

A Seminar on the Crimes against Women and the Law:

Back ground paper

Introduction:

Women occupy half the globe. But their survival has been a question; their existence with honour and dignity has been a problem. Woman is the subject of sexual exploitation in and outside the home, to say, on roads, trains, buses, schools, hospitals and everywhere, wherever there is a male. She has no secured place in this universe to live in. Male violence against women is a worldwide phenomenon.

Although not every woman has experienced it, and many expect not to, fear of violence is an important factor in the lives of most women. It determines what they do, when they do it, where they do it, and with whom. Fear of violence is a cause of women's lack of participation in activities beyond the home, as well as inside it. Within the home, women and girls may be subjected to physical and sexual abuse as punishment or as culturally justified assaults. These acts shape their attitude to life, and their expectations of themselves. There are various forms of crime against women. Sometimes, it begins even before their birth (foeticide) sometimes in the adulthood and other phases of life. In the Indian society, the position of women is always perceived in relation to the man, from birth onwards and at every stage of life, she is dependent on him. Violence against women both inside and outside of their home has been a crucial issue in the contemporary Indian society. Women in India constitute near about half of its population and most of them are grinding under the socio-cultural and religious structures. One gender alone has been controlling the space of the India's social economic, political and religious fabric since time immemorial.

Indian law does not differentiate between major and minor rape. In every ten-rape cases, six are of minor girls. In every seven minutes a crime is committed against women in India. Every 26 minutes a woman is molested. Every 34 minutes a rape takes place. Every 42 minutes a sexual harassment incident occurs. Every 43 minutes a woman is kidnapped. And every 93 minutes a woman is burnt to death over dowry. One-quarter of the reported rapes involve girls under the age of 16 but the vast majority are never reported. Although the penalty is severe, convictions are rare. (Source: National Crime Records Bureau, New Delhi. 2010)

To punish the culprits of sexual offences, the Indian Penal Code is the major answer.

The Crimes under the Indian Penal Code (IPC)

- (i) Rape (Sec. 376 IPC)
- (ii) Kidnapping & Abduction for specified purposes (Sec. 363 - 373 IPC)
- (iii) Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
- (iv) Torture - both mental and physical (Sec. 498-A IPC)
- (v) Molestation (Sec. 354 IPC)
- (vi) Sexual harassment (Sec. 509 IPC)
- (vii) Importation of girls (upto 21 years of age) (Sec. 366-B IPC)

Penal Law is found ineffective:

Rape is the fastest growing crime in the country today and as many as 18 women are assaulted in some form or the other every hour across India. Over the last few months cases of rapes and assault have made it to the headlines with alarming frequency. Mumbai watched with shame as an ugly mob attacked women on New Year's Eve. In Latur a 14 year old was raped and killed by four young men. In Konark four men were charged with dragging a woman out of a bus and gang raping her. It is an ordeal simply to file a police report and the investigations thereafter have been stories of apathy and absolute humiliation meted out to the victims. Where convicted, punishments have ranged from capital punishments to a day in jail. The recent *Nirbhaya's* episode made the public to open their unhappiness over the functioning of the Criminal Justice system in the Country. There is public demand that the law should be made rigid with serious punishment like death sentence to a rapist. There is also a demand that special enactments in the direction of protection of women and children shall be brought in. Some jurists are expressing opinion that even if a rapist should be prescribed with the punishment of death, to impose death sentence, the court will necessarily examine whether it is the rarest of rare case. One should accept that when the Penal Code was enacted, rate of crime is low, and sexual crimes are rare. After a century, due to rapid change in the life style of the people, there is growing tendency of committing sexual crimes. Therefore, the punishments prescribed in the Penal Code are not adequate to serve as deterrent, and so one would be justified in the demand for enhancement of punishment to the culprits involved in the commissions of sexual offences.

Demands from Civil Society:

Of all the promises made in the Constitution, the most important are the promises of the 'right to life', the 'right to dignity', the 'right to personal liberty' and the 'right to bodily integrity and health'. However these promises are yet to be redeemed for women. Rape and other forms of sexual assault, domestic violence, dowry death and honour killings, the most brazen violation of these rights — is a real and daily danger for most women.

The cry that has been reverberating in the streets of the capital and across the country, from a new and younger generation of citizens is: "We want justice". It is addressed to the judicial system in the country, whose primary responsibility is to protect the rights of the people. The women of this country are no longer willing to tolerate the unconscionable delays in the delivery of justice. It is the sacred duty of judicial administration at all levels, to prevent violence against women in the home; at the work place and on the streets and hold the perpetrators accountable. What is it that stops courts from securing justice for women? Why has the law not been able to convict the accused when it comes to crime against women? The situation is best summed up by a famous Orwellian quote—' to see what is in front of one's nose needs a constant struggle'.

Lack of adequate number of judges or excessive workload is no longer an acceptable excuse to the women of this country for delaying judicial decisions. They know that it is the abuse of the process of law by vested interests and the utter indifference to women who have been sexually abused, that cause delays, not lack of infrastructure. An approximately 40% increase in the number of judges between 2005 and 2012, has not produced a corresponding decline in the pendency of cases. Justice does not reside in the brick and mortar courtrooms but in the heart and soul of judges and lawyers who represent victims of injustice.

Accountability of the police must start with a complaints procedure within the police service itself where a complaint can be lodged for non-performance of duties. A clear command responsibility must be articulated within this mechanism so that in case of non-performance of duties by a junior, the senior officer is held liable. When a pattern of non-performance emerges, leading to a permanent sense of insecurity in which women live, the accountability must be that of the head of the police, and of the political establishment. Confidence in the administration can only be restored by measurable action against people in positions of power.

Justice Verma Commission:

In the aftermath of the public response to the death of Delhi victim of rape, a press release from the Ministry of Home Affairs read as follows:

“The recent incident of rape and brutal assault on a young woman in Delhi has shaken the conscience of the nation and has triggered a serious debate amongst jurists, civil society members and women’s groups about inadequacy of the present laws to protect the safety and dignity of women. The Government has given anxious consideration to the need for reviewing the present laws so as to provide for speedier justice and enhanced punishment in cases of aggravated sexual assault. For that purpose, a Committee has been constituted by the Union Government.”

The Committee has to submit its report within 30 days. The Committee has invited suggestions from the public. The suggestions can be sent by e-mail to justice.verma@nic.in or through fax at 011-23092675. The suggestions should be sent by January 05, 2013.

The initiative by the A.P. Judicial Academy:

In this back ground, the President and Members of Board of Governors of AP Judicial Academy with the advice of Hon’ble the Chief Justice & Patron-in-Chief of the Academy have decided to convene a Seminar on “Atrocities on women, Law & Reforms on 8.1. ’13 in MCR HRD, Hyderabad. Jurists, Judicial Officers, Police, Prosecutors, Advocate, Human Rights groups, Women Rights activists, NGO, representatives of women employees from private and public sector, representatives of press and electronic media will be delegates in this Seminar.

There will be two sessions. In the first session, there will be open debate participated by all the delegates. On the basis of the opinions generated in the discussions, issues and challenges will be identified and it will be followed by group discussion on the relevant issues. After submission of the opinion of all the groups, they will be put to debate. The conclusions arrived at the Seminar will be submitted in the form of a Report to Justice Verma Commission on the same day.

This seminar will address to the specific problems and gender injustice faced by the women in State of AP, and specially in Hyderabad and other Cities in the State.