

## "WOMEN AND CRIME" -AN INTERVENTION

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With the advent of civilisation, the man realised that the civilised society cannot be run by the rule of 'might is right', which was a rule of jungle, so the ancient modalities were built in for living in the society in a manner where even the weaker person is protected against the mighty one. This was the beginning of the concept of the rule of law which was thought of for protecting the weak against the strong and to build a society where might is not right and every body has a right to live equally irrespective of physical strength, in essence the rule of law was for protecting the weaker from the mighty one and the justice system was meant to maintain this rule of law i.e. protecting the weaker against the strong.

During Vedic era the woman was equal partner of man in all walks of life including learning and reciting of Vedas. The society conceived of a free man and free woman. It is true that the nature has made women weaker in strength than men but the civilised man soon realised that this weakness cannot be permitted to be exploited by strength. With the passage of time when the women became dependent on men for economic reasons, the men became dominant partner and the women became the oppressed one. This is not an occasion to trace the history and the reasons for reaching this stage.

The sorry state of affairs, as it stands today, is that even in independent India, the women have been victim of men's power, lust and criminal instincts. Newspapers are full of reports, every day, regarding dowry deaths, regarding instances where the women are paraded naked in the village and in the market, and cases of gang rapes. Many times, the custodian of security, mainly the police personnel are committing this brutal crime and as a society we are compelled to tolerate it. Since we have adopted a system of law and justice, the victim cries for justice from the courts, it is difficult to comment as to whether the courts are able to discharge their obligation in right perspective.

In Upendra Baxi's book "Law and Poverty" 1988 edition, a detailed report regarding the victims of dowry deaths had been given. Some of the extracts from the aforesaid report are reproduced for making out the point.

*"The victims of such causalities are mostly young newly married girls. A survey conducted on the basis of incidents reported in the press reveals that during a span of five years from 1975 to 1979 the number of wife burning cases have increased from 670 to 1975. The state wise figure of wife burning is as noted below :-*

*Table 1 : Statewise Figures of Wife Burning Deaths*

<i>Year</i>	<i>Name of the State</i>	<i>No. of wife burning case</i>
1979	Uttar Pradesh	744
	Maharashtra	364
	Andhra Pradesh	249
	Delhi	148
	Rajasthan	98
	West Bengal	48
	Punjab	33
	Tamil Nadu	2
	Karnataka	2

*Note: The above figures do not include cases of suicides.*

*During 1978 and 1979 only 35 and 54 cases of dowry deaths were reported to the police throughout the country. The reported cases of dowry deaths for Delhi for three years 1980, 1981 and 1982 show an upward trend of 9, 11, and 19. Likewise the figures for Uttar Pradesh, Orissa and Gujarat for 1979, 1980 and 1981 show sharp increase in number.*

*For instance, in case of Uttar Pradesh the number increased from 10, 16 to 30, Orissa from 1,2 to 5 and in the case of Gujarat from 0 to 1 and 2 respectively.*

*The fall in the number of reported cases of dowry deaths burning is ascribed to the refusal of the police to register such cases. It is also noted that police frequently register the cases as accident\$ and do not even look for evidence of homicidal intent and close the case. Even the press remains unaware of such incidents in many cases due to various reasons. The conviction in such cases is almost nil. For instance, out of 2,273 deaths, of married women by burning recorded in Delhi in the last five years. viz. from 1979 to 1983 only 12 cases have resulted in convictions.*

*To curb the practice of dowry deaths there is an urgent need to reinforce the punitive measures to appropriate preventive measures. At the same time the law be made more effective. Police should be more watchful with respect to such offences as pointed out by the Supreme Court in V.N. Pawar v. State of Maharashtra.*

*"Wife burning tragedies are becoming too frequent for the country to be complacent, Police sensitization mechanisms which will prevent the commission of such crimes must be set up if these horrendous crimes are to be avoided. Likewise, special provisions facilitating easier proof of such special class of*

*murders on establishing certain basic facts must be provided for by appropriate legislation. "*

To meet the menace of dowry death, the Parliament enacted Dowry Prohibition Act, 1961. Various State Governments, Including the State of Bihar, Punjab & Haryana and West Bengal, have made State amendments for providing teeth to the aforesaid Act. A reference need be made only to Section S-A, which has been inserted by the Amendment Act no.43 of 1986 whereby it has been provided that where any person is prosecuted for taking or abetting the taking of any dowry under Section 3, or the demanding of dowry under Section 4, the burden of proving that he had not committed an offence under those sections shall be on him.

Likewise, important amendments have been made by the Parliament by enacting Criminal Law (Second Amendment) Act, 1983 whereby Section 498-A has been added in the Indian Penal Code and the husband or the relative of the husband of the woman, whoever subjects a woman to cruelty, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Cruelty has further been defined in the Explanation added to Section 498-A, as any willful conduct of such a nature as is likely to drive the woman to commit suicide or to cause injury or danger to life, limb or health or harassment to woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security etc.

Section-174 of Cr. P .C. has also been amended providing for a magisterial enquiry in a case involving suicide or death of a woman within seven years of her marriage in any circumstance raising reasonable suspicion that some other person has committed an offence in relation to such woman.

Section 113-A of the Evidence Act has also been amended wherein it has been provided that when the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. These are stringent provisions made by the Parliament and the State Legislature to prevent the crime against the women.

Another crime to which woman is frequently subjected is rape. The malaise is world over.

The issue today with which we are concerned is as to what procedure should be adopted in the courts for proving the offence of rape. Shri Shyam Singh, Reader in Faculty of Law In Jammu has elaborated the point in his Article

**'Trial Procedure for Rape' (Published in Social Policy Law & Problem of Weaker Section of the Society-Edited by Sri D.N. Sarraf, 1986 Edition, Eastern Book Company.) Some portions from the Article are extracted to bring home the point which I want to emphasise.**

### **Trial Procedure for Rape**

*"The view that, as a matter of law, no conviction without corroboration was possible has not been accepted..... As to what type of corroboration may be required when the court is of the opinion that it is not safe to dispense with that requirement, it has also been laid down that the type of corroboration required must necessarily vary with the circumstances of each case and also according to the particular circumstances of the offence with which a person is charged?"*

*In this case the sessions judge justified himself to proceed on the basis of uncorroborated testimony of the prosecutrix departing from the rule of prudence as to corroboration whereas the High Court found corroboration for the evidence from the testimony of the other witnesses and the attendant circumstances. It implies that the High Court was not inclined to confirm the conviction on the uncorroborated evidence of the complainant.*

*In a recent judgment of the Supreme Court in Bhoginbhai Hirjibhai v. State of Gujarat (AIR 1983 S. C. 753: 1983 Cr. L.J. 1096) the court expressed its opinion that "if the evidence of the victim does not suffer from any basic infirmity, and the probabilities-factor does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming subject to the following qualifications: Corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is likelihood of her having levelled such an accusation on account of instinct of self-preservation or when the probabilities-factor is found to be out of tune. .,*

*Although the judicial decisions tend to smoothen the path towards acceptance of the uncorroborated evidence of the prosecutrix in order to procure conviction, yet the tendency to require corroborative evidence as a matter of prudence cannot be ruled out. When the complainant is a competent witness and her credibility has not otherwise been impeached, why should her evidence be viewed with doubt, disbelief or suspicions? Therefore, to have clarity and certainty in this area the legislative interference is required.*

### *Non-recording of Information relating to Commission of Sexual Offences*

*The instances are not wanting where the police officers have refused or failed to record the information as to the commission of rape (a cognisable offence) and it may happen so, particularly, when the accused is a police officer. The remedy for such non-recording of information is prescribed in the*

*Code of Criminal Procedure, 1973 under Section 154 (3). This provision of the Code, it may be noted, is not of a penal character. It is submitted that a punitive provision as recommended by the Law Commission may be inserted in the Indian Penal Code which will operate as a check on a police officer to record every information regarding commission of such an offence.*

#### *Medical Examination of the Victim and the Accused*

*The Law Commission of India took into account the nature of offence of rape and the circumstances in which it is committed and was satisfied that in good number of cases, particularly where there is no witness except the victim (and generally it is so), the accused persons are acquitted for want of proof or want of consent. Therefore, the Law Commission has recommended the insertion of a provision in the Indian Evidence Act with regard to the presumption that such intercourse was without the consent of the lady in the cases where the sexual intercourse has been proved and} the question is whether it was without the consent of the woman and the woman has alleged that she did not consent. (The Law Commission recommended the insertion of S. 111-A in the Indian Evidence Act.) The Criminal Laws (Amendment) Act, 1983 has partially incorporated this provision with regard to the custodial rape and the presumption is to be raised only when the sexual intercourse has been proved. "*

Most of the times the Courts insist on medical examination of the victim for proving the sexual intercourse. No procedure is provided for getting the victim medically examined, many times medical examination is of cursory nature, and prosecutrix is put to severe adverse cross examination and many embarrassing questions are put to malign the prosecutrix, which prevents them from approaching the court, even for such a heinous offence as of rape. A similar presumption in law should be incorporated in Cr. P .C. to raise presumption which has been provided in case of custodial rapes.

Unless some such drastic steps are taken crime against women will continue to increase. Unless some positive legislative steps are taken immediately with a follow up of providing independent investigating agency, this brutal crime against women will continue and will bring shame to the nation.

My experience as a Judge has shown that most of the times, the Judicial Officers are oblivious of the provisions referred to earlier and even allow bail applications in offences punishable under section-3/4 of Dowry Prohibition Act and Section 498A of Indian Penal Code without recording any reason whatsoever. The extracted figures referred to earlier, amply establish that in almost 99% cases of dowry deaths, and statistics also prove that in almost the same percentage in rape cases, the accused are acquitted for want of proper evidence. The approach of the court in acquitting the accused in these matters is

wholly inconsistent with the provisions of the enactment and the decision referred to earlier. In all these cases the burden must lie upon the accused to prove their innocence. On the contrary the courts continue to insist on the prosecution to prove the case. The approach of the courts also suffers from gender bias. It is rightly being agitated by the Women Liberation Movement that all offences concerning the crimes on women should be tried and heard by the women Judges. I support the idea to effectively protect the crimes against Women. The time has come when offences against the women must be tried by women Judges and a mandatory provision should be made by the Parliament and State Legislature to that effect. Only such a drastic step may put some check on these increasing crimes and the time has also come that offences against women must be investigated by women police officers.

**[J.T.R.I. JOURNAL – Second Year, Issue – 4 & 5 - Year – March, 1996]**