, 2013

decision. One can condemn these decisions, but this will not help change social reality at the ground level. Later reports said that parents had allowed the girls to attend school under police protection.

The argument of some scholars that “the institution of patriarchy operates in the name of culture for justifying child marriage of young girls” becomes problematic when we examine elopement cases. As against the socio- economic constraints of child marriage due to poverty, these cases concern marriages of choice by young girls. Here the legal provision becomes a weapon to control the expression of sexuality, and curb voluntary marriages, and is used to augment patriarchal parental power.

Even though the criminal provisions of kidnapping and statutory rape appear to be protecting the minor girl, these provisions are concerned primarily with securing the rights of the parent or guardian over the minor girl against her lover or husband. A young couple who exercises the choice gets trapped in family feuds, or caste and community hostilities. There are no exceptions in the laws on abduction and kidnapping that allow a minor to opt out of guardianship or to leave her parental home on grounds of domestic abuse and neglect.⁴³³

There are several instances where the parents file cases of rape against the boys with whom their teenage daughters have eloped. Anyone who has even cursorily examined lower court judgments cannot fail to notice the sizeable number of cases termed “statutory rape” or “technical rape”. These are cases where the girl elopes with her boyfriend and her parents file a case of rape to exert pressure on her to return, only to get her married to a boy of their choice against her wishes. This tactic could be used only if the girl was around 16 years of age, but now it can be used even in cases where the girl is over 18, since proof of age is a contentious issue in litigation and ossification tests have a margin of two years, either way. And in a dispute over age between the parents and the child, the law tends to lean in favour of the parents.

⁴³³ Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India*, Oxford University Press, New Delhi, 2014

A discussion on “elopement” marriages brings to the fore the ways in which multiple social subordinations – caste, region, religion – intersect with patriarchy to contain the sexual choices of defiant young women within established social mores. The situation becomes precarious when an upper-caste girl elopes with a lower-caste boy, or when a Hindu girl falls in love with a Muslim boy, transgressing the boundaries of Hindu upper-caste dictates on “purity”. In a strictly stratified society, ridden with prejudices against the lower castes and minorities, a young couple that dares to cross boundaries is severely punished. At times, the price for choosing a partner is public humiliation or gruesome murder. The notion of women as the sexual property of their communities is deeply ingrained. The two main concerns for those resisting the increase in the age of consent are increasing parental control over young adolescents and criminalising a normal sexual activity.

The use and abuse of police power at the instance of parents in marriages of choice is in direct opposition to women’s autonomy, agency and free will. In a society ridden with prejudices against the lower castes and communal conflicts, a young couple who dares to disobey community dictates is severely punished. At times, the price for choosing a partner is death or public humiliation⁴³⁴. Despite being aware that it is a marriage of choice and voluntary elopement, the police collude with the fathers to protect patriarchal interests and community honour. Only if a girl is able to provide clear and unequivocal proof of her majority is she allowed to accompany her husband and cohabit with him. Or else the father’s word regarding her age will be accepted and she will be sent back to his custody, and criminal charges will be pressed against the boy. In rare cases where girls vehemently refuse to return to the custody of their fathers, they are sent to state-run shelter homes. These girls are not automatically released on attaining majority. The husbands concerned would have to initiate legal proceedings for their release.

In view of the above discussions it appears that rape is associated with the larger questions of women’s sexuality in which a woman’s body is site of cultural and political contestations. A women’s sexuality in Haryana moreover is associated with the caste-

⁴³⁴ Prem Chowdhry, “*Private Lives, State Intervention: Cases of Runaway Marriage in Rural North India*”, *Modern Asian Studies*, Vol. 38, No 1, 2004, pp. 55-84.

purity and thus regulation of her sexuality remains a central concern. Rapes can be seen as powerful assertions resulted by the inability to control or regulate her sexuality.

E. The role of State and Judiciary

The role of State and judiciary has been crucial for understanding the criminal justice system of a particular country and region as well. Ronald J Waldron has rightly defined criminal law- ‘Criminal law has been described as an important instrument of social control by which organized society defines certain human conduct as criminal and attempts to prohibit and restraint such conduct by a system of procedures and penalties’⁴³⁵

In recent years rape has been redefined as political violence against all women, and the law critiqued as that agent of the state which systemically transforms rape into sex⁴³⁶. It is in presenting itself as a neutral and coherent whole that the law succeeds in deploying power. This very power is deployed herein to constitute rape as a transparent category, as if social and legal discourses on rape constitute their object identically. The state and the judiciary seem to act in collaboration when it comes to regulate sexuality because the Indian penal code directly recognizes the right of the state to regulate sexuality. In the IPC sexual offences are classified through a binary distinction between ‘rape’ and ‘unnatural offences’. This deployment of the concept of nature allows rape to be viewed as an offence which is ‘natural’ and men falling into a natural state when the ordering mechanisms of culture are absent⁴³⁷.

⁴³⁵ Ronald J Waldron, *The Criminal Justice System – An Introduction*, 5th edition, Harpr and Row Publishers, New York, 1989,p.29

⁴³⁶Pratixa Bakshi, “Violence of Political Rhetoric on Rape”, *Economic and Political Weekly*, Vol. 44, No. 32

⁴³⁷ Veena Das, “Sexual Violence, Discursive Formations and the State”, *Economic and Political Weekly*,September,1996

The law relating to crimes in India was codified in 1860 by the colonial British government by the introduction of the Indian Penal Code⁴³⁸. The Code identified rape as an offence and made it punishable under Section 376. Section 377, defines ‘unnatural offences’ and prescribes punishment for these. Section 377 reads as follows: “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment of life...”⁴³⁹ Thus what rape offends, it seems, is not the body of the woman but the order of correct sexual relations as defined by societal norms. Even a cursory reading of the text makes it clear that in defining the offence of rape, the concern is with regulation of sexuality rather than protection of body integrity of the woman.

For instance, in cases of bigamy a woman may believe herself to be married but the marriage is null and void in law. Hence although the husband may not have used any force in having sexual relations with her and indeed, the woman may have consented to the sexual relationship, in law he would be defined as a rapist according to this clause. When we read this along with the clause which does not consider it judicially possible for a husband to ‘rape’ his wife if she is above the age of 16, we can see that the offence of rape is about the regulation of sexuality and not about the protection of the body integrity of women.

Veena Das has discussed in details how the juridical discourse splits into the two poles of grammar and semanticity. The legislative level is the level of grammar without content while the adjudicatory processes relate to the level of judicial verification through which content is given to the judicial grammar. The level of non-judicial discourse - devoid of both judicial grammar and judicial semanticity - constitutes a virtual world elements of which may enter the judicial world through judicial production and verification. It is this double process of judicial production and verification that negotiates the ‘reality’ of societal categories and fits it into frames of law. In the process the judicial discourse

⁴³⁸ Vasudha Dhagamwar, *Law, Power, and Justice: the Protection to Personal Rights in the Indian Penal Code*, Sage, Delhi, 1992.

⁴³⁹ <https://www.livemint.com/opinion/who-is-responsible-for-modernising-a-150-year-old-law?> Accessed on 22nd July 2018

comes to mediate the everyday categories of sexuality and sexual violence, sorting and classifying the normal and the pathological in terms of marriage and alliance. The process of judicial verification, separates women into 'consenting' and 'non-consenting' ones, and regulates male desire by channelizing it towards women of appropriate categories.

The importance of the notion of consent in Indian law is very complex and difficult to explain. Indeed 'consent' of woman turns out to be the most significant category of distinguishing between non-punishable sexual offence with a woman and the offence of rape against her. Carol Smart⁴⁴⁰ considers that the significance of the category of consent is that it helps to systematically transform rape into consensual sex in the legal system. More recently Matoesian has identified court room talk as the site for examining how the victim's experience of sexual violence is delegitimized and decriminalized by converting it into consensual sex.

The court room trial and the structure of sentencing demonstrate how a woman's no to sex can be converted into a yes to it through the operation of judicial grammar and judicial sentencing. Landowski⁴⁴¹ has described how the legislative function of this discourse first separates the licit and illicit compartment of human desires through normative enunciations. These desires, they argued, are then classified and heirarichized through processes of judicial verification by an application of such distinctions as nature and culture on the one hand, and individual and social, on the other. Thus women's reluctance towards and negative experiences of engaging with the law and law enforcement raises various questions around the ways in which the legal structure as a whole addresses women's issues and their rights⁴⁴².

To illustrate this, I would like to take up the case of Ram Murti vs. the State of Haryana, 1970⁴⁴³.

⁴⁴⁰ Carol Smart, *Feminism and the Power of Law*, Routledge, London, 1989.

⁴⁴¹ *ibid*;

⁴⁴² *Keeping Women Safe? Gender, Online Harassment and Indian Law*, Richa Kaul Padte

⁴⁴³ Ram Murti vs State of Haryana ,All India Reprter 1970 Supreme Court, case no. 1029, 1970

It is case where Satnam Kaur, a student of standard 9th, Dev Samaj Girls High School is deceitfully brought to the house of Ram Murti. Ram Murti the accused was a medical practitioner but also used to teach in school. Apparently Sumitra another classmate of Satnam was used as the message conveyer and Satnam came to Ram Murti's house in order to know the marks secured by her (as per conveyer's message). Satnam was offered tea at the house of the accused. Satnam was taken by Ram Murti in the car to various places where Pratap Singh, Suresh and Prem Kumar Mittal committed rape on her. While she was being taken by the accused to the Chandigarh railway station she happened to see some police officers and raised the alarm, she was taken to the Chandigarh police station and her statement was recorded where she narrated the whole story. However during the course of interrogation her narration and the fact that the police had found her was ignored and greater emphasis was laid on the evidences such as it was she who went to Ram Murti's house. Satnam's medical examination had revealed that she was used to intercourse and ironically it was assumed that she was not of 'good moral character' and the accused cannot be convicted merely on her statement. Thus the above case clearly reveals the loopholes in law and the fact that judicial laws are largely concluded in patriarchal terms.

Feminist analyses of the juridical and social discourses on rape have amply demonstrated that in law the bodily autonomy of all women has not been its chief concern. If we look at the manner in which the statute on rape frames its object before the Criminal Amendment Act 2013, we see that it does not include all forms of rape. Rape by sticks, fingers, other sharp objects did not constitute rape. The age old emphasis on heterosexual rape based on penile penetration can be understood in the way in which patriarchal descent is traced in patriarchal social structures, to which the control of female sexuality is central.

Patrilineal mechanisms of tracing kinship in patriarchal societies place emphasis on the purity of descent, so much so that rape of the woman is constructed as the defilement of the descent group itself. In such cultures the emphasis on the regulation of women's sexuality makes it necessary to criminalise some forms of heterosexual rape in everyday contexts. In this gendered context of violence in society men are generally considered as subjects of violence and women as objects of violence.

The Indian rape law divides women into those who cannot consent and those who cannot withhold consent to sexual intercourse from their husbands. The former is the provision which prohibits sexual activity for all unmarried women up to 16 years of age and those married up to the age of 15 years. The latter is the provision which holds that marital rape is not criminal.

In all these constructions which are clearly predicated on the discourses of honour and shame of the collective community, then marks its identity by taking pride in its women's chastity. 'Unchaste women', wives prostitutes, women on whose bodies violence is inscribed or women who act as desiring subjects, are seen to deserve the violence of rape, for they blur the very point at which this difference is located - the control over female sexuality.

Analyses of legal judgments on rape have shown that generally rape is classified as 'heinous' when it is committed against women who fall within the ambit of 'good' women with the help of two cases I would like to illustrate how law distinguishes between 'good' and 'bad' women and how then on its very basis justice is meted out.

The following is *The State of Punjab vs. Gourmit Singh & Ors* on 16 January, 1996 case⁴⁴⁴:

The prosecutrix, a young girl below 16 years of age, was studying in the 10th class at the relevant time in Government High School, Pakhowal. The matriculation examinations were going on at the material time. The examination centre of the prosecutrix was located in the Boys High School, Pakhowal. On 30th March, 1984 at about 12.30 p.m. after taking her test in Geography, the prosecutrix was going to the house of her maternal uncle, Darshan Singh, and when she had covered a distance of about 100 karmas from the school, a blue ambassador car being driven by a Sikh youth aged 20/25 years came from behind. In that car Gurmit Singh, Jagjit Singh and Ranjit Singh accused were sitting. The car stopped near her. Ranjit Singh accused came out of the car and caught hold of the prosecutrix from her arm and pushed her inside the car. Accused Jagjit Singh put his hand

⁴⁴⁴ *The State Of Punjab vs. Gurmit Singh & Ors* on 16 January, Supreme Court of India, All India Reporter, case no. 1393, 1996

on the mouth of the prosecutrix, while Gurmit Singh accused threatened the prosecutrix, that in case she raised an alarm she would be done to death. All the three accused drove her to the tube well of Ranjit Singh (accused).

She was taken to the `kotha'⁴⁴⁵ of the Tube well. The driver of the car after leaving the prosecutrix and the three accused persons there went away with the car. In the said kotha Gurmit Singh compelled the prosecutrix to take liquor, misrepresenting to her that it was juice. Her refusal did not have any effect and she reluctantly consumed liquor. Gurmit Singh then got removed her *salwar* and also opened her shirt. She was made to lie on a cot in the *kotha* while his companions guarded the *kotha* from outside. Gurmit Singh committed rape upon her. She raised rule as she was suffering pain but Gurmit Singh threatened to kill her if she persisted in raising alarm. Due to that threat, she kept quiet. After Gurmit Singh had committed rape upon her, the other two accused, who were earlier guarding the kotha from outside, came in one by one, and committed rape upon her. Jagjit Singh committed rape on her after Gurmit Singh and thereafter Ranjit Singh committed rape on her. Each one of the accused committed sexual intercourse with the prosecutrix forcibly and against her will. They all subjected her to sexual intercourse once again during the night against her will.

Next morning at about 6.00 a.m., the same car arrived at the tube well kotha of Ranjit Singh and the three accused made her to sit in that car and left her near the Boys High School, Pakhowal near about the place from where she had been abducted. The prosecutrix had to take her examination in the subject of Hygiene on that date. She, after taking her examination in Hygiene, reached her village Nangal- Kalan, at about noon time and narrated the entire story to her mother, Smt. Gurdev Kaur. Her father Trilok Singh was not present in the house at that time. He returned from his work late in the evening. The mother of the prosecutrix, Smt. Gurdev Kaur, narrated the episode to her husband Tirlok Singh on his arrival. Her father straight away contacted Sarpanch Joginder Singh of the village. A panchayat was convened. Matter was brought to the notice of the Sarpanch of village Pakhowal also. Both the *Sarpanchs*, tried to affect a

⁴⁴⁵ terrace in Hindi

compromise on 1.4.1984 but since the panchayat could not give any justice of relief to the prosecutrix, she along with her father proceeded to the police station Raikot to lodge a report about the occurrence with the police. When they reached at the bus *adda* of village Pakhowal, the police met them and she made her statement, before ASI Raghbir Chand who made an endorsement, and sent the statement of the prosecutrix to the police station Raikot for registration of the case on the basis of which formal FIR was registered by SI Malkiat Singh. ASI Raghbir Chand then took the prosecutrix and her mother to the primary health centre Pakhowal for medical examination of the prosecutrix. She was medically examined by lady doctor, Dr. Sukhwinder Kaur, on 2.4.84, who found that the hymen of the prosecutrix was lacerated with fine radiate tears, swollen and painful. Her pubic hair was also found mated. According to PW1 intercourse with the prosecutrix could be “one of the reasons for laceration which I found in her hymen”. She went on to say that the possibility could not be ruled out that the prosecutrix “was not habitual to intercourse earlier.”⁴⁴⁶

During the course of investigation, the police took into possession a sealed parcel handed over by the lady doctor containing the salwar of the prosecutrix along with 5 slides of vaginal smears and one sealed phial containing pubic hair of the prosecutrix, vide memo Ex. PK. On the pointing out of the prosecutrix, the investigating officer prepared the rough site plan Ex. PF, of the place from where she had been abducted. The prosecutrix also led the investigating officer to the tube well kotha of Ranjit Singh where she had been wrongfully confined and raped. The investigating officer prepared a rough site plan of the Kotha Ex. PM. A search was made for the accused on 2.4.1984 but they were not found. They were also not traceable on 3.4.1984, inspire of a raid being conducted at their houses by the ASI. On 5.4.1984 Jagjit Singh and Ranjit Singh were produced before the investigating officer by Gurbachan Singh and Jagjit Singh on the same day were produced before Dr. B.L. Bansal for medical examination. The doctor opined that both the accused were fit to perform sexual intercourse. Gurmit Singh respondent was arrested on 9.4.1984 by SI Malkiat Singh. He was also got medically examined on 9.4.1984 from Dr. B.L. Bansal who opined that Gurmit Singh was also fit to perform sexual intercourse.

⁴⁴⁶ The State Of Punjab vs. Gurmit Singh & Ors on 16 January AIR 1393,1996

The sealed parcels containing the slides of vaginal smears, the pubic hair and the salwar of the prosecutrix, were sent to the chemical examiner. The report of the chemical examiner revealed that semen was found on the slides of vaginal smear though no spermatozoa were found either on the pubic hair or the salwar of the prosecutrix. On completion of the investigation, respondents were *challaned* and were charged for offences under Sections 363, 366, 368, 376 IPC.

The trial court first dealt with the prosecution case relating to the abduction of the prosecutrix by the respondents and observed:

“The first point for appreciation before me would arise whether this part of the prosecution story stands fortified by any cogent or reliable evidence or not. There is a bald allegation only of prosecutrix that she was forcibly abducted in a car. In the F.I.R she stated that she was abducted in an Ambassador Car of blue colour. After going through the evidence, I am of the view that this thing has been introduced by the prosecutrix or by their father or by the thanedar just to give the gravity of offence. Prosecutrix was tested about the particulars of the car and she is so ignorant about the make etc. of the car that entire story that she was abducted in the car becomes doubtful. She stated in her cross examination that the make of the car was Master. She was pertinently asked whether the make of the car was Ambassador or Fiat. The witness replied that she cannot tell the make of the car. But when she was asked as to the difference between Fiat, Ambassador or Master car, she was unable to explain the difference amongst these vehicles. So, it appears that the allegations that she was abducted in a Fiat Car by all the three accused and the driver, is an imaginary story which has been given either by the thanedar or by the father of the prosecutrix.” “If the three known accused are in the clutches of the police, it is not difficult for the I.O. to come to know about the car, the name of its driver etc., but strange enough, SI Raghbir Chand has shown pitiable negligence when he could not find out the car driver in spite of the fact that he directed the investigation on these lines. He had to admit that he made search for taking the car into possession allegedly used in the occurrence. He could not find out the name of the driver nor could he find out which car was used. In these circumstances, it looks to be improbable that any car was also used in the alleged abduction.”

The trial court further commented :

“On 30th March, 1984 she was forcibly abducted by four desperate persons who were out and out to molest her honour. It has been admitted by the prosecutrix that she was taken through the bus adda of Pakhowal via metalled road. It has come in the evidence that it is a busy center. In spite of that fact she has not raised any alarm, so as to attract persons that she was being forcibly taken. The height of her own unnatural conduct is that she was left by the accused at the same point on the next morning. The accused would be the last person to extend sympathy to the prosecutrix. Had it been so, the natural conduct of the prosecutrix was first to rush to the house of her maternal uncle to apprise him that she had been forcibly abducted on the previous day. The witness after her being left at the place of abduction lightly takes her examination. She does not complain to the lady teachers who were deployed to keep a watch on the girl students because these students are to appear in the center of Boys School. She does not complain to anybody nor her friend that she was raped during the previous night. She prefers her examination rather than to go to the house of her parents or relations. Thereafter, she goes to her village Mangal Kalan and informs for the first time her mother that she was raped on the previous night. This part of the prosecution story does not look to be probable.”

The trial court, thus, disbelieved the version of the prosecutrix basically for the reasons; (i) “she is so ignorant about the make etc. of the car that entire story that she was abducted in the car becomes doubtful” particularly because she could not explain the difference between a Fiat car, Ambassador car or a Master car; (ii) the investigating officer had “shown pitiable negligence” during the investigation by not tracing out the car and the driver; (iii) that the prosecutrix did not raise any alarm while being abducted even though she had passed through the bus adda of village Pakhowal (iv) that the story of abduction “has been introduced by the prosecutrix or by her father or by the thanedar just to give the gravity of offence” and (v) that no corroboration of the statement of the prosecutrix was available on the record and that the story that the accused had left her near the school next morning was not believable because the accused could have no “sympathy” for her.

The other case used for illustration is Vikram Singh Son of Shri Mam Raj vs. The State of Haryana on 6 February, 2003.

Present is a case which has shaken our conscience on going through the evidence and allegations of the prosecution. Vikram Singh appellant is none else but the husband of Ramesh Devi. To what extent he can go for defaming his wife not only through himself but also with the assembly of his companions can be well judged on going through the statements of the Ramesh Devi made before the police and in the trial court and also before the Magistrate under Section 164 Cr.P.c. Ramesh Devi made a statement before SI/SHO Baldev Singh of Police Station, Sadar Rewari in the company of her mother on 23.12.1998 at about 8.15 a.m. stating therein that she is a resident of Berli Khurd. Her father expired in her childhood and thereafter she started residing with her mother. She was married with Vikram son of Mam Raj, caste *Ahir*, Resident of Dahina, Police Station, and Khol on 5.6.1994 according to Hindu rites and ceremonies and out of this wedlock she gave birth to one male child, namely, Ankit, aged about 2 years at the time of this incident. The prosecutrix was a young girl of 20 years at that time and she further stated that she was living with her mother in the village for the last about 8/10 months and she started serving as nurse in Virendra Hospital, Rewari.

On 21.12.1998 when she was returning to bus stand Rewari from the hospital, on the way her husband Vikram Singh called her by name. At that time he was sitting in a white Maruti car bearing No. DL-4C.3051 which was being driven by Titu [Raj Singh] resident of Ladhuwas. her husband was sitting on the rear seat of the said car and one more person belonging to village Ladhuwas was also sitting in the car. Her husband called her saying that he would drop her at bus stand or Naiwala Chowk. She reposed confidence in her husband and sat in the car. She was made busy in conversation and due to this reason her last bus missed. Her husband told her that firstly they would take liquor and then they would drop her. Her husband and his companions became busy in taking liquor. It is alleged by the complainant that she was forced to consume Pepsi which was in a plastic bottle. Some intoxicant was mixed in the Pepsi and that was the reason that after 10/15 minutes she started feeling giddiness and her limbs were unable to move. Upon this her husband Vikram told to his companion Titu that now she was fully intoxicated and they

will take her to Ladhuwas. Thereafter they took her to a house in village Ladhuwas and she was in a position to identify the same. On reaching that house she observed that two persons were already sleeping in the Chobara of the said house. Her husband forcibly committed sexual intercourse with her in the Chobara and then he went out. Thereafter two persons, who were already sleeping in the Chobara, sexually assaulted her but she resisted and cried, her husband told Titu that on hearing such cries villagers would attract to the spot. He suggested taking her to the well. Thereafter all the five persons forcibly took her in the car to the hut made of gunny bags. In the hut three persons were already present, all those persons also committed rape with her turn by turn and on her refusal they gave her beating and many photographs were taken by them in a forcibly manner. Throughout the night they had been committing rape upon her forcibly one after the other.

On the following day at about 5.00 a.m. they dropped her near Mehendergarh Chowk, Rewari. Due to tiredness and pain she straightway went to village Berli Khurd to her mother. On the day of reporting, after she recovered, she accompanied by her mother Giano Devi came to the police station for lodging the report, it was also stated by the prosecutrix that those persons while leaving her threatened that in case she tried to go to the police station for lodging the report, she would be killed. Also it was stated by the prosecutrix that all those persons were young in age and she could identify them as and when they were produced before her. All the accused were punished by the Punjab and Haryana High Court⁴⁴⁷. What remains important is that in the case of Ramesh Devi the victim was sympathised and believed because she was married and this happened to her while she believed her husband, whereas in the case of Gurmit Singh the victim is a school going girl who delayed in complaining and in the medical examination the fact that she might have been habitual to sexual intercourse could not be ruled out. This made her statement weak, and it was assumed by the judge that she was lying.

⁴⁴⁷ *Vikram Singh Son of Shri Mam Raj vs. The State of Haryana* on 6 February, 2003, Supreme Court of India, 2003.

Pratiksha Baxi while providing a reading of the text of the 1983 parliamentary debates and the current debate on death penalty offers good insight on the object of punishment that the object of deterrence is not to deter rape against all women.

Rather its objective is to control normal levels of violence against some women and increase disciplinary power over all women⁴⁴⁸.

She argues that the retributory logic operates within the structures of patriarchy which pose the state as the guarantor of the honour of a certain kind of women. It does not and will not in its enactment, provide retributory justice to all women⁴⁴⁹. Further it entrenches the patriarchal common sense that those women who do not enact patriarchal standards of morality invite rape by provoking the uncontrollable natural male sexual urge, do not deserve retributory justice. The objective of justice here is a certain kind of law and order, which on the one hand posits the state as the guardian of the chastity of a certain kind of women and on the other increases the disciplinary power over all women. Retribution, thus, aims at punishing men for having breached the contract between the masculinist state and all men. Its aim is to deter men from transgressing the 'normal' levels of violence against women. Thus the consequence of the proposal is to normalise violence against women which is seen as 'normal' in society and to deter what is seen as pathological sex/violence against women. The rhetoric of justice then really stages a dialogue between the powers of the state and its male subjects, which turns a blind eye to the risks women live and survive at an everyday level.

F. Role of Women Organizations and the Campaign against Rape

The issue of rape has been one that most contemporary feminist movement internationally have focused on "firstly because sexual assault is one of the ugliest and most brutal expressions of masculine violence towards women, secondly because rape and the historical discourse around it reveal a great deal about the social relations of reproduction and thirdly because it shows about the way in which the woman's body is

⁴⁴⁸ Pratiksha Baxi, "Rape, Retribution, State: On Whose Bodies?", *Economic and Political Weekly*, Vol. 35, No. 14

⁴⁴⁹ Ibid;

seen as representing the community⁴⁵⁰. In India it is the latter reason which has been most dominant in taking up of campaigns against rape. In the colonial period in India, the nationalist-feminist movement raised the issue largely to point to ‘excesses’ committed by the British state as ‘foreigner –colonizer’. In post-independence India, the left and far left raised the issue to point to ‘excesses’ committed by the Indian state and by the ‘ruling class’⁴⁵¹.

The two major categories of rape which were largely protested by women groups initially were that of police rape⁴⁵² and that of rapes by landlord. Both of these categories of rape theoretically could be treated as part and parcel of the exploitation of the ‘weaker sections of society’ and thus consciousness of class oppression could be created among men and a consciousness of women’s oppression could be stimulated among women. The agitation largely began with campaigns against police rape. The scale and frequency of police rape are quite startling in India: police records themselves show that the number of rapes by ‘government servants’ in rural and tribal areas can exceed one a day. The issue of police rape achieved a new significance in 1978, just as the feminists groups were in the process of formation, through an incident in Hyderabad, where a woman called Rameeza Bee was raped by several policemen and her rickshaw puller husband was murdered because he protested against his wife’s gang rape. Following this rape and murder, twenty two thousand Hyderabadi’s went to the police station verandah, set up road blocks, cut telephone wires, stoned the building and set fire to some bicycles in the compound. The agitation continued even after the Army was called in, and could only be repressed after President’s rule was declared and a commission of inquiry into the rape of Rameeza Bee and the murder of her husband was appointed. Despite the report of the commission of enquiry which established the policemen’s guilt, they were acquitted by the Session court. The only people to protest were feminist groups like the Stri Shakti Sangathanain Hyderabad, Vimochana and the Women Lawyers’ Association in Bangalore

⁴⁵⁰ Radha Kumar, *The History of Doing: An Illustrated Account of Movements for Women’s Rights and Feminism in India 1800-1990*, Zubaan Pvt. Limited, New Delhi, 2015,p.128

⁴⁵¹ *ibid*;

⁴⁵² It included rape by army and security forces as well

demonstrated against the judgement and went an appeal against it to the High Court and then the Supreme Court.

A similar case of gangrape which brought about revolution against the crime of rape and altered the course of law was Nirbhaya⁴⁵³ gangrape case which took place in the capital Delhi on December 16, 2012. The 23 year old physiotherapy intern was assaulted and raped inside a moving bus in Munirka, South Delhi, while she was returning after watching a movie with her male friend Awindra Pratap Pandey. She was brutally raped by six men including the driver and suffered grave injuries while her male friend was also beaten up with rods. Eleven days after the assault , she was transferred to a hospital in Singapore for emergency treatment but succumbed to her injuries two days later⁴⁵⁴.

The incident generated widespread national and international coverage and was widely condemned both in India and abroad. Subsequently, public protests against the state and central governments for failing to provide adequate security for women took place in New Delhi , where thousands of protesters clashed with security forces. Similar protests took place in major cities throughout the country. All the accused were arrested and charged with sexual assault and murder. One of the accused, Ram Singh, died in the police custody from possible suicide on 11 March 2013 in the Tihar Jail⁴⁵⁵. The rest of the accused went on trial in a fast-track court ; the prosecution finished presenting its evidence on 8July, 2013. The juvenile was convicted of rape and murder and given the maximum sentence of three years' imprisonment in a reform facility. On 10th September 2013, the four remaining adult defendants were found guilty of rape and murder and three days later were sentenced to death by hanging.

As a result of the protest, in December 2012, a judicial committee was set up to study and take public suggestions for the best ways to amend laws to provide quicker investigation and prosecution of sex offenders. After considering about 80000 suggestions the

⁴⁵³ Since Indian law does not allow the press to publish a rape victim's name, she became widely known as Nirbahaya, meaning "fearless" and her struggle and death have become a symbol of resistance to rape in the world.

⁴⁵⁴ "Delhi Gangrape: Chronology of events", *The Hindu* , New Delhi, 31/8/ 2013.

⁴⁵⁵ "Delhi gang-rape accused commits 'suicide'", *The Hindu*, Chennai , 11/3/2013.

committee submitted a report which indicated that failures on the part of government and police were root cause behind crimes against women. In 2013, the Criminal Law (Amendment) Ordinance, 2013 was promulgated by the President. Several new laws were passed and fast-track courts were created to hear rape cases. Critics argue that the legal system continues to remain slow to hear and prosecute rape cases but most agree that the case has resulted in a tremendous increase in the public discussion of crimes against women and statistics show that there has been an improvement in the number of reporting of the crime.

Thus it is important to understand that the assertion of power remains central to the violence against female bodies in the cases of rape. Women bodies serve have historically served as sites of political and cultural contestations. The contemporary issue of rape needs to be seen as forms of aggression which often results from the transgression of customary norms, violation of “codes” of sexuality . Violence in the form of rape is increasingly used nowadays to “teach a lesson” for exercising their rights and choices, in other words to push women back to their subordinate position.

CONCLUSION

Violence against women has emerged as a global issue defying class, cultural and regional boundaries. One of the most significant observation which emerged from working on the issue in India and specifically in Haryana is that gender based violence in India defies caste, class or regional boundaries. What also emerged is the fact that age and educational background of the perpetrator was also not a determinant as far as nature and gravity of the crime is concerned. Thus it is important to understand that crime against women is not a mere law and order problem but a multilayered and complex issue which cannot be addressed through a single set of strategies. Violence against women has been regarded as one of the most heinous crimes and some of the harshest punishments have been prescribed for commission of these in ancient law books, customary codes, the Indian Penal Code and the various personal laws in practice in India. However the implementation of these laws remain difficult sometimes due to lack of awareness and at times due to lack of commitment at the part of the state machinery. Most laws to protect women do not address the underlying cause of violence, that is, societal attitude towards women and inherent patriarchy. Therefore through the present study I have looked at the social and cultural roots of crime, contextualized the reasons behind its normalization and questioned its social sanctioning. This study has questioned the ambivalent character portrayed by the state which on one hand represents global capitalism and evil feudalism on the other.

After consulting a wide range of sources for my chapters like the various national and international reports on violence against women, administrative reports on criminal justice system in the Punjab province, customary law reports, Supreme Court and High Court Cases, autobiography of Judge, Law commission reports, NGO reports, newspaper reports, conversation with campaigners and activists involved in creating awareness about gender based violence and a range of primary and secondary sources I arrived at some important conclusions regarding the nature of crime against women in India which will be discussed below issue-wise.

If we look at the nature and magnitude of violence the most important thing which emerged was the fact that there is a vast gap in the number of cases reported when we compare the NCRB reports, National Family Health Survey reports and the newspaper reports. The nature of crime reported also varied across the sources like the Family Health Surveys showed that much of the sexual violence is witnessed during their reproductive age(15-49)yrs and most of the women of this age have experienced some form of intimate partner violence. The newspaper reports over the years have mostly reported crimes like rape against minors, cases of murder and have begun to report suspected cases of honour killings which helped in creating awareness about the issues which received less attention and were silently disposed off. The National Crime Record Bureau reports suggest that there has been an increase in the reporting of the cases especially of those crimes which have been separately classified and have a proper channel of support system like helpline numbers. It appeared to me as a positive outcome of the various legislative and administrative measures taken over the years. If we look at the High Court Cases we find that most of the cases of violence against women are those of dowry, rape and domestic violence but still cases of honour killings, incest rapes and cases of homicides do not reach the courts owing to underreporting of these crimes and its association with ‘shame’ and ‘loss of family and community honour’. Similarly Supreme Court cases at times revealed reversal of conviction because of the witness turning hostile during re-examination and at times conviction of those who were otherwise not punished by emphasizing on the gravity of the crime. An examination of the landmark cases of the Supreme Court on issues such as dowry, rape and honour killing revealed that the Supreme Court judgements have often paved the way for amendment in the present acts and helped in upholding the rights of women and protecting their interests. The secondary sources⁴⁵⁶ for this study have been books, articles, journals. An extensive reading of them helped me in understanding the historical and cultural context of the region which facilitated the analysis of crime in the region and helped shape my opinion over the issue. They formed the base over which I could construct my own structural framework.

⁴⁵⁶ Some of the books which served as a base for my research have been discussed in detail in my introduction and the rest find a reference in the bibliography

'Uniqueness' of Violence in the region: some observations

Gender violence in colonial Punjab and contemporary Haryana have been very different from those of that in other parts of India. One of the most significant example is that one of the most discussed crime 'sati' which was widely prevalent in Bengal is nearly absent in the region. Interestingly widow- remarriage which was one of the most important concern of the social reform movement was customarily practiced in the region locally known as 'karewa' in the region. Dowry- marriages were not the only form of marriages in the region and marriages involving 'bride-price' were widely practiced. One can clearly observe that while colonial Punjab was a patriarchal society, the region was not governed by Hindu or Muslim law rather the customary laws enjoyed supremacy over them. Similarly we can observe that the way domestic domain was questioned up in Bengal and Maharashtra through sustained feminist movement, it didn't receive similar attention in Punjab or contemporary Haryana. What further complicates the study of crime in the region is the presence of extrajudicial bodies popularly known as the 'khap panchayats' or the caste- panchayats. They wield unrestrained power and influence in the region and thus community becomes a predominant figure over and above family in the region. Their presence and the dictates issued by them are very crucial in understanding the continuance of feudal mindset in the domain. Thus the cultural and social specificities helped me understand the context in which violence thrives in Haryana and receives social sanction.

Through my observation of the nature and rate of crime in the colonial period I derive at the conclusion that the present social tensions which Haryana is facing are not sudden or recent, rather these are in continuation with the patriarchal and feudal customs which in a way has institutionalised and patronised such crimes in the name of culture and tradition. The region of colonial Punjab and Haryana has been historically unfavourable to females and till now she remains as subject of constant regulation and subjection through various norms which are still widely practiced. Haryana at present is suffering from acute shortage of brides which can be seen as an offshoot of the long standing discrimination against female foetus and girl child. This gender imbalance has brought about changes in the marriage practices and the custom of dowry. Apart from this, it gives rise to crime

such as “bride-trafficking”, “rape” and other forms of sexual violence because with the rate of crime against women has been directly proportional to the increasing number of male population. The high masculine population have shown increased tendencies to control and regulate women’s sexuality. Failure to do so, results in increased incidences of violence against them be it in the form of rape, dowry death and honour killings. The above issues have been investigated in an integrated manner instead of looking each in isolation because for me the control over sexuality of women is the central concern common in all of them. The contradictions which are displayed in the acceptance of across-region brides on one hand and the violence which the couples who go for same *gotra* -marriage, love marriages have to face by the sanction of the *Khaps* within the village and the state have been questioned. This institutionalisation of crime in Haryana has been present in the colonial period and continues to receive widespread social sanction in the post-colonial period as well.

My analyses of dowry helped me conclude that dowry is no more customary and it defies all assumed constructs behind its practice. It is not any more exclusive to the upper-caste Hindus rather its demand and acceptability is widespread and cuts across religious idnetites. It has permeated to different religious communities like Muslims, Christians and other tribal communities. Despite the Dowry Prohibition Law since 1961 and efforts to make the law more and more punitive, dowry and dowry related violence are rampant. It appears that single strategy or use of law as sole redressal mechanism would not work. Awareness creation was one of the effective strategies used in the past and it may still work due to widespread access to media and availability of various digital platforms.

The research on ancient and modern forms of violence against body and punishments against it revealed that the assertion of power remained central to the violence against female bodies in the cases of rape. Women bodies serve have historically served as sites of political and cultural contestations. The contemporary issue of rape needs to be seen as forms of aggression which often results from the transgression of customary norms, violation of “codes” of sexuality Violence in the form of rape is increasingly used nowadays to “teach a lesson” for exercising their rights and choices, in other words to push women back to their subordinate position.

The most important outcome of focusing on violence and defining it clearly is the potential to more precisely understand its scale, form and causes which could enhance the scope to intervene to prevent its occurrence or to modify its effects. After investigating gender violence and culture in the region, I attempt to offer some suggestions which could be useful in addressing the issue. Primary prevention which means prevention of violence before the occurrence of incident could be the most important step. This requires gender sensitization of police and also an increase in the number of the number of females in the police forces which would help in reporting of the cases. The public health services should also be sensitive while handling the cases of rape victims. While the amendment in the criminal laws over the years have worked in this direction, still there is lot to be done. I have covered only the crimes which directly appeared most important to me at the time when I began my research but while exploring the themes I realized that there is much more left to be touched upon. Through my research I have merely opened up the area of gender violence in the region. It has tremendous scope for analysis and research in future.

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