Introduction

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Introduction

The purpose of this thesis is to throw the light on immorality, crime against weaker section and the role of Human Rights Commission for the same. The main object of this research is that the crime which can be punishable by law but immorality not punishable by law; can it be made punishable by law?

a. Ingredients of Thesis

Here to introduce the title and each ingredient of the title:

Firstly : Immorality
Secondly : Crime
Thirdly : Weaker section
Fourthly : How women and children as the weaker Section.
Fifthly : Human Right Commission and their role for the same.

1. Immorality

Before defining the immorality we must know about what is morality.

“Morality may be defined as rule or principles which are recognized or protected by a certain society or communicated by them”.

Morality may differ from community to community, family to family and even from person to person.

The dictionary meaning of the morality is degree of conformity to moral principles “the word moral means concern with character etc. or with right and wrong; good, virtuous.

Moral principles:-

Moral principles concern with the person, what should be done. The morals which are well defined in Holy Book of every religion e.g. well behave to all
persons, respect to elders, help to needy persons, feed a starving man, give
clothes to a man who shivers with cold in wintry night etc.

The word immorality is on the other hand which is just opposite to the
morality means not in conformity with the moral principles e.g. not
behaving well to others, not respecting elders etc.

We can not compare the ugliness with beauty for we if do not know about
the ugliness we do not know about the beauty too. Similarly to know about
immoralities know the morality first.

The word crime is narrower than that of the word immorality as all crimes
are immoral but all immoralities are not crime.

What is moral or immoral depends upon the standard of morality being
practiced in the society. In certain European countries, adultery and
homosexuality are not crimes but person indulging in such acts will
nevertheless be said to be practicing immorality.

Similarly in India the bigamy is a crime but to keep concubine [woman who
is not a wife of any man cohabits with married man without marriage.] is
immoral not a crime.

**Crimes:-**

An act violating a law is crime.

The Oxford English dictionary defines “crime is an act punishable by law as
forbidden by statute as injurious to the public welfare.

Crime is a social phenomenon, arising in an organised state where people set
up rules, the breaking of which is an act called crime. Ordinarily a crime is a
wrong which affects the security or well being of the public has an interest
in its suppression.
A crime is frequently a moral sense of the community.

**Elements of crime:**

1. A human being,
2. Mens rea
3. Actus reas, illegal act or omission
4. Injury to another human being.

**Stages in commission of a crime:**

1. Intention
2. Preparation
3. Attempt
4. Accomplishment or commission of crime

In every crime, there is:

**Firstly** an intention to commit it.

**Secondly** preparation to commit it.

**Thirdly** attempt to commit it.

Thus, a culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence, if it fails due to reason beyond his control; he is said to attempt to commit the offence.

According to section 40 of IPC the word “offence” denotes a thing made punishable by the Code. Test of criminality prescribed under the Code is its characteristic of punishment.

Crime being a relative conception is an act prohibited by the State as a crime. Since the concept of crime changes from time to time, no fixed rule can ever be laid down for its determination.

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1. Principle of criminal law O.P.srivastava
Weaker section:

DHOL GAWAR SHUDRA PASHU NARI
SAKAL TADANA KE ADHIKARI

Weaker sections are somewhat neglected as well as discriminated part of the society. Weaker section has been dominated by strong section since the ancient times. Weaker section includes backward by caste, economically weaker, weaker by sex like woman and eunuch, physically weaker like weaker by age i.e. Children, old person etc.

Weaker section can be described as “a section which is inferior to upper section of the society”.

Weaker section based on caste

The earliest reference to the caste is a hymn in Rigveda; which says that Brahmans came from the mouth, the Kshatriyas from the arms, the Vaishyas from the thighs and Shudras from the feet of the supreme purusha (Bhramha). That was called a Vamas system. The varnas nurtured into a rigid socio-legal order. In ancient times law and religion were inextricably mingled.

The punishment varied for crimes committed by the people belonging to the different caste. Killing of Brahmans by Shudras dealt with higher punishment while vice-versa dealt with lesser punishment. Brahman’s murder was considered as a most mortal sin (Mahapataka, Bhramha hatya) and according to Manu no worst could be committed than that. Instead, the slaying of woman, Shudras, Vaishyas and even of Kshatriyas were considered as pity offences (Upapatakas). ³

Modern era

Freedom from colonial rule marks a great water shade in Indian history. After the independence, The Indian Constitution abolished the difference of
section prevailing in the society and established the rule of equality before law consequently no more weaker section.

**Economically weaker**

Harmonic aspect of inequality based on caste cumulative in the past compounded by corresponding economically weaker.

Today this rule is also followed that the lower caste people are ill-treated and they are known as economically weaker because they cannot earn enough for family and get weaker.

The well known zamindari system was the best example for the same but that was past now a days whole scenario has been changed. The modes of economically weaker are changing with the time and the crime against them silently increased with all the protection of law.

**Weaker by sex: Women & Eunuch**

Manu states that a woman is never fit for independence because her fathers protect her in childhood, her husband in youth and her son in old age.

The women have been suffering exploitation and discrimination since women are considered as scientifically and physically weaker as compared to the man that is the reason they are prescribed as the weaker section.

**Eunuch (Hijra):**

The word Hijra is not unknown to us. We can see Hijras in the occasion of child birth and at marriage ceremonies. They belong to the category of weaker section by sex and live usually together in separate community. They have no gender base identity. They are subjected to victim of crimes as well as immoralities.

Hijra in the different community is difficult to defined as they have no determined sex. They are neither considered as man nor as woman. In the culture of Indian subcontinents a hijra is usually considered as member of the third sex-“Neither man nor woman”. Most physically male or intersex,
but some are females. Hijras usually refer to themselves as female at the language level and usually dressed as a woman. Census data does not exist but estimates range from 50,000 to 5,000,00 in India alone.

Although they are usually referred to in English as “Eunuch” relatively few have any genital modification A third gender has existed in the subcontinent from the earliest records, and was clearly acknowledged in Vedic culture, throughout the history of Hinduism, as well as in the royal courts of Islamic rulers.

Hijras are called khusra in Urdu. The older names of Hijras are kinnars. Most hijras live at the margins of society with very low status; the very word “hijra” is sometimes used in a derogatory manner. Few employment opportunities are available to hijras. Many get their income from performing at ceremonies, begging, or prostitution an occupation of eunuchs also recorded in premorden times. Violence against hijras, especially hijra sex workers, is often brutal, and occurs in public spaces, police stations, prisons, and their homes. As with transgender people in most of the world, they face extreme discrimination in health, housing, education, employment, immigration, law, and any bureaucracy that is unable to place them into male or female gender categories. One hijra reports waiting in the emergency room of a hospital for hours while medical staff debated whether to admit her to the men’s or women’s ward.

**Weaker by age:**

Children are by age treated as a weaker and the old men too because of their old age and their decreasing efficiency making them weaker.

**Women & Children as a Weaker Section:**

Accordingly to Confucius, the subordination of women to man was one of the supreme principle of government.

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4. Wikipedia: South Asian
Aristotle said- "The dominion of male over the female, in our organization of the family to be natural and necessary".

He believed that the head of house hold is in mistakenly men who rules it, woman may be said to be an inferior to man.

The woman has been exploited and ill-treated by men as they consider them as physically weak therefore prescribed as the weaker section of the society.

**Children as the weaker section:** The children are physically and mentally weak by their age they are innocent and depend on their parents.

The immorality and crime against children can be committed easily because of their tender age and innocence they are unable to understand the situation of activity (wrong) done against them, makes them weaker.

**Kofi. A. Annan**- Former Secretary General of UN observed that ⁵:-

"There is no trust more sacred then the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that there lives are free from fear and want and that they grow up in peace."

**Human Right Commission:**

Human rights are the basic rights which a person grasps by birth. Parliament has passed Protection of Human Right Act, 1993 in pursuance of the direction enshrined in Article 51 of the Constitution, International commitments.

The Act provides for the setting of a “National Human Right Commission a Human Right Court similar commission may also be set up in the State. The National Human Right Commission has started functioning since September 1993 when the Ordinance was promulgated by the President.

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5. forward by Kofi Annan in the state of the world children 2000
The Human Right Commission has power to publish interim reports; Annual reports along with the action taken by the government will be presented in parliament.

The main object behind of this research is to reduce or minimize the crimes and immoralities against women and children and other weaker sections whether physically, socially, mentally or psychologically and to encourage Human Rights Commission to explore the vistas of crime and immorality. It is humble endeavor on the part of the researcher to fill the gap blows the expiration of the Human Rights Commission and its actual execution.

b. Research Methodology

The systematic investigation of problems and of matters concerned with law such as Codes, Acts etc. are legal research. Legal researchers do make systematic research into social political and other facts conditions which give rise to the individual Rules, Acts or Codes. They also examine the socio legal and other effects of those Acts, Rules. Research may be pursued to obtain better knowledge and understanding of any problem of legal philosophy, legal history, comparative study of law or any system of positive law.

Law is an instrument of social control. It originates and functions in a society and for society. Upendra Baxi says that the lawyer must know much of sociology and the sociologists must know much of law.

I have decided topic for research “Immorality and crime against Weaker Section with special reference to Women & Children and role of Human Right Commission. Under Art. 23 of the Constitution of India, traffic in human beings are prohibited and any contravention on the prohibition is an offence punishable by law. Under Article 35 such law had to be passed by the Parliament as soon as may be, after the commencement of the Constitution. But some immoralities which are not treated as offence as well as torts are still struggling for legality. May Parliament make laws for such
immoralities under Constitution? May such immoralities be treated as offence under any Acts? These are the basic question of this research.

In the research process of legal issues I pass through certain major step of them sub sums under it a set of interrelated operations. Every operation is important in its own way in affecting the value of the research results and their worth.

The following are the major steps of legal research.

1. **Formulation of problem:** As a researcher I have to decide the area of a subject matter. I need to formulate a specific problem from within its general area of interest before I can take any decision relating to collection and analysis of data. It is more difficult to find and to formulate a problem then to solve it. I have decided “Immorality and crime against weaker section with special reference to women & children and role of Human Right Commission” as a research problem because it is a new challenge for legal system and society and they the important part of our society and they are victim by immoral ways. They have no means, remedy against immorality because they are known as a weaker section of the society. Being a legal researcher and part of the society I think that I must find out some solutions for this problem in such a way that I can. So I have decided “Immorality and crime against weaker section with special reference to women and children and role of Human Right Commission” for the further research.


3. Formulation of Hypothesis:- A Good hypothesis in one which is testable and must be based directly on data. It might even be expected to Predict or anticipate previously unknown data. Hypothesis Provides direction to research. It directs to identify the Procedures and Methods to be followed in solving the problems we cannot admit anything as valid knowledge until a satisfactory test of the validity has been completed. But the formation of hypothesis is the most important part of research methodology. So as a researcher I prepared to follow this step.

4. Collection of datas and analysing of collected Data:- Collection of data is regarded as fascinating Phase of research. Data collection is related to primary and secondary data. The sources of legal data can be classified on several grounds, such as reliability, personal efforts, availability and so on. In this legal research I collected so many data from – Internet, case laws (having its source in precedent) Enacted Law (having its source in legislation) Customary law, Conventional law, Statutory Interpretation, codifications, observation of the society, surveys, National crime reports and News Papers etc.