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Reflections on Gender Justice
in the Context of Delhi
Incident



A JOURNAL OF DEMOCRATIC POLICING

Special issue dedicated to
Gender Equity in
Justice System



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From the Editor's Desk

Democracy rests on the presumption that all human beings are equal in rights and dignity. While abilities of individuals may vary, all are equal before the law. Though this is accepted as a principle in most constitutions and international agreements, several types of inequalities continue to prevail in differing degrees in different countries.

The social and structural inequalities faced by women as a class are known to exist in practically every part of the world. The enslavement of women by men has been the longest lasting subjugation in human history. Where such subjugation coexists with economic deprivation, superstition and violence, the plight of women becomes intolerable.

In the quest for democratic policing, achieving gender equity in the administration of criminal justice is an important consideration. Our vision and mission must go far beyond mere detection of crimes against women and punishing the guilty. Admittedly, even in the limited task of prevention of dastardly attacks on women, we have not been able to make much headway. Women are unsafe both in the privacy of their homes as well as in public spaces under public gaze. This is truly the primary challenge before the police. At the same time, apart from overt violence, there are thousands of other problems which are to be identified and solved before women can enjoy the full extent of rights as citizen.

This volume of the Journal of Democratic Policing had been planned weeks ahead of the recent Delhi incident. The problems faced by women with regard to the criminal justice system have been brought into sharp focus by the above incident. In this issue we are presenting a large number of articles which dwell upon varying aspects of gender equity and better justice for women. It is hoped that this will prove useful both for practitioners, academicians and policy makers and help us all in our perennial pursuit of the elusive ideal of human dignity for all.

Jacob Punnoose IPS (Rtd)
Visiting Editor

An Exploratory Study of Influential Factors that Appear to Contribute to the Success of Females in Criminal Justice Agencies

Diana Bruns and Michelle Kilburn

Abstract

This exploratory study examines qualitative data obtained from 58 female police chiefs across the United States. The goal of the study was to identify strategies, characteristics, and career paths that can best prepare females for leadership positions in policing. The purpose of this analysis aims at identifying and exploring female police chief perspectives on a variety of relevant issues including personal characteristics, educational background, leadership styles, common challenges and perceived personal strengths and weaknesses of females in executive positions in criminal justice agencies. Discussions include influential factors that appear to contribute to the success of females in criminal justice agencies in the United States. Future trends regarding females in the criminal justice field are explored.

“A female who is interested in becoming a chief has a very, very, tough road ahead. I look back on the past 39 years and wonder how and why I did it. The cost is almost too dear.”

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Introduction

As more women are pioneering their way into vast male-dominated work environments that were originally purported as too important or dangerous of roles to take on for their gender, policing is no exception to the typical gender stereotypes and assumptions. Although males still dominate the policing field in patrol and executive positions, more females are entering into the policing ranks. Decades of research and interviews with females in the criminal justice field highlight negative costs associated with gender including: underestimation, slow promotions and sexual harassment. However, not only are women overcoming such obstacles they are exposing them as they gain promotions to higher ranks. Two-hundred eighteen (218) female police chiefs were identified as current leaders in the over 12,000 local, state and counting policing agencies the United States.

A Review of Literature

Women in policing have slowly increased over the last three decades. Currently, women make up about 12 percent of all sworn law enforcement positions in the United States (Bureau of Justice Statistics, 2002; Center for Women and Policing, 2002). However, advancement of female officers into administrative positions, have not fared nearly as well. The National Center for Women and Policing reports that only 7.3% of the top positions (i.e., chiefs, commanders, captains) are held by women. A study conducted by Schulz (2003, 2004) revealed that females represent only 1 percent of chiefs of police in the United States. To date, there has been rather limited research examining why so few women are moving into administrative positions within law enforcement agencies (Archbold, Hassell & Stichman, 2010).

Archbold and Hassell (2009) examined organizational and personal factors that might impact female police officers' decisions to attempt to achieve a promotion within law enforcement. Several personal factors emerged including family responsibilities, day care issues and lack of experience. Organizational factors entailed negative experiences on the job, lack of training opportunities and perceptions of bias by administration.

Some research suggests that female police officers may be better at certain types of traditional policing tasks because of their unique problem-solving and communication skills (Grant, 2000; Horne, 2006). In regards to philosophy of community policing, females have been found to excel in carrying out the true intent - emphasizing community, government, policing partnerships and problem solving in the community (Cowan & Bochantin, 2008; Horne, 2006)

Research Problem

As more women are entering into police chief roles, there has been little collective research emphasizing gender struggles and perceptions of obstacles and challenges encountered throughout their journeys into executive positions.

Research Questions

The questions to be answered by the qualitative feedback obtained by the research include: a) What is the description of the sample regarding levels of educational attainment and demographics, including: age, race/ethnicity, years of service on police force, educational and employment backgrounds, current salary levels and options of best education requirements for aspiring police officers; b) what are the best career paths for women aspiring to prepare for leadership positions in policing; c) what are common personality traits of female police leaders; d) what are common challenges faced by female police leaders on their journey into executive roles; e) what obstacles did they face on their journeys into their executive roles; and f) what are respondents' perceptions of leadership?

Methodology

Two-hundred eighteen (218) female police chiefs were identified through the National Center for Women and Policing for this exploratory analysis. Questionnaire surveys were mailed to the known and current 218 female police chiefs with a response rate of 27% (N=58).

Results

The average female police chief is currently 52 years of age and became a police chief at the age of 41. The average number of

years on the force is 19 and the current average salary is \$95,270. Ninety percent (90%) are Caucasian. See Table 1.

Table 1

<i>Description of Sample</i>				
Description	<i>M</i>	<i>Md</i>	<i>SD</i>	Range
Number of sworn officers in the department	52.4	22.0	78.5	1-364
Current age	51.5	52.0	6.3	33-66
Age respondent became chief	41.2	43.5	8.3	22-55
Number of years in current department	14.3	11.0	10.9	1-39
Years on the force	19.2	20.5	8.03	2-35
Current salary	\$95,270	\$95,550	\$38,883	\$19,000-\$213,000

Note: *N* = 58

A large majority had experience as patrol officers prior to becoming a police chief (93%). Almost a quarter (24.1%) of the female police chiefs were captains prior to assuming their current role.

A majority (72%) are currently satisfied or very satisfied with their current department, as well as their role as police chief (75%).

More than half of the respondents (55%) have a graduate degree. When asked their opinion of the best educational requirements for officers, more than half (62%) felt that a baccalaureate degree was best.

Close to half (48%) of the police chiefs did not feel discriminated against, or felt very small amounts of discrimination. Interestingly, one respondent stated that “*most of the discrimination I faced has come from the public.*” However, more than half (66%) believed they challenged the organizational process on a daily or weekly basis. See Table 2.

Emerging themes. Selective coding of open ended questions revealed a number of emerging themes including: the need for administrative courage, having a thick skin, working hard, not playing the gender card, holding yourself accountable to a higher standard, developing a support system and finding a mentor.

Specific comments that strongly supported these themes:

“Leadership is always filtered through the heart and I think that’s why I think female police chiefs are so successful – having courage to the right thing and not cave.”

“I learned to not give up or give into pressure from non-believers. Some felt I would not last and would quit. I did not.”

“I get discouraged with women who expect to be treated differently because of their gender. Don’t demand special treatment because you are a woman, especially not in this job. If you are going to be in law enforcement, then you need to develop some thick skin. You have to deal with a lot of ugliness in this world. That being said, women should never have to tolerate sexual harassment and disrespect just because of their gender. Policies that protect women from these abuses are necessary, but there is nothing worse than a woman using a rule for something insignificant. It minimizes the necessity of the policy or rule when it is really needed. You are representing every woman before you, as well as every woman that will come after you.”

“I earned respect and proved I was there to back-up my partner and put myself in harms-way whenever needed. I had to push myself through danger and uncertainty without being overcome by emotion. I avoided gossip, complaining, cussing, partying, and other behaviors that would lead me to compromise my ethics and principles. Women need to avoid putting themselves into situations that can entice them into compromise or allow others to relay false information about them. We must hold ourselves to higher standards (in my opinion), as we continue to prove ourselves in this field. Women make outstanding cops when they don’t whine, complain gossip, sleep around, and undermine other women.”

“Find a mentor and educate yourself. Don’t keep quiet when you think gender is causing unfair treatment.”

Recommended skill sets. A number of recommended skill sets and abilities were recommended by the female chiefs including: education; knowledge of the department, city and opponents; listening skills; knowledge of the laws; ability to multi-task; lead by example; understand budgets; keep up-to-date with technology; communication skills; and become competent and professional.

Many of the police chiefs provided great detail in their recommendations and suggestions for success:

Table 2

<i>Vital Statistics and Opinions about Profession</i>		
Description	N	%
Experience prior to becoming chief		
Patrol officer	54	93.1
Other	4	6.9
Position held prior to becoming chief		
Captain	14	24.1
Sergeant	11	19.0
Lieutenant	8	13.8
Assistant chief	5	8.6
Patrol officer	2	3.4
Corporal in another department	3	5.2
Deputy chief	3	5.2
Major	3	5.2
Others	9	15.5
Satisfaction with current department		
Very dissatisfied	3	5.2
Dissatisfied	2	3.4
Neutral	6	10.3
Satisfied	23	39.7
Very satisfied	20	34.5
Uncertain	4	6.9
Satisfaction with role as chief		
Very dissatisfied	7	21.1
Dissatisfied	2	3.4
Neutral	3	5.2
Satisfied	26	44.8
Very satisfied	18	31.0
Uncertain	2	3.4
Best educational requirement of officers		
None	1	1.7
HS/GED	4	6.9
Some college	2	3.4
Associate degree	13	22.4
Baccalaureate degree	36	62.1
Other (Military)	2	3.4
Perceptions of discrimination as female chief		
Felt not discriminated against	13	22.4
Felt very small amounts of discrimination	15	25.9
Neutral	8	13.8
Felt moderately discriminated against	16	27.6
Felt very discriminated against	6	10.3
Perceptions of how often organizational process is challenged		
Daily	20	34.5
Weekly	18	31.0
Monthly	9	15.5
Rarely	9	15.5
Uncertain	2	3.4

Note: N = 58

“Know how to budget and manage resources; know how to supplement your budget with grants/foundations/fundraisers. Be mindful and abreast of liability issues. Have a great vision—be able to see far down the road and around corners. Stay in touch with internal and external environments—ALWAYS.”

“Be competent and professional. Don’t play the gender card. Hold yourself accountable and always lead by example. Keep your feet on the ground and always base your actions on the Law Enforcement Code of Ethics. Stay abreast of current affairs. Learn how to successfully maneuver through the political environment.”

“Women need first of all to be sure that they enter the policing profession for the right reason. Women can and should enter to bring the womanly mind to the job. Whereas men, many times, will want to bring their brawn into the situation. Women offer the ability to think and talk themselves and others into solutions to problems. I would want to see more women just remember they are women and its okay to bring woman strengths to the job. Think, talk and then act.”

“Acting like a lady and thinking like a man has been the absolute key! It seems like my whole career has been boosting the male ego. Managing mostly men for the last 30 years has been a constant juggling of balls (no pun intended). It is so important to LISTEN and then slowly act. You cannot have a chip on your shoulder or you will never be successful.”

Definition of leadership. When asked to provide a definition of leadership, a very robust definition developed from the responses. Responses encompassed a wide variety of characteristics comprising: being collaborative; being fair and open-minded; doing the right thing, even when no one is looking; establishing the vision for the agency, setting the tone and inspiring staff; being more than just a manager of people; and using the art of consensus building, collaboration and persuasion.

“A leader establishes that vision for the agency, sets the tone and inspires staff to share that vision. A leader sets the example, cares for and feeds the organization. A leader guides and mentors others to reach their full potential. Be the coach, cheerleader and parent.”

“A leader is more than just a manager of people, but is one who motivates, encourages, guides and sets high standards.”

“Doing the right thing, even when no one is looking.”

“The ability to accomplish a mission/objective/goal using available capital, human and otherwise (supplement to human resources) using the arts of consensus building, cooperation, collaboration and persuasion. However, mixing in coercion may become necessary.”

“Being able to provide direction and course that will allow for others to follow. Lead by example.”

“Collaborate: I will work with everyone to gain knowledge and information. Then we put a plan into work. The plan—everyone has a voice. Ultimately, I make the call and give everyone the credit for success.”

“Fair, open-minded, willing to take five minutes to listen to alternative views. I do not think you need to be a Type A personality to lead. I believe if people think you care about their well-being and the well-being of the department, they will follow any direction that you lead.”

The majority of respondents (66%, n = 38) perceived differences in leadership roles and gender. Representative comments included:

“There are absolutely differences based in gender. Women are more nurturing, unless they are hardened to think that they cannot retain a feminine perspective. Women lead with facts, fairness and heart.”

“Yes, women leaders are more apt, generally, to lead using a mix and relying on a mix of skills and talents and calling upon the array of talents and skills resting with those being led. This approach enables those being led to feel more like a part of the solution; leads to a mentoring environment, and may generally involve a more collegial, and supportive work environment.”

“Men and women lead differently, but it is harder for the female because it is a male-dominated profession.”

However, it is important to point out that 1 in 3 (35%, n = 22) replied that successful leaders do not show gender differences, stating:

“My mentors were all male. I took parts of each mentor I liked, and molded my own style.”

“Leadership traits can be learned to a great extent. If a woman’s mentor was a man, she may take on the traits he possessed that she deemed as effective. Currently, I am grooming a man to succeed me, I see him taking on the same behaviors, but also developing his own approach.”

“Leadership varies based on the individual. My leadership style is more about the team-building concept with a strong focus on relationships and problem-solving rather than a dictator style. I encourage a cooperative working environment while I have seen more competitive environments used by other leaders.”

Several subthemes emerged such as alluding that women are better communicators and collaborators, women feel they have to prove themselves 24/7, women are more emotional, and egos often come into play.

“Women are more tuned in to the subtle cues that men sometimes miss. Oddly, the same cues they might see when interviewing a victim or suspect are ones they should be tuned into when talking with staff. I think most women (not all) lead with a sense of empathy and while it may not work to change what they do, it informs how they do it.”

“Never let them see you as weak, and never let them see you cry because that is what they are waiting for.”

“We always have to prove ourselves and show that we can do the job.”

“Women get a bad rap, but must strike a balance of toughness, affability and logic in order to succeed.”

“I worked really hard, pulled my own weight and held my own. I proved myself constantly—every day, every task, in every position.”

“ Women get a bad rap (over-emotional, prone to illness and injury, reputation of drama and bitchiness). If a woman is tough, she is a dike or a bitch. If a man is tough, he is a good leader. Women leaders must strike an appropriate balance of toughness, affability and logic in order to succeed.”

“Male chiefs are very black/white in thinking. Female chiefs see some gray in-between—sometimes heart gets in the way. I find myself struggling at times because my heart and compassion can get in the way. Occasionally, I need to step back and ask myself if I’m making my decisions for the right reasons.”

“Women naturally bring their feelings and emotions into the game, where men tend to compartmentalize everything.”

“Men tend to lead in a more competitive ego-centered manner. Women lead in a more participatory, democratic manner.”

“Males more often than not lead from their office and do not take criticism well.”

“Women and men need to lead differently. Employers, officers and co-workers expect it.”

“It’s about personality—acting like a lady and thinking like a man has been absolute key.”

“I wanted to be able to try different approaches and realized that I couldn’t do that unless I was in charge. I tend to ‘mother’ my employees and encourage them to stretch themselves and their abilities.”

Necessary personality traits. When asked what personality traits are necessary of aspiring female chiefs the most regularly occurring responses include: strong, thick skin; integrity, honesty, ethical and strong moral character; ability to influence others; open-minded; don’t forget where you came from; be likeable and approachable; self-less and compassionate; determination and willingness to work hard; enthusiasm, desire to make the world better; the ability to accept that you can make mistakes and empathy.

Greatest obstacles faced in the role of chief. The majority of respondents, 79.31% (n=46) admitted common obstacles in the roles, whereas 20.69% (n=12) replied, besides being a minority at most functions, that they faced no obstacles either on their journey to become chief, or in their current role, or to being a female in the criminal justice field. Essentially, the women who expressed little to no obstacles held the standard that,

“I try not to look at the negatives, but rather challenge myself at every opportunity to turn a negative into a positive. Nothing has power over you unless you let it—is my philosophy. I simply do not allow anything to become an obstacle to begin with.”

“Not really. People did sit back and wait to see—but once they determine you are a leader—they do not care how you are packaged.”

“I stayed focused on the finish line—doing my very best and not getting caught in what some may have done, said or thought. I had great advocates and role models.”

“Don’t ever give up. I have pioneered my little area of the world with “women in law enforcement,” and have eventually proved that ‘we’ belong in law enforcement. “

General comparable obstacles throughout the various ranges and spans of careers included uniforms that did not fit properly, lack of female locker rooms, openness of the field for women to advance and public perceptions. Other responses included dealing with unions and opposition to change from union leaders; the budget; trying to change the culture of the organization, and a general lack of understanding of working with other professionals outside of law enforcement that do not understand what they do. Three respondents recalled their greatest perceived challenges were other women.

“Women undermining are the most challenging.”

“I believe the most challenging obstacles during my career have been other women wanting to undermine my success. I believe much of the undermining was subconscious. However, women’s being critical of each other has been detrimental to me and others as

well. Our hard work and accomplishments on patrol, investigations and other assignments pale with the bickering, nitpicking and other poor behavior women display. If we could only join up together, we would take the world over in a minute. We get in our own way."

"The obstacle I see is that we don't compete with other male officers, we compete against each other. We are territorial, and very few seem to not exist with other female officers successful."

Five main sub-themes emerged (the economy, politics, unions, sexist attitudes, emotions and detriments to family life). Particularly regarding sexist attitudes, although, great strides in concert to adding more women to the police forces, numerous respondents (41.37%, n=24) felt that sexist attitudes remain commonplace in American policing:

"Deeply entrenched beliefs 'old guard' devalue contributions of female officers and block opportunities for promotion."

"Many people feel this is a male-dominated field and do not take seriously the realization of a female chief. At conferences and meetings, most other chiefs think a female present is a male chief's wife or companion. Therefore, females are sometimes 'left out of the loop' in general."

"I really believe that I am a leader. I have had (4) male chiefs in my career and for the most part, these chiefs taught me what I didn't want to do as a chief. My male chiefs never seemed to care about their people and the profession that way I feel. "

"There are still a lot of departments that feel that a woman should not be on the road. RUBBISH!"

"Male-domination—It's like I'm the pound puppy and I might mess up the blood line."

"I started in the late 1970's we had to prove ourselves every step of the way. We broke down barriers so women officers today could be here and would never have imagined how far the role of female officer has evolved. The fitness standards were rigorous and had to be changed so they were relevant to the job, uniforms and clothing, vests, guns, and shoes evolved to be more female-figure

friendly. Training is better. The public is more understanding of the realities that women and do anything and are.”

“Yes, ‘command presence’ too much emphasis on this one characteristic that law enforcement as a group believe is indicative of police leadership. In a room of CJ professionals, some have assumed I worked for probation, not a police chief because we are stuck on this image of how a chief should ‘look’.”

“It’s those old community traditions—we’ve always done it that was is no longer a viable option.”

“I have been in law enforcement for 35 years and it appears that working conditions and support systems are no better now that they were 35 years ago. It is a tough job at all levels. Don’t expect to be treated fair by the world and expect to work harder and be much more competent than your peers. This is probably true of women in other professions also.”

“Being thought of as weak, either because I’m a female or because I ask instead of barking orders.”

“Some older male officers still feel women should not be officers, much less chiefs.”

“Men feeling they should be considered for the job before you.”

“I worked at a department for 25 years and was in the place to be chief. I passed all the tests, scored higher than other candidates—more education, longevity, etc. The hiring authority asked if being a woman, would I be a good police chief? I didn’t get the job.”

“Sexist attitudes of officers that they are unaware of.”

“I remain excluded from the good-old-boy network and not being accepted by the older chiefs. Always living under a microscope—everything in my behavior is scrutinized on and off duty.”

“Always having to prove that I am just as good as a male chief.”

“My greatest obstacle thus far is that I have faced a lack of acceptance from other chiefs.”

“The belief that women are weak and cannot work with other women—it’s cut throat!”

“Lack of female officers and police chiefs in the state.”

“Some of my male peers felt the need to grill me about my experience and suitability for the job.”

“Gaining the respect and buy-in from subordinates because I was hired from the outside. The department tried to run me off.”

“Here’s an example. A ranking member that is male does not need to wear a uniform to display his membership in the organization. As a female, if I don’t wear my uniform often enough, I am told that I don’t seem like one of them because I don’t wear my uniform enough. If I have a weakness, it is utilized as a sword against me. If a male has a weakness in an area, it’s okay as long as he passes the standards. It doesn’t mean the male shouldn’t be in the police field.”

Overcoming obstacles. Only 4 respondents (6.9%) revealed instances where previous departments fostered atmospheres and subcultures that would never allow for promotions. Three (N= 3; 5.2%) expressed they obtained an attorney due to unrelentless discrimination. Sub-themes that emerged from responses pertaining to overcoming obstacles entailed the need for perseverance, networking and gaining support of those who make decisions:

“Yes, but so has everyone, men too. You can’t personalize that stuff. Get over it. Move on. Do the job!”

“Always being the one female in the room can be distracting. Being tested by the male cops to see if you can handle it.”

“I entered law enforcement before there were sexual harassment laws. Early on I had to be very direct and assertive in making it clear that ‘No’ meant NO. I did not get some opportunities because the men in management positions believed that women could not do the job. I believe that many of these obstacles still exist today—only the opinions are still held covertly.”

Table 3
Major Findings

Research Question	Major Findings
What is the description of the sample	<ul style="list-style-type: none"> • Age: 52 • Ethnicity: Caucasian • Age became a police chief: 41 • Years on the force 19 • Current salary: \$95,270 • Patrol officer experience: 93% • Currently satisfied with their department: 72% • Currently satisfied with their role as police chief: 75% • Graduate degree: 55% • Did not feel discriminated against: 48% • Challenged the organizational process daily or weekly: 66%
What are the best career paths for women aspiring to prepare for leadership positions	<ul style="list-style-type: none"> • Captain (24%), Sergeant (19%) or Lieutenant (14%) • 62% believed a baccalaureate degree should be required for all officers
What are the common personality traits of female police leaders	<ul style="list-style-type: none"> • Strong, thick skin • Integrity • Honesty • Ethical and strong moral character • Ability to influence others • Open-minded • Don't forget where you came from • Be likeable and approachable • Self-less and compassionate • Determination and willingness to work hard • Enthusiasm • Desire to make the world better • Ability to accept that you can make mistakes • Empathy
What obstacles did they face on their journeys into their executive roles	<ul style="list-style-type: none"> • 79% reported obstacles where as 21% did not report obstacles. • Uniforms that did not fit properly • Lack of female locker rooms • Openness of the field for women to advance • Public perceptions • Dealing with unions • Opposition to change • Budgets • Sexist attitudes • Emotions • Detriments to family life • Politics
What are respondents' perceptions of leadership	<ul style="list-style-type: none"> • Being collaborative • Being fair and open-minded • Doing the right thing, even when no one is looking • Establishing the vision for the agency • Setting the tone and inspiring staff • Being more than just a manager of people • Using the art of consensus building, collaboration and persuasion

Note: N = 58

“Admit when a situation is too much to manage and either simplify it or ask for help. Remember that your personal role in life (mother, daughter, etc) IS significantly different than most male counterparts. If you want to focus on something—focus on that equally.”

“No, obstacles are often created by individuals themselves, and must be overcome. Those that are not just present a challenge in the development of leadership skills and may present more of an effort to reach a goal.”

“Initially, I just wasn’t taken seriously. I’m a ‘white-Yankee woman’ coming to a very small southern town, and I didn’t know the old southern racial attitudes were as alive and well as they are. My town is 70% African American and 30% white, and it has been very hard to get the black population to believe that they are as important to me as any other white person might be. My words to officers and my expectations of my officers is that ‘everybody is somebody’. I need to make these words come to life.”

Other strategies offered were those of perseverance, networking and gaining support of those who make decisions.

“Good officers have the mindset of winning. Believe and you will succeed.”

“Being smarter than the discriminators and pretending that it didn’t bother me. I think if many knew I was offended, it would have continued past the testing phase. i.e.: Male Cop to Female Cop: Hey Jane, did you know the tampon machine in the women’s room is empty? (asked during shift change with 20 people in the room with me). No John, but the question is, how did you know?”

“I learned from the negativity and used the circumstances as ‘teaching moments’ for others, male or female.”

“I felt bias, but used it to become stronger and tougher.”

“I kept a positive attitude. I always remain confident in myself and do not let others’ beliefs or comments deter me.”

“Having successful mentors, advocates and role models that helped me guide my way.”

“I had a thick skin and stood my ground. I showed up the next day and continued to do an excellent job. I survived and excelled.”

Strategies to attract more females. The most common response (27.9%, n = 22) suggested visible female role models are among the best practices to recruit females. Additional suggestions entailed outreach (career education for women about females in policing), adjusting positions for family life (adjust hours for young moms, more positions and hours conducive to family life, flexible scheduling, daycare provisions for all hours) and to education chiefs about the benefits of women on the police force (i.e., improved public perceptions, less use of force, fewer complaints.)

Discussion

The purpose of the study was to identify and explore female police chief perspectives on a variety of relevant issues including personal characteristics, educational background, leadership styles, common challenges and perceived personal strengths and weaknesses of females in executive positions in criminal justice. Findings from this study support prior research that while women in policing have slowly increased over the last three decades, females are still facing obstacles in advancing into administrative positions. The encouraging results of this study are that women are finding ways of overcoming these obstacles and almost one quarter of the respondents did not feel obstacles were an issue in their advancement in the field. Table 3 succinctly illustrates the major findings of the study as they pertain to the research questions.

Limitations of the study. The type of agency (local/municipal, state, county, university) was not addressed. Experiences and perceptions may differ based on agency type. The response rate was 27% and should not be considered an exhaustive representation of the population of the 218 female police chiefs in the United States.

Areas of future study. Many of the respondents' perceptions of leadership mirrored the definition of Bass's (1985) transformational leadership. The three factors that comprise transformational leadership

are charisma, intellectual stimulation and individual consideration. Transformational leadership incorporates and moves beyond transactional leadership (leaders responding to lower level subordinates basic and security needs). The leader-subordinate influencing relationship is one of mutual excitement where relative power is fused to pursue organizational and personal goals (Burns, 1978; Deluga & Souza, 1991). Further investigation into the type of leadership styles espoused by female police chiefs is suggested.

“I love being a police officer. My mom and dad raised me to believe that I could be anything I wanted. My daughter is now a police officer too. I raised her the same way. I never felt that I could or could not do something because of my gender. I faced bias, but used it to become stronger and tougher. I am concerned female officers feel that they have to look and act like a man to be a police officer. They do not. Women have attributes that make them good police officers—effective, empathetic communicators, problem-solvers, etc, but we must be careful not to generalize because not all women and men are the same. Some men have the same characteristics and talents as women—and vice versa. Not all women are exactly the same. Men and women each have the characteristics and skill sets to be good police officers. We need to train and develop those individuals to bring out those traits.”

References

- Archbold, C.A., & Hassell, K.D. (2009). Paying a marriage tax: An examination of the barriers to the promotion of female police officers. *Policing: An International Journal of Police Strategies Management*, 32, 56-74.
- Archbold, C.A., Hassell, K.D., & Stichman, A. (2010). Comparing promotion and aspirations among female and male police officers. *International Journal of Police Science & Management*, 12(2), 287-303.
- Bass, B. M. (1985). *Leadership and performance beyond expectations*. New York: Free Press.
- Bureau of Justice Statistics (2002). *Police departments in large cities, 1900-2000*. Washington, DC: U.S. Department of Justice.

- Burns, J. M. (1978). *Leadership*, New York: Harper.
- Cowan, R.L. & Bochantin, J.E., (2008). Pregnancy and motherhood on the thin blue line. Female police officers' perspectives on motherhood in highly masculinized work environment. *Women and Language*, 32 (1), 22-30.
- Deluga, R. J., & Souza, J.S., (1991). The effects of transformational and transactional leadership styles on influencing behavior of subordinate police officers. *Journal of Occupational Psychology*. 64, 49-55.
- Grant, D.R. (2000). Perceived gender differences in policing: The impact of gendered perceptions of officer-situation "fit". *Women and Criminal Justice*, 12, 53-54.
- Horne, P. (2006). Policewomen: Their first century and new era. *The Police Chief*, 73, 1-10.
- National Center for Women and Policing. (2002). *Equality denied: The status of women in policing: 2001*. Los Angeles; author.
- Schultz, D.M. (2003). Women police chiefs: a statistical profile. *Police Quarterly*, 6, 330-345.
- Schultz, D.M. (2004). *Breaking the brass ceiling: Women police chiefs and their paths to the top*. Westport, CT: Praeger.

Police & Judicial Reforms First Priority : Need for Surgeon's Precision while Amending the Anti Rape Law

Madhu Poornima Kishwar

The countrywide anger and protest following the brutal gang rape of a 23 year old student has galvanized public opinion as never before. Even though the ostensible demand of protesters is to make the rape law more stringent, the real intent is to express “No Confidence” in the machinery of governance, especially the political class, police and law courts. That is why protests refuse to die down despite numerous pious announcements by the highest functionaries of the state- from the P.M to the Home Minister to the Chief Minister. True to character, the government has come up with a series of knee-jerk responses. These include appointing a Commission to suggest changes in rape laws in 30 days, a Special Task Force of all the big wigs in Delhi Government, proposal for chemical or physical castration of rapists, death penalty for all cases of aggravated sexual assault, mandatory registration of F.I.R.s in every complaint of sexual violence, special fast track courts, and gender sensitization programs for the police and so on.

Changes urgently needed in existing rape law: The most basic improvement required in the anti-rape legislation is to get rid of antiquated definition of rape as “outraging of modesty” of a woman. This needs to be replaced with “assault on the bodily integrity of a woman”. The second important change required is to treat rape by security forces at par with custodial rape meriting stricter punishment than meted out to civilians because their job is to protect citizens, not violate them. However, this

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amendment should include safeguards against malafide complaints and misuse of law to weaken anti-terror operations.

However, many of the demands being made by the anti-rape protestors as well as those proposed by the UPA government have come as knee jerk reactions and are potentially harmful

Demand for stringent law: A common demand from both public and media is that the rape law should be made more “stringent”. This overlooks the fact that in India, the gap between what the law prescribes and what actually happens in practice needs to be addressed as the first priority. When a law fails to deliver what it promises, instead of undertaking a cool headed honest review of what is wrong with the law and its implementation, the tendency in India is to assume that the law is not stringent enough, that it has too many loopholes which enable the culprits to escape punishment.

Unfortunately, most of those demanding changes in law to make it more draconian, including most T.V. anchors at the forefront of this mass hysteria, have not read the existing law. The rape law was amended in 1983 due to pressure from women’s organizations following the rape of a young woman named Mathura in a police station of Hyderabad. It provides for a minimum 7 year punishment which may extend to life imprisonment. It also has special provisions for custodial rape including a minimum of 10 years in jail since Mathura was raped while in police custody. In case of brutal rape leading to murder, our law already provides for death sentence. Thus the existing law can hardly be called “lenient”.

Proposal to chemically or physically castrate men indicted of rape: This has come from leading national parties, including the ruling party in the Centre. Such a punishment assumes that rape is all about uncontrollable sexual urge or certain men being oversexed. Apart from being an instrument of striking terror with a view to subjugate women, rape is often accompanied by brutal forms of violence of the kind the 23 year old gang rape victim went through. Rods were shoved into her vagina and her intestines pulled out. It is common for rapists to shove stones and other pain giving objects inside a woman with or without penetration of the rapists’ penis. These pathologies and brutal acts will not be controlled by castration. In fact, there is evidence that men with performance anxieties are usually more brutal.

Demand that police be trained to be gender sensitive: Our colonial minded police are no doubt very gender insensitive and have a disgraceful track record of handling cases of violence against women. But it is not as if they treat men any better as is illustrated by examples below. Police are trained to understand only two codes: a bribe from below or a kick from above. Whether the hand that bribes or the one who gets the kick delivered is that of a woman, a gangster or a terrorist makes little difference to the police. It is well known that the likes of Dawood Ibrahim exercise enormous influence on the police and can make it dance to its tunes. Our police have no hesitation in harassing and brutalizing men. Women are no doubt doubly vulnerable but only if they are not well connected. Ask the poor slum dwellers, street vendors, rickshaw pullers, auto rickshaw drivers and other vulnerable groups who survive on the mercy of the police, whether the men among them have any special advantage vis a vis the police.

Compulsory registration of sex crime complaints: Another common refrain is that the police must be obligated by law to register an F.I.R on the basis of every complaint of rape or sexual harassment that comes to them and that rape should be made a non-bailable offence in addition to mandating longer and harsher prison terms. It is also being demanded that the burden of proof in rape cases be shifted to the accused, even though in most other criminal cases, including murder, the burden of proof is on the complainant. Tamil Nadu Chief Minister Jayalalitha has set a high benchmark by announcing a 13 point plan of action for her state which includes amendment to the Goonda Act to include sexual offenders. This law provides preventive jail for one year, with no scope for bail. To this list, Sunitha Krishnan, one of the most courageous and inspirational gang rape survivors has added another important demand that once the lower court has convicted a man of rape, appeal to the High Court or Supreme Court should not be permissible at all.

When we demand that every complaint must result in an instant F.I.R and that bail to alleged rapists be denied as a rule, we are opening the flood gates for fraudulent cases being registered by the police to extort money and other vested interests to browbeat those who stand in their way. If all those accused of sexual violence are going to be booked under the Goonda Act and kept in preventive detention for one year without the possibility of bail, as announced by chief minister Jayalalitha,

there is nothing to stop extensive abuse of law given the lawless police we are saddled with. Let us not forget the kind of attacks R.T.I and other political activists have faced from police and politicians for exposing their criminal acts. (As an illustrative example see Indian Express report dated 3/1/13: <http://www.indianexpress.com/news/bengal-crusader-against—rape—pays-with-his-life-because-of-police-harassment/1053560/>)

The problem is not confined to police reluctance to register cases of genuine victims but also its increasing propensity to blackmail innocents by registering false cases against them as an instrument of extortion or implicate genuine victims in patently bogus counter cases in order to force them into withdrawing their complaints against powerful persons. This happens even in first world countries which boast of efficient police and law courts. The manner in which Wikileaks genius Julian Assange has been hounded by the US and European countries on what appears like a trumped up rape charge after adult consensual sex, points to the ease with which false criminal cases can be used to destroy lives, especially if you shift the burden of proof on the accused, as is being demanded.

This danger is even more acute in our country where we are saddled with a totally lawless police. I am myself saddled with the burden of facing a whole array of false counter cases on account of my policy reform work for street vendors which brought MANUSHI, into conflict with political mafias who prey on the illegal status of street hawkers. Every time I or other MANUSHI volunteers were subjected to murderous attacks from politically patronized gangsters, the goons succeeded in filing fake counter cases against me and other MANUSHI members involving serious criminal charges— including attempt to murder, Section 420, impersonation, extortion and fraud— with a view to forcing us to abandon our work.

One of our most active and valuable members Mehboob, has also been implicated in a bogus “attempt to rape” case through the use of call girls who he had never seen or met before. They just came to his shop and started beating him with chappals alleging that he had tried raping them. When one of the men named Sanjay who knew those call girls intervened to save Mehboob, he was attacked by local goons with iron

rods and bricks which resulted in serious head and other injuries. He could have died from the injuries but the police refused to file an F.I.R. on the basis of his complaint though they quickly entertained the complaint of the two women hired by local goons to implicate Mehboob in a bogus “attempt to rape” case. This happened in 2008. Five years down, Manushi is still saddled with defending Mehboob in this false case. If there was no provision for bail, this poor street vendor would have rotted in jail for endless years.

The horror story does not end with Mehboob. When Sanjay insisted with the police that they file an F.I.R. against local goons who caused him serious injuries for defending Mehboob against false charges, the S.H.O. of Kotla Mubarakpur police station arrested 5 adult male members of Sanjay’s family, locked them up in the thana and threatened Sanjay that if he did not withdraw his complaint, all of them would be locked up and sent to jail under the Goonda Act. Those arrested included the old bed-ridden grandfather of Sanjay, plus his father who is a Class IV employee working as a maali in a government department. We took up this case to the Deputy Commissioner but got no help. Therefore, we had no choice but to advise Sanjay to withdraw his case. These cases, filed in 2008, have gone on and on without an end in sight. They have caused us endless grief, humiliation, harassment and a waste of time on addition to financial burden.

This is not a solitary case. Implicating innocents in false cases is a well-established practice of the police. The Muslim community is particularly vulnerable on account of the popular stereotype of their being pro-Pakistan and pro-terrorism. But even well-educated Hindus from respectable families are not spared wherever and whenever the police decide to hold them to ransom. For an account of how my brother became a random target of extortion by the police, read “Police Can’t Be Women Friendly without Being Citizen Friendly”.

In short, you cannot make our police “gender sensitive” by subjecting them to special training sessions or sermons unless they are made “citizen sensitive”. This too doesn’t happen by subjecting them to occasional sermons. It happens only by institutionalizing principles of accountability and transparency in the very structure of the police - including better recruitment criteria, and creating incentives for honest work.

In other words, the existing failure of the police to act honestly, to follow due diligence in investigating whether a complaint merits filing an F.I.R. cannot be set right by doing away with the need for honest investigation altogether. Let us not forget, even Rahul Gandhi was implicated in a gang rape case by some woman in his constituency. It was later pronounced as a fabrication. Not everybody has Rahul Gandhi's clout to escape being locked up in jail without bail.

Shifting the burden of proof: The demand that the burden of proof should be shifted to the accused appears reasonable in cases of brutal violence is also fraught with danger. It is noteworthy that under pressure from women's organizations in case of dowry related violence, the burden of proof has already been shifted to the accused and the bail made extremely difficult. Can anyone claim that dowry giving and receiving has stopped or that incidents of domestic violence on account of dowry demands have come down? Can we claim that all genuine victims have been dealt with fairly by the police and law courts as a result of stringent laws in favour of alleged victims of domestic violence?

On the contrary, we have plentiful evidence of gross misuse of law by the police, lawyers and their unscrupulous clients to implicate innocent families in false cases with a view of extorting money from them. Even in terrorism related arrests, the police have consistently misused provisions that shift the burden of proof as well as denial of bail to the accused. In the process, lives of numerous innocents have been destroyed while real terrorists roam free. If the police have failed to use these provisions responsibly in cases involving national security, why do we put so much faith in their ability to use them with integrity in cases of rape? There is no substitute for honest, professionally competent investigations by law enforcement agencies.

Denying provision for appeal to higher courts: The most dangerous of all is the demand that once a man is convicted by the lower courts, there should be no provision for appeal to the High Court or the Supreme Court. This is no doubt proposed with good intent by people who have seen how rapists go scot free by dragging the case for years on end through adjournments and appeals to higher courts which also function at a snail speed. During that time, the rapists roam free on bail and often intimidate the victims into turning hostile against themselves

Once again, the dysfunctionality and tardiness of our judicial system cannot be set right by doing away with the right to appeal. By that logic, why not do away with courts altogether and let the police deliver instant justice? The right to appeal is available even to perpetrators of terrorist attacks as well as those who indulge in mass murder. Those guilty of communal massacres are also protected under this constitutional right. To demand that this right be denied only to those who commit atrocities on women is to play with fire. When brushing aside of constitutional rights and due process gains legitimacy, it has a way of spreading into all areas like a virus and eat into the very vitals of democracy.

Marriage to rapist cannot be treated as rehabilitation measure: Police and courts have often pushed for such a settlement as a measure to “rehabilitate” the raped woman. Therefore, the message needs to go down strong and clear that forcing marriage between the two parties amounts to legitimizing rape.

However, what if a woman demands this “relief”? We need to take into account all those cases as well where the woman files a rape case as a retaliation measure against a man who refuses to marry her after a long standing sexual and/or a live in relationship. Several such cases are reported routinely in the press. I have personally been approached by a half a dozen such women but declined to take up those cases. We have also witnessed the ugly drama played out in the media, including on TV channels, by a young woman who dragged famous film director Madhur Bhandarkar to court pressing rape charges when by her own account she had sexual relations with him over a long period in return for his promise to cast her as a heroine in one of his films. This in my view is a patent misuse of law. A woman who enters into pre-marital sex with a man or offers a sex bribe in return for a favour, ought to take full responsibility for her actions, instead of playing victim, if the man changes his mind and terminates the relationship or fails to deliver the promised reward as did Bhandarkar. This may amount to “cheating” but certainly not rape.

Demand that “marital rape” be included in the anti-rape law: Mahatma Gandhi was among the first in modern times to assert that a woman has the right to say “No” even to her husband. This was much before feminists came to demand that rape in marriage be treated as a serious offence. I

strongly support the Gandhi's position but including marital rape as a punishable offence is a very tricky proposition. How does a man prove that the sexual relation on a particular day or night with his wife was with her consent? Have her sign an affidavit every time they go to bed together? The law against domestic violence already gives strong protection to a woman who alleges "cruelty" by husband with or without insufficient safeguards against false charges. Adding "marital rape" is likewise fraught with danger unless strong safeguards are put in place against baseless, malafide complaints.

Selective fast track courts: The demand for special fast track courts in cases of rape comes from an unrealistic faith in "special measures". In a country where national security related crimes, including open and shut cases, take decades despite all the attendant "special" procedures, including suspension of due process requirements, to expect "special courts" for rape to act as a magic wand is to live in cloud cuckoo-land. Just as special police stations for women cannot perform miracles when the regular police stations are citadels of crime and corruption, so also "special courts" become mere tokens if regular courts are dysfunctional and court procedures are not thoroughly overhauled. In any case, there is no "fast track" provision in the High Court or Supreme Court. Our courts have not only failed rape victims, they have also failed victims of caste and communal massacres, hate crimes, victims of criminal mafias, as also those involved in simple property disputes.

There is much to be learnt from the fate of special dedicated courts set up in 1986-7 to deal with monetary compensation and rehabilitation of victims of the Bhopal Gas Tragedy of 1984. This case attracted widespread national and international attention. In full glare of national international media, first the Government of India played foul by making an infamous settlement with the Union Carbide in return for payoffs. Then it played foul in disbursing the pitiful compensation it announced. When gas victims sought the intervention of the Supreme Court, special courts were set up to deliver the measly compensation to be given to families of those who died of the poisonous gas as well as to those who developed serious illnesses.

The delays, deliberate hurdles, harassment and humiliation suffered by those who went to claim the money due to them was no less than

those inflicted in regular courts. Hardly anyone got the full promised amount. Families had to accept far lower amounts than officially sanctioned and even from that they had to give cuts in order for payment to be processed. This when some of our best NGOs worked tirelessly to help victims make claims through “special dedicated courts”. They brought the corruption and harassment suffered by victims to the notice of the Supreme Court. Yet the scam continued unchecked. It has been 28 years since the tragedy. Ask what the victim families think of these special courts!

Closer home, in February 2010, in response to a PIL by MANUSHI, the Delhi High Court passed a historic order banning the lawless confiscation and destruction of cycle rickshaws by the municipal agencies and police. This order was endorsed by the Supreme Court. When both these agencies continued flouting the High Court and Supreme Court judgments, the Delhi High Court set up a dedicated special court in June 2012 to investigate complaints of rickshaw owners whose vehicles had been confiscated involving contempt of court. Till date, the special dedicated court has been able to cross examine only 8 complainants! The procedure for cross examination remains as farcical as it is in regular courts. To add insult to injury, all of us complainants and victims are being treated as if we are in the dock. The entire attempt of lawyers representing government agencies is to prove us liars who brought in false complaints. All this is happening even though two of the best judges of the High Court, Justices Ravindra Bhatt and Murlidharan are monitoring the case.

Merely naming a particular court “special” cannot work as a magic wand to cure our colonial minded legal system of its deeply entrenched incompetence, inefficiency and deviousness.

Demand for special courts has come from many other disadvantaged groups- environmentalists, anti-corruption crusaders, victims of domestic violence, as well as those routinely displaced from their lands and villages through arbitrary land acquisition laws. The list of those demanding special fast track courts will keep growing if the entire judicial system is not reworked thoroughly. The soul destroying, torturous and corruption friendly court procedures require fixing for all cases, not just for those crimes that become hot issues thanks to high profile media coverage.

Need for accountability of lawyers: Among many other judicial reforms, one of the most urgently required measures is to clarify the role of lawyers as officers of the court. At present, it is taken for granted that the job of a lawyer is to defend his/her client and save the person from punishment, no matter what the crime and no matter how foul the measures used for the purpose. This makes a total mockery of the entire judicial system and renders it incapable of delivering justice. Those who can afford to hire competent lawyers can get away with murder, rape or worse. This is because giving false evidence and browbeating vulnerable victims through hostile and devious forms of cross-examination to mislead the court in practice is never treated as unethical. Perjury and false testimonies are almost never punished under our judicial system.

The job of a lawyer is to assist the court in arriving at the truth, in ensuring that no innocent gets punished, no wrong doer escapes the punitive action he deserves, and that the punishment is in proportion to the crime. Lawyers who encourage their clients to give false testimonies to browbeat the system should be dealt with severely.

Police and judicial reform first priority: In short, the situation calls for far reaching police and judicial reforms, not knee-jerk tokenisms. The rape law certainly requires improvements. But simply providing for “more stringent” punishment will achieve nothing except enhance the scope of abuse, if the police as an institution are not thoroughly overhauled to make it a fit instrument for ensuring safety of life and liberty of all citizens. Likewise, without simplifying court procedures, making laws more rational and investing heavily in improving the quality and proportion of judges and making access to justice more affordable, a few fast track courts here and there will inevitably rot out. In any case, if the police have messed up the evidence at the stage of primary investigation, what will fast tracking of the case achieve?

We have all witnessed the crude and mischievous ways in which the police used lathis, tear gas and false cases against people to break the morale of anti-rape protestors at India Gate in full view of T.V cameras. This was proven when some of the young men arrested for allegedly causing the death of a policeman were acquitted by the court because they could prove that at the time the police claimed they were stoning policemen at India Gate they were travelling in Delhi’s Metro. This was

corroborated by the CCTV footage provided by the Metro. The policeman who collapsed during the protests suffered a heart attack, he did not die on account of injuries caused by protestors as the police have falsely alleged. Can we afford to put AK-47s in the hands of those who routinely use their lathis to tyrannize people?

Finally, when demanding changes in legislation or legal procedures, let us not think of men only as potential rapists or wife-beaters. We are all connected to men in intimate caring relationships- as brothers, fathers, uncles, sons, nephews, lovers, husbands, friends, colleagues and caring neighbours. My pain and grief at the life of my brother or nephew being ruined on account of being implicated in false cases is no less than when I am directly victimized by our corrupt, criminalized police and dysfunctional judicial system.

In short, we cannot let our concern for women victims of domestic or sexual violence blind us to the possibility of further damage by the already corroded police and judicial system of our country, leave alone blind us to the dangers of selectively depriving people of their constitutional rights. We need a surgeon's precision while amending the anti-rape law, not a butcher's hatchet. All cases deserve speedy trials without sacrificing due process. If so many countries in the world can do it, why can't we?

Immediate measures needed for improving police & judicial performance:

While the task of refashioning our police and judicial system requires many far reaching systemic reforms-something that can't be done in haste with unrealistic deadlines —the following immediate measures can kick start the process without delay:

- Speedy implementation of the Supreme Court directives regarding police reforms. Contempt of Court proceedings against all those chief ministers, home secretaries, chief secretaries of state governments who fail to implement these modest guidelines.
- Installation of CCTV cameras in all police stations to monitor how the police handle complainants and their work style.

- Mandatory video recording of all complaints so that the police don't get a chance to distort the complainant's testimony. This should be made available to the court instead of shoddily written, incomprehensible F.I.Rs that are usually submitted to the court.
- Institutionalised mechanisms for involving local communities in policing their neighbourhoods in coordination with the police.
- Independent audit of the functioning of police stations every three months by qualified professionals.
- Mandatory recording of court proceedings to monitor whether lawyers and judges do justice to their jobs.
- Encouraging petitioners to argue their own case to reduce the dependence on lawyers.
- Providing dedicated time to petitioners to present their case in person even when they are being represented by a lawyer, especially in cases of rape.
- Restrictions on adjournments so that the case is not allowed to drag on endlessly.
- Holding district magistrates under whose charge the police functions, and the Lt Governor in the case of Delhi, accountable for police lapses.

The following non police measures which can be implemented with speed can play a vital role in making our cities safe:

- Well lighted streets all over the city
- Safe footpaths for pedestrians
- Keep cities alive at night by creating citizen friendly public spaces with benches, vendor kiosks, night stalls, spaces for performances for local artists to keep the city alive at night. Deserted areas are more crime prone. Cities are safe only when they are walking friendly and ordinary families come out in the evenings to keep the streets and public spaces alive.

- Massive investments in adequate and safe public transport-such as buses- in all our towns and cities as well as for connecting urban centres to villages equipped with CCTV cameras and other technological devices to monitor their movements.

At the same time, the government should facilitate a nationwide debate on the recommendations of various commissions on police reforms as well as proposals for judicial reforms suggested thus far in order to seek inputs from a range of concerned citizens as well as best available experts on measures needed to make our police and our law courts worthy of a democracy. This debate will be taken seriously only if the government announces clear time frame and mechanisms for implementing the systemic reforms arrived at by way of a national consensus.

Women in Police

Jacob Punnoose

Policing had been a male preserve for long. Even after most other professions had opened their doors to women, policing continued to be a male bastion. Five decades back, one could hear debates on whether women should work outside her home. Fortunately, the suitability of women for all jobs has been widely recognized now and gender discrimination has, to a large extent, ended in most professions.

However policing, along with print media, continues to be an exception. Even relatively senior officers have been heard to express their personal doubts as to whether women can be competent Police Officers.

The bias against women stems primarily from the general perception regarding the nature of policing. Policing is, very rightly, the effective instrument of the assertion by the State that, the State - and the State alone - is competent to exercise force to enforce its will. In other words the State maintains its monopoly over the use of force by employing Police. The nature of force is fundamentally and intrinsically physical. Naturally therefore, police is an agency which is called upon to use physical force against citizens on behalf of the Will of the Sovereign. In non-democratic systems, the ability to wield and use physical force becomes the paramount consideration for deciding suitability for the police job. In absolute physical strength and in comparative physical efficiency, women are not as strong as men. Therefore in a profession, where physical force is supposed to be the overriding consideration, the role that woman can play was understood and agreed upon as an extremely limited one.

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The role of women police has undergone 3 different evolutionary transformations. In the first stage, which has been fully understood and effectively prevalent now in all States, women police were deemed necessary to protect the privacy of women who are arrested or to be arrested. Privacy of women can be protected only if women police are recruited to the police force. Because of this an extremely small strength of women came to be inducted into the force. Only a small strength was necessary because women constitute only a very small fraction of the total number of persons arrested. Even today, though the role of women in social life and economic activity is much more than what it was three decades back, the arrest of women is an exceedingly rare event. The total number of persons arrested in India both for IPC and SLL crime in 2009 was 77 lakhs. Among them women accounted for only 3.25 lakhs. Therefore among the arrested accused, the percentage of women is only 5%. Consequently the requirement of women police was actually deemed to be much less than 5% in most States. Actually the availability of women police in the country as a whole today is only around three percent, if we include the paramilitary strength also.

The second stage, to which a good number of states have now progressed, is one in which the necessity of women police to address the special concerns of women complainants as well as to effectively intervene in human trafficking and juvenile Justice situations. It is also becoming more clear that police has to play a vital role in areas such as crime against children, crime against women, crime against senior citizens, crimes relating to drug addiction etc. as these kinds of crimes are increasingly attracting more and more attention and police are called upon to deal with these situations using the force of law rather than physical force. The need for sufficient women police to deal with such issues is now increasingly felt in most States. But it is a fact that by and large sufficient strength of women police has not been sanctioned in most States to address these tasks. The next quantitative and qualitative leap will be due to the fulfilment of such needs by all States.

There is yet a 3rd stage, to which we must all evolve, if we are truly adhering to the norms of gender equality. We must recognize the fact that women are competent to deal with complaints of men and men who break the law. In investigating crimes or in questioning accused or in dealing with general crimes, there cannot be a priori assumption that the masculine intelligence is superior to the feminine. In technological skill,

forensic sciences, observation or psychological discrimination, it cannot be said that men are superior to women. In a tortureless police regime, physical strength is not a significant factor for the success of the investigation. No physical force is used or necessary for conducting investigations in 99 percent of total crime. There are also offences relating to traffic control, accident control, public safety, public security etc. which are gender neutral. Here also there is little scope or need to use force.

The profile of what comprises police work is gradually changing with increasing democratization of society and with the perception that police is an agency of the state which is bound to ensure conditions for the enjoyment of rights by all citizens. Though physical force continues to be an attribute of policing, the aspect of force of law is increasingly stressed. Policing is getting increasingly bound by legal procedures and instances of police using force to secure their purpose are becoming increasingly rarer. As society and the criminal justice system becomes more and more human rights friendly, the need as well as the predisposition to use force is becoming lesser and lesser. There are also a lot of conflicts which are coming to the Police Stations today for resolution. Sympathy, understanding, concern etc. will be more valuable attributes in the future than the ability to get rough or beat-up people. Therefore the so-called natural advantage that the male officer had over the female officer is gradually disappearing and female counterpart may actually be better at doing many of the jobs that the new types of police duties require.

Now the Police are seen as defenders of the rights of citizens. Police personnel have to create conditions conducive to the enjoyment of rights of every citizen. Police personnel are facilitators of security. They are the people who must protect the public from danger and help them in distress. As societal structures become more transparent, social as well as physical mobility increases day by day and the activities and interactions of ordinary citizens with each other become far more frequent and quicker. The role of the police has undergone a change from being physical guards who protect by force of arms and physical strength to monitors of the security environment capable of immediate response in several planes of human activity. This has increased the complexity and diversity of Police task. Therefore physical strength and physical toughness are no longer the primary capabilities of policing. Knowledge

of law, knowledge of systems, technological competence, skills of communications, understanding of persons, sympathetic approach etc. have become more vital for policing. As the profile of the successful police officer and the requirement of the police job undergo drastic changes, the role and scope of women police officers in successfully addressing policing problems have considerable relevance. But sadly the organizational response has not kept pace with either public aspiration or genuine need.

Similarly the women police can be extremely valuable in transforming the image of policing from one of physical ferocity to that of polite firmness. If security is a service, then women are equally qualified as men to deliver that service but with more fairness, politeness and firmness.

Another aspect of policing will also signal the end of male domination in policing as a profession. This is the increasing use of technology in policing task. For sentry duty, standing with a rifle at night, men are more suitable than women, especially when basic conveniences are not available at most of the places. Similarly escort of persons from prisons to court is also being done by male police men. But technology has introduced cameras and video conferencing. A place can be kept under observation by a camera system. Video Conferencing can eliminate the very need for personnel escort. Many types of field enforcement activities can be transformed with technology totally avoiding human interaction. Now many traffic offences can be checked with the help of technology with minimal human interference. Again the adoption of audio video and digital technology to police work will make policing task highly gender neutral. The style of investigation itself will undergo drastic changes. As technology changes, the so-called masculine superiority in several tasks will disappear and probably, at many of the tasks incorporating the new technology, women may be actually better than men.

Before accepting women as equal to men in delivery of police services, the nature and style of police functioning itself has to undergo considerably deeper and more meaningful transformation. We must replace feudal systems with democratic systems of service to citizens. Unfortunately in most of the Police Stations in India, Police stations are both projected and perceived to inspire fear for the purpose of extracting obedience from hostile population. The policing structure and its style of operation have not been transformed. The Police Station is a point of delivery of security, both at the Police Station as well as at the house of the citizens

who demand it. Police continues to be instruments of fear and fear of the policemen rather than fear of the law is relied-upon to enforce the will of the sovereign State. Therefore before women police can be inducted in large numbers, the style of policing has to be changed. For this purpose the accent and the attitude of Police Stations and their staff have to be changed. Police Station must be transformed into places where persons are made welcome. It must be a place where the victim and the defenceless will run for help when they have a grievance or when they are afflicted by crime or danger or disaster. For this purpose Police stations should have reception desks, reception staff, good furniture & facilities for visitors etc.

Apart from physical comfort of visitors a meaningful change has to take place with regard to recording of complaints. It is a fact that most of the Police Stations in India do not record the complaints of victims unless the Police Station is compelled to do so either by the gravity of the crime or by the influence that the victim can wield. Free recording and free registration is the minimum service that the victim can be given at a Police Station. If that itself becomes a matter of either corruption/influence or gravity then the treatment to the complainant cannot be deemed proper. Therefore the service orientation of the Police Station should be transformed in both ways. If this happens suddenly there will be an explosion of work at the Police Station level with regard to crime registration, minor crime etc, for handling which the services of women police will actually be much more helpful than that of men police.

It is true that this transformation can be acquired by the Police Station, only if the strength of Police in the Police Station is significantly enhanced. There is considerable scope of enhancement if the police leadership so decides. As per the latest statistics of Crime in India, the total strength of state police forces is 21.14 lakhs (in which women police strength in Civil Police is 83,800 and 10,048 in Armed Police). At the same time, the total staff strength of police posted in all the Police Stations in India together is only less than 5 lakhs. In addition it may be noticed that the total strength of central paramilitary forces sanctioned is 9.14 lakhs. This means that out of 30 lakhs strong security establishment, we have put just 16% in Police Stations. The neglect of the Police Station has led to its inefficiency. Its inefficiency led to corruption as well as the need for ferocity.

Increasing the strength of Police Station to an average of up to 50 personnel and allotting 20 posts of women in every Police Station will be a reform which will improve the image as well as the professionalism of police force as a whole. In duties relating to attending to complaints of public, registration of crimes, taking down the statement of witnesses, assistance in investigation, carrying out of investigation, reception duty in Police Station, station security duty etc. women can do equal or better work than the average male constable. Considerable police work is relating to prosecution and relating to courts. There is absolutely no reason why women cannot do that work on par with men. If we analyze the job content of each duty, the truth will be self evident that most duties are gender neutral. In many duties like keeping of records, maintenance of station register, control room duties, traffic checking etc. women may actually be better than men, in both efficiency as well as skill. Hence there is even a case for pushing-up the level of women presence in Police Station to even beyond 40%.

Ideally the recruitment for women police should not be as a separate category. The practice is of designating a woman as a WPC while a man who is a constable, is designated as a PC. This is gender discrimination. This particular discrimination implies that a police constable is naturally a male. Therefore the designation of woman police posts with a “W” suffix or prefix must be avoided. This is not done in any other department. This is also not done for any other special category of recruitment like SC Category, ST category physically challenged category etc. The designation of a post should not reflect either the category of recruitment or the sex of the incumbent. Designation has to be gender neutral. For the Indian Police Service, the women officers are not designated as WDGP, WIGP, WSP etc. Therefore the gender discrimination implicit in the designation of women working in police force with a “W” prefix must definitely be avoided. Male or female, the constable and SI should be designated as PC or SI.

It is also high time that separate recruitment process for women is abolished. The recruitment of women in the police can be modelled on the IPS pattern wherein the same examination is conducted. Once this is done, both woman and men should be taken into the police force by the same channel and integrated in the same cadre. If there are States in which, due to backwardness of women, women are not likely to qualify

in open examination, they should have separate recruitment for women. But even in those cases they should be integrated with men cadre.

Another issue is the one relating to working hours and family responsibilities etc. It is high time that for police as a whole, the system of 8 hour duty is implemented. There is nothing implicitly impossible in 8 hour duty system for the Police. Just because policing is to be done for 24 hours, it does not mean that policemen have to do duty for 24 hrs. Even now there are large number of women in public services doing duties, which are either necessary to be done during the night or occasionally for longer than 8 hours, when the occasion demands that. In police also, when situation demands, the same can be done. The difficulty with regard to 8 hour duty is not because of any implicit constraint in the nature of police duties but purely due to lack of sufficient staff. It is more a question of resources of the state government than a question or principle of theoretical impossibility. If the combined Police Station strength of 4 lakh or 5 lakh people can be increased to one million, 8 hour duty systems can easily be managed in Police Stations. Some concessions have to be made for child rearing responsibilities of women. But such a responsibility, which is a basic human right, cannot be taken as a ground for discrimination against women.

Police work basically involves guiding and controlling citizens. It involves monitoring the activities of citizens, facilitating smooth public interactions, listening to complaints, solving problems between persons etc. It involves exercise of authority over citizens. There is nothing to show that women are incapable of doing this. In fact this is a role which is traditionally played by a woman in every household. Children grow-up disciplined through the care and concern of mothers. What is possible in the realm family is also possible in society. The prejudice against them basically arises because, most of us, without much thought, believe that force and ferocity, rather than lawful procedures and polite fairness, are basic ingredients of policing.

In a civilized society, we must respect civil and human rights. Policing cannot have a gender bias. For excellence in policing as well as for better service delivery policing service as a has to be rendered to the society by men and women working together as police personnel.

Accessibility of Women to Criminal Justice System

B. Sandhya

Abstract

At the outset, the essay examines briefly, various gender based inequalities in the society. An elaborate literature survey is done. The study of accessibility of women to Criminal Justice System dwells essentially upon the first window of the Criminal Justice System, viz the Police. A comparison of the accessibility of women to Police in Kerala based on data of 1999 and 2009 is done. Empirical data is collected by interviewing victims who had approached Police Stations with various criminal complaints using an interview schedule, after collection of preliminary data from the Police Stations. Major causes for satisfaction/dissatisfaction of the victims with respect to the dealing/disposal of their criminal complaints are analysed using statistical tools. In the recent past the number of women approaching the Police Station has increased. However to increase accessibility, systematic steps need to be taken.

The Status of Women in Society

According to Dr. R. Revathi (2009) during the Vedic period women had exalted position and they enjoyed a fair amount of personal freedom and equality with men. Both boys and girls had equal opportunities for education. The institution of marriage was a sacrament uniting the parties in an indissoluble union. The husband and wife stood on an equal footing. The position of the wife was an honoured one in the household. Dowry system was unknown. Dr.Revathi continues that

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the honoured position which the wife enjoyed in the family and society during the Vedic era gradually started declining.

The British Period: At the dawn of the British rule, the position of women in the family and society had reached the maximum deterioration. The plight of the women, thus, became the focal point for social reformation.

The reform movements during the British period tackled, *inter alia*, the problems of sati, widow re-marriage, education, purdah, child marriages, property rights etc. However, the pace of women's welfare process during the British period was very slow. In order to eradicate the existing social evils, the Child Marriage Restraint Act, 1929 popularly known as Sharada Act, Hindu Widows Re - marriage Act, 1856 and the like were enacted. However, these laws proved ineffective and remained a dead letter for a long time. The freedom struggle also paved the way for their emancipation from socio-religious taboos.

The Post Independence Period: After Independence, efforts have been made to promote the welfare of women. The Constitution of India envisages that all are equal before law irrespective of their religion, race, caste, sex or place of birth. The fundamental rights contained in Arts. 14,15,16 of the Indian Constitution guarantee that women in India should not be treated as inferior to their counter parts in any respect. Art. 15(3) of the Indian Constitution empowers the State to make special provisions for the advancement of women and children. The Directive Principle of State Policy under Art. 39 also enjoins the State to provide equal right for men and women to adequate means of livelihood.

The International Year of Women, 1975 and the decade that followed generated a momentum which reverberated throughout the world. This movement sensitized the women worldwide with calls for equality and sexual egalitarianism. Women's issues were debated and this kindled the researchers, academicians, feminists to highlight various issues pertaining to women.

Based on the British Crime Survey¹⁰, domestic violence is the largest single form of crime against women in the UK. In the British Crime Survey of 2007/2008, domestic violence accounted for about one in six

violent incidents, approximately 16%. 33% of violent incidents against women were domestic violence and 85% of victims of incidents of domestic violence were women. Domestic violence was the only category of violence for which the risk for women (0.6%) was significantly higher than for men (0.2%). Out of all the categories that comprise 'serious violence' which the British Crime Survey considers in its report, domestic violence has the highest percentage, 45%, of repeat victimization, and repeat victimization accounts for 73% of all incidents of domestic violence. In the majority of incidents of domestic violence the victims were women i.e. 85%. According to Homicide Statistics, 1998, every week two women are killed by their current or former partners. In 2008, domestic violence still claims up to two lives a week. As confirmed by statistics, domestic violence is gender violence.

Women and Crime

According to A. Kumar (2003), what is most degrading for women is that they have not only been left behind and neglected in the social milieu but also been subjected to harsh cruelties and atrocities as a class. It is strange as well as unfortunate that these atrocities are perpetrated without any provocation or instigation on their part; they are helpless victims of atrocities which range from mental and psychological torture in the form of obnoxious remarks and gestures to physical assaults which so often result in killings or suicides. Physical beating and deprivation of proper food, clothes and other necessities of life are world-wide occurrences of a daily nature.

The universal suffering is that of economic dependence. As a class, women are probably the weakest of the weak in this respect. Their over-dependence on others is often abused and exploited by the very persons on whom they are dependent. They are treated according to the whims of their protectors who may not only physically harass and torture them but also put them to other abuses like overwork, deprivation of daily necessities in the name of false economy. They get treated as inanimate possessions which can be kept or thrown away, treasured or destroyed, cared for or neglected and even sold or bartered away at will and whim of the possessor.

It is almost half a century since most countries unequivocally granted to the women a place in the society equal to that of men by giving them equal

rights of work, wages and vote. Discrimination on grounds of sex and class was done away with by law and several socio-legal measures were initiated to remove any such disparities between men and women. In the last century, social reformers actively campaigned against evils like ‘*sati dahan*’ and the ‘*purdah*’ system in India and while the former has almost been totally eradicated the latter has been made much less rigorous in its observance. In Western countries women came out of the four walls of their houses and started competing with men in education and employment. Several laws granting property and other rights to women were passed in India.

The term ‘Violence Against Women’ following the declaration of UN Commission on Status of Women (in 1993), is usually defined as “any act of gender based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life”.

The UN Convention on the Elimination of All Forms of Discrimination Against Women guarantees women equal rights with men in all spheres of life, including education, employment, health care, the vote, nationality and marriage.

The World Conference on Human Rights, Vienna, 1993, refuted the distinction between public and private spheres, declaring for the first time that women’s human rights must be protected not only in courts, prisons and other areas of public life but also in the privacy of the home.

UN International Conference on Population and Development (ICPD), Cairo, 1994, affirmed that women’s rights were an integral part of all human rights. UN Fourth World Conference on Women, Beijing, 1995, recognized that “all governments, irrespective of their political, economic and cultural systems are responsible for the promotion and protection of women’s human rights”. The document also specifically stated that violence is an obstacle to the achievement of women’s human rights.

The Human Development Report 2000 urges nations to commit themselves to gender equality in order to unleash the energy and productive capabilities of women around the world. The sex ratio in India, which was 972 females per thousand males in 1901, has declined to 940

in 2011. According to UNDP Report 2012, India ranks 113th in Gender Related Development Index. India's position is below Morocco.

Reported Incidents of registered crime

- The share of violent crimes in total reported IPC crimes during 2010 remained static (10.9%, the same as in 2009)
- The proportion of reported IPC crimes committed against women towards total IPC crimes has increased during last 5 years from 8.2% in 2006 to 9.6% during 2010
- Offenders were known to the victims in 97.3% of Rape cases (21,566 out of 22,172)
- The female criminality in the total reported IPC crimes accounted for 6.2% only. The percentage share of female arrestees was higher in cases of cruelty by husband & relatives (22.8%)
- It can be observed from the above table showing crime trends of major heads that dacoity and Burglary /House breaking have shown declining trend over a period of 58 years. Burglary /House breaking has declined by 38.8% (from 1,47,379 in 1953 to 90,179 in 2010) and dacoity has declined by 21.9% (from 5,579 in 1953 to 4,358 in 2010), where Murder has increased by 240.1% (from 9,802 in 1953 to 33,335 in 2010); Rape by 791.5% (from 2,487 in 1971 to 22,172 in 2010); Kidnapping & Abduction by 630.7% (from 5,261 in 1953 to 38,440 in 2010); Robbery by 178.3% (from 8,407 in 1953 to 23,393 in 2010) and Riots by 229.1% (from 20,529 in 1953 to 67,571 in 2010).

A total of 2,13,585 incidents of Crime Against Women (both under IPC and SLL) were reported in the country during 2010 as compared to 2,03,804 during 2009 recording an increase of 4.8% during 2010. The registration of these crimes have continuously increased during 2006 - 2010 with 1,64,765 cases in 2006, 1,85,312 cases in 2007, 1,95,856 cases in 2008, 2,03,804 cases in 2009 and 2,13,585 cases in 2010.

**Crime Head-wise Incidents of Registered Crime Against Women
during 2006 – 2010 and % variation in 2010 over 2009**

Sl. No	Crime Head	Year					Percentage variation in 2010 over 2009
		2006	2007	2008	2009	2010	
1	Rape (Sec. 376 IPC)	19,348	20,737	21,467	21,397	22,172	3.6
2	Kidnapping & Abduction (Sec. 363 to 373 IPC)	17,414	20,416	22,939	25,741	29,795	15.7
3	Dowry Death (Sec. 302 / 304 IPC)	7,618	8,093	8,172	8,383	8,391	0.1
4	Torture (Sec. 498-A IPC)	63,128	75,930	81,344	89,546	94,041	5.0
5	Molestation (Sec. 354 IPC)	36,617	38,734	40,413	38,711	40,613	4.9
6	Sexual Harassment (Sec. 509 IPC)	9,966	10,950	12,214	11,009	9,961	-9.5
7	Dowry Prohibition Act, 1961	4,504	5,623	5,555	5,650	5,182	-8.3
TOTAL		158,595	180,483	192,104	200,437	210,155	

**Proportion of Crime Against Women (IPC) Towards Total
IPC Crimes**

Sl. No.	Year	Total IPC Crimes	Crime Against women (IPC cases)	Percentage to total IPC crimes
1	2006	18,78,293	1,54,158	8.2
2	2007	19,89,673	1,74,921	8.8
3	2008	20,93,379	1,86,617	8.9
4	2009	21,21,345	2,03,804	9.2
5	2010	22,24,831	2,13,585	9.6

Women's Development and 10th Plan Strategy envisage gender justice to eliminate all forms of gender discrimination and thus allow women to enjoy not only de-jure but also the de-facto rights and fundamental freedoms on par with men in all spheres, viz. political, economic, social, civil, cultural etc. The National Policy for the Empowerment of Women 2001 has been drafted after nationwide consultation to enhance the status of women in all walks of life. It aims at creating an environment through positive economic and social policies for full development of women to enable them to realize their full potential.

Status of Women in Kerala

According to Dr. P K B Nayar (1984), an outstanding characteristic of the women of Kerala which contrasts them from their counterparts elsewhere in India is the higher status they enjoy in society. This is not only reflected in education and in the large proportion of women

in employment but also in the higher age at marriage, in the initiative taken in family planning and in pioneering and promoting a number of women's organisations which give women significant role in social work activities. These achievements were not made overnight or even in a few years. Women's high status in Kerala has a long historical past. It is founded on ecological and sociological factors.

The unique feature of Kerala's ecology is the absence of the village system of the All-India type with clustered habitats. In Kerala, houses are scattered far and wide. Natural protection offered by the Arabian Sea in the West and the Western Ghats in the East, enabled the Keralite to dispense with the village community life and to settle down anywhere he liked. The individual Keralite did not feel the need for protection by the community with its security system for combating internal and external threats to life and property as much as was felt by his other Indian counterparts.

As a result, the practice of village community mediating on all matters concerning the individual did not develop in Kerala in the form in which it developed in other places. Naturally, the individual felt free to act in his own best interest without much concern for or pressure from the community. This contributed to the rise and growth of individualism and competition in the social and economic spheres

Demographic Composition

Kerala's population has a unique religious composition with 56.9% Hindus, 19.% Christians and 24% Muslims. The religions of Christianity and Islam came to Kerala in the very first century of their founders and were warmly received.

However, ecology and religious pluralism should be taken more as contextual than as contributory factors in the rise and growth of status among women in the state. Historical factors (which were of course influenced by the above two elements) offer a better explanation of the important role of women in society.

The Kalari

This is a unique institution peculiar to Kerala and was intended to train the martial communities in physical fitness and warfare. The chief instructor in the *Kalari* was the *Kurup* or *Panicker*. Both boys

and girls were admitted to the Kalari; usually training started at the age of 8 one would go to Kalari after completing education in the village school. Courses included instructions in use of weapons, physical feats such as fencing, boxing and wrestling as also training in self-defence.

Education of Women

The popularisation of women's education in the 19th Century was largely the work of missionaries who opened schools for girls in different parts of Kerala, especially Travancore. The lead thus established for female education in the 19th century gathered momentum in the 20th century. Government and missionary activities in education resulted not only in the establishment of a number of separate schools for women but in large enrollments of girls in mixed schools. The state gave 50 percent concession in fees to women students in English medium schools besides other special facilities. As a result, the number of girls attending schools in Travancore rose from 14,139 at the end of the 19th century (1891) to 5,29,422 in 1948-49 and 22,57,888 in 1970-71. The post-Independence period witnessed not only a big spurt in education in general, but government's efforts at extending education to the weaker sections resulted in women from the backward classes also being enrolled on a massive scale. This period also witnessed the starting of a number of professional institutions at undergraduate and graduate levels and women's enrollment in them. As per 2011 Census (Kerala), Female Literacy is 91.98, Male Literacy 96.02 and General Literacy 93.91. As per 2011 Census (India), Female Literacy is 65.46, Male Literacy 82.14 and General Literacy 74.04.

The percentage of **Work Participation Rates of Women** in **Kerala** and **India** for the past 6 census are given below.

Year	KERALA			INDIA		
	Women	Men	Total	Women	Men	Total
1961	19.71	47.20	33.31	27.93	57.16	42.97
1971	14.60	45.22	29.74	14.22	52.75	34.19
1981	17.02	45.25	30.90	20.85	53.19	37.55
1991	15.8	47.6	31.4	22.3	51.6	37.5
2001	15.4	50.2	32.3	25.7	51.9	39.3
2011	16.2	52.4	33.6	25.6	51.7	39.1

The following Table gives the percentage of **Female Workers** in the different sectors in 2011

Sectors	Kerala	India
Primary Sector	26.3	14.91
Secondary Sector	7.1	30.13
Territory	66.5	54.95

Women in Society

Traditionally women in Kerala had an advantage in several fields compared to women in other parts of the country. They were economically secure and emotionally integrated with the Tharavad through the marumakkathaya system; the problem of dowry and widowhood did not bother them; education kept them in schools for several years and prevented them from marrying early; it also gave them a broader perspective towards society and their role in it. All these enabled them to enjoy a high status in society. The position of women in Travancore before Independence is best described by Her Highness Sethu Parvathi Bhai, Maharani of Travancore, in her Presidential Address to the 10th All India Women's Conference in Trivandrum in 1935.

“The woman is here recognised as the head of the family and succession is traced through her. No restriction on the holding and disposition of property and no inequalities regarding education, social life and cultural growth have hampered our sex. Not only has our history afforded instances of queens who have stamped their individuality on the chronicles of their country but in the fine arts and philosophy women have played a notable part. The equality of women with men in the matter of political as well as property rights is today an established fact. Female literacy in Travancore has attained a high standard” (Velu Pillai 1936: 43)

It may be pointed out that this was the foundation on which the present status of women has been built. One should not, however, think that all classes and castes enjoyed the position described by the Maharani. The picture applied most appropriately to the Nairs and other well-to-do communities.

A major bane of Indian society and one which kept women at a low ebb was child marriage. Baden Powell noted that in India girls were married even before they attained the age of 5 and there were widows even among those -children who had not reached their first birthday. In Kerala women married late and widowhood was never a curse. The following is the data on age at marriage in Kerala and India.

Mean Age at Marriage of Females in Kerala and India

Period	Kerala	India
1901	17.13	13.2
1911	17.35	13.6
1921	17.80	12.6
1931	19.66	15.0
1941	19.35	15.4
1951	19.85	16.1
1961	20.64	17.2
1971	20.88	18.0
1981	21.9	18.7
1991	19.8	17.7
2001	20.8	18.3
2011	22.7	20.7

Marrying late enabled women to have better choice of husbands, better understanding of family responsibilities, family planning, and child care. These coupled with education, which women of the state enjoyed, contributed to more sober decisions on the number of children to be given birth to and greater ability to implement these decisions. This has been a key factor in the steep fertility decline of Kerala women in recent years (Nayar 1981). Education and late marriage also made women more health and hygiene conscious, better equipped for pre-natal and post-natal care including child-rearing and associated problems, and this in turn reduced infant and child mortality (Nayar 1983). Today, Kerala leads India in the reduction of birth rate (14.8), death rate (7) and infant mortality rate (13). The corresponding figures for India are 20.97, 7.48 and 47.57 respectively.

Social Protection Measures Exclusively for Women:

There are several schemes in Kerala to provide social protection exclusively to women. The destitute/widow pension scheme was

implemented in the state from 1973 onwards. Financial assistance is also provided to poor widows towards marriage expense of their daughters from 1978 onwards. Pension scheme for unmarried women above 50 years of age was implemented from 2001.

Gender Development in Kerala:

Kerala presents a positive picture as far as women's development is concerned. Women's awareness, women's movements at the Grass Root Level, greater mobility, education, women and child health interventions have all led to overall development of women in Kerala.

Special Policies in Kerala to Combat Crime Against Women (CAW)

The Government of Kerala in general and Police Department in particular, from time to time adopted special policies to combat Crime Against Women (CAW). Apart from issuing various Circulars and Instructions, various legislations and administrative steps were also taken.

It is a fact that the number of Women Police remained nominal in the Police Department of Kerala. The Government took a decision to increase the number of Women Police in Kerala and presently the strength of Women Police is around 10% of the local police strength, though no women are inducted into the Cutting Edge Level (Sub Inspector) and above.

From time to time the Government of Kerala and the Police Department have been issuing Instructions, Circulars etc. regarding CAW and behaviour towards women victims of crime.

Flagship Programme of Kerala Police for Gender equity

To eradicate social inequities which are gender specific Gender awareness creation programmes and support programmes were introduced in Police Department of Kerala using Plan Fund from Government of Kerala, from the year 2008 onwards. The scheme undertake programmes to eradicate social inequalities which are gender specific. This include Victim Support Cell, Research study on women victims, women friendly Police Station Project, Improvement of Women Reception desks in all taluk Headquarters Police Stations, Developing

and printing of complaint cards for women, Formation of Vanitha Vigyana vyapana Kendrams and gender training to all officers and men.

The Police Department has established Vanitha Cells and Vanitha Helpline in every district and they attend various functions such as petition enquiry, counseling etc. and they work to create gender awareness among all police persons. They extend the help of existing laws to women. The personnel working in Vanitha Cells/ Helplines are familiar with procedures to be followed in cases of atrocities against women.

In order to give assistance to women victims, such as victims of violent crimes like rape, domestic violence etc. a separate cell, Victim Support Cell was formed in around 300 Police stations. ie. nearly 60% of the total police stations.

A research study has been conducted through Rajagiri College of Social Sciences, Kalamassery on women victims of crimes as well as conviction rate/reasons for acquittal and how to strengthen criminal investigation and prosecution etc.

Complaint cards have been printed and issued to the women complainants to file their complaint without coming to the police stations. Every complaint filed by a woman is given special attention by the SHO and the action taken on the complaint is informed to her.

Janamaithri Police Stations are being converted to women friendly Police Station which strive to become free of child abuse, child employment and harassment of women at public and private places. The SHO and all police personnel of these Police stations are given gender training. Also the Janamaithri Police Stations are declared as Vanitha Vigyana Vyapana Kendrams with audio visual shows, pamphlets for legal awareness on crime against women and children and to guard against/prevent child abuse/domestic violence, child employment etc. In addition to the above all Police Officers and selected police personnel from all police stations are given gender training by suitable faculties in every district.

Women Helpline (with toll free number 1091) provides 24 x 7 service by Women Police to the women in need.

Fund allotted

Flagship programme on Gender awareness has been started as a part of XI Plan Scheme from the year 2007-2008. The funds received are as follows:-

Year	Amount (in lakhs)
2007-2008	25.00
2008-2009	10.00
2009-2010	30.00
2010-2011	400.00
2011-2012	400.00
2012-2013	480.00

Provisions in the new K P Act 2011 (Act 8 of 2011)

119 Punishment for Atrocities Against Women:- (I) Any person who.

(a) performs, in public places, any sexual gestures or Acts degrading the dignity of women; or

(b) takes photographs or records videos or propagates them at any place in a manner affecting the reasonable privacy of women.

shall., on conviction, be punished with imprisonment which may extend to three years or with 'fine not exceeding ten thousand rupees or with both.'

(2) Where any service provider or person in charge of a public place, who fails by deliberate omission to take reasonable action for the time being to prevent such a criminal act; if the victimized woman complains that an offence under sub-section (1) had taken place in their presence or fails to inform the authorities concerned shall be an offence which on conviction be punishable with fine up to one- thousand rupees.

Crime Against Women in Kerala

In spite of a better tradition as far as status of women in the society, Kerala is reporting a number of Crimes Against Women. The recent State Crime Records Bureau Statistics in this regard is furnished below. The reason could be increased awareness as well as increased number of incidents. Dealing with CAW needs to get a high priority in

Kerala, as security of the society is measured greatly in terms of security it offers to its women.

CRIMES AGAINST WOMEN IN KERALA FROM 2006 TO 2012

(State Crime Records Bureau Statistics)

SL. NO	OFFENCES	2006	2007	2008	2009	2010	2011	2012
1	Rape	601	512	568	568	634	1132	1021
2	Kidnapping	202	177	166	173	184	221	205
3	Molestation	2543	2624	2745	2540	2936	3756	3710
4	Eve-teasing	222	262	258	395	537	573	496
5	Dowry death	25	27	31	20	22	15	25
6	Cruelty by Husband or Relatives	3708	3999	4138	4007	4797	5377	5226
TOTAL		7301	7601	7906	7703	9110	11074	10683

One of the reasons for reporting of large number of rape cases in the recent years is unearthing of hitherto unreported crimes at the initiative of the Police Department. Of course due to increased accessibility of women to Criminal Justice System, more women come forward with complaints.

Criminal Justice Policies on Gender

Sandra Walklate (1995) describes about policing policies and ‘domestic’ violence. She also quotes from Faragher that the traditional view of ‘domestic’ violence was that this was not real police work and that when all the conditions were met for the Police to make an arrest, this was rarely done. Stanko(1992) is well justified in stating that the Police have no history of responding actively to ‘domestic’ violence. Smith (1989) mentions that it was the Women’s National Commission of England in the mid 1980s, which brought the issue of violence against women to government attention. This Commission, influential as it was in contributing to the Home Office Circular 69/1986 addressing the Police’s handling of rape, also drew attention to the need for ‘the overriding concern in dealing with domestic violence to ensure the safety of victims and reduce the risk of further violence’

In the years between 1986 and 1990, the London Metropolitan Police established what came to be seen as a policy precedent in responding to 'domestic' violence. This took the form of the 'dedicated' Domestic Violence Unit.

Researches by Edwards (1989), Ferraro (1989), Hatty (1989), and Stanko (1989) have shown that police officers tend to use the decision to arrest in 'domestic' incidents only in specific circumstances: when the officer was threatened (Hatty 1989); when there was a breach of the peace or criminal damage (Edwards 1989). These researches clearly suggest that the process of implementing change of actual practice needs either to be backed by an unambiguous force order (as in West Yorkshire, for example, where police claim an increase in the use of arrest for 'domestic' incidents from 28 to 50 percent in the 12 months from 1990 to 1991) and/or by a considerable input into training (for example, Merseyside Police has produced Open Learning Packages for all officers).

Edwards (1989), Friedman and Schulman (1990) and Walklate (1992) have combined their response to 'domestic' violence with their response to child abuse and have six officers (most female) per division dedicated to dealing with issues relating to violence against women and children. Their policy strategy is supplemented by Domestic Violence Forums, regular inter-agency meeting in which policies are developed and co-ordinated. Greater Manchester, on the other hand, has one officer per sub-division (again all female, with the exception of two male officers) whose work is focused on responding to women in the immediate aftermath of a violent incident.

As Hanmer and Saunders (1991) indicate: the appointment and promotion of Women Police Officers remains an issue. Women in the West Yorkshire Police constituted 9% of the Force in November 1987 when the earlier research was completed and this had risen to 13.5% in 1991. However, 13.5% of senior officers are not women. Inadequate number of women officers and their position in the Force continue to be commented upon by other agencies, but the Force response to this recommendation was to describe themselves as an equal opportunities employer. The employment of women officers is an issue both in relation to requests by women and agencies in the community for women officers and the transformation of masculine police culture in order to provide a

more satisfactory service for women. It may be true that what women are asking for is a quality of support, which is commonly associated with women i.e., sympathetic listening skills which indicate that the woman is being taken seriously.

As Heidensohn's (1992) interviewees suggest, there is no necessary relationship between the possession of these skills and being female. However, the apparent ease with which female officers have been most readily accepted as suitable in this area of work raises both particular and general questions for them as workers within a male-dominated profession.

It is interesting to note that it is in their capacity as victims of crime that women have received attention. As Karmen, (1990) indicates, this clearly resonates with the new move from crime prevention towards victimization prevention within criminal justice policy.

Taylor (1990) mentions that in the arena of criminal justice the customer has been identified as the victim of crime rather than the perpetrator reflects a way of thinking about free-market ideals, which have developed in a relatively unchallenged fashion since the 1980s.

Hanmer et al. (1989) state the difficulties of implementing change through re-orienting policy which has led some writers to argue that what is required is the recruitment of more policewomen. Such a view presumes that not only will women as 'consumers' of a police service have their needs better met, but also that the more Women Police Officers there are, the better they will survive their daily working life.

In 1981, policewomen accounted for 8.6% of the total force establishment in England and Wales. In 1989 this had risen marginally to 10.6%, though these global figures mask marked regional variations.

Jones (1985) and Heidensohn (1989) noted that women occupy very few senior posts. Anderson et al, (1993) found that women officers are limited in the amount and type of experience they are able to gain. This in turn affects their job satisfaction and may inhibit their promotion prospects. Sandra Walklate (1995) quotes from Moss Kanter that both statements on equal opportunities and statements on domestic violence are embraced by all members of a police force, both male and female, in order to create an atmosphere in which male and female officers can pursue their career aspirations. It has frequently been suggested that

only when women make up at least 25% of an organization's total workforce, it would challenge men's conceptions of what policing is about, why they became police officers, etc.

Historically, the militaristic model has underpinned policing. This is evidenced by the historical practices of marching on parade, the use of the salute, the routine reference to senior officers as 'sir', amongst other practices. However, whilst some of these more symbolic militaristic practices might be waning, the legacy of the need for discipline runs through policing in a fundamental manner. As Wiles (1993:55) points out, it has been argued that 'since some policing jobs require obedience to command, and all policing requires a high level of accountability for individual actions, then only a disciplined service can fulfill these two requirements'. However, the extent to which the militarist model, rooted in a notion of discipline, actually achieves these requirements has consistently been open to criticism, misuse and abuse, and only represents one interpretation of what an accountable Police Force might look like. The failure to grasp the pervasive influence of this militaristic model, however, inevitably acts to undermine any management initiative, which either does not take its influence into account or question its legitimacy. Management in policing has not to date been concerned with developing the best expertise and skills of officers, but about ensuring hierarchical adherence to authority and the solidarity which emanates from that control. Such management initiatives, which have been introduced, have, in their effect, been more concerned about managing relationships with the public rather than reflecting a real concern for the internal effectiveness of such developments. In other words, these initiatives have had little effect on the 'cop culture' features of solidarity and control.

What is Policing About?

Reiner (1992) points out that there has never been a full debate as to what 'blue-uniform' policing is about. What became clear towards the end of the 1980s was that a concern with 'service delivery' emerged as one of the key features of that task, an assumption, which permeates the Sheehy Report, and the debate, which it has generated. It reflects an acceptance of the focus on service delivery and professionalism as being the key to securing consent for policing.

Hearn et al.(1992:133) state ‘Policing has itself always been gendered, and not less so in criminal work. In the policing of crime, one set of men work against, and sometimes with another set of men’. In many ways, then, what is represented here is a more fundamental dilemma for policing, both in the formulation of its central task and in the delivery of a ‘service’ which can fulfill that task; that dilemma is, what is policing about and to whom is this service delivery addressed?

According to Weatheritt (1993) the task of improving police performance, that is improving the standards of behaviours of individual police officers, can only be achieved if officers themselves come to believe that, that is important and necessary. The Police quality of service initiative involves imparting the sense of belief not just through obeisance to the ‘customer’ and what that implies for measures of police performance but also through the cultivation of a different organizational ethos and a different managerial style. To that list may be added a redefined conception of what policing is about, which would automatically include an awareness of alternative policing styles, alternative models of deployment and alternative conceptions of what counts as ‘good’ police work. In all of these areas there is no need for any necessary presumption to be made concerning the sex of the officer engaged in the work.

According to Nancy Foy (1994) presence of women is needed in organizations trying to shift from power and control towards networks, co-operation and empowered employees. Women are good at sharing information as well as power.

If more light is cast on the policing task when viewed through a gendered framework, we are perhaps in a better position to understand the impact that the practice of policing has on its recipients, both the victims of crime and those who break the law. This is very much the case in India.

1 Problems in Combating Violence Against Women

- I Invisibility: Acts of violence not viewed as gender unjust
 - II Accepted as part of societal functioning.
- 2 Visibility in accordance with the brutality of the violence.
 - 3 Non- reporting.

- 4 Segregation between public and private life.
- 5 Excessive dependence on legal measures.
- 6 Violence against women as a reaction.
- 7 Financial compulsions.
- 8 Changing forms of violence

The following statistics, calculated from the NCRB Data (1995-1999) will throw some light on the present state of affairs regarding CAW cases.

1. Every year 22 % of the CAW cases remain pending
2. Among the cases in which investigation is refused, cruelty and kidnapping/abduction cases predominate.
3. Kidnapping/abduction cases charge sheeted are the least, only 37%.
4. Percentage of charge sheeted cases is the maximum under sexual harassment.
5. Number of pending cases is high in these categories of crime: Kidnapping/abduction of women & girls (36% in 1999), rape cases (27%), dowry death cases (25%) and cruelty at home (20%)
6. The percentage of pending cases under sexual harassment has increased by 6% over 98-99.
7. Only 15 % of all crimes against women cases are tried by courts.
8. Among compounded/withdrawn cases,
 - i. More than half are that of kidnapping/abduction of women and girls.
 - ii. One-third are cases of cruelty by husband and his relatives.
9. The percentage of tried cases is even lower for cruelty and molestation cases.
10. Of the few CAW cases put to trial, only less than one-third are convicted.

11. Each year, more than four-fifth of all cases remain pending.
12. The lowest conviction rates are that of cruelty and rape cases.
13. CAW cases show an increasing trend over the years 1995-1999, while total crimes are declining at the all India level.
14. In all CAW categories, crime rates have been rising.
15. Cruelty by husband and his relatives (Sec. 498A IPC) consistently records the highest crime rate, followed by molestation cases.

1.2 Major Types of Crimes Against Women

The following are the major types of CAW cases reported in India

a. Rape (Section 376 IPC)

Indian Penal Code, under section 376 is the “Punishment for rape”. According to J.P Atry (1998) rape is a severe crime. The physical and mental after effects brought about to a woman by rape is terrific. From a dreadful situation, the victim becomes secluded and ridiculed in front of her relatives and of the society.

As an atrocity, rape is the most reprehensive crime that women are subjected to because once committed the effect on the woman is irreversible. Each such incident is also a permanent living scar on the face of the society.

Sandra Walklate (1995) recognizes that, the unwillingness of women to report rape to the Police has been well documented. Benn (1985:136) says ‘Women were told not to get upset, not to get things out of proportion, not to go out alone, not to go out at night, to avoid “dangerous areas”, not to put themselves at risk.’ Such police advice reflected a victim-precipitation view of rape. Smith’s (1989) study states that the work completed by Chambers and Millar on police responsiveness to rape and the public outcry which followed the televised handling of a rape complainant by the Thames Valley Police (BBCI, 18 January 1982) precipitated the Home Office Circular 25/1983. This circular outlined how incidents of rape might be handled more effectively, and many forces, following the lead of the London Metropolitan Police proceeded to establish ‘rape suites’. These suites comprise, primarily, more comfortable and sensitive surroundings, usually away from the Police Station, to examine medically and interview ‘victims’ of rape and sexual assault.

Punishment for Rape in the Indian Penal Code

1	2	3	4	5	6
376	(1) sexual assault	Rigorous imprisonment of not less than 7 years but which may extend to imprisonment for life and with fine	Cognizable	Non-bailable	Court of Session.
	(2) sexual assault by police officer or a public servant or a member of the armed forces or a person being on the management or on the staff of a jail, remand home or other place of custody or women's or children's institution or by a person on the management or on the staff of a hospital and sexual assault committed by a person in apposition of trust or authority towards the person assaulted or by a new relative of the person assaulted.	Rigorous imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine	Cognizable	Non-bailable	Court of Session.
376 A	Person committing an offence of sexual assault and inflicting injury which causes death or causes the person to be in a persistent vegetative state.	Rigorous Imprisonment of not less than 20 years but which may extend to imprisonment for life which shall mean the remainder of that person's natural life or with death.	Cognizable	Non-bailable	Court of Session.
376 B	Sexual assault by the husband upon his wife during separation.	Imprisonment for not less than 2 years but which may extend to 7 years and with fine .	Cognizable (but only on the complaint of the victim)	Non-bailable	Court of Session.
376 C	Sexual intercourse by a person in authority.	Rigorous Imprisonment for not less than 5 years but which may extend to 10 years and with fine	Cognizable	Non-bailable	Court of Session.
376 D	Sexual assault by gang	Rigorous Imprisonment for not less than 20 years but which may extend to Imprisonment for life which shall mean the remainder of that person's natural life and compensation to the victim.	Cognizable	Non-bailable	Court of Session.
376 E	Repeat offenders	Imprisonment for life which shall mean the remainder of that person's natural life or with death	Cognizable	Non-bailable	Court of Session.

Forces also endeavor to provide specially trained officers to handle such cases, in particular trained female police officers.

In a later study by Grace, Lloyd and Smith (1992), out of 335 incidents of reported rape, 80 were 'no-crimes' after a month, representing an initial attrition rate of about 20%. Various reasons were given by the

Police for 'no-criming': the woman withdrawing the allegation - 43%; false or malicious allegation - 34%; insufficient evidence - 12%; woman unwilling to testify or co-operate - 9%; complainant and suspect married - 2%. This evidence clearly renders the Police decision-making process as still being a key moment in the attrition rate of rape cases.

James Wadakkumchery (2000) reveals that shocking stories are heard about police misbehaviour with women. A raped girl in the Police Station must get protection from harassment and embarrassment at the Police Station. She needs emotional first aid and counselling which must be lavishly showered upon her. The woman in police custody in her helplessness could not react to police questioning and the way they questioned them. If there was no superior force to control the Police functionaries, the questioning of women extended beyond verbal boundaries.

Sri. Sankar Sen (1994) narrates that a survey of the rape cases in our country shows that rape victims come mostly from the lower rungs of the society. Poor women working in fields and factories often are victims of this atrocity. There has also been a sharp rise in the number of girls being raped who are between ten to fifteen years of age.

Not a Sex Crime

It is a common mistake to view rape *as* a sex crime, it should be, on the other hand, viewed as a violent and aggressive crime against a person. Recently researches have established that very often the intention of the offender is more aggressive than sexual. An average rapist is not one to whom normal sexual outlets are unavailable. While committing the crime, he is not, as is believed, succumbing to uncontrollable lust but is proving his own masculinity by degrading the victim. The rapist drives, says Growth and Birnbaum,* "an eroticised pleasure not through sex act but through an horrendous assaults on victim's body." Researches have also shown that many rapists come from families in which violence is frequent between parents and between parents and children. Menachem Amir in his study of the rape cases from the police records in Philadelphia found that a large number of rapists had previous records of committing crimes against persons. His study also revealed that a majority of the rape cases were not sudden occurrences but had been carefully planned.

Need for Women Police Officers

For successful investigation the officers investigating into rape cases must try to establish proper rapport with the rape victims and help the latter to overcome their feelings of shame, nervousness and reluctance. Failure of the male investigating officer to get detailed information from the reluctant

victim ultimately weakens the case at the investigation stage itself and subsequently has telling effect at the trial stage, it will be useful if the statements of the rape victims are recorded, wherever possible, by women police officers. In western countries many police forces have rape squads with a number of female officers. It is necessary to substantially augment the strength of women investigating officers in State Police forces. Special training in social welfare work should be imparted to the women police officers as part of the basic training.

In U.S.A. there are many rape crisis centres to advise the rape victims. Rape crisis centres send experts to stay with the victim during medical examination and also to assist her during examination by the police. They also advise the medical officers regarding the type of evidence to collect in sexual assault cases. Many hospitals in the U.S.A. now maintain 'Sexual assault evidence kits' containing items like instruction sheet for the examining physician, packages of sterile cotton swabs and envelopes marked for clothing, fibres, hairs, blood and secretions etc. It is necessary that such evidence kits should be maintained in our hospitals and medical centres.

Defence Techniques

It is often said that women must learn to defend themselves when attacked by the rapists, but there can be no standard response to such attack. Though many advocate acting aggressively early in the assault, there are instances of rapists stabbing and fatally injuring women who had resisted. However, some knowledge of Judo or Karate may prove useful in dealing with lonely rapists when attacked. Women should try to keep a clear head and observe the perpetrator carefully for any identifying features and remember his behaviour and verbal activity during the assault. This will definitely facilitate identification of the criminals afterwards. Moreover, women should be encouraged to fight back and report cases before the police instead of cursing their lot with silent tears.

i. Response of the Judiciary:

R.K. Bag (2000) says that the analysis of both procedural and substantive law relating to rape and the manner of proof of the charge indicates that the law hinges on corroboration, consent and character of the victim. For successful prosecution of a rape case, it is to be proved that the victim was not consenting party to the sexual intercourse. The judiciary of our country insists on corroboration of the testimony of rape victim, particularly when the victim is a married lady habituated to sexual intercourse. Fortunately, in Gurmeet Singh's case, the Supreme Court has specifically laid down that "corroborative evidence is not an imperative component of judicial credence in every case of rape". The need of the

hour is to sensitize the judges, so that they may not insist upon corroboration of the evidence of the victim in a case of rape.

To ascertain the judicial perception of rape cases, SAKSHI (Gender & Justice', Note published by SAKSHI, 1996) surveyed 94 judgments of higher judiciary in the country during the period from 1979 to 1996, which were reported in various Law Journals. Out of the 94 reported cases, the trial court convicted the accused in 80 cases. On appeal, the High Court acquitted in 41 percent cases, reduced sentences in 53 percent cases and increased sentences in 6 percent cases. The grounds of acquittal include, inter alia, the view of the judges that penetration of a woman is physiologically impossible without her consent and that in any case victims are partially to blame for such abuse. Some cases were acquitted by giving excessive importance to medical report.

Many judges of subordinate judiciary conduct the trial of rape cases in open court, in violation of Sec. 327 of Cr.P.C., which provides that rape cases must be tried in camera and the identity of the victim girl must not be disclosed to the print and electronic media. Some judges are extremely reluctant to look beyond their technical understanding of the law even in this era of judicial activism in India. However, the Apex Court's pronouncement in "Delhi Domestic Women's Forum" (Delhi Domestic Women's Forum Vs Union of India 1995) is the first instance where the judiciary has come closer to understanding the impact of sexual violence as women experience it. In this case the Supreme Court has indicated the broad parameters in assisting the victims of rape during investigation and trial of the criminal case. The gist of the guidelines is that the victims of sexual assault will get legal assistance from a competent lawyer from the stage of interrogation by the Police till the conclusion of trial in the court. It is the duty of the Police authorities to inform the victims of their right to engage an advocate for legal assistance. The advocate so engaged will not only render professional service, but also assist the victim in getting help from other agencies like mind counselling or medical assistance. The anonymity of the victims must be maintained from the beginning of investigation till the conclusion of trial. The victims must be awarded compensation by the courts when the case ends in conviction of the offender. The government must set up Criminal Injuries Compensation Board for awarding to the victims even when the cases end in acquittal of the accused persons.

b. Domestic Violence

The new law on domestic violence called The Protection of Women from Domestic Violence Act, 2005 came into effect. However,

appointment of protection officers and service providers is not made in several States. For the time being social welfare officers are discharging the functions of the protection officers who are already overburdened with their respective duties and some women associations have been designated as service providers. Need is felt for the effective implementation of the law in its letter and spirit.

i. Torture and Harassment

Generally these offences are covered under section 498A IPC. This section deals with husband or relative of her husband subjecting her to cruelty. Whoever being the husband or relative of the husband of a woman subjects such a woman to cruelty shall be punished with imprisonment for a term, which may extend to 3 years and shall also be liable to fine. The Indian Evidence Act 1872 was amended to provide that where a woman has committed suicide within a period of 7 years from the date of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty the court may presume that such suicide had been abetted by her husband or by such relative of her husband (Sec 113 A and 113 B). The onus of proof is also statistical in the accused in such cases.

The new law on domestic violence called The Protection of Women from Domestic Violence Act, 2005 came into effect. However, appointment of protection officers and service providers is not made in several States. For the time being social welfare officers are discharging the functions of the protection officers who are already overburdened with their respective duties and some women associations have been designated as service providers. Need is felt for the effective implementation of the law in its letter and spirit.

R K Bag (2000) mentions that women in India are mostly confined to their roles as daughter, house-wife and mother, which can be effectively played within the four corners of the home. Unfortunately the women are not safe within the four walls of their homes. The housewives are subjected to physical and psychological torture irrespective of economic status, religion, caste and creed.

Civil Remedy

R.K. Bag says that law is inadequate to deal with battering of women within the home. Cruelty is a legal ground for dissolution of marriage under personal laws before civil court and the same cruelty is made punishable under Criminal Law by way of amendment of Indian Penal Code in 1983. Cruelty in matrimonial cases falls under the jurisdiction of the Civil Courts or Family Courts constituted under the Family Courts

Act 1984. The predominant concept behind this legislation is preservation of the family, because in our country family and marriage are considered two solid institutions, which are to be preserved at all costs in the interest not only of the couple, but also of the society. This approach of the legislature and judiciary has treated cruelty as a dispute for civil remedy by way of dissolution of marriage. Of course, the civil court can pass the order of injunction prohibiting one spouse from subjecting other spouse to cruelty during the pendency of any proceeding before the court, but it is very difficult to implement this order when both the spouses live in the same house.

Daniel J. Bell (1995) says that the concept of 'Protect and Save' should motivate the Police to protect citizens from 'all' dangers whether from strangers or family members. This is clearly not the case when the Police abandon domestic violence victims to future abuse from family or other household members.

Flavia Agnes (1996) points out that complaints can be registered only after an offence has been committed, but in a domestic situation a woman would need protection even before the crime, when she apprehends danger to her life, as she is living with and is dependent on her assaulter.

ii. Cruelty to Married Women, Dowry and Dowry Death

Section 304 (B) of the IPC deals with the offence against women that, 'Where the death of a woman is caused by burns or bodily injury or occurs otherwise under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by husband or relative of her husband in connection with any demand for dowry, such death shall be called 'dowry death' and such husband or relative shall be deemed to have caused death'. Shifting the burden of proof to defence (Sec 8A of the Indian Evidence Act 1872) and a number of changes in the Indian Criminal Procedure Code provide for the Sub Divisional Magistrate to conduct inquest in such deaths and the case to be investigated by the Sub Divisional Police Officer.

The dowry system is going on in a large scale even though there are provisions in the Indian Penal Code and also a special law (Dowry Prohibition Act, 1961), which penalises the evil.

Sobha Saxena (1999) says that the modern system of dowry is a problem of a highly conformist culture which makes it almost impossible not only for dowry seekers but also for the dowry victims to desist from such an evil practice.

O.C. Sharma (1994) points out that according to the Hindu Shastras the meritorious act of 'Daana-Kanyadan', marriage remains incomplete till the receiver is given a token or 'Dakshina'. So when a bride was handed over to the bridegroom, he was given 'Varadashina' in cash or kind. Thus what was originally a 'token' and had its origin in sublime sentiments gained all characteristics of market transaction where women were killed, burned or thrown out of their houses if the demands of dowry were not fulfilled. Thus dowry death or bride burning became a unique form of violence experienced by Indian women.

Flavia Agnes (1988) says that the immediate causes of violence as reported by women are alcoholism, arguments over money, jealousy and suspicion on the woman's character, instigation by in-laws, housework, disputes over children and extra marital affairs on the part of the husband. According to Flavia, wife beating occurs due to frustrations built up in a man's life at two levels - individual and societal. Flavia mentions that if a man has witnessed wife beating in his childhood or has been physically abused as a child, he is likely to assume that physical violence is the acceptable way of resolving marital problems. Child abuse also leads to the belief that one who loves also has the right to beat. The most fundamental factor, which leads to wife beating, is connected with the sexist structure of the society as well as the family. While economically dependent and independent women are equally likely to be beaten, an economically dependent woman is more likely to stay on in a violent home.

Flavia suggested some changes for this problem. Any institution, which tries to deal with the problem of wife beating, has to take a preventive rather than a curative approach. Unless we try to change the structure of the family, the help given to battered women will prove to be only superficial. The author points to the need to create awareness in society so that the attitude of doctors, counsellors, institutions, social workers and the Police is more sympathetic towards victims of marital violence. The attitude of the institutions and counsellors should be to make the partners in a marriage more complete human beings rather than to preserve the marriage at any cost.

Sobha Saxena (1999) feels that in cases of cruelty and wife beating, the role of police is very crucial but there is a complete lack of interest in the Police force to follow up these cases seriously. Often valuable information is lost at the initial stages and conviction became very difficult.

Shireen J Jejeebhoy (1998) concludes that domestic violence against women is a difficult and intractable health and social problem in India.

The author stresses the importance of immediate needs of the provision of shelter, economic support and legal assistance for battered women who do opt out. According to him, efforts to protect women must be strengthened and expanded at local and national government levels. He argues for the integration of services to identify, refer and prevent domestic violence in the primary or reproductive health programme of the country.

According to Pratima Chaudhary (2001:45) whether or not a woman is free to leave a violent and stressful marriage will depend on: The availability of alternative accommodation; and Access to the law and willingness and ability to use it.

Usha Venkitakrishnan (1996) reveals that violence against women is the most blatant manifestation of the unequal power relations in society and perpetuates women's subordination. It's growing incidence indicates a decline in women's well-being in a very fundamental sense. According to her the dominant persuasion of families in Kerala today is patrifocal. Hence in Kerala, patrifocality may be seen as a diversified outcome of structures and practices in transformation. That is if patrilocal residence and dependence on men as husbands grew to be general features, changes in descent are not so clear and inheritance and succession tend to be bilateral. And yet it is in the norms of masculinity and femininity taking shape in the context of emerging consumer practices, that the details of a patrifocal ideology are being consolidated and reinforced.

Response of the Judiciary

A survey conducted by "SAKSHI", (1996) an NGO of Delhi, among 109 judges, of both subordinate and higher judiciary of some states reveals that most of the judges are in favour of compromise and adjustment of the parties in situations of domestic violence. In a criminal complaint of cruelty, the degree of proof required would vary with the perception of the judge on marriage and matrimonial relation, which again is imbibed by him from the environment in which he is brought up from the childhood. There is urgent need to sensitize the law enforcement agencies and the judiciary by training programmes, seminar and workshop, so that they can perceive the situation of violence faced by a woman in her traditional role in home.

The survey also reveals that judges attribute the pervasiveness of dowry to a number of reasons like unequal economic condition, weak husband, and failure of parents to take back the daughter from situations of dowry harassment. The judges laid emphasis on changing women rather than altering attitudes, which affect women adversely. Some judges affirmed

that while they would not demand dowry for their son, they would have to provide dowry for their daughter, wherein lies the crux of the problem with gender bias.

c. Sexual Harassment and Criminal Assault

Punishment for Criminal Assault and Sexual Harassment in the Indian Penal Code

1	2	3	4	5	6
326 A	Voluntarily causing grievous hurt by use of acid. etc.	Imprisonment for not less than 10 years but which may extend to imprisonment for life and fine of 10 lakh rupees.	Cognizable	Non-bailable	Court of Session.
326 B	Voluntarily throwing or attempting to throw acid.	Imprisonment for five years but which may extend to 7 years and fine.	Cognizable	Non-bailable	Court of Session.
354	Assault or use of criminal force to women with intent to outrage her modesty.	Imprisonment of 1 years which may extend to 5 years and with fine.	Cognizable	Non-bailable	Any Magistrate
354 A	(1) sexual harassment of the nature of unwelcome physical contact and advances or a demand or request for sexual favours.	Imprisonment which may extend to 5 years or with fine or with both	Cognizable	Non-bailable	Any Magistrate
	(2) sexual harassment of the nature of making sexually coloured remark or showing pornography or any other unwelcome physical, verbal or non-	Imprisonment which may extend to 1 years or with fine or with both	Non-Cognizable	Bailable	Any Magistrate
354 B	Assault or use of criminal force to woman with intent to disrobe	Imprisonment of not less than 3 years but which may extend to 7 years and with fine	Cognizable	Non-bailable	Any Magistrate
354 C	Voyeurism.	Imprisonment of not less than 1 year but which may extend to 3 years and with fine for first conviction. Imprisonment of not less than 3 year but which may extend to 7 years and with fine for second or subsequent conviction.	Non-Cognizable Cognizable	Bailable Non-bailable	Any Magistrate Any Magistrate
354 D	Stalking.	Imprisonment of not less than 1 year but which may extend to 3 years and with fine	Cognizable	Non-bailable	Any Magistrate

Cause for Sexual Harassment

Many educated men and women think that sexual harassment is very rare and is due to fault in the dressing and conduct of the victim. Lot of research has gone into the problem and one such study by the Research Centre for Women's Studies of SNDT Women's University, Mumbai (1998) points out that sexual harassment arises out of male dominance and exercise of power and it is all pervasive and needs immediate redressal. Though it is rampant and widespread, it is not casual and harmless. Harassment has nothing to do with the way women dress, act or behave. Ignoring such conduct may encourage the harasser to continue behaving badly. Women are conditioned to remain silent because of the fear of stigma to her character or fear of further harassment from the troublemaker. The world over, women experience sexual harassment at public places, work places etc. Even in Scandinavian Countries, one study shows that 58 % of women are harassed at work places. The Supreme Court of India, realizing the depth of the problem has put forward certain guidelines to prevent sexual harassment at workplaces.

According to M. Iftikharuddin (2003) sexual harassment acts as a control on most women by censoring their general mobility in and accessibility to spaces, thereby affecting sense of personhood and security. The cost to the nation is too high as it affects the entire productivity of the nation as well as the health of the society.

Other offences reported in lesser numbers like abduction, selling minor for purposes of prostitution, offences under the Immoral Traffic Prevention Act etc. are not discussed in this article but these are also important crimes against women.

Provisions in the IT Act 2000

Punishment for publishing or transmitting obscene material in electronic form (Section 67):-

Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or

subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form (Section 67A):-

Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend, to seven years and also with fine which may extend to ten lakh rupees.

How to Deal With CAW?

According to J.P Atray (1998) the two main reasons for the present plight of women and the seemingly impossible situation about prevention of crimes against women are the failure of the existing law and that of the law enforcement agencies to effectively deal with the problem. He also reveals in his book that as a main law enforcement agency, the Police have the number one responsibility in the area of protection of women against crimes.

O.C.Sharma (1994) holds the opinion that police is basically an agency of the Government. It is responsible for registering crime; investigating crime and maintaining law and order. Crime Against Women need not remain as a low priority area for the Police.

As a solution to the above malady, the National Police Commission (NPC) recommended the enlistment of more women in the Police Force, preferably in the rank of Assistant Sub Inspector or Sub Inspector of police rather than in the rank of constables. The NPC also insisted for greater involvement of Women Police in the Police administration and also for providing equal opportunities to them in various other areas of police work. (5th Report of the National Police Commission Government of India, 1980)

Jayathilak Guha Roy (O C Sharma (1994) recognizes that the concept of Women Police is yet to receive 'whole-hearted' departmental acceptance. Even in Kerala, which has the distinction of setting up the first All-Women Police Station, cases involving crimes are not given to

women in the force because of their 'lack of familiarity with police procedures'.

M.S. Preethi (O C Sharma 1994) found that the complaints received in Women Cell are mostly based upon 498 A IPC. These Cells do not have the power to launch prosecution against an offender on its own. The Women Cells enjoy only advisory capacity and this also affects reconciliation in certain cases but if the other party fails to appear, the Women Cell has no power to compel his attendance. Usually the Cell sends their reports to the Police Stations for further enquiry or investigation. The cases of dowry and other complaints of offences against women should be taken up on priority basis so that the offenders get speedy and proper punishment.

'The Women Cell experience to women are happy as far as listening to their complaints sympathetically and registering cases are concerned', says Sobha Saxena (1999).

In the National Workshop on Gender and Law Enforcement by the National Commission for Women (NCW) held in New Delhi in 2001 many problems faced by women were discussed. Some major recommendations were proposed. The Commission came to the conclusion that gender justice can be achieved only by the concerted effort of all agencies concerned with women's protection, promotion and development.

Evidence and Investigation Techniques

In Joint Investigation Project: Final Report (1987) it is mentioned that the quality of evidence gleaned in the course of any police investigation, particularly investigations in the context of sexual assault must predict the outcome of any prosecution. Quality evidence can only be achieved through quality investigation. The London Metropolitan Police in the UK has concluded that quality investigation will only occur where officers are appropriately trained. It is believed that much of the attitudinal problems police face with respect to sexual assault stems from the limited legal definition of rape, which may suggest to police that only a very serious physical attack followed by sexual assault will meet the definition. Officers are further attitudinally to make sure that forensic specialists take the right samples.

Officers are also warned to realize that the crucial point of success or failure of a trial for sexual assault will be the demeanor of the complainant

in court. As this is so, it is critical to prepare her for what will happen in court and thus the Metropolitan Police works closely with a scheme set up in UK called the 'Victim Support Scheme', a scheme which aims to provide by the use of trained volunteer counsellors, support for victims of crime generally.

CURRENT SITUATION OF VICTIMS OF CRIME AT EACH STAGE OF THE CRIMINAL JUSTICE PROCESS IN INDIA IN COMPARISON TO INTERNATIONAL STANDARDS

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN General Assembly, 1985), considered the 'magna carta' for victims, provides the basic framework of principles which in the last two decades have been vociferously debated and converted as victims' rights by some of the developed countries. The international standards expected of the countries in the treatment of victims by the CJS agencies at different stages of the criminal process have been elaborately detailed in the UN Handbook on Justice for Victims (United Nations Office for Drugs and Crimes, 1999, chapter III, pp.56-76). The police play a pivotal role in victim assistance as it is the first agency victims come into contact with after being victimized by a crime. The attitude of the victims towards the entire CJS will be based on the kind of treatment the victims get from the police whom they first encounter.

Unfortunately, in India the police are still not oriented to meet the expectations of the victims as per the UN Handbook on Justice for Victims. The police at the field level who are in actual contact with the victims in day-to-day crime situations are blissfully ignorant of the international developments in the field of Victimology and the better treatment victims deserve from the police. The treatment of victims by the police also forms the basis for a negative perception of the CJS, more particularly, the police, because the "treatment with compassion and respect for their dignity", emphasized by the UN Declaration, is missing completely. The Handbook says that "victims have a valid interest in the prosecution of the case and should be involved at all stages of the proceedings". In practice, the entire court proceedings protect the rights and interest of the accused, neglecting the victims' interest. Excepting that the victims are summoned to tender evidence in courts, the various

services and assistance to be rendered by the prosecution to victims (p.66-68) are not practiced in the criminal courts in India. In a nutshell, victims are alien to the criminal proceedings as they have no rights excepting to be a witness when summoned by the court. With regard to the role of the judiciary in justice for victims, though judges are by and large sympathetic towards victims, on many of the requirements, such as separate waiting halls, information about the criminal proceedings, special services and support, ordering of restitution to victims, victim participation, victim protection etc. we have a long way to go to realize victim justice in India.

A. Affirmative Action by the Higher Judiciary

1. Restitution to Victims

Despite the absence of any special legislation to render justice to victims in India, the Supreme Court has taken a proactive role and resorted to affirmative action to protect the rights of victims of crime and abuse of power. The court has adopted the concept of restorative justice and awarded compensation or restitution or enhanced the amount of compensation to victims, beginning from the 1980s. (Sukhdev Singh vs. State of Punjab (1982 SCC (Cr) 467), Balraj vs . State of U. P. (1994 SCC (Cr) 823), Giani Ram vs. State of Haryana (AIR 1995 SC 2452), Baldev Singh vs . State of Punjab (AIR 1996 SC 372).

2. Justice for Rape Victims - Guidelines for Victim Assistance

In Bodhisattwa Gautam vs. Subhra Chakraborty (AIR 1996 SC 922), the Supreme Court held that if the court trying an offence of rape has jurisdiction to award compensation at the final stage, the Court also has the right to award interim compensation. It is a landmark case in which the Supreme Court issued a set of guidelines to help indigenous rape victims who cannot afford legal, medical and psychological services, in accordance with the Principles of UN Declaration of Justice for Victims of Crime and Abuse of Power, 1985:

(i) The complainants of sexual assault cases should be provided with a victim's Advocate who is well-acquainted with the CJS to explain to the victim the proceedings, and to assist her in the police station and in Court and to guide her as to how to avail of psychological counselling or medical assistance from other agencies;

- (ii) Legal assistance at the police station while she is being questioned;
- (iii) The police should be under a duty to inform the victim of her right to representation before any questions are asked of her and the police report should state that the victim was so informed;
- (iv) The Advocate shall be appointed by the Court, in order to ensure that victims are questioned without undue delay;
- (v) In all rape trials, anonymity of the victims must be maintained;
- (vi) It is necessary, having regard to the Directive Principles contained under Art. 38 (1) of the Constitution of India, to set up a Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment;
- (vii) Compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of childbirth if this occurred as a result of the rape.

3. State Compensation for Victims of Abuse of Power

As early as 1983, the Supreme Court recognized the need for state compensation in cases of abuse of power by the State machinery. In the landmark case of *Rudul Sah vs . State of Bihar* (AIR 1983 SC 1086), the Supreme Court ordered the Government of Bihar to pay to Rudul Sah a further sum of Rs.30,000 as compensation, which according to the court was of a “palliative nature”, in addition to a sum of Rs.5,000, in a case of illegal incarceration of the victim for long years. Similarly in *Saheli , a Women’s Resources Centre through Mrs. Nalini Bhanot vs . Commissioner of Police , Delhi Police* (AIR 1990 SC 513), the Court awarded a sum of Rs.75, 000 as state compensation to the victim’s mother, holding that the victim died due to beating by the police. In another landmark case of *D. K. Basu vs . State of West Bengal* (AIR 1997 SC 610), the Supreme Court held that state compensation is mandatory in cases of abuse of power and said that “To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience”.

B. Recommendations of Commissions and Committees on Justice to Victims in India

1. The Law Commission of India, 1996

The Law Commission, in its report in 1996, stated that, “The State should accept the principle of providing assistance to victims out of its own funds, (i) in cases of acquittals; or (ii) where the offender is not traceable, but the victim is identified; and (iii) also in cases when the offence is proved” (Law Commission of India Report, 1996).

2. The Justice Malimath Committee on Reforms of Criminal Justice System (Government of India, 2003)

The Justice V. S. Malimath Committee has made many recommendations of far-reaching significance to improve the position of victims of crime in the CJS, including the victim’s right to participate in cases and to adequate compensation. Some of the significant recommendations include:

- The victim, and if he is dead, his or her legal representative, shall have the right to be impleaded as a party in every criminal proceeding where the offence is punishable with seven years’ imprisonment or more;
- In select cases, with the permission of the court, an approved voluntary organization shall also have the right to implead in court proceedings;
- The victim has a right to be represented by an advocate and the same shall be provided at the cost of the State if the victim cannot afford a lawyer;
- The victim’s right to participate in criminal trial shall include the right: to produce evidence; to ask questions of the witnesses; to be informed of the status of investigation and to move the court to issue directions for further investigation; to be heard on issues relating to bail and withdrawal of prosecution; and to advance arguments after the submission of the prosecutor’s arguments;
- The right to prefer an appeal against any adverse order of acquittal of the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation;

- Legal services to victims may be extended to include psychiatric and medical help, interim compensation, and protection against secondary victimization;
- Victim compensation is a State obligation in all serious crimes. This is to be organized in separate legislation by Parliament. The draft bill on the subject submitted to Government in 1995 by the Indian Society of Victimology provides a tentative framework for consideration;
- The Victim Compensation Law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority. (Government of India, 2003).

3. The National Commission to Review the Working of the Constitution

The Commission to review the working of the Constitution (Government of India, 2002) has advocated a victim-orientation to criminal justice administration, with greater respect and consideration towards victims and their rights in the investigative and prosecution processes, provision for greater choices to victims in trial and disposition of the accused, and a scheme of reparation/compensation particularly for victims of violent crimes.

4. Justice Varma Commission Report

The report prepared after the Delhi gangue rape incident (2012, December) is an elaborate study report and gives recommendations on Crimes Against Women.

Gender Sensitisation of Police Force

i. Cult of Masculinity

Debasis Panigrahi (1994) says that Policing has traditionally been a male bastion. Policemen's perception of policing is that it involves strength, danger, action and it is a masculine pursuit. Their self-image is that of a crime-fighter rather than a problem solver, they find non-violent, service and non-enforcement aspects of police work less exciting.

M. Woodworth and W. Woodworth (1980) found in their research that most men who complain about women supervisors have never worked for a woman.

The rationale for gender sensitization in law-enforcement is summed up as follows by Panigrahi. Police are the gatekeepers of the Criminal

Justice System and enjoy wide discretion. Differential law enforcement, indifferent police response and fear of police deny women the access to justice.

Panigrahi suggests that, at the level of induction into police force, some psychological tools should be employed to test the character, social sensitivity, responsibility and commitment of the candidates. As crimes against women are mostly personal and intimate in nature, there should be larger representation of women in the force who can inspire confidence of the victims and better appreciate and investigate cases of sexual and domestic violence. Induction of women also can obviate complaints of indignity and misbehavior to female victims/offenders, help tackle the women demonstrators and ensure better co-ordination with women groups. For better integration and involvement in police mainstream, and providing equal opportunities, National Police Commission has recommended recruitment of women in vacancies in general duty posts and not against women specific vacancies.

Panigrahi continues that training is a vital tool for unlearning the male bias and learning to deal with the needs, concerns and priorities of women more sensitively. In this process, training in the induction stage is the pace-setter because it shapes the Policemen of the future and given the level of integrity and idealism at this level, receptivity to gender-fair suggestions and values is high. Unfortunately, the basic/institutional training for policemen at all levels is grooved in a law and order, crime and security framework. Proper perceptions of gender and behaviour, critical understanding of laws for women, social investigation and role of police need to be built into the training content.

ii. Mainstreaming Gender in the Police

S. Chakrabarthy (1998) mentions that no regular recruitment of Women Police had been resorted to in the past. Besides the differential recruitment and training, Women Police also had the handicap of being considered a separate cadre for the purpose of seniority, placement and promotion. A woman officer would always have the prefix W attached to her and would get promoted only when women senior in rank to her retired. This was thus the classic case of vertical and horizontal segregation. Statement and gestures by the chief of police, making it clear that getting policewomen into the mainstream was one of the top priorities, would have the desired effect on the majority of the members

of the Police Force. This can be supplemented by clear circulars, laying down the executive instructions.

Liaison with Non-Police Organisations and Referral Agencies

The Police have had significant experience of co-operation and co-ordination with hospitals and medical personnel, but co-ordination with other agencies is more recent. In some jurisdictions, this co-ordination has been taken so far that investigation of child sexual abuse is undertaken jointly by the social services and police. (Child Sexual Abuse: Joint Investigation Project: Final Report (London, 1987)). Co-ordination has been confined to using counselling agencies to help complainants come to terms with the assault. The report stresses that while police should closely liaise with non-police bodies in the context of sexual crime, it must not be forgotten that these assaults are criminal and must be prosecuted. It is essential, therefore, that the Police retain control in any situation where liaison is advocated.

Special Law Enforcement Mechanisms

Special Police Cells and All-Women Police Stations to deal with acts of aggression against women have been established in 12 States and Union Territories. The induction of women into the Police Force at different levels has also increased substantially. A number of women's organizations are also involved as volunteer counsellors at Police Stations, helping in building bridges between the citizens and the Police Force. They are also being associated in facilitating the registration and investigation of cases of crimes against women.

Role of Other Wings and Agencies

i. The Lawyers

J.P.Atray (1998) describes the lawyer as a spokesman for the entire law and order set up of the society and plays the most vital role of placing every point of view in the open so that no other course but that of justice remains open to be followed in fairness to both the victim as well as to the accused.

Atray says that, legal politicking rather than legal advocacy is in vogue leaving little scope for professionalism.

This tendency particularly affects the woman victims, because it is very easy to attack their character and standing and to hackle and harass them in the court and outside to make them change their stand. This is

the main reason why crimes against women rarely succeed in Courts of law and end in conviction.

Professional dishonesty among the lawyers is climbing up to new heights with time. One important reason why the legal profession had gone astray forgetting all ethics and professionalism and started running after shortcuts, success and wealth is that the profession has become too much politicized.

Atray concludes that the lawyers must also discharge an obligation to the society by providing free legal aid to the poor.

ii. The Prosecution Wing

The Code of Criminal Procedure, 1973 has brought into effect a scheme for the appointment of a Public Prosecutor at the state level for conducting any prosecution, appeal or other proceeding on behalf of the Government before the High Court and a Public Prosecutor for conducting prosecutions in the courts of Magistrates. All these appointments are to be made by the State Government. The Central Government has concurrent power before the High Court. Appointment of an experienced advocate from the Bar as a Special Public Prosecutor for the purpose of any particular case or class of cases by the Central Government or the State Government is also permissible under the Code.

The National Police Commission (1980) mentions that the success of a prosecutor in handling this work depends on his mastery over the facts of the case as ascertained during investigation and his appreciation of the logical sequence and significance of the different bits of evidence for presentation in court. This calls for a good measure of cooperation and interaction between the investigating staff and the prosecuting agency when the case becomes ripe for laying charge sheet in Court, and also during the entire process of trial in court. Their mutual cooperation and total involvement in the conduct of proceedings in court are effected easily when both were part and parcel of the district police set up in the old days. This relationship got somewhat loosened when a separate cadre of Assistant Public Prosecutors was created, with the coming into force of the Code of Criminal Procedure, 1973. A feeling appears to have grown among the prosecuting staff in States that they form an independent wing of the Criminal Justice System and do not come under the administrative purview of the Police set up. This has led to a general weakening of the structure at the district level and lack of coordination

between the subordinate prosecuting staff and the subordinate police officers and marshalling of evidence in courts.

The NPC Report further states that Investigating Officers and the prosecuting staff tend to blame each other for lack of interest in piloting cases properly in court. It is necessary to evolve a new arrangement and institutionalize it on a proper footing to secure the required measure of coordinated functioning of both the wings for the successful conduct of prosecutions in court.

The generally unsatisfactory performance of the prosecuting staff is also linked with the fact that their service conditions are not good enough to attract good talent from the Bar to join the cadre of Assistant Public Prosecutors. Appointments to the level of Public Prosecutor from the local Bar are mostly made under directions from the political executive, and the Public Prosecutors so appointed do not always carry adequate professional ability and competence to enthuse the subordinate prosecuting staff with appropriate advice and guidance in specific cases. (4th Report of the National Police Commission, Government of India, 1980)

iii. The Judiciary

J. P. Atray (1998) stresses that there is no perceptible change in the outlook of the Judiciary and it still thinks the English way, marked by high-flown language and high-sounding postulations.

The entire focus in the proceedings in the Courts is on the accused and in seeing that he must at every step get an opportunity to fully defend himself and he should not only get justice but it must appear to be so. Even his false and motivated pleas to confuse the prosecution and delay the trial must be thoroughly gone into, not once but as many times as he chooses to do so. He is the hero in both stages of the trial, the prosecution and the defence.

J P Atray continues that the delay in trial and reluctance on the part of the witnesses to depose are the two biggest stumbling blocks in the path of a victim, particularly a woman and the Judiciary can help her in overcoming both these difficulties to a great extent. The courts should move out of the four walls of the court houses to the villages and take justice to the people so that they can directly approach them with their grievance and obtain their due.

Sexism in Law and Justice

S. P. Sathe, (1992) recognizes that in cases on maintenance, generally it is observed that the judges are not willing to award high sums as maintenance. Even though the maximum amount that can be given as maintenance under Section 125 of the Cr.PC is Rs. 500/-, actual sums awarded are much less and are rarely proportionate to the income of the husband. He quotes a study by Gadbois on the judges who have occupied positions in the High Courts and the Supreme Court. The study mentions that the judges invariably come from the higher castes and classes of India. The same class and caste composition prevailed in the subordinate judiciary until recently and even now has survived to a great extent in our view. This class is exposed to liberalism and is generally willing to give as much liberty and equality to women as is compatible with the patriarchal order. We therefore find contradictions in their judicial disposition. A subtle male chauvinism is to be seen in almost all judicial decision-making. The judges are either (a) patronizing and self-righteous or (b) condescending towards women or women issues. They seem to hold fast to the traditional ideal type of a woman and would be willing to concede chivalry to women.

iv. Innovative Justice Delivery Systems

While framing the Course Curriculum on Gender Sensitization of Police Officers, G.U.G Sastri & Renuka Mishra (2001) stress the importance of the following institutions in delivering justice.

1. Family Courts

The Government of India enacted the Family Courts Act 1984 for the establishment of family courts by the States in city/towns with a population exceeding one million. These courts are to make an endeavor to effect reconciliation or a settlement between the parties to family disputes, which is not adversarial. Family Courts have so far been established in 12 states and 2 union territories.

2. Parivarik Mahila Lok Adalats

To provide alternate dispute resolution mechanism in civil cases concerning women to ensure speedy justice for women these adalats have been held by the National Commission for Women. Most cases coming up before these Adalats relate to family disputes, divorce, custody of children etc.

v. Non Governmental Organisations and the Society

In order to bring social justice to the oppressed women, participation of women in general and the NGOs in particular becomes necessary.

Radhakumary (O.C.Sharma, 1994) opines that the attitude of police, judiciary and the lawyers needs a drastic change and the NGOs should see that all crime cases are registered with the Police and are followed up. The NGOs should also mobilize public opinion, organize demonstrations to seek public support and play the role of watch dog to keep the machinery on toes till the Justice is announced to the victim.

J.P Atray (1998) also recognizes that the society's involvement in the affairs of women is there in a big way in every respect. The society should provide equal means to men and women and create an atmosphere of assurance where the availability of these means to women is ensured in the same manner in which they are available in today's society. It should be an essential part of women's education and upbringing to learn the techniques of self-defence.

vi. Media

The media have the immediate advantage of reaching the largest number of people with the smallest effort and the shortest possible time. It can effectively bring into focus the various dimensions of the problems being faced by women.

Poornima Advani and Sastry (2001) describe that following a series of workshops in different regions of the country, the "National Human Rights Commission", in collaboration with 'Prasar Bharathi' and 'UNICEF' framed a set of guidelines to assist the media in reporting on the problem of child sexual abuse. The guidelines will serve to sensitise and equip the media to play a more active and catalytic role in promoting the rights of children, particularly the right to protection, and to develop a clearer understanding of existing legislation and international instruments to combat child sexual abuse. The guidelines would equally hold good for all types of crime against women also. A few important guidelines are as follows: -

1. It is important that the issue of sexual abuse is presented as a serious violation of rights.
2. Media should, through sensitive and meaningful projection and coverage of the issue be instrumental in creating a sense of

moral indignation and outrage over the incidents of sexual abuse. Media should also take care to ascertain the facts, context and circumstances. A report on such sensitive issues should not be based on superficial interviews of persons who are supposedly witnesses to the incident.

3. Media should desist from the temptation to sensationalise or exaggerate a particular incident of child abuse.
4. When media reports an incident of sexual abuse it should also report subsequently on actions taken by concerned authorities and continue to report till action is taken to punish the abusers.
5. Media should not unwittingly glorify the act of sexual abuse by giving undue prominence to the perpetrator.
6. The victims should not be further victimized or made to relive the trauma she has been through.
7. Under no circumstances should the media disclose or reveal the identity of the victim. Masking techniques should be used wherever the victim is made to give a first person account of her experience. The victim, relatives and concerned persons must be assured of confidentiality.

vii. National Commission for Women

National Commission for Women (2001) in their report of the National Workshop on Gender & Law Enforcement, has made some recommendations on issues related to violence against women. Some of the recommendations are given below: -

1. Police should show utmost sensitivity in recording the statements of victims as repeated questioning adds to their trauma. It is better if the statement is recorded once and not repeatedly.
2. Forensic facilities like DNA testing be made available to all Police Districts. Team approach is essential to help women victims.
3. Issues of violence against women should be specifically included in the course curriculum of medical and Para-medical staff.
4. Women should be given equal rights in matrimonial property acquired by spouses or either one of them, while the parties are living together.

5. In cases of bride burning and 'unnatural death' of women, the post-mortem should be done by a panel of at least two doctors, one of them preferably being a woman.
6. There is need for a gender audit of all procedures and prescription of law.
7. There is need for a separate law to deal with domestic violence so that it will not be dealt with piecemeal as it happens now. There is need to reinforce the issues so that the Government and society treat this offence on a priority basis.
8. The Supreme Court directive in Delhi Domestic Working Women's Forum Vs. Government of India that the victims of rape case are to be extended legal help at the Police Stations is not being implemented. Victims should be examined by police in the presence of a legal counsel. There is complete lack of awareness on this requirement. Police Chiefs should ensure that all Police Stations are made to adhere to this provision scrupulously.
9. Team approach is essential to help women victims. The Police, NGOs, doctors, lawyers etc should work in tandem to rehabilitate the victim. State Government should facilitate this by issuing appropriate orders.
10. School curriculum should include awareness of police procedures and rights of women. Police should associate themselves with such awareness campaigns.

viii. The Policy Makers

According to R.K. Bag, (2000) the status of women in India stems from their lesser economic liberty and consequent dependence and lack of decision-making power. They do not have control over resources because of lack of access to the decision-making structures in the country. The legislators can play a pivotal role in empowering the women by making reservations in various decision-making structures. The bill for reservation of 33% seats for women in Parliament and State Legislative Assemblies has not yet been passed, for lack of unanimity among various political parties of the country. The reservation is the prime need of the hour.

Bag continues that the police officers, prosecutors and judges at all levels of hierarchy need to be exposed to gender education which would

enlighten them on existing assumptions, myths and stereotypes about women and how these can interfere with fair and equitable administration of justice. There is urgent need of training of the personnel involved in the Criminal Justice System on the nature of violence against women in general and domestic violence, sexual violence and dowry offences in particular. The participation of the victims, NGOs, lawyers and social activists in such training programmes may help in internalizing the gender-based violence by the law enforcement agency and the judiciary and this process may in the long run help our Criminal Justice System to be more responsive and sensitive to the victims of domestic violence and crimes.

According to S. Mohanty and N. Mohanty, (1997) as far as social support mechanism and legal provisions to protect women against violence are concerned, the following conclusion can be made. The 'support-network mechanism', which is expected to play an effective role in the maintenance of the 'social system', has been facing a tremendous dilemma. Therefore, it is high time that the people belonging to the different sub-systems and the social system as a whole analyze and understand their role expectations in a broader framework. In this regard, necessary changes in the traditional patriarchal value system are essential.

It will be seen from the above review of relevant literature that though there is strong plea to infuse the qualities of gender equity into Criminal Justice System the way ahead is full of hurdles.

I. Recent Trends in Accessibility of Women to Criminal Justice System

The introduction of Janamaithri Suraksha Project, the Community Policing Project sponsored by the Government of Kerala is a landmark step towards better Service Delivery by the Kerala Police.

The Janamaithri Suraksha Project was introduced in 20 Police Stations in the year 2008. It is now functioning in 248 Police Stations in Kerala. A number of studies were conducted in 2009, 2010 and 2011 on the influence of Janamaithri Suraksha Project on Communities. The studies show that the communities have very positively responded towards the project. The capacity building in Police personnel who work as Beat Officers and Community Relations Officers is another extremely positive change felt after the project took off.

Impact studies done in 2011, in 10 of the Janamaithri Police Stations by Rajagiri College of Social Sciences, Kalamasseri shows that female population is showing more trust in the Police and they have a better perception about the working of the Police. Generally all communities and more specifically women feel that they can approach Police for help.

A Comparison of Accessibility of women to Criminal Justice System based on data for the year 1999 and 2009

Studies on Accessibility of women to Criminal Justice System was done by the author based on data for the year 1999. After a gap of 10 years a similar study was conducted by the Rajagiri College of Social Sciences, Kalamasseri, for the Police Department of Kerala. It would be interesting to do a comparison of the findings in the two studies, with a view to analyse whether accessibility of women to Criminal Justice System has increased over the decade and if so which are the areas we have improved. It is also worthwhile to find out whether there are areas where we are still lagging behind.

Educational Profile

Educational Profile of women subjected to CAW remains more or less the same. In 1999 as well as 2009 majority of the victims had an educational level below SSLC.

In 1999 24.3% of the victims were having qualification of SSLC. It is 23% in 2009. Less educated women are more vulnerable to the atrocities by the opposite sex.

Marital Status of victims, annual income and social status are also showing the same trend over the years. With number of married women, lower income groups and lower social status of group subjected to crimes more compared to other groups.

Persons who accompanied the Victims to the Police Station

In 1999 all the victims have gone to the Police Stations along with their family members. There was not even a single case in which family members have not supported them. Relatives, friends and neighbours also supported them. No NGO or any other institutionalized mechanisms helped the victims to approach the Police Station.

By 2009 there is a marked change in this regard. 11.7% of women victims had the confidence of visiting the Police Station alone.

80.8% reported about the escort of their relatives. Politicians, neighbours and others accompanied a few victims. Surprisingly none of the victims reported contacting any NGOs escorting them to the Police Station. This shows that there is a tremendous amount of confidence built up in the Police Department prompting atleast some of the victims to approach the Police Station alone. However absence of other institutionalized mechanisms helping women to approach the Police Station is remaining the same even after a decade.

Legal Literacy

Ignorance about the Legal rights is one of the major hurdles that restrict women to access the Criminal Justice System. The probe in relation to Legal literacy or awareness about the procedures at the Police Station reiterated the above, as majority of the victims remarked about their ignorance in this regard even in 2009(12%) compared to 5% in 1999. This points towards the need for more and more legal awareness programmes targeting all age, education and social groups.

Loss of working days and financial cost

The above two factors affected the victims much. The scenario remains more or less the same over the period of 10 years. Around 14 working days are lost to the victims on account of the crime Case. For transportation of self, those accompanying, witnesses etc, fees to advocate, medical expenses etc and for other charges around Rs.3600/- was spent in 1999. Around Rs.5000/- is seen spent in 2009. Victims are saying that the financial loss is very difficult for them to bear.

In this regard, it is worthwhile to note that under the Gender Flagship Programme of Kerala Police, Plan fund is spent under 'Victim Support Scheme' to meet the expenditure of the women victims for transportation, medical expenses etc.

Providing Copy of FIR to the Victim

Section 154 CrPC directs the Police to provide a copy of the FIR to the complainant. In 1999, none of the victims were provided with a copy of the FIR initially. After repeated requests only, some of them were able to obtain a copy of the FIR from the Police Station. Ignorance of victims about such a provision also may be one of the reasons for the low percentage of reporting on the affirmative. In 2009, 54.2% stated that they did not get a copy of the FIR. This shows that awareness of

victims has improved and Police is also responding positively . However a long way has to go in this basic aspect.

More attention of the supervisory and senior officers in this regard is required, as officers in the Police Station are the kingpins at this juncture. The FIR is usually the single most critical document a victim will have in her effort to get Justice. If recorded properly, it serves as a solid base for prosecution, and if recorded improperly can undermine a victim's Justice, making the perpetrator to perpetuate the crime.

Use of indecent Language

In 1999, 86% of the women customers felt that the Police has used only fair language. In 2009, 95.8% reported about use of fair language. The use of indecent language to victims has been reduced from 14% in 1999 to 4.2% in 2009. Use of derogatory language in a Police Station can cause devastating havoc on women who have already undergone a traumatic experience. Hence use of indecent language even in 4% of cases is not a tolerable behaviour from the part of Police personnel. This calls for a need for repeated gender awareness training to all Police personnel having public interface.

Interview by Women Police

In 1999 only 2.5% of the victims were interviewed by Women Police. In 2009, 26.7% of the victims said that they were interviewed by Women Police. The change is due to the fact that at present, around 10% strength of local constabulary is Women Police. Thus Kerala Police has slightly overcome the major hurdle of lack Women Police. The satisfaction level of women victims would be much better, if at the officer level also women are available in the Police Station and supervisory levels.

Urgency in Dealing with the Case

The Investigating Officer is required to create the feeling of security and confidence in the minds of women victims while dealing with cases of crimes against them. The studies looked into the perception of the respondents on the seriousness shown by the Investigating Officer at the time of dealing with their cases. The data shows that in 1999, 26% of the victims felt that the Police did not show any urgency in dealing with their problems. On the other hand in 2009, only 14.2% of the victims had a reverse opinion on the matter. This shows that there is slight positive change with respect to perception of victims regarding urgency of Police

in proper investigation of CAW cases. Criminal Investigation techniques to deal with CAW, combined with gender sensitization exercises would help to improve the matter.

Time taken for Registration of FIR

Concerning the duration taken for registering the FIR, the data depicted that in 1999, 42% victims were able to get their case registered within one hour, where as 35% got the FIR registered in two hours. 11% waited for 4 hours and 3% registered the FIR in 6 hours. 6 % had to wait for a day and 3% had to wait for several days. In 2009, 52.5% FIRs were registered in an hour, and 25.4% in 2 hours. 5.8% could register the FIR after 4 hours and 0.8% in 6 hours. One day or several days delay was reported by 11.7% and 3.8% respectively. The statistics shows that in 2009, 15% victims faced undue delay in getting the FIR registered, compared to 9% in 1999. Thus even now, getting an FIR registered in a Police Station can be considered as a major hurdle faced by victims in a Police Station.

Very close supervision and frequent and effective checking by Supervisory Officers is a must with respect to prompt registration of F.I.R. Delay or non registration should be dealt with promptly so that the existing gap in this connection is bridged urgently. Supervisory Officers may contact the victims and find out whether there was undue delay in registration of F.I.R, atleast in a few cases on a random basis and take corrective steps if required, at the Police Station level.

Sending the Victim for Medical Examination

In 83% of rape cases, victims were sent for Medical Examination in 1999. In 90% of the cases, rape victims were sent for Medical Examination in 2009. In 498 A IPC cases, none of the victims were sent for Medical Examination in 1999. In 2009, in 12.90% of the cases, the victims were sent for Medical Examination. Even though physical assault is mentioned in a majority of cases, these are not being properly recorded through a Medical Examination, even now. This is a major gap which needs to be filled urgently.

Questioning of Witnesses

In 1999, only 63% of victims felt that the Investigating Officer questioned all important witnesses and elicited all information with respect of the

case. In 2009 also there is not much change in this respect as 64.2% of the victims under study perceived that the Investigating Officer had questioned all the witnesses. 20% of victims of 1999 reported that the Investigating Officer did not question all important witnesses whereas 11.7% of victims only answered in the negative in 2009. However those who do not know whether the Police questioned the witnesses or not was a negligible 2.5% in 1999 compared to 11.7% in 2009. This is an indication about the legal illiteracy of the victims that these 11.7% victims are not knowledgeable about even simple procedures in the Police Station.

Perception about dealing with the accused

In 1999, 71% of victims felt that the accused was questioned by the Investigating Officer properly to elicit all details of the crime. In 2.5% of cases the victims complained that the accused was not arrested due to political influence. In 2009, 66.3% told that the accused had been questioned properly by the Investigating Officer. In 2009 too, 2.6% believed that the accused escaped due to influence and money. Thus the perception of victims regarding external influence in dealing with accused remains more or less the same over a period of 10 years. The perception about fairness in investigation also remains more or less the same over a period of 10 years.

Submission of Chargesheet / Final Report

In 1999, 71% of victims knew that a chargesheet was laid in the Court. In 2009, 80% of women victims reported that the Police submitted chargesheet in the Court. There is a slight improvement in this respect over a period of 10 years. About 11% victims in 1999 reported that chargesheet was not laid in the Court. In 2009, 7% reported about non submission of chargesheet in the Court, showing a slight improvement.

Information Received about the Stage of Investigation

If information about the stage of investigation is not received by the victims, the victims may perceive that proper chargesheeting of the case is not done by the Police. In 1999, 81.3% of the women victims reported that they received information about the progress of investigation. In 2009, only 55% of victims received information about the progress of their cases.

This points towards the need for better communication in this regard to the women customers. During this age of advanced communication, the Police Department can chalk out easy methods through which

progress regarding investigation is promptly communicated to the victims of crimes. If some small financial expenditure is incurred in this respect, the same may be even met from the victim assistance fund.

Overall Satisfaction of Victims

The appraisal in this regard was based on the victim's perception about the way Police had handled the case and their willingness to return to Police Station to Lodge a complaint if such incidents occurred again.

In 1999, 31% of victims reported that they were not at all satisfied by the Police action. In 2009, those who were absolutely unsatisfied were 1.7% and with low satisfaction level were 9.2%. Thus it can be concluded that there is improvement in overall satisfaction level of women customers as far as Police action is concerned, over a period of 10 years. However the fact that more than 10% of victims still feel much unsatisfied about Police action should prompt the Police Department to take further progressive steps towards service delivery to women victims coming to the Police Station.

Major Causes of Dissatisfaction

Even after a period of 10 years, delay in trial remains as the major reason for dissatisfaction of women customers of Criminal Justice System. Even in 2009, 71.7% of the victims stated that delay in trial had troubled them much. Absence of Women Police Officers during questioning was a serious problem cited as a major cause of dissatisfaction by 16.7% of the victims. Narrating the details of the incidents of the atrocities against women in its fullest sense is crucial for the effective prosecution of the perpetrators. Such true expressions can be made by the victims only to a woman. Interview or even presence of male Police Officers often makes such expressions very calculated due to which many serious elements could go omitted.

25.8% of victims in 2009, stated financial difficulties to be a major problem. The condition becomes grim as the case goes for longer duration. The need for victim assistance fund is highlighted by this finding.

Delay in investigations is cited by 11.3% of victims even in 2009, causing great havoc on the lives of victims. It could also lead to destruction of strong evidences required for successful prosecution of case.

Money demanded by the politicians and middleman was cited by 3.8% and 2.1% respectively in 2009 also. Illtreatment by Police also was

cited in 2009, in 1.3% of the cases as major reason for dissatisfaction. None of the victims in 2009 reported about demand of bribe by the Police.

Some other problems cited by victims in 2009, as in the case of 1999 include

- Use of indecent language by Police Officers
- Making them wait for long duration in the Police Station
- Social difficulties such as apathy of relatives, friends, accused and social stigma faced by victims
- Improper conduct of investigation.

Accessibility of Women to Criminal Justice System

By examining several factors to measure accessibility of women to Criminal Justice System, and the gap filled over the various issues over a period of 10 years the following conclusions are made.

- Major impediments in women's access to justice as per them included:
 - Non availability of resources in terms of finance, knowledge and information about her rights and legal procedure.
 - Majority of the women lack access to information about the procedure of filing the complaint.
 - It reflects lack of legal literacy and awareness among women.
 - Many women were not aware of their right to file a complaint against their husbands.
 - Fear and stigma associated with going to Police Station or the Court is yet another barrier for accessing the Criminal Justice System.
 - Delay in Criminal Justice Process results in loosing of confidence in the system.

For making Criminal Justice System more accessible to women victims of crime, much progress need to be achieved in several areas. The key areas include sensitised Women Officers to deal with CAW at Police Station level and upwards, legal awareness among the women, gender sensitization among the personnel administering the system, special provisions for speedy, investigation and monitoring of CAW cases and

development of systems for victim's support including rehabilitation of rape victims and victims of domestic violence and lastly, necessary changes in the provision of law to ensure appropriate punishments for various crimes committed against women.

II. CONCLUSIONS

Women in general and those against whom atrocities have been committed, in particular need special attention from the Criminal Justice System and other Government agencies. The increasing trend of crimes against women reported need to be looked into with utmost seriousness. The Under Investigation and Pending Trial cases against women and children is very serious concern.

Prompt registration of crimes, speedy investigation and trial, in camera proceedings, speedy medical attention, provision for all types of victim support and the solutions are many as far as accessibility of women to Criminal Justice System is concerned.

Police station is the first window of the Criminal Justice System. The recent research done by the Kerala Police Department shows that in the recent past, the number of women approaching the Police Stations has increased tremendously. There seems to be a greater urgency to register complaints brought by women. At the same time, Police Department is handicapped with the traditional self image of a crime fighting Department and there is a resultant feeling that service to the victims is a less prioritized item of Policing. Inadequacy of representation of women in the Police Department is another major handicap. The Kerala Police study shows that women victims refer to open up properly about their grievances only to Woman Officers. Recent central enactment on Child Sex Abuse as made taking of statement of victim by Woman Officer not below the rank of a Sub- Inspector of Police mandatory.

In some of the most heinous gang rape cases, the Court have let off the culprits in the light of appreciation of ordinary human conduct. Victims may not be able to react just like raped heroines in movies - special legal requirement with scientific assistance is required for appreciation of evidence in rape cases.

The Government first need to make a policy statement regarding making the State more safe for women. Following policy changes should be made on all crucial matters.

1. Recruitment Policy - Gender aptitude test for recruitment
- Induction of 35 % of women at all levels, in the Criminal Justice System.
2. Laws
 - a) Making recording of a victim Impact Statement by the presiding officers of the Court mandatory. This will make the trial Court Judge understand the trauma of the victim.
 - b) Making legal provisions for appreciation of ordinary human conduct (section 3 of Evidence Act) by presiding officers of the Court based on distinct scientific psychological test for psychological reactions of a rape victim.
 - c) Comprehensive rape and other laws to prevent harassment of women at public place and work place.
 - d) Institutions
 - i. Criminal Injuries compensation board
 - ii. Special fast track Courts in every District with women Presiding Officers
 - iii. Gender Training institutions for personnel working in the Criminal Justice System
3. Professional improvement policies.
 - a. Entry in ACR of Government Servants about their flaws if any in handling offences against women and children.
 - b. Gender training to all in the system.
 - c. Legal literacy to women
4. Victim Assistance policies
 - a. Victim Assistance fund through Police
 - b. Rehabilitation of rape victims
 - c. Counseling centers
5. External environment
 - a. Social audit
 - b. Media sensitization
 - c. Constant monitoring by NGOs, media

Every stakeholder need to work in tandem with each other for betterment of safety of women

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1. Advani, Poornima., Sastry, G.U.G. and Mishra, Renuka. (eds) (2001) *Course Curriculum on Gender Sensitization of Police Officers*, New Delhi: National Commission for Women.
2. Atray, J. P. (1998) *Crimes Against Women*, New Delhi: Vikas Publishing House Pvt Ltd.
3. Bag, R.K. (2000) 'Domestic Violence and Crimes Against Women-Criminal Justice Response in India'. *S.V.P National Police Academy Journal*, Volume No: 52 No.1. pp 67 - 89, Jan - Jun.
4. Bell, Daniel, J. (1995) 'The Police Response to Domestic Violence: A Multilayer Study', *Police Studies*, Vol. 8, No.1.
5. The Criminal Law (Amendment) Ordinance 2013, Gazette of India Extraordinary, Dated:- 03.02.2013.
6. Debasis. Panigrahi, (1994) 'Course Curriculum on Gender Sensitization in Law Enforcement'. *SV P National Police Academy Journal*, Vol. 46, No.2, July - December.
7. Edwards, S. (1989) *Policing 'Domestic' Violence: Women the Law and the State*. Thousand Oaks: Sage.
8. Ferraro, K. (1989) 'The Legal Response to Woman Battering in the United States', in J.Hanmer, J. Radford and E. Stanko (eds) *Women, Policing and Male Violence*, London: Routledge.
9. Flavia Agnes, (1988) 'Violence in the Family: Wife Beating' in *Women in Indian Society: A Reader(ed)* by Rehana Ghadially, New Delhi:Sage Publications.
10. Friedman, L. and Schulman, M. (1990) 'Domestic Violence: the Criminal Justice Response', in A.J Lurigio, W.G. Skogan an R.C. Davies (eds) *Victims of Crime: Problems, Policies and Progress*, London: Sage.
11. Gender Awareness Study on Women Victims in Kerala with reference to the Criminal Justice System. Sponsored by Home Department Govt. of Kerala, Conducted by The Research Institute Rajagiri College of Social Sciences, Kalamassery, Kochi, January 2011.
12. Government of Kerala. (2003) *Protection of Human Rights by Police Personnel - Kerala Human Rights Commission - A Handbook of Training*. May
13. Hatty, S. (1989) 'Policing Male Violence in Australia', in J Hanmer, J Radford and R. Stanko (eds) *Women, Policing and Male Violence*, London: Routledge.
14. Hanmer, J., Radford, J. and Stanko, E. (eds) (1989) *Women, Policing and Male Violence*, London: Routledge.
15. Heidensohn, F. (1992) *Women in Control? The Role of Women in Law Enforcement*, Oxford:Oxford University Press.
16. The Information Technology Act,2000 (21 of 2000) as amended by The Information Technology (Amendment) Act, 2008 (10 of 2009) (with effect from 27-10-2009 : Professional Book Publishers Delhi.
17. James. Vadakkumcherry, (2000) *Police, Women and Gender Justice*, New Delhi: S.B. Nangia for A.P.H Publishing Corporation.

18. Karmen, A. (1990) *Crime Victims: An introduction to Victimology*, Pacific Grove, Calif: Brooks Cole.
19. Kerala Police Act 2011 Government of Kerala (2011):Kerala Gazette KL/TV(N)/12/2009-2011, Extraordinary, Published by Authority: Law (Legislation E) Department 20th April 2011(No.4448/Leg.E1/2011/Law)
20. A. Kumar (eds 2003) *Women And Crime* (Vol. 1); Institute For Sustainable Development, Lucknow & Anmol Publication Pvt. Ltd, New Delhi -110002.
21. Mishra, Renuka and Sastry, GUG (eds) (2001) *Course Curriculum on Gender Sensitization of Police Officers*, National Commission for Women, Hyderabad: SVP National Police Academy.
22. Dr. P K B Nayar (eds) (1984) Panel Discussion on Kerala Women; Second National Conference On Women's Studies Trivandrum April 9-12 1984: Department of Sociology, Univesity of Kerala, Kariavattom, Trivandrum.
23. Pratima. Chaudhary, (2001) *Battered Women, A study of Domestic Violence*, Bhopal: Porvasha Prakashan.
24. Reiner, R. (1992) *The Politics of the Police*. 2nd Edition, Hemel Hempstead: Prentice Hall/ Harvester Wheatsheaf.
25. Dr. R. Revathi (eds) (2009); *Law Relating to Domestic Violence, Introduction* : Asia Law House Hyderabad
26. Sankar Sen (1994) *Indian Police Today; Law Enforcement Officer*: Ashish Publishing House 8/81 Punjabi Bagh New Delhi 110026.
27. Sathe, S.P. (1992) 'Sexism In Law and Justice'. *Indian Journal of Social Work*, Vol.III, No.3, July.
28. Sharma O. C. (1994) *Crime Against Women*, New Delhi: S.B. Nangia.
29. Sobha. Saxena, (1999) *Crime Against Women and Protective Laws*, New Delhi: Deep & Deep Publications.
30. Taylor, L.R. (1990) 'Introduction: the Concept of "Social Cost" in Free Market Theory and the Social Effects of Free Market Policies', in L.R. Taylor (ed). *The Social Effects of Free Market Policies*, Hemel Hempstead: Harvester Wheatsheaf.
31. Shireen J. Jejeebhoy, (1998) 'Wife Beating in Rural India: A Husband's Right?' *Economic and Political Weekly* (EPW), Vol.No.33, No.15, Page Nos. 855, 862. April 11.
32. Usha. Venkitakrishnan, (1996) *Crime Against Women-Kerala Scenerio*, (ed.) Thiruvananthapuram: Joint Women's Programme, Kerala Chapter.
33. Justice Varma Commission report on Delhi gangue rape website: <http://nlrd.org/womens-rights-initiative/justice-verma-committee-report-download-full-report>, <http://www.prsindia.org/parliamenttrack/report-summaries/justice-verma-committee-report-summary-2628>)
34. Walklate, Sandra. (1995) *Gender and Crime: An Introduction*- Keele University: Prentice Hall Harvester Wheatsheaf.
35. Weatheritt, M. (1993) 'Measuring Police Performance: Accounting or Accountability?' in Reiner and S. Spencer (eds) *Accountable Policing: Effectiveness, Empowerment and Equality*, London: Institute of Public Policy Research.

Sexual Assault Forensic Examination (SAFE)

From Victim to Winner

Sherly Vasu

Introduction

The term “**sexual violence**” refers to a specific constellation of crimes including sexual harassment, sexual assault, and rape. The perpetrator may be a stranger, acquaintance, friend, family member, or intimate partner. Researchers, practitioners, and policymakers agree that all forms of sexual violence harm the individual, the family unit, and society and that much work remains to be done to enhance the criminal justice response to these crimes. **Sexual harassment** ranges from degrading remarks, gestures, and jokes to indecent exposure, being touched, grabbed, pinched, or brushed against in a sexual way. In employment settings, it has been defined as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct that enters into employment decisions or conduct that unreasonably interferes with an individual’s work performance or creates an intimidating, hostile, or offensive working environment”

Sexual assault covers a wide range of unwanted behaviors—up to but not including penetration—that are attempted or completed against a victim’s will or when a victim cannot consent because of age, disability, or the influence of alcohol or drugs. Sexual assault may involve actual or threatened physical force, use of weapons, coercion, intimidation, or pressure and may include—

Intentional touching of the victim’s genitals, anus, groin, or breasts.

Voyeurism.

Exposure to exhibitionism.

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Undesired exposure to pornography.

Public display of images that were taken in a private context or when the victim was unaware.

Rape definitions vary .Most statutes currently define rape as nonconsensual oral, anal, or vaginal penetration of the victim by body parts or objects using force, threats of bodily harm, or by taking advantage of a victim who is incapacitated or otherwise incapable of giving consent. Incapacitation may include mental or cognitive disability, self-induced or forced intoxication, status as minor, or any other condition defined by law that voids an individual's ability to give consent.

Sexual Assault Medical Forensic Examination Research Forum

Sexual Assault Medical Forensic Examination Research Forum, sponsored by the Office for Victims of Crime (OVC) and the National Institute of Justice (NIJ) of the US , explored gaps in the existing research related to the technical aspects of sexual assault medical forensic examination (SAMFE). The goal was to identify what research is needed to bring a stronger evidence base to the SAMFE. The forum focused on the following topics:

- Types of evidence gathered.
- Examination technology.
- Standardizing the evidence kit.
- Evolving DNA technology.
- Potential use and logistics of telemedicine during the examination.

The forum builds upon a congressional requirement pursuant to the Violence Against Women Act of 2000 (VAWA) that mandated the Attorney General to develop **national standards related to the SAMFE** [sexual assault forensic medical examination] . This mandate led the U.S. Department of Justice (DOJ) to develop the National Protocol for Sexual Assault Medical Forensic Examinations (Adults/Adolescents) (pdf, 141 pages) and the National Training Standards for Sexual Assault Medical Forensic Examiners (pdf, 33 pages), and to offer technical assistance resources to encourage jurisdictions to implement a standardized approach to the SAMFE process.

Forum participants included sexual assault forensic examiners (SAFE), victim advocates, law enforcement officers, prosecutors, forensic

laboratory personnel, researchers, federal agency personnel, and one identified sexual assault survivor.

This diverse group of participants was highly supportive of the translational criminology approach to research. **Translational criminology is a strategy for transforming criminal justice through research.** By bringing evidence to bear on crime policies and practices, researchers can form a bridge between the work of research and the real-life challenges of fighting crime and enhancing justice. Transformation through research is a cyclical process.¹¹

Victim centred approach and Community Initiative

[Crisis Centres and SAFE]

The traditional approach to the offence of sexual assault had to change with the above reforms. It now had to change from the Crime centred approach to the Victim centred approach and the victim fighting against the perpetrator to the society supported by law acting in unison to encourage the victim to provide information and evidence against the offence and support the victim throughout the prosecution and beyond, restitution and rehabilitation. The victim's need for societal support and continued medical care was identified as a priority.

The Crisis Centre is a facility established by the Local Self Government (with or without support of sponsors) where under one umbrella the various needs of the victim are met. These include a variety of care for the victim like:

1. Consider sexual assault patients a priority , safety needs from threats) and required privacy and quietness during interview and examination. Emotional support and information needed for proper decision making through counseling, medical attention, light refreshments a, facilities for rest, wash and change of clothes. Her/his friend/family and victim advocate shall offer company and support during interview.
2. Assistance of translator or interpreter for those speaking a different language or those with communication difficulties or children can be arranged (wordboards, speech synthesizers, or The use of cards with pictures of medical procedures and human anatomy)
3. One time all purpose interview, (Examiners coordinate with other responders) instead of multiple sessions with lawyer, doctor and

investigating officer can be arranged in such centres. Promote a streamlined, victim-centered information-gathering process. Victim advocates can be contacted who shall be present during interview.

4. Patient's need for immediate medical or mental health are assessed and addressed. Prevention of sexually transmitted diseases and pregnancy which are likely to follow sexual assaults are also offered. Separate Medical document is maintained for future care as separate from Forensic medicine documents.

5. The most important service such comprehensive care centres can offer is the continuous or repeat session psychological counseling to protect from Sexual Offence Post Traumatic Distress Syndromes.

6. Trained Forensic Examiners (who are alerted and respond quickly) conduct the Forensic medical examination, proper documentation and evidence collection, protection of chain of custody and integrity of such evidence. If the victim would defer her decision making as to prosecute, the evidence can be stored safe in deep freezers for permitted times. If the victim would prefer examination by same sex doctor or anonymity of names in records this also can be offered by replacing name by patient number.

Forensic Medical History

The specific questions asked of patients by examiners for the medical forensic history vary as do forms used to record the history. The following information should be sought routinely from patients:

1. Date and time of the sexual assault(s): It is essential to know the period of time that has elapsed between the assault and the collection of evidence. Evidence collection may be directed by the time interval since the assault. Interpretation of both the physical exam and evidence analysis may be influenced by the time interval between the assault and the exam.
2. Pertinent patient medical history: The interpretation of physical findings may be affected by medical data related to menstruation, recent anal-genital injuries, surgeries, or diagnostic procedures, blood-clotting history, and other pertinent medical conditions or treatment.
3. Recent consensual sexual activity: The sensitivity of DNA

analysis makes it important to gather information about recent consensual intercourse, whether it was anal, vaginal, and/or oral, and whether a condom was used. A trace amount of semen or other bodily fluid may be identified that is not associated with the crime. Once identified, it may need to be associated with a consensual partner, and then used for elimination purposes to aid in interpreting evidence.

4. Post-assault activities of patients: The quality of evidence is affected both by actions taken by patients and the passage of time. It is critical to know what, if any, activities were performed prior to the examination (e.g., have patients urinated, defecated, wiped genitals or the body, douched, removed/inserted a tampon/sanitary pad/diaphragm, used oral rinse/gargled, washed, brushed teeth, ate or drank, smoked, used drugs, or changed clothing?).
5. Assault-related patient history: Information such as whether there was memory loss, lapse of consciousness, vomiting, non-genital injury, pain and/or bleeding, and anal-genital injury, pain, and/or bleeding can direct evidence collection and medical care. Collecting toxicology samples is recommended if there was either loss of memory or lapse of consciousness, according to jurisdictional policy.
6. Suspect information (if known): Forensic scientists seek evidence on cross-transfer of evidence among patients, suspects, and crime scenes. The gender and number of suspects may offer guidance to types and amounts of foreign materials that might be found on patients' bodies and clothing. Suspect information gathered during this history should be limited to that which will guide the exam and forensic evidence collection. Detailed questions about suspects are asked during the investigative interview.
7. Nature of the physical assault(s): Information about the physical surroundings of the assault(s) (e.g., indoors, outdoors, car, alley, room, rug, dirt, mud, or grass) and methods employed by suspects is crucial to the detection, collection, and analysis of physical evidence. Methods may include, but are not limited to, use of weapons (threatened and/or injuries inflicted), physical blows, grabbing, holding, pinching, biting, using physical restraints, strangulation, burns (thermal and/or chemical), threat(s) of harm,

and involuntary ingestion of alcohol/drugs. Knowing whether suspects may have been injured during the assault may be useful when recovering evidence from patients (e.g., blood) or from suspects (e.g., bruising, fingernail marks, or bite marks).

8. Description of the sexual assault(s): An accurate but brief description is crucial to detecting, collecting, and analyzing physical evidence. The description should include any:

- Penetration of genitalia (e.g., vulva, hymen, and/or vagina of female patient), however slight;
- Penetration of the anal opening, however slight;
- Oral contact with genitals (of patients by suspects or of suspects by patients);
- Other contact with genitals (of patients by suspects or of suspects by patients);
- Oral contact with the anus (of patients by suspects or of suspects by patients);
- Non-genital act(s) (e.g., licking, kissing, suction injury, and biting);
- Other act(s) including use of objects;

If known, whether ejaculation occurred and location(s) of ejaculation (e.g., mouth, vagina, genitals, anus/rectum, body surface, on clothing, on bedding, or other); and

- Use of contraception or lubricants.

These questions require specific and sometimes detailed answers. Some may be difficult for patients to answer. Examiners should explain that these questions are asked during every sexual assault medical forensic exam. They should also explain why each question is being asked.

Examination and evidence collection Procedures

Collect as much evidence from patients as possible, guided by the scope of informed consent, the medical forensic history, exam findings, and instructions in the evidence collection kit. Evidence collected during the exam mainly includes biological and trace evidence. To reconstruct the events in question, evidence collected is used in two potential ways in sexual assault cases: Transfer or associative evidence can provide

information about contact between patients and suspects, patients and crime scenes, and suspects and crime scenes. The type of evidence recovered and its location can provide details about the nature of the contact.

Identification evidence can give scientific data about the source of a specific

Non-Genital Injury Evidence (force, corroboration)

Physical injuries are the best proof of force and should always be photographed, described on drawings, and documented in writing on the report. Physical injuries are the best proof of force and should always be photographed, described on drawings, and documented in writing on the report. Evidence of injury can also corroborate the victim's account of events. It is imperative to note, however, that the absence of injuries does not mean that force or coercion was not used. Given that the majority of sexual assault victims do not sustain injuries, an absence of injuries does not prove consent.

Pattern of non-genital injury

The forensic examiner must be knowledgeable about the pattern of injuries resulting from violence, in order to ask the appropriate questions and locate injuries on the basis of the history.

The most common of them are :

- ? Upper leg and thigh bruising
- ? Neck bruising from choking
- ? Punch bruising to the upper arm
- ? Defensive posturing injuries to the outer side of the arms
- ? Whip or cord like injuries to the back
- ? Punch or bite injuries to the breasts and nipples
- ? Punch injuries to the abdomen
- ? Punch and kick injuries to the thighs
- ? Facial bruising, abrasions, and lacerations

Genital Trauma Evidence (sexual contact, force)

Genital trauma is useful to show both recent sexual contact and force. Studies have consistently shown that although genital trauma can occur as a result of consenting sexual intercourse, it is much more likely to be seen after sexual assault. For example, research has found genital trauma in 45-89% of sexual assault victims, in comparison with 7-11% of adult women examined after consenting intercourse.

These findings have led researchers to conclude that the incidence of genital microtrauma is “strongly suggestive” of non-consenting sexual intercourse.

However, even in cases of sexual assault there is often no evidence of genital trauma. Thus, the absence of genital trauma should not be interpreted as evidence of consent. In other words, the forensic examiner will often not find genital injuries, and the reasons for this must be explained to the jury.

Pattern of genital injury

The pattern of genital injury in female sexual assault victims has been a more recent area of study. For example, of the 311 sexual assault victims studied by Slaughter and colleagues, 213 (68%) exhibited anogenital trauma of some kind. Of these 213 victims with some form of genital trauma, the percentage with injury at each specific site was as follows:

posterior fourchette (70%)	vagina (11%)
labia minora (53%)	perineum (11%)
hymen (29%)	periurethral area (9%)
fossa navicularis (25%)	labia majora (7%)
anus (15%)	rectum (4%)
cervix (13%)	

When documenting genital injuries, the forensic examiner will generally use a clock to describe their location (e.g., 3 o’clock, 7 o’clock). Injuries commonly found in forcible sexual assaults are caused by an absence of human sexual response by both parties, resulting in the following factors:

- Lack of pelvic tilt to prepare for penetration

- Lack of partner assistance with the insertion of a penis or foreign object
- Lack of lubrication
- Lack of relaxation
- Increased force of penetration
- Male sexual dysfunction
- Lack of communication

Patterned non-genital injury

“Patterned injury” is different from the similar term, “pattern of injury” discussed above. Both are important forensic terms, however, “Patterned injuries” are those where the object used to inflict the injury can be easily identified by the pattern left on the victim. Examples include a coat hanger, iron, extension cord, belt, or the imprint of a ring worn by the assailant.

- Bite marks are important patterned injuries that can be linked to a suspect’s dental pattern.
- Strangulation also constitutes a patterned injury. Since most assailants who strangle their victim use their dominant hand, the fingertip pattern can be used to identify the assailant’s handedness. A right-handed assailant will usually grab the victim’s anterior neck so as to leave a single thumb bruise at the right of the neck and several fingertip bruises to the left of the neck.
- A recent bruising is red or dark blue in color, and older bruising may be green-blue or yellow-blue, and older still bruising may be barely visible — people vary greatly in their rates of healing. Medications, skin tone, age, and other factors affect bleeding and healing response as well.
- Presence or nature of injuries vary greatly between victims (age, prior sexual experience, most important timing of the examination after the assault)

Colposcopic evidence

The literature also suggests that colposcopic examination to magnify genital tissue is an important asset to the identification of genital trauma. Photographic equipment, both still and video, can also be easily attached to a colposcope for forensic documentation.

- .. To demonstrate the importance of the colposcope, positive genital findings are typically reported in only 10-30% of cases using gross visualization.
- .. With colposcopic examination, however, the general range for identified trauma is 60-80%. One study even identified genital trauma in 87% of sexual assault cases using colposcopic examination.

Toluidine blue

Toluidine blue is a nuclear stain commonly used in sexual assault examinations to detect genital microtrauma. Some research suggests that toluidine blue can significantly enhance the detection of genital injuries compared with gross visualization alone.

For example, one study found that the use of toluidine blue increased the detection of perineal lacerations among adult women from 24% with gross visualization to 40%.

In a second study, the dye increased the incidence of positive findings from 4% to 58%.

Since toluidine blue is spermicidal in nature, the literature consistently suggests that it should only be used after all specimens are collected. There is no evidence, however, that it interferes with ACP levels.

Follow –up in case of injuries

In those cases where genital trauma is identified, a follow-up examination of the victim may strengthen the documentation of evidence.

The American College of Emergency Physicians recommends that sexual assault victims be referred for follow-up examinations 2 weeks, 3 months, and 6 months after the assault to evaluate for pregnancy and sexually transmitted diseases.

Many prosecutors also like to have evidence from the follow-up examination to document that a particular finding was in fact an injury that healed within the expected time frame. Photographs should be taken at the time of the follow-up exam to document the healing of the genital injuries for comparison purposes in court.

There are also situations where the forensic examiner is unsure whether the suspected “injury” is due to the victim’s medical history or other gynecological condition. In these cases, a follow-up examination can be used to evaluate whether the finding is the same or healed as an injury naturally would.

Post Traumatic Stress Disorder

The most harmful and distressing aftereffect of Sexual Assault is the PTSD. It may take many or complex forms:

Self abuse /destruction/drug or alcohol abuse

Depression or Stockholm syndrome

Suicidal ideas

Body memories/ flashbacks/ sleep disorders/eating disorders

Poor self esteem and performance

Disturbed relationships

Poor compatibility with family relationships

From Victim to winner

The victim may fail to report for various reasons or bias . When he/ she prefers to make a complaint before the law enforcement the victim turns to be the complainant and during prosecution as the “Prosecutrix”. In the court of law the first witness is as important as the prosecutor.

The community help can help and fasten the victim’s return to normalcy, can make her adjust with the events and requirements of law that follow (evidence before court, public jobs etc) and she can resume her education or job. This is only possible with family support, community support , conviction of assailant and continuous counseling to heal PTSD.

Changes in the prospect of the community to offence and offenders would also strengthen the assertive attitude of probable victims as well .A good example of such law is the Megan Law of the US. On May 17, 1996, federal efforts to strengthen the Jacob Wetterling Act got a boost when President bill clinton signed an amendment to the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071); the amendment is known as Megan’s Law. This legislation directs all state legislatures to adopt laws requiring convicted sex offenders to register

with their local law enforcement agency after release. Additionally, the federal Megan's Law mandates states to grant access to sex-offender registries to the public.

These and other changes would definitely advance the change of the Victim to Winner.

References

1. Hill, C., and E. Silva. *Drawing the Line: Sexual Harassment on Campus*. Washington, DC: American Association of University Women, 2006.
2. Rubin, P, 1995. *Civil Rights and Criminal Justice: Primer on Sexual Harassment* . Washington, DC: U.S. Department of Justice, National Institute of Justice, October 1995, NCJ 156663.
3. National Institute of Justice & Centers for Disease Control & Prevention. *Prevalence, Incidence and Consequences of Violence Against Women Survey*. 1998.
4. U.S. Department of Justice. *2003 National Crime Victimization Survey*. 2003.
5. U.S. Bureau of Justice Statistics, *Sex Offenses and Offenders*. 1997
6. U.S. Bureau of Justice Statistics. *2000 Sexual Assault of Young Children as Reported to Law Enforcement*. 2000.
7. Supreme Court of India Sakshi vs Union Of India (Uoi) And Ors. on 26 May, 2004
8. Equivalent citations: *AIR 2004 SC 3566, 2004 (2) ALD Cri 504*
9. *Report on World Conference on Human Rights* ,14-15th June 1993, Vienna, Austria UN
10. *National Domestic Violence Hotline* @www.hotline.org
11. *One Million Rising* .www.unmultimedia.org 14thFeb2013
12. RAINN: [nij.gov/forensics/investigations/sexual-assault/research/United States](http://nij.gov/forensics/investigations/sexual-assault/research/United%20States)
13. *Forensic Medical Report : State of California: OES 923 and OCJP 930 pdfs* :Adobe reader
14. West Virginia S.A.F.E. Training and Collaboration Toolkit—*Serving Sexual Violence Victims with Disabilities*

Gender Awareness Study on Women Victims with special reference to the Criminal Justice System in Kerala.

Celine Sunny

According to Indian constitution, women are the legal citizens of the country and have equal rights with men. But in the contemporary India, they have been the worst victims of exploitation. Gender based violence – including rape, domestic violence, mutilation, murder and sexual abuse – is a profound health problem for women. Hindrance to accessibility, availability and utilization of the criminal justice system is a big problem faced by many women victims. Furthermore, the unequal treatment of women victims in availing Criminal Justice System, difficulty in the dealings in police stations, the consequences of grievances, and the difficulties encountered while dealing with the police/judicial officers and the gender insensitivity of the judicial/police officers are concurrent problems which needs special attention.

This study on gender awareness focuses on the gender sensitivity of criminal justice system on women victims of crimes. A total of 240 victims were selected for the study representing the major crime categories from 8 police districts of the state. In addition 7 Judicial/Prosecution officers and 2 Key personnel-(Women/Social Activists) were also included in the study. A quantitative survey using structured interview schedule was administered among the respondents.

The findings of the study showed that the socio-economic profile of the women victims was comparatively low. Responsiveness of the police during the investigation stage, revealed that majority of them showed

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maximum vigilance in dealing with the case of violence against women - especially in rape cases. The results with regard to the assessment on the satisfaction level of victims highlighted that a great majority of the victims had good satisfaction level. Grave Problems faced by women victims were delay in the trial of the registered cases, absence of women police officer at times while questioning, financial difficulties and gender insensitivity of few of the officials of the criminal justice system. Major recommendations of the study included: mainstreaming of gender issues in the national and local policy and legislative forums, preparation of periodical orders /circulars to judicial /prosecution officers regarding aspects of justice dispensing to women victims of atrocities. Regular follow-up and disposal of cases in a time bound manner, establishment of a special court in every district to deal with the crimes against women and appointment of more women police personnel.

Introduction:-

Women throughout the world have been accorded lower status than men. In the last two decades violence against women, (gender-based violence) has emerged as the most pressing and intractable social problem across regional, social and cultural boundaries. ¹ The Declaration on the Elimination of Violence Against Women, adopted by the UN General Assembly in 1993, defines Violence Against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm, or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty; whether occurring in public or private life”.

Violence’ is an act carried out with the intention or perceived intention of physically hurting another person. ‘Gender Violence’ is defined as “any act involving use of force or coercion with intent of perpetuating promoting hierarchical gender relations”. From birth till death, women face many kinds of violence. Forms of Violence experienced by women throughout their life span have stated by Heise and Germain in 1994. According to them, Sex-selective Abortion; Battering during Pregnancy; Coerced Pregnancy are the hardships of violence experienced by a pre-natal female. In infancy, it turns out to be Female Infanticide; Emotional and Physical Abuse; differential access to Food and Medical Care. Child marriage, Genital Mutilation, Sexual Abuse by family members and strangers, differential access to food, medical care and education becomes

the major forms of violence in girlhood. When the girl child reaches Adolescence, she will have to face Violence during courtship; economically coerced sex (e.g. for school fees); sexual abuse in the workplace; rape; sexual harassment; arranged marriage; trafficking etc. Lot of difficulties are faced by a female in her reproductive age ;Physical, psychological and sexual abuse by intimate male partners and relatives; forced pregnancies by partner; sexual abuse in the workplace; sexual harassment; rape; abuse of widows, including property grabbing and sexual cleansing practices. In the dusk of her life, she suffers abuses, including property grabbing; accusations of witchcraft; physical and psychological violence by younger family members; differential access to food and medical care. It comes to an upward trend if she is a widow.

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The picture from the recent statistics evidences the same. The National Family Health Survey III, 2006 found that a substantial proportion of women face spousal violence at home, a supposedly safe domain for women. In Statistics on Women in India 2010 by National Institute of Public Co-operation and Child Development, it's mentioned that, 10.1% married women in Kerala face emotional violence, 15.3% experience physical violence, 4.8% sexual violence and 19.8% suffer any one of these form of violence. The statistics also pointed out that, in the year 2008 more number of rape victims in Kerala is identified among the age group, 18-30 years. The data also revealed that , in the year 2008, there has been 166 incidences of Kidnapping and Abduction of women in Kerala, 2745 incidences of Molestation , 258 cases of Eve-Teasing and 19 incidences of Indecent representation.

In spite of the reporting of all these issues, it's observed that women victims are not treated on par with those of their male counterparts in availing the criminal justice system. Lack of gender sensitivity among the implementers of the criminal justice system (CJS) is cited as the major reason for this. It was in this context, that the Home Department, in association with the Research Institute, Rajagiri College of Social Sciences, Kochi has undertaken a study in this regard.

Objectives of the study:-

The main objective of the study were to find out the gender sensitivity of the Criminal Justice System in terms of socio-economic profile of the women victims, accessibility and responsiveness of the criminal justice

system, satisfaction level of the women victims on the criminal justice system, problems faced by the victims and gender insensitivity of the judicial/police officers. The study also aimed at recommending appropriate measures /strategies for strengthening the criminal investigation and prosecution of cases of crimes against women.

Methodology:-

All the reported cases of crimes against women in the police stations of the 8 Police districts of the state of Kerala formed the universe of the study. For this study, 16 police stations, 2 each from the police districts were selected, one being rural police station and the other urban. All the recorded/registered cases in these stations during the period 2007 - 2010 were enlisted and women victims representing the major categories of crimes viz., Mental & Physical Torture- *IPC 498 (A)*, Rape- *IPC 376*, Molestation – *IPC 354* Sexual Harassment- *IPC 509* and Kidnapping and Abduction- *IPC- 366* were selected. Thus, a total of 240 victims were interviewed. 5 case studies were taken from the above mentioned categories. In addition, 7 Judicial/Prosecution officers and 2 Key personnel-(Women/Social Activists) were also interviewed.

A survey method using structured interview schedule was administered among Women victims and Judicial/Prosecution officers forming the primary source of data. The Secondary sources of data included; documents, books, reports of surveys and studies and literature pertaining to the subject of study. The collected data were processed using Statistical Package for Social Sciences (SPSS)

Findings of the study:-

The findings yielded from the analysis are detailed under 7 major heads viz., (1) *Socio-economic profile of the women victims* (2) *Accessibility and Responsiveness of Criminal Justice System to women victims* (3) *Satisfaction level of women victims on the Criminal Justice System* (4) *Problems faced by the women victims* (5) *Accessibility of women to criminal justice system and allied aspects as perceived by the judicial/prosecution officers* (6) *Gender Sensitivity of the judicial / prosecution officers* and (7) *Views of the key personnel*.

(1) Socio-economic profile of the women victims

It was observed that, of the 240 women victims, Majority (74.2%) belonged to their young and productive years of 18-30 years. It was

seconded by 31.3% in the age group 30-40 years. Educational profile of the victims revealed that only a small fraction of the victims (23%) had obtained higher education. Of the victims, majority (88.4%) were married. However, of these only 63.8% were living together. A large majority of the victims were unemployed.

(2) Accessibility and Responsiveness of Criminal Justice System to women victims

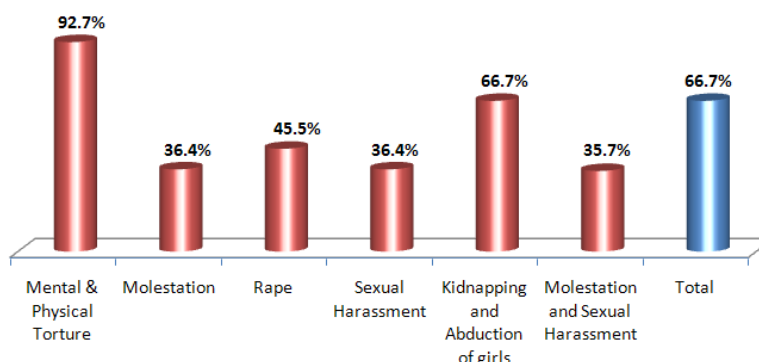
Social stigma attached with the police interventions has always contributed to unwillingness in seeking their assistance. This has been revealed in many past studies. Similarly, this study has probed into the various aspects related to the Accessibility of women victims to the police station. Majority (82%) of the respondents reported that the present case was their first instance of visit to the police station. A large number of respondents (80.8%) were given escort of their relatives (i.e., parents, husbands, children etc.) to the police station. Only 11.7% had the confidence of visiting the police station alone. 43.8% of the victims were prompted by the relatives for Registering the Complaint at the police station. It was followed by 41.7% who made it by themselves. 66.7% were delayed in approaching the police station for registering their complaints after the incidents, of which hope of redressal through negotiations and Social stigma attached with going to police station constituted major reasons for delay.

Ignorance about legal rights is one of the major hurdles that restrict women to access the criminal justice system for protecting them from the atrocities/ violence against them. As only 12.9% perceived to be quite literate or had an idea about the legal procedures in the police station. Delay in investigation and adjudications were yet another hurdle to access justice. In 46.7% of the cases, the victims reported the incidents only after one month or several months of its occurrence. The wide gap between the two (date of occurrence and date of reporting) could be attributed to factors such as: fear and stigma, lack of legal literacy or even lack of economic sources.

The table below explains the delay in approaching the police by the victims of various crimes. It is understood that, a good number of women victims (92.7%) of the 'mental & physical torture by husband or relatives' had reported about the delay in registering the complaint. Further, it was found from the data that with the exception of 'kidnapping & abduction'

(66.7%), all the other categories of cases had only below 46% respondents.

Delay in Approaching the Police Station by Type of Atrocity/Violence



Majority of the respondents, 57.9% reported that they faced social difficulties after registering complaints in the police office. Of these 'Ridicule of friends / neighbors / society' after the registration of their complaints were the more prominent ones.

With regard to the Responsiveness of the police, majority (76.3%) of women victims highlighted that they were attended promptly by the police whereas delay was reported in the case of 13.3% of the victims. Regarding the registration of First Information Report (FIR) 82.1% stated that the FIR was registered promptly, whereas 17.9 % had negative response. Furthermore, 83.8% commented that the police had recorded complete details of their cases. However, 11.3% stated about their ignorance about the same. 5% on the other hand voiced that the police failed to pen down complete details of their cases for one reason or the other.

Even though, code of criminal procedures mentions, women are to be questioned/ interrogated in the presence of women police personnel, only 26.7% of the victims reported that they were questioned by the women police or in the presence of the women police personnel. The response of the vast majority was negative. With regard to the language used by the police officers, large majority (95.8 %) victims reported use of decent language. Surprisingly, only 11.3% of the victims responded about seizure of Material Evidence, the remaining 88.8% had a negative response. Majority, 54.2% said that, they did not receive a copy of FIR.

With regard to the Seriousness / Urgency Showed by the Investigating Officer, 85.8% of the respondents expressed their satisfaction with the seriousness/urgency shown by the investigating officer. More than half of the respondents interviewed (54.2%) reported that the investigation officer in charge of the case had drawn out all the minutiae of the complaint from them.

Only 60% of the total victims responded that investigating officer had carried out the investigation very accurately, more positive response in this regard was obtained from victims of sexual harassment. 80% of the women victims reported that the police had submitted the charge sheet in the court, of which victims subjected to 'sexual harassment' and 'molestation & sexual harassment together' reported positively. A higher number of 'molestation and sexual harassment' victims reported that they faced delay in investigation of their cases.

In spite of the above mentioned facts, it was found that 55% victims had received the information about the progress of their cases. In this regard the highest number of responses was reported among victims of Rape and Molestation.

(3) Satisfaction level of women victims on the Criminal Justice System

Majority of the respondents expressed satisfaction regarding the action taken during FIR stage and Treatment at the police station. Of these the highest satisfaction was reported for victims of Sexual Harassment and Kidnapping and Abduction. A great majority (89.1%) had overall satisfaction with regard to handling of their case by Police.

(4) Problems faced by the women victims

The crucial problem mentioned by 71.7% of the women victims were delay in the trial of the cases registered. Absence of women police officer during questioning, financial difficulties and Delay in investigation was mentioned as problems by many of the victims. Gender insensitivity, Money demanded by politicians/middle men and ill treatment by the police was reported by a small section of respondents. It was noteworthy that none of the victims reported about the demand for bribe.

(5) Accessibility of women to criminal justice system and allied aspects as perceived by the judicial/prosecution officers

In the perception of judicial/prosecution officers, the major impediments in women's access to justice is unavailability of resources in terms of finance, knowledge and information about their rights and legal procedures. They were of the opinion that majority of women lack access to information about the procedure of filing the complaint, which in turn reflects on the lack of legal literacy among women. Among the judicial / prosecution officers there exists a clear cut divide on the authenticity of the cases related to crimes against women; however, most were affirmative with regard to it. No unanimous opinion regarding the justice given to women victims of atrocities were received from judicial/prosecution officers. From the perception of the judicial/prosecution officers, it was understood that atrocities against women is treated just like any other case, no special attention or priority is given.

(6) Gender Sensitivity of the judicial /prosecution officers

From the responses collected from judicial/prosecution officers it was understood that they were gender sensitized to an extent. They themselves rated their gender sensitivity either as very good or good. As per their responses with respect to their perception of crimes against women and allied matters, it could be inferred that the gender sensitivity had only very little impact on the cases on atrocities against women. More training programmes for the prosecution/judicial officers are the need of the hour, so that gender perspective will be made reflected in the administration of criminal justice system to women victims of atrocities.

7) Views of the key personnel

The key personnel were of the opinion that the literacy and social development progress in Kerala has not changed the mindsets of people. They also stated that the number of atrocities against women is still on the upward trend in spite of the enactments of prevention of Domestic Violence Act, Sexual Harassment Act, and Dowry Prohibition Act etc. According to them, the major atrocities/ crimes against women included: sexual harassment, domestic violence, dowry harassment, harassment at workplace and outraging the modesty of women.

Conviction rate in cases of atrocities against women is comparatively low in their view. They also added that minimization/reduction of crimes against women cannot be brought to effect with the introduction of new laws alone but rather, stringent execution and conviction is required to attain the above. The key personnel expressed a positive change over

the past years, with respect to the inquiry on gender sensitivity of the criminal justice system.

Conclusion:-

The study has brought out the following recommendations for effective gender sensitivity of criminal justice system. The major recommendations are scripted below.

It will be worthwhile if government can mainstream the gender issues in national and local policy and legislative reforms. Preparation of periodical orders/circulars to judicial/prosecution officers regarding various aspects related to dispensing of justice to women victims of atrocities can be of great use for women victims. Setting up of a fund with the Monitoring agency for disbursement to the deserving women victims of atrocities is also recommended.

Prosecution should ensure that the police follow up the cases of women atrocities regularly and systematically after filing the charge sheet. Care should also be taken to make certain that the disposal of the cases of crimes against women is done in a time-bound manner.

It would be valuable if Judiciary can establish at least one special judge or magistrate each in every district to deal exclusively with the crimes against women. Judges should be encouraged to use their discretionary powers in favour of the women victims.

Recruiting of lady police personnel and enhancing their strength in every police station can be of great assistance to women victims. Establishment of specialized investigation wings/units/cells to deal with the crimes against women are more welcomed.

These recommendations, if implemented properly will pave the way for better gender sensitivity with regard to the criminal justice system.

References:-

1. <http://www.isrj.net/publishArticles/796.pdf>
2. <http://nipccd.nic.in/reports/ehndbk10.pdf>
3. Ambaraya. Gundappa and Dr. P.B. Rathod Violence Against Women in India: Preventive Measures : Indian Streams Research Journal (MAY ; 2012)

Removing cobwebs from the courtroom

Prabha Sridevan

Judges, both men and women, need equality training to prevent gender biases impacting judgments

I was recently in The Hague for the launch of the Global Leadership Organization of Women (GLOW) project initiated by the International Association of Women Judges and supported by the Government of Netherlands. The participants were women judges from the international tribunals, three West African countries (Cameroon, Ghana and Nigeria) and three South Asian countries (Bangladesh, Nepal and India).

The subject was violence against women. Justice Albie Sachs of South Africa calls this ubiquitous masculinity “the only truly non-racial institution in South Africa.” We may without fear of dissent call it the only global institution which cuts across class, creed, colour and countries. The difference may only be in its degrees and shades.

All the participants agreed that the question before us is not if it is bad but if it is unequal. On a morality scale or a religious one, it could be decided that it is not bad, but on a equality scale, judges can have no two opinions that it is unequal. We considered the issue from two angles: how do we address the issue of violence, and do women judges make a difference?

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Courtesy : The Hindu Daily dated March 13, 2013

We occupied a democratic space. All titles (Excellency, Honour, etc) were avoided. So were all surnames. Removal of hierarchy is the first step towards equality. What I heard may have been anecdotal, but it was universal.

A judge went to a faraway village on a legal awareness programme when she met a group of women who had not stepped out of their homes. She said the women were astonished that one of them could have travelled so far, and was so enabled.

Their movement was restrained not by choice but because that was the practice and “so it was written and so it was done.” It was apparent over and over again from the many voices that religious and cultural practices promoted inequality. One judge said: “Custom cannot make prisoners of women.”

The women judges of one country had picked out the bad practices in their courts and had enacted a skit before all their colleagues. One judge was trying a case of a 14-year-old rape complainant, and therefore it was a case of statutory rape. He had asked the Public Prosecutor: “Look at her! Will you say she is only 14?” Such incidents were strung together in the skit. Their colleagues were shocked and horror-stricken at the extreme gender insensitivity and cried, “Such a horrible judge!” It must have been truly an educational experience. It is necessary that all judges have an education programme. Without education on the right to dignity and the right to equality of women, even a million fast track courts will not deliver justice.

Mathura case

The women have to address implicit and explicit stereotyping. There are well-entrenched notions of who is “a good woman.” In one of the courts the rape complainant was a bar maid and it was decided that she had no right to complain since she “was any way bad.” Remember our own Mathura [which happened nearly 30 years ago in Chandrapur district, Maharashtra]? After being raped by constables, the girl did not get justice because it was decided ‘that she was habituated to sex’ and may have incited the policemen. Our jurisprudence on rape is in fact divided into the pre-Mathura and post Mathura periods.

The woman does not have to be a complainant let alone a witness. Her credibility depends on what the court thinks a good woman should be. In a case heard by two judges, one of whom was a woman, the only eyewitness to the murder was a woman who on her way to a coffee shop early in the morning. The defence counsel had begun his argument like this: “The only eyewitness is this woman who had allegedly gone to have coffee in the morning. Will any respectable woman do it? Every woman will make the coffee herself and not step out in the morning. This witness is unreliable and is a plant witness.”

It turned out, unfortunately for the defence, that the woman judge in this case had the habit of having coffee from a coffee shop. We laughed, but it is no laughing matter.

There are two things here. First, what men think is proper woman-conduct. If both had been men judges or “decent women” judges who don’t go to a coffee shop to have coffee, that witness may have been termed a liar. Then, even the due process of law must depend on men and women whose minds are filled with myths and mental baggage of all shades and hence the need for equality education.

The judges from the international tribunals shared their experiences and we found that those courts had a pretrial procedure, far more resources and a firm witness protection programme which the domestic courts lacked. We realised how important a witness-protection programme is in the delivery of justice. But otherwise what was the same before both Courts was the issue of dignity and the right to equality.

One of the International Special Courts had called forced marriages a crime against humanity, and that it was really “conjugal enslavement.” They said that in conflict conditions, rape is a war crime and referred to the famous Akayesu case decided by Navi Pillai (U.N. High Commissioner for Human Rights). Aggressors may sometimes deliberately and forcibly make the women of a particular group pregnant only to change the ethnic component of that group. I learnt that immediate medical assistance to a woman on whom sexual violence was inflicted is crucial not only to get the best forensic evidence but also because if a prophylactic AIDS medicine is given to her within 72 hours of exposure to an infected man, she can avoid being infected. This was the theme, the refrain; that the woman suffers only because of her gender.

We discussed marital rape at length and understood that too here the woman has all the cards stacked against her because of socio/religious norms. The words “stigma,” “stain” and purity reinforce the belief that it is better to be dead than raped, and that an act done to a woman against her will can change the essence of her identity. All that the woman stands for, works for and is loved for cannot be erased just because a man was violent to her. That would take away her agency and reduce her to a zero. The woman judges accepted that it is not just male judges who exhibit gender-unfairness, and woman judges too need equality training. But it was clear that if a critical mass of women judges was created in every court then the compass of gender jurisprudence will veer towards equality.

Rape Case and Compromise

Ashok Dhamija

In the recent case of Baldev Singh v. State of Punjab, (2011) 13 SCC 705 : AIR 2011 SC 1231 : 2011 Cri LJ 1746, that was decided on February 22, 2011, the Supreme Court (a bench consisting of Justice Markandey Katju and Justice Gyan Sudha Misra) had drastically reduced the sentence in a gang rape case under Section 376(2)(g) of the IPC to much below the minimum punishment prescribed under the law on grounds that did not appear to be so special and that appeared to be commonly available in many other cases.

Section 376(2)(g) of IPC lays down that whoever commits gang rape shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine. However, the proviso to the said sub-section 376(2) provides that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

In the aforesaid case of Baldev Singh, the Supreme Court reduced the sentence of the three appellants, found guilty of committing gang rape, to the period of only about three and half years' imprisonment already undergone. It appeared to be an unusual case wherein the sentence has been drastically reduced from the minimum prescribed ten years to the aforesaid much shorter period without there being any special or adequate reasons.

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The case appears even more unusual when one looks at the fact that the Supreme Court had considered the fact of the case being an old case (incident of gang rape took place in the year 1997, i.e., about 14 years back) as a “circumstance for invoking the proviso to Section 376(2)(g) and awarding a sentence less than 10 years, which is ordinarily the minimum sentence under that provision”. Thus, the Supreme Court considered the fact of the case being an old case of 14 years as an adequate and special reason for reducing the said sentence to much below the minimum prescribed sentence. For this purpose, the Supreme Court also considered the fact that the parties have entered into a compromise to finish the dispute. It was mentioned that the appellants (rapists) had since got married and the victim had also got married meanwhile (it is pertinent to point out that these were separate marriages and it is not the case that the victim had married the rapist, which in any case was not possible since there were 3 rapists).

The reasons given by the Supreme Court do not appear to be special and adequate reasons for reducing the punishment in the said gang rape case to a much shorter punishment than the minimum prescribed under law. Given the fact that many of the cases remain pending before the trial court itself for 15-20 years with appeals before the High Court and Supreme Court needing further longer durations, the aforesaid Baldev Singh case cannot be given the special advantage of being an old case, since within a short span of 14 years this case had the so-called luxury to reach (and get decided by) the Supreme Court. Thus, this case got decided from the trial court, the High Court and then the Supreme Court within a total period of 14 years. There are a large number of other similar cases that take much longer periods for this purpose. So, this cannot be a special reason.

Secondly, the fact of the accused getting married during the long pendency of the case or the victim getting married during such long period, is not an unusual thing. One cannot expect that they should not marry during the long pendency of the trial or the appeal proceedings. And, if they do marry (not to each other), this fact does not deserve any special consideration as it is a usual phenomenon common to most cases.

Thirdly, the fact that the parties had arrived at a compromise has to be seen in the context of the fact that rape (and more so, gang rape) is a non-compoundable offence under law. Therefore, the law does not give

any recognition to a compromise between the rapist and the rape-victim. This being so, giving undue importance to such a compromise may have the tendency to lead to the unfortunate consequence of the rapists trying to put pressure on the rape-victims to compromise. This will negate the legislative intent and mandate. It may also lead to further victimisation of the poor rape-victims. So, money power or muscle power may overpower the legal processes by way of a “forced” compromise. Moreover, in the instant case, it appears that the Supreme Court did not make any efforts to call for the rape-victim to authenticate the truthfulness and circumstances of the compromise and to ascertain for itself as to whether the so-called compromise was voluntary and genuine.

The recent rape case of Patiala in Punjab is relevant in this regard. In that case, even the police officers were trying to force a compromise between the rapists and the victim. Later, the victim committed suicide. It is only after this that this Patiala case attracted the attention of people at national level that led to some belated action against the concerned police officers.

Therefore, a compromise between the parties is rather a cause to look at the case with suspicion. It is like adding insult to injury. First you commit rape and then force a compromise on the victim using money or muscle power. That is why perhaps, the Parliament, in its own wisdom, decided to keep the offence of rape as a non-compoundable offence, where a compromise is not allowed.

It is unfortunate that, ignoring these aspects, the Supreme Court considered the compromise in the said Baldev Singh case as a reason to reduce the punishment of the gang-rape convicts.

No doubt, the Supreme Court has the power to do “complete justice” in a given case before it under the provisions of Article 142 of the Constitution of India (though the judgment in this case does not refer to Article 142). Nonetheless, the fact remains that a sincere effort to do “complete justice” should not lead to an unintended result of injustice to the important social cause of ensuring gender equality and safety of women in as much as an unusual judgment like this has the unintended capacity to open floodgates for similar judgments if the High Courts and trial courts take a cue from the Supreme Court.

Reflections on Gender Justice in the Context of Delhi Incident

Vikash Narain Rai

Neither the recommendations nor the follow up debates and penal measures have related to Crimes against Gender which provide the environment, the platforms and the mind-set to imputinise Crimes against Sex.

The core emphasis, consequently, stayed on flexing state muscles through increased retribution and protectionism, the two essential by products of male chauvinism, rather than overcoming the eternal handicaps via sensitization of functionaries and capacity building of women

In the aftermath of Rape Episode of Delhi (RED), the depressing realization that not enough is changing on ground towards instilling a sense of security into country's female population is impossible to escape.

The High Powered Action Committee in the MHA (Ministry of Home Affairs) constituted to tackle the menace of Crime against Women, has confined to monitoring only the administrative measures-more PCRs, more female police, higher level task force and may be a stricter accountability regimen for non-performers. This routine exercise has never helped the victims or deterred the offenders in the past. There is no reason why the outcome would be different this time around.

Verma Committee on RED has proved to be yet another lost opportunity indeed. Neither the recommendations nor the follow up debates and penal measures have related to Crimes against Gender which provide the environment, the platforms and the mind-set to imputinise Crimes against Sex. The core emphasis, consequently, stayed on flexing state

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muscles through increased retribution and protectionism, the two essential by-products of male chauvinism, rather than overcoming the eternal handicaps via sensitization of functionaries and capacity building of women.

The RED Committee did harp upon the oppressiveness of prevailing gender inequality but played tough only on sexual crimes. No surprise that even when the Committee, bowing to strong public backlash against an insensitive criminal justice system and an insecure environment for women, is prompted to recommend stringent possible punishment for the sex offenders and a wider accountability for the Law & Order functionaries, the sexual offences including the gang-rapes must go unabated.

The trend will not change after the government accepts the Verma Committee recommendations, it has little choice under the circumstances, and the stringent measures are put in penal practice. An honest implementation of the recommendations will, though, change the crime statistics under the relevant crime heads as the new accountability awareness among various sections of society will compel police to register more sexual crimes and inspire judiciary to hand over more convictions. It will appear statistically that there is a spurge in sexual crimes, a seemingly ironical but foreseeable outcome, without altering the security status.

Why will free registration of cases, speedier trial and stringent punishment not substantially impact the sex crimes? Because free registration will help only when the offences are reported without any inhibition to police, speedier trial will play its role only when the reported cases stand trial in courts, and stringent punishment will be felt only when the trials are supported by evidence to end up in convictions. Sadly, the Verma Committee's recommended measures do not alter the prevailing logjam to make any favourable dent in the above equations.

However, it can still be argued that more registration and more conviction will have a salutary effect on the potential sex offenders and at least to that extent it will positively impact the prevailing environment of insecurity? The answer will still be a 'NO'. Because the sexual offences mostly go unnoticed, unreported and unacted for reasons of insensitivity of the police as well as the other criminal justice machinery, and acute gender inequality, and there is nothing in the RED measures to augment these vital handicaps. On the other hand a larger chunk of cases alleging

abduction/kidnapping/ rape/molestation involving females surface on account of the social compulsions faced by the parents and guardians-to curb the killing, are pursued to the hilt with police/in courts, and add to statistics of registration/conviction, but are otherwise irrelevant to the issue of women-security. Such episodes belong to the domain of counseling and not crime tackling, if the interest of the female is to be served.

This brings us to the central issue : How to encourage reporting, ensure registration and obtain conviction in core areas of crimes that are detrimental to women from the point of view of women.

The remedial dynamics is bound to be multifaceted. It would, first and foremost, comprise gender sensitization of the criminal justice functionaries, identifying as serious crime the imposition of any vital gender handicap on women while quantifying corresponding civil/criminal liability of perpetrators. It would most importantly ensure shifting the accountability paradigm for guaranteeing a victim friendly speedy interface at various stages of crime against women on to the concerned segments i.e. Witnesses, Police, Hospital, Shelter, Counselor, Protection Officer, Prosecution, Court, Rehabilitation and even Media. All facilitations must be time bound and carry no financial liability to victim or her guardians. The victim in serious cases must be rehabilitated emotionally as well as financially to be able to have a stable and dignified post-trauma life.

The following gender/sex violations may be listed as core crimes, attracting stringent punishment/liability, in the present context:

- a. denial of share in parental assets/ property
- b. denial of choice in marriage/ intimate friendship
- c. denial of choice in education/career
- d. domestic violence
- e. stalking, voyeurism, obscene words/gestures
- f. sexual harassment at work place
- g. gender harassment at work place
- h. molestation/indescent assault/ disrobing
- i. rape/attempt to rape
- j. rape by a person in authority or

- k. having control/custody
- l. threat, attack, acid attack, murder, as weapon of imposition
- m. objectification/inappropriate depiction of female body
- n. blaming the victim for the crime (victim in the dock)
- o. negative stereotyping of female gender
- p. human trafficking for forced prostitution
- q. marital rape/sexual inducement on the pretext of marriage
- r. dowry harassment/violence
- s. abetment to commit suicide
- t. failure to act or not do timely action/rehabilitation/ disposal as provided under law in above matters by police/medical staff/ protection officer/ prosecution/ judiciary/ rehabilitation agency.

Just, Effective and Speedy Punishment to Offenders of Crime Against Women

Against the backdrop of public outcry for justice and media build up for systemic upheaval, the Delhi's 16 December 2012 episode of brutal rape assault exposed handicaps at many levels:

- Lack of a credible language of gender equality in administrative parlance as well as in media and society;
- Lack of willingness to interlink the crimes against sex with the crimes against gender;
- Lack of clarity on Rape degrees and their linkage with just and effective punishment;
- Lack of direction in Police's capacity building (cognitive, emotional, environmental) as the first and foremost responders to challenges of crimes against women;
- Lack of emphasis on gender sensitization training of functionaries of various segments of criminal justice system, at cutting edge and supervisory levels;
- Lack of investment in the gender sensitization training at all levels of police and particularly at cutting edge levels;
- Lack of initiative to develop victim friendly investigation and prosecution protocols;

- Lack of political / administrative will to provide an accountable orientation Interface for the arriving work force into Metropolis;
- Lack of courage to bring out the primary role of family and media in keeping the female gender vulnerable and male gender contrite;
- Lack of planned budgeting to extensively cover above handicaps beyond symbolic / demonstrative / test-tube stages and as systemic priority.

The most vital lesson of Delhi episode for administration is that mere hands-on competency in arresting, prosecuting and punishing the offenders would not be enough to give a sense of security to community, when they lack the capacity to stand by the emotions of the community. For this, first and foremost, they need to be constitutionally conditioned. Their capacity build up must involve the aspects of sensitization and orientation as much as the competency aspect. The edifice of competency (domain / intersegment) must stand on the piers of orientation (legal / ethical) and the bedrock of sensitization (personal/social).

The above handicaps are addressable through training, public debates, appropriate legal protocols and budgeting. Out of these, budgeting is the easiest (Rs. 1,000/- per frontline person involved in the criminal justice delivery), and training the hardest to achieve (experienced trainers, will to avail training, training platforms, pulling out people for training etc).

Accordingly, for a holistic remedial picture, the focus of the 'Rape' debate must examine 4 relevant dimensions:

- (A) Prevailing gender stereotype in society;
- (B) Shameful plight of Victim;
- (C) Just, effective and speedy punishment to offenders; and
- (D) Gender sensitization training of law enforcers.

A. Prevailing gender stereotype in society

While the entire society could be shown up in arms against the sexual exploitation of women, there is hardly any soul agitated when it comes to subjugation of female gender. The phenomenon is reflected in private and public spaces alike. Its most fundamental manifestations are - within families in denial of share in parental property, in popular culture in glorification of male sexuality, in media in objectification, in governance

in test tube female representation, in security domain in exclusion from employment, in policy in ignoring adequate gender budgeting, in religion in subservient role modeling, and in criminal justice parlance in adversarial protocols. Ironically, the cultural / traditional / emotional / security arguments that are aired to demand stringent punishment for crimes against sex are turned around to accommodate the crimes against gender. The sex offenders are shamed, battered and despised publicly but the gender offenders are ignored, tolerated and seldom questioned.

The fact of the matter is that the unabated gender assault leaves the female extremely vulnerable to various forms and ways of exploitation, and prepares the male mind-set for sporadic sexual assault with impunity. Why the male dominated society is blind to this obvious connection is because of its inertia to move to loosen the stranglehold over its women-folks. The ceasarians needed to cut the umbilical cord of gender exploitation feeding to sexual assaults are missing, and must be brought into play.

In fact Delhi's brutal public Rape may also be seen as an extremely violent continuum of gender subjugation, attempted in a lurking environment, carried out by an impunity mind-set. While the physical environment can be tempered by better policing and faster sentencing coupled with continued public focus on women security, the tackling of the mind-set begs to address deeper issues of sensitisation of all concerned segments - police, prosecutors, rehabilitators, judges, prison officials, media, employers-towards gender vulnerability.

B. Shameful plight of Victim

The community feels insecure not because every female is being sexually assaulted but because of the sense of insecurity that even one episode of the magnitude of Delhi assault is capable of creating. The feeling is further accentuated by the plight of victim. The investigation and prosecution procedures put the female victim in the dock on every step. Let a team comprising criminologist, jurist, police and psychologist work out a victim friendly dignified protocol for dealing with offences against sex and gender. This would include, inter alia, examining communication skills, compensation / rehabilitation priorities, counseling approach and conviction strategies in the given time and space, fixing accountability at every stage of the offence.

C. Just, Effective and Speedy Punishment to Offenders

It is nobody's case that the Rapist be shown leniency. However, in order to marry the jurisprudential caution with the severity of sentence, the offence itself should better be defined and adjudicated not as one genre but in terms of dynamic degrees. By analyzing the varying profile of the complaints registered under the offence of 'Rape', the following degrees are discernible:

First Degree:- Where the victim is brazenly overpowered by physical force / threat / deceit and brutally assaulted by a group of persons. (The 16 December Delhi episode would straightway fall in this category). This degree will also apply in cases where the offender has the custody of the victim or control over her, and commits rape taking advantage of his authority / position.

Second Degree:- Where there is only one offender who overpowers the victim with physical force / threat / deceit, and sexually assaults her. This degree will also apply when the victim has been forced into human trafficking for prostitution or compelled to submit to offender on account of fiduciary / officious / sexual / marital blackmailing.

Third Degree:- Where the adult victim is in emotional relationship with the offender and lured into sexual activity on the pretext of marriage or promise of co-habitation similar to marriage.

Fourth Degree :- Where the 'Rape' is alleged by the parents / guardians following the girl's elopement against their wishes, and they persist with the matter alleging Kidnapping / Abduction and Rape, on account of personal reservations or social compulsions. This degree may also apply when a married woman opts to live with another person and the husband alleges 'Abduction' and 'Rape' to pressurize her with a view to regain her custody against her wish.

The severity of punishment may be different for each degree of Rape: (

- i) First Degree - Imprisonment for life or death penalty, with no bail / parole (fast tracked).
- ii) Second Degree - From seven years upto life imprisonment with no bail / parole (fast tracked).
- iii) Third Degree - Upto seven years of imprisonment and / or counseling of all concerned.

iv) Fourth Degree - Counseling of all concerned.

In all the above degrees, the law must categorically emphasize that the girl at the receiving end is a multifaceted victim, and an automatic protocol be provided to ensure for her appropriate emotional counseling, privacy, trauma support, medical assistance, compensation, rehabilitation and sense of security, and justice. The cognizance should also be taken of the fact that the third and fourth degrees together constitute the bulk of cases that are registered under the generic title 'Rape', even though the anger and frustration in the society is on account of the first and the second degree of cases. Also, in the fourth degree, the parents / guardians may prove to be the real perpetrators at times, and the wishes of the girl to be brought out through counseling must be given supremacy.

However, the above scheme of punishment would serve its purpose if certain gender crimes are also severely punished in tandem. These could be :

1. Repeated Stalking : When the victim feels threatened / harassed / insulted by being repeatedly followed by a stalker laden with sexual / derogatory / marriage / alliance / friendship pestering or innuendoes, it should attract imprisonment upto 7 years and counseling (fast tracked, without bail). If the offence is repeated, imprisonment upto 10 years and regular counseling (fast tracked, without bail).

2. Acid Attack I Violent Attack : Taking recourse to acid / violent attack on the girl by an offender to avenge her refusal to his sexual pestering or marriage / alliance proposal is an extremely serious matter and not just vent of frustration of a 'jilted lover', as the media so routinely describes these heinous acts in a neutral tone and without a tinge of anger. In fact to term such so-called (swines) as lovers in media spaces is the worst form of depravity and indifference. The punishment should range from 10 years to life imprisonment (fast tracked, without bail / parole) coupled with continuous counseling in jail.

3. 'Honour' Killing: Imprisonment for life coupled with continuous counseling in jail or death penalty (fast tracked, with no bail / parole). In order to put the offence in perspective it be called 'Gender Killing', so that to delink it from any notion of 'Honour' as prevails in popular perception.

4. Domestic Violence: First time conviction should carry punishment upto 7 years coupled with counseling. Repeat conviction should attract

from 10 years to life imprisonment coupled with continuous counseling in jail (fast tracked, without bail).

5. Denial of share in Parental Property: Notwithstanding the laws enabling inheritance for girl child, it is a universal practice to deny them share in parental property citing customs and dowry expenses. The fact is that the girls are kept totally aside from the family assets and silently nurtured to this fate through emotional blackmail. Those few who dare to put forward their claim, find doors of the annoyed family closed on them, and even suffer facing a violent opposition or protracted litigation from the male family members rather than getting their due share. This single exclusion contributes immensely to ultimate subjugation of female gender via erosion in self-esteem and dependence on male gender, opening up the route to many forms of exploitation including vulnerability against sexual attacks.

It would make a big dent in the domineering male mind-set, being routinely constructed within the family environment, if the girl child, assured of her equal status in inheritance, finds space for expression as a discerning individual. The stakes being so high, let a violation in this regard also attract a fast tracked criminal liability of deterrent nature. In the event male members of the girl's family conjure up the usual plea that she had voluntarily surrendered her share in their favour, let her portion be automatically get vested in the State.

6. Gender Harassment at Work Places : Denial of mainstreaming, maternity leave, convenient logistics, transport/ housing etc. are the usual harassment channels used to subjugate females at work places. These be underlined as criminal offences, attracting punishment upto 7 years and/or counselling. **7. Denial of choice in Marriage/Career/ Education :** Along with the perpetrators, the promoters, the instigators, the fatwa-givers etc in this domain would need to be counselled. The repeat offence should attract jail sentence upto 7 years (fast tracked). The objectification/negative stereotyping of female gender in media should be treated similarly.

D. Gender sensitization training of law enforcers:

Conditioning and De-Conditioning : The Police Training is bound to be different from other trainings in one fundamental way. Any individual joining most other careers would be normally considered comfortable with possessing the required professional competence in the concerned

domain. Not so with a police person (or for that matter with a judge or a doctor or a school teacher). S/he would need to be conditioned in three domains - individual, social and of course professional. In the professional domain, the fresh trainees are like a clean slate but in the other two, they are not at all a clean slate and carry the imprints of biases, prejudices and perceptions, collected from life experiences or lack of it. This burden needs to be unburdened first through an appropriate process of de-conditioning. The slate would then be ready to record fresh writing, integrating sensitisation, orientation and competency.

It should be therefore obvious that the launching platform for thousands of annual police cadets cannot be constricted to exposing them with knowledge, skill and attitude (K/S/A) in professional domain only. The matrix of de-conditioning and conditioning must lead to showcasing police cadets as constitutionally conditioned and, truly accountable to the citizens of the country to stand the test of legitimacy. Importantly, the two processes of de-conditioning and conditioning would run in tandem within competency regimen, led through well structured sensitization and orientation modules.

Sensitised Police for Empowered Society (Samvedi Police - Sashakta Samaj) : The old image of colonial police must yield to a people sensitive profile. It is not just the learning of the skill that is crucial in any police training, but the conditioning or the mind-set of a police-person which plays even greater role. Even though the duties of an average police-person involve majorly interfacing with law abiding citizens, s/he is routinely conditioned to deal only with criminals and extremist elements. This is a huge paradox.

Samvedi Police is the way to complete the journey from colonial policing to democratic policing. In this context 'Sensitised Police for Empowered Society' defines the training philosophy.

'Sensitised' means 'Constitutionally Conditioned'. A sensitized police would be essentially oriented to -

- (a) Democratic & Constitutional objectives;
- (b) Rights-based & Transparent procedures;
- (c) Policing by Legitimacy.

Man is a social animal and, consequently, a cultural animal too. Therefore, it would be logical to sensitise police persons through cultural

ensembles as well, involving literature, drama, film, music, dance, folklores, biographies, ballads etc. A perception gained through teaching-learning interface may leave only a skin-deep impact, the imprints of a training experience could reach flesh or bone deep, but a sensitized acquisition through potential to become part of individual's DNA. It is, because the culture defines a society and its people in the same way as the DNA defines any living organism. Equally pertinent would be to expose the cadets to the diversity & plurality of Indian society through heritage exposure. Experience-sharing and Field-visit would be the other effective mediums of sensitization.

'Empowered' means 'Self-served', 'Accessed Legal Entitlement', 'Assured Social Dignity'. Only an empowered society shall pave way for good policing. Only an empowered society shall respect police; a weak society will only nurture mistrust towards police and despise it. It is obvious that a society lacking in respect for its police will experience more crime and disorder. And hence police has a stake in being a catalyst to the process of social awareness and legal empowerment of society, and through this medium to inculcate democratic values and constitutional pride in its own members as well. The most effective way of empowering the society would be by supporting and strengthening the social awareness and legal literacy, leading to citizen's access to social dignity and legal entitlements.

A similar model of sensitisation protocol would be a must and in order for the functionaries of the other segments of the criminal justice system as well. The Empowerment of female gender, so Vital to crack the logjam of woman security owes a lot to Mission Sensitisation.

Women Police and Social Development

Aruna Roy

The first thing I want to plead with all of you and with everybody is that not all women are tall, some women like me are short too and podiums are always made for men! So I will stand to one side of the podium and speak.

I used to be in the IAS very long ago. Posted in Delhi, in the Parliament Street court, there was a colonial chair and the colonial desk which I am sure that do not exist anymore. If I sit on that chair, my nose will be barely seen! I felt the same behind this podium!

It is a joy to be with women in uniform. Being out of it myself makes no difference. Between you and me- we have many things in common. We are different and that is what makes life so interesting. I remember when I went for my IAS interview, I was asked by the committee that sits in the UPSC, why I haven't opted for the police. I admit that the thought never even crossed my mind at that time. But thinking about it later, I don't think there is much difference between IAS or IPS one way or the other. Whether I sit on a dharna, or at a police station to meet a SHO, we in the Mazdoor Kisan Shakti Sangathana who work in various campaigns in Rajasthan & Delhi, had made friends with the police. Police have understood that we have not come to fight with them .and our fight is actually with the persons behind the scene.

I really do feel sorry generally for the police especially for my women friends in the police, that you sometimes become the baton that the

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government use to beat us with and we all end up fighting you rather than fighting with the cause. Mazdoor Kissan Sena does not take financial help from anywhere but only from people, so that poor people get rice and wheat. Sometimes we get money from the police constables and other officers in the Police, but they say to us that it should not be publicised. So there is a good side and a bad side to it.

As soon as you mention about the police you think of either police in Bollywood films or of the horror that we have created in our minds about the police. Police is often stereotyped and I think that it is extremely important that we create the image of a protector in police, a person who looks and sounds like a friend, who will be of help to people rather than as somebody from whom people run away. May be because I was in the IAS I never feared police. I always feel reassured seeing police, may be because I have friends among many Dy.SPs and Addl. SPs and SPs. But I do think that the police is a much maligned service and it is criticised for more than it share.

Women Police and Social Development is the topic on which I was asked to speak. I think for anybody now in India social development is getting more and more difficult, it is not just for the police activities, administration, politicians and for private business. We are getting smaller and smaller in our minds. There are so many ways in which one is identified. When I was a young girl in Delhi University we were told the girls shouldn't work and women should never get in to the IAS, and men should not be deprived of the job just because a woman wanted to get it! Now the identity of a woman is shrinking more and more. I am a woman and so I am a lower being. Somehow in our thinking and attitudes we are getting more and more narrower. I was talking to my friends from Haryana how narrow our identities get, we say not only that we are from Haryana but from a particular caste, from a particular sub caste and then there will be honour killings! Just because a girl ran away with a boy who was of lower caste, her father took her life with a sword and said that he was proud that he did it. He is in jail but the rest of his family say that he did the correct thing.

As police officers you have many children. So you will have to prove not only the power of your 'khakhi' but you have to prove that you are women and to bring the two together and see the world as women is a big task. I am always proud to be a woman; we can feel sympathy and feel compassion. From my mother and my grand mother and many other women in my family I have learnt that women are strong, that women can and always dwell in many layers. As police officers you have something very precious and

significant in you that is you were born in this gender, you can understand and preserve all the feminine qualities, understand discrimination. There is discrimination even in the most progressive state of Kerala, women cannot enter some temples.

In Kerala again, very sorry to say, women get lower wages than men. I am always shocked when I come to Kerala, which I admire so much- it is one of the states I like to be in- but then with all its equality, with all its political understanding and everything else, women for the same work get a lower wage and it is justified and is against the Constitution but still there.

So I think we know what it means to be discriminated against, but as police officers are you discriminated against? You are, that is why such conferences exist. No matter you have this uniform but an understanding has to be developed into something much stronger in terms of political action for us and public statements by you. You have to go to the press and raise the issues. In the way in which you deal with us and the way you listen to us and the way you solve our issues and problems. You should make statements louder than perhaps what the Television says and you know what the problems are.

I am told that you do better than men at job. Why should it be better than a man, it should be the best women can be at any job. Because men are not the best, some men are absolutely rough and rude. I can say with conviction that all men are not excellent. So I would like you to be better than men in general and in plural, so also to be a good police person. I think you have to define what a good police is. The police person is a friend and the police person stands for the rule of law and who is compassionate. The police person is helpful.

If you are in police you will have to protect. If we can reaffirm these values in the society, the Indian Police will really change its image and the social development you talk about will be much more possible because when you go into community, you will be welcomed. It does not matter that only a good police officer is recognized. Police is loved in many places, they are looked up, but you need to create an image use its strength to deal with the democracy in the society, to deal with caste issues in the society, to deal with gender issues in the society, to deal with issues of minorities in the society. You really have to break the stereo type and who better than women to break the stereo type. I always remember when the famous Babri Masjid was broken in Ayodhya, there were riots there. I know the work of one police officer, N. R. K. Reddy who stopped an entire from village going up

in flames. He himself took out his pistol because all the other cops ran away, his constables ran away and he just took out his pistol and he said to the advancing mob to go away or he will fire. He did not allow them to harm the minority and stood firm, all alone, with just his pistol and his courage! He showed extra ordinary courage because it was the ruling party he was working against, but he did it and because of him the whole town was saved. I think women officers in general are politically neutral and do deeds I like these.

There are issues of great concern for women officers. As young, competent and mature women police officers you can fight effectively against injustices. You can kindle the comparison, the feeling of forgiveness. I don't know how many of you have beaten people. If and when you beat, have you thought why you beat? When I was a district magistrate, at court listening to testimony of women who had been picked up from the street and sent to Nari Nikethan, there were very few women officers or none accompanying the women victims.

Stories that were told to me were horrifying. At such times we have to handle them with care and concern. We should at least listen to the sufferings narrated by women so that that we could do something positive for them. Your social development and your participation in that are also to see that mobs that come together to do the most horrible things on other human beings should be stopped and if it is done on women is doubly worse! In Gujarat when we were on two weeks tour for hearing of the testimonies of people who suffered, we heard that a young woman was gang raped at 11 in the morning on a street in Ahmedabad with 600 people watching it! I consider it most woeful. When paralysis sets in among the public, that's when something horrific happens. We became worse than criminals when we watch crimes taking place in front of our eyes and do nothing to stop it! We became sadists! When you, as police officers have the opportunity to break that crowd you should be brave and do it. I may have the courage but I cannot act. Your position and authority give you the power to act proactively, if there is any possibility of violence because of caste, of gender or due to social and moral prejudices.

As part of empowering our social development, we should stand strong against moral policing. We could all be victims of moral policing and there is no question whether we are women in the government or women out of government. A section of people cannot decide or plan an attack on another set of people belonging to one caste or based on some norms or culture. What often happens is they make statements such as the state in which I

live and in the neighboring state from where you come, so you become an 'X' community or 'Y' community or 'Z' community. Can't women as one community stand together against all atrocities on us? Why should they tolerate people castigating them as feminists?

About feminism there are two wonderful sayings, the first one I like very much. My life is a revolution because as a woman I struggle every minute, I fight for equality in my family, I fight for equality in society, and fight for equality in the eyes of the law, I fight for equality everywhere. In this revolution all of us are one because we are born women. Your uniform and my activism come much later. My age comes later, your youth comes later, what you first see is that we are women and if that bonding become stronger I think many things can be conquered. Feminism has been a wonderful thing and it is also steeped in slogans that do not remain as just slogans. Slogans encapsulated in 4 or 5 words convey great thoughts! The second thing that I like about feminism is the slogan-that personal is political for a woman. When you are threatened to be burnt by your family, you do not go to a police station to complain against them because this is your personal life. But if you underestimate the political issues you can't be saved. There are so many other things that are personal which becomes political for us; so we should understand the need for crossing barriers, for breaking and pushing boundaries for stretching things.

We live in a democracy and please remember one thing - don't ever react to something that is truthful because that is the beginning of a great change. Let me quote my favorite writer and the poet who is a South African whose writings influenced Mahatma Gandhi. The 3 sentences have become a mantra for me. **He said that democracy is speaking truth to power. Meaning that democracy speaks truth to power, making truth powerful and power truthful.** When we speak truth to power, which is an assembly of hundreds and thousands of people on the street, what we do is create power. You may not have the same public face as politicians; you are civil servants behind the barriers. But you too get to come to contact with people and on such occasions, speaking truth is as essential for you as it is for us. Sometimes for the sake of protection, if you use violence, then I understand that, but you should not be forced to be in a violent frame all the time. In some cases you may have to resort to dialogues which will end sometimes in greater unity of women fighting for peace, fighting for change without blood, fighting for change in a manner in which you bring about those lost values that we all stand for.

Patriarchy and Masculinity and its Effect on Men & Women



It was an honor to hear some very sensitive and heartfelt presentations. Though I endorse what other speakers have said, I would like to add a couple of points. In the women's movement we have stopped using the word victim, like victim of rape, victim of circumstances, and victim of trafficking.

The moment an afflicted woman enters the office of an NGO or a police station, she is no longer a Victim but a Survivor. The power of women in police is being recognized too. Women are gradually taking over men or equalizing with the men Intelligence Quotient (IQ). Today it is being recognized that EQ or Emotional Quotient is as important as IQ. The people in this world who have done well are not those who have got the highest marks but people who understand their own emotions and emotions of others. Management Sciences today stress on the need to build on emotional quotient, and of course women are expert at it. They have to understand the emotions of their kids, father in law, mother in law and all relations.

After listening to the deliberations since the last two days I realized that you all have the same aspirations of justice, equality and human rights as I do. I realized that we NGOs alone do not have the onus of safeguarding human rights & altruism, police too is part of this. As, I listen to all of you I realize that each of you is a part of the women's

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movement. Each of you here is a feminist inside. Anyone who realizes that women are discriminated against in the society and takes a positive action is a feminist. All these conferences are feminist movements. We all are partners and this needs to be applauded. We women united will never be defeated. With this hope, women & men in police should work together to create a world where everyone lives with dignity and rights. All of us should join hands and resolve to take on challenges and make sure we are not taken for granted. The number of women in power positions in police or politics should increase but they will make a difference only if they come with different sensibilities and values otherwise **Mainstreaming** will only be **Man streaming**. We will only mimic men. The core strength of women is cleaning and that should be used to, cleanse the system of crime. Patriarchy & Masculinity, both these terminologies have relationship with the police because police force has reputation of being both Patriarchal and Masculine. Patriarchy is bad enough but police patriarchy is like 'karela usperneem chadha'

JUSTICE VERMA COMMITTEE REPORT ON AMENDMENTS TO CRIMINAL LAW

CONCLUSIONS AND RECOMMENDATIONS

Part I - Conclusions

- ☐ The existing laws, if faithfully and efficiently implemented by ***credible law enforcement agencies***, are sufficient to maintain law and order and to protect the safety and dignity of the people, particularly women, and to punish any offenders who commit any crime. This is not to say that the necessary improvements in the law, keeping in mind modern times, should not be enacted at the earliest.
- 2. Speedy justice is not merely an aspect of the right to life with dignity, but is essential for efficacy of the law and its desired impact, as well as for prevention of its violation.
- 3. Available personnel of the judiciary and the infrastructure, with a few systemic changes can, at least, reduce half the burden of arrears in courts contributing to delays in enforcing the law of the land. Judge strength can be increased in phases without diluting their quality. Our suggestion of eminent retired judges being appointed as ad hoc judges will solve this problem.
- 4. More effective control of the subordinate judiciary by the responsibility vested in the High Courts would ensure improved performance of the subordinate judiciary, which is the cutting edge of the justice delivery system. The High Courts have the pivotal role in the administration of justice by virtue of Article 235 of the Constitution. They have to lead by practice in addition to precept. The restatement of values of judicial life is a charter of faith for every judicial functionary at all levels.
- 5. Police reforms that are recommended and directed for the autonomy and better quality of the police force must be urgently implemented for the preservation of the rule of law, which is a basic feature of our Constitution.
- 6. Law enforcement agencies must be insulated from any political or other extraneous influence, which impedes their performance.

Law enforcement agencies must not become tools at the hands of political masters.

7. Transparency in the performance by all institutions of governance is necessary to enable the 'people' to discharge their participatory role in governance of the republic, and to enforce accountability of the public functionary when needed.
8. Performance appraisal for career progression must be objective, i.e. based on commitment to the constitutional values and to prevent the upward mobility of the undeserving.
9. Practically every serious breach of the rule of law can be traced to the failure of performance by the persons responsible for its implementation. The undisputed facts in public knowledge relating to the Delhi gang rape of December 16, 2012 unmistakably disclose the failure of many public functionaries responsible for traffic regulation, maintenance of law and order and, more importantly, their low and skewed priority of dealing with complaints of sexual assault.
10. Disputes relating to the jurisdiction of the police over the area of the crime are often a cause of delay in initiating the process of taking cognizance of the crime and providing medical aid to the victim.
11. Delay in giving the necessary medical aid to the victim/injured person in a medico-legal case is also because of the practice of approaching only a government hospital and not the nearest available hospital. This continues in spite of the clear duty of every medical doctor (even a private practitioner) to attend to an injured person and to save such person's life.
12. The peculiarity of the Government of NCT of Delhi not having any control over the police force, which control vests only in the Ministry of Home Affairs of the Government of India (through the Lieutenant Governor) is the reason given publicly by the Chief Minister of Delhi for the absence of responsibility of her government. This ambiguity must be removed forthwith so that there is no divided responsibility in Delhi in respect of maintenance of law and order. Such a step is also essential to maintain accountability.
13. The apathy of civil society is evident from the inaction of passers-by and bystanders, who failed in their citizenship duty of rendering help to the victim of the December 16 gang-rape and her companion, who were both lying badly injured and disrobed on the roadside for a considerable amount of time. The misbehaviour of the police towards any samaritan is often the cause for such apathy. But this must not deter citizens from doing their duty. A change in the behaviour of the citizenry will also improve the conduct of the police. This effort must be promoted.

14. It is clear that denial of political rights to women will cast a shadow on democratic right to a free and fair election.
15. The nation has to account for all its missing children.
16. The lathi charge on peaceful demonstrators after the December 16 gang rape has scarred the Indian democracy.
17. The brutalities of the armed forces faced by residents in the border areas have led to a deep disenchantment, and the lack of mainstreaming of such persons into civil society. Serious allegations of persistent sexual assault on the women in such areas and conflict areas are causing more alienation.
18. The nation has to account for the tears of millions of women and other marginalized sections of the society which has been ignored owing to institutional apathy. At this closing juncture we wish to reiterate the promise of a 'tryst with destiny' that Pandit Nehru made to the nation on the eve of independence:

"Freedom and power bring responsibility. The responsibility rests upon this Assembly, a sovereign body representing the sovereign people of India. Before the birth of freedom, we have endured all the pains of labour and our hearts are heavy with the memory of this sorrow. Some of those pains continue even now. Nevertheless, the past is over and it is the future that beckons to us now. That future is not one of ease or resting but of incessant striving so that we might fulfil the pledges we have so often taken and the One we shall take today. The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us but as long as there are tears and suffering, so long our work will not be over."

19. Unless the promises made at the birth of the nation are fulfilled, the India that our founding fathers dreamt of will never become a reality. Recent events indicate that the patience of the disillusioned youth is running out.

Part II - Recommendations

- The equality of women, being integral to the Constitution, its denial is a sacrilege and a constitutional violation. Sustained constitutional violations mean that governance is not in accordance with the Constitution. A fortiori, all limbs of the State

- the executive, the legislature as well as the judiciary - must respect women's rights and must treat them in a non-discriminatory manner.
- 2. As a primary recommendation, all marriages in India (irrespective of the personal laws under which such marriages are solemnised) should mandatorily be registered in the presence of a magistrate, which magistrate will ensure that the marriage has been solemnised without any demand for dowry having been made and that the marriage has taken place with the full and free consent of both partners.
- 3. The manner in which the rights of women can be recognised can only be manifested when they have full access to justice and when the rule of law can be upheld in their favour. The proposed Criminal Law Amendment Act, 2012, should be modified as suggested, and to secure public confidence, be promulgated forthwith. Since the possibility of sexual assault on men, as well as homosexual, transgender and transsexual rape, is a reality the provisions have to be cognizant of the same.
- 4. In respect of certain categories of cases, such as those where the victim is in custody of persons in authority including police and armed personnel, certain statutory presumptions must apply under Section 114A of the Indian Evidence Act, 1872. Every complaint of rape must be registered by the police and civil society should perform its duty to report any case of rape coming to its knowledge.
- 5. Any officer, who fails to register a case of rape reported to him, or attempts to abort its investigation, commits an offence which shall be punishable as prescribed. We have also taken into account offences of eve teasing, voyeurism, stalking as well as sexual assault and unsolicited sexual contact.
- 6. A special procedure for protecting persons with disabilities from rape, and requisite procedures for access to justice for such persons is also an urgent need. Amendments to the Code of Criminal Procedure, which are necessary, have been suggested.
- 7. The protocols for medical examination of victims of sexual assault have also been suggested, which we have prepared on the basis of the best practices as advised by global experts in the fields of gynaecology and psychology. Such protocol-based, professional medical examination is imperative for uniform practice and implementation.
- 8. The insensitivity of the police to deal with rape victims is well known. The police respect a patriarchal form of society, and have been unable to deal with extraordinary cases of humiliation and hardship caused by the khap panchayats, as is evident from various judgments of the Supreme Court. The police are involved

in trafficking of children (including female children) and in drug trade. To inspire public confidence, it is necessary that there must not only be prompt implementation of the judgment of the Supreme Court in Prakash Singh, but also police officers with reputations of outstanding ability and character must be placed at the higher levels of the police force. In the present context, and in view of the facts revealed to us, it is necessary that every police commissioner and director general of police of this country must be selected in accordance with the directions of the Supreme Court in Prakash Singh's case, who can lead by example. The leader makes all the difference. As such, all existing appointments need to be reviewed to ensure that the police force has the requisite moral vision.

9. It is settled law that every policeman is bound to obey the law and any order of a superior officer, which is contrary to law, is no defence for his illegal action, which may be a punishable offence. Accordingly, any political interference or extraneous influence in the performance of the statutory duty by a policeman cannot be condoned. This principle has to be clearly understood by every member of the police force -their accountability is only to the law and to none else in the discharge of their duty. Dereliction of this duty has to be punished according to the service rules and applicable law.
10. Authentic figures of missing children in India are not available for obvious reasons of the complicity of law enforcement agencies. Children have been driven into forced labour, sex abuse, sexual exploitation as well as made victims of illegal organ trade. Our report includes the testimonies of children (whose identities have been concealed for their safety) to verify facts from their personal experience. As a small gesture, this Committee has (at its own cost) taken necessary steps for proper rehabilitation and education of one of these children, payment of the minimum wages due to the said child, her safe passage and reintegration with her family, psychotherapeutic intervention, and to fulfil her educational aspirations. The Committee expects similar treatment by the State of all such deprived children.
11. Every District Magistrate is responsible for carrying out a census of missing children within his district. Having regard to the apathy shown by the district magistrates and the police in the matter of missing children, evident from advisories issued by the Ministry of Home Affairs as late as on 30th January 2012, this issue needs immediate attention. This is necessary also for the credibility of the political establishment.
12. The judiciary has the primary responsibility of enforcing fundamental rights, through constitutional remedies. The judiciary can take suo motu cognizance of such issues being deeply concerned with them both in the Supreme Court and the High

Court. An all India strategy to deal with this issue would be advisable. The Chief Justice of India could be approached to commence appropriate proceedings on the judicial side. The Hon'ble Chief Justice may consider making appropriate orders relating to the issue of missing children to curb the illegal trade of their trafficking etc. Social activists involved in curbing this menace could assist the court in the performance of this task. The question of award of compensation and rehabilitation could also be considered in such cases by the court.

13. Juvenile homes in the country, i.e. child homes, and observation homes, are not being run in a manner consistent with the spirit of the Juvenile Justice Act. To ensure that the constitution of the Child Welfare Committee, Juvenile Justice Board, the infrastructural facilities in a home, the quality of food, the quality of counselling and psychotherapy required for a child to wipe out the scars of abuse and deprivation in early childhood and to mainstream him/her in society and to educate him/her fully requires a deeper and profound engagement of the State and civil society. This is the primary duty of the State, which is found wanting. We are shocked to note that so many of these children have been forced into bonded labour and beggary, which is in violation of Article 23 of the Constitution. India should not permit cheap child labour to be an incentive for foreign investment to boost our economy.
14. It is time for the judiciary to step in to discharge the constitutional mandate of enforcing fundamental rights and implementation of the rule of law. In performance of this obligation, the Chief Justice of the High Court in every State could devise the appropriate machinery for administration and supervision of these homes in consultation with experts in the field. For the safety and physical security of children, women, persons with disabilities, inmates of mental homes and widows, monitoring by the judiciary is necessary. The immediate and ultimate guardianship of such persons has to be with the court, founded on the principle of *parens patriae*.
15. To augment the police force, there is a need to develop community policing by involving the local gentry, which would also motivate them to perform their duty as citizens. Respectable persons in each locality could also be appointed Special Executive Magistrates under Section 21, Cr.P.C. and invested with powers to deal with the traffic offences and other minor offences. In addition, to assisting the maintenance of law and order in the locality, their presence would inspire greater confidence of safety in the locality.
16. Street lighting everywhere would provide more safety since dark areas are more prone to facilitate crimes. There is great wisdom in the words of the American Judge Louis Brandeis, that "Sunlight

is said to be the best of disinfectant; electric light the most efficient policeman”.

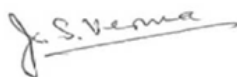
17. Street vending should be encouraged to make the bus stops and footpaths safe for communities and pedestrians, in addition to providing street food for the common man.
18. We recommend the creation of a new constitutional authority akin to the Comptroller and Auditor General for education, non-discrimination, in respect of women and children.
19. Reforms in respect of the political establishment:
 - (a) Reforms are needed in the Representation of People Act, 1951 to deal with criminalisation of politics and to ensure true representation of people by elimination of those with criminal antecedents. This is also essential to avoid any conflict in the discharge of their legislative functions.
 - (b) Having regard to the fact that there is no verification of the affidavits which are filed by candidates under Section 33A of the Representation of People Act, 1951, we have suggested amendments to the said Section 33A requiring the making of a declaration about the pendency of any criminal case, whether cognizance has been taken of it. A certificate from the Registrar of the High Court should be necessary for the validity of the nomination.
 - (c) We also suggest that, in the event cognizance has been taken by a magistrate of an offence mentioned in Section 8(1) of the Representation of People Act, 1951, the candidate ought to be disqualified from participating in the electoral process.
 - (d) We further suggest that Section 8(1) of the Representation of People Act, 1951 be amended and should include all heinous offences as suggested.
 - (e) A candidate who fails to disclose a charge or the commission of an offence should be disqualified subsequently. It is alleged that a minister of the Andhra Pradesh Cabinet had failed to disclose an offence and there is presently a complaint pending against such minister under Section 125A of the Representation of People Act, 1951. We request the Chief Minister of Andhra Pradesh to dismiss the minister immediately from the Cabinet if it is correct that he did not disclose the offence for which he was charged.
 - (f) Scrutiny and verification of the disclosures made by candidates in respect of their assets may be made by the CAG with necessary follow up action in the case of such disclosures being found to be incorrect or false. Such discrepancies should be a ground for subsequent disqualification under the Representation of People Act, 1951.

- (g) If all those in Parliament and State Legislatures, who have any criminal case pending against them in respect of heinous offences, vacate their seats as a mark of respect to Parliament and to the Constitution (which they have sworn to uphold), it would be a healthy precedent and would raise them in public esteem. This would be consistent with the principle of institutional integrity emphasised by the Supreme Court in the P.J. Thomas case judgment
 - (h) It is the least to expect that political parties do not nominate any candidates for election who have any criminal antecedents. Failure to do so is likely to set in motion social urges of inestimable dimensions. It has been established in the oral interactions of the Committee with the stakeholders that the fielding of such candidates leads to women being deterred from exercising their right to vote.
 - (i) Legislation be enacted for compulsory registration of all political parties as indicated earlier.
20. Even though the scope of the terms of reference of this Committee was to look at all criminal laws including laws relating to aggravated sexual assault, we have also studied the related laws which have a bearing upon the administration of criminal justice, including the exercise of enacting legislation.
 21. These recommendations are to be read along with the various other recommendations contained in the body of the report relating to specific matters.
 22. The recommendations made in this report, unless urgently implemented, will end the exercise conducted by this Committee in futility.

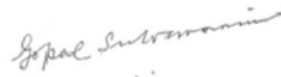
We pay our tribute to the departed soul of Nirbhaya which has occasioned this exercise.



Leila Seth
(Member)



J. S. Verma
(Chairman)



Gopal Subramaniam
(Member)

MODEL FRAMEWORK FOR LEGISLATION ON VIOLENCE AGAINST WOMEN

I. Human rights-based and comprehensive approach

1.1. Violence against women as a form of gender-based discrimination

Recommendation

Legislation should:

- Acknowledge that violence against women is a form of discrimination, a manifestation of historically unequal power relations between men and women, and a violation of women's human rights;
- Define discrimination against women as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field; and
- Provide that no custom, tradition or religious consideration may be invoked to justify violence against women.

1.2. Comprehensive legislative approach

Recommendation

Legislation should:

- Be comprehensive and multidisciplinary, criminalizing all forms of violence against women, and encompassing issues of prevention, protection, survivor empowerment and support (health, economic, social, psychological), as well as adequate punishment of perpetrators and availability of remedies for survivors.

3.1.3. Equal application of legislation to all women and measures to address multiple discrimination

Recommendation

Legislation should:

- Protect all women without discrimination as to race, colour, language, religion, political or other opinion, national or social origin, property,

marital status, sexual orientation, HIV/AIDS status, migrant or refugee status, age or disability; and

- Recognize that women's experience of violence is shaped by factors such as their race, col-our, religion, political or other opinion, national or social origin, property, marital status, sexual orientation, HIV/AIDS status, migrant or refugee status, age, or disability, and include targeted measures for particular groups of women, where appropriate.

1.4. Gender-sensitive legislation

Recommendation

Legislation should:

- Be gender-sensitive, not gender-blind.

1.5. Relationship between customary and/or religious law and the formal justice system

Recommendation

Legislation should state that:

- Where there are conflicts between customary and/or religious law and the formal justice system, the matter should be resolved with respect for the human rights of the survivor and in accordance with gender equality standards; and
- The processing of a case under customary and/or religious law does not preclude it from being brought before the formal justice system.

1.6. Amendment and/or removal of conflicting legal provisions

Recommendation

Legislation should:

- Provide for the amendment and/or removal of provisions contained in other areas of law, such as family and divorce law, property law, housing rules and regulations, social security law, and employment law that contradict the legislation adopted, so as to ensure a consistent legal framework that promotes women's human rights and gender equality, and the elimination of violence against women.

2. Implementation

2.1. National action plan or strategy

Recommendation

Legislation should:

- Where a current national action plan or strategy on violence against women does not already exist, mandate the formulation of a plan, which should contain a set of activities with benchmarks and

indicators, to ensure a framework exists for a comprehensive and coordinated approach to the implementation of the legislation; or

- Where a current national action plan or strategy exists, reference the plan as the framework for the comprehensive and coordinated implementation of the legislation.

2.2. Budget

Recommendation

Legislation should:

- Mandate the allocation of a budget for its implementation by:
 - > Creating a general obligation on Government to provide an adequate budget for the implementation of the relevant activities; and/or
 - > Requesting the allocation of funding for a specific activity, for example, the creation of a specialized prosecutor's office; and/or
 - > Allocating a specific budget to non-governmental organizations for a specified range of activities related to its implementation.

2.3. Training and capacity-building for public officials

Recommendation

Legislation should mandate:

- Regular and institutionalized gender-sensitivity training and capacity-building on violence against women for public officials;
- Specific training and capacity-building for relevant public officials when new legislation is enacted, to ensure that they are aware of and competent to use their new duties; and
- That such training and capacity-building be developed and carried out in close consultation with non-governmental organizations and service providers for complainants/survivors of violence against women

2.4. Specialized police and prosecutorial units

Recommendation

Legislation/subsidiary legislation should ensure:

- The designation or strengthening of specialized police units and specialized prosecutor units on violence against women, and provide adequate funding for their work and special-ized training of their staff; and
- That complainants/survivors should have the option of communicating with female police officers or prosecutors.

2.5. Specialized courts

Recommendation

Legislation should:

- Provide for the creation of specialized courts or special court proceedings guaranteeing timely and efficient handling of cases of violence against women; and
- Ensure that officers assigned to specialized courts receive specialized training and that measures are in place to minimize stress and fatigue of such officers.

2.6. Protocols, guidelines, standards and regulations

Recommendation

Legislation should:

- Require that the relevant Minister(s), in collaboration with police, prosecutors, judges, the health sector and the education sector, develop regulations, protocols, guidelines, instructions, directives and standards, including standardized forms, for the comprehensive and timely implementation of the legislation; and
- Provide that such regulations, protocols, guidelines and standards be developed within a limited number of months following the entry into force of the legislation.

2.7. Time limit on activating legislative provisions

Recommendation

Legislation should:

- Provide a deadline regarding the length of time that may pass between its adoption and entry into force.

2.8. Penalties for non-compliance by relevant authorities

Recommendation

Legislation should:

- Provide for effective sanctions against relevant authorities who do not comply with its provisions.

3. Monitoring and evaluation

3.1. Specific institutional mechanism to monitor implementation

Recommendation

Legislation should:

- Provide for the creation of a specific, multisectoral mechanism to oversee implementation of the legislation and report back to Parliament on a regular basis. The functions of such a mechanism should include:

- √ Information gathering and analysis;
- √ Interviews with complainants/survivors, advocates, attorneys, police, prosecutors, judges, probation officers and service providers regarding complainants/survivors' access to the legal system and the effectiveness of remedies, including obstacles faced by particular groups of women; and
- √ The proposal of amendments to legislation if necessary; and
- √ Mandate adequate funding for the mechanism.

3.2. Collection of statistical data

Recommendation

Legislation should:

- Require that statistical data be gathered at regular intervals on the causes, consequences and frequency of all forms of violence against women, and on the effectiveness of measures to prevent, punish and eradicate violence against women and protect and support complainants/survivors; and
- Require that such statistical data be disaggregated by sex, race, age, ethnicity and other relevant characteristics.

4. Definitions

4.1. Defining forms of violence against women

Recommendation

Legislation should:

- Apply to all forms of violence against women, including but not limited to:
 - > Domestic violence;
 - > Sexual violence, including sexual assault and sexual harassment;
 - > Harmful practices, including early marriage, forced marriage, female genital mutilation, female infanticide, prenatal sex-selection, virginity testing, HIV/AIDS cleansing, so-called honour crimes, acid attacks, crimes committed in relation to bride-price and dowry, mal-treatment of widows, forced pregnancy, and trying women for sorcery/witchcraft;
 - > Femicide/feminicide;
 - > Trafficking; and
 - > Sexual slavery; and
- Recognize violence against women perpetrated by specific actors, and in specific contexts, including:

- > Violence against women in the family;
- > Violence against women in the community;
- > Violence against women in conflict situations; and
- > Violence against women condoned by the State, including violence in police custody and violence committed by security forces.

4.2. Defining domestic violence

4.2.1. *Comprehensive definition of types of domestic violence*

Recommendation

Legislation should:

- Include a comprehensive definition of domestic violence, including physical, sexual, psy-chological and economic violence.

4.2.2. *Scope of persons protected by the law*

Recommendation

Legislation should apply at a minimum to:

- Individuals who are or have been in an intimate relationship, including marital, non-marital, same sex and non-cohabiting relationships; individuals with family relationships to one another; and members of the same household.

4.3. Defining sexual violence

4.3.1. *Defining a broad offence of sexual assault incorporating rape, including marital rape*

Recommendation

Legislation should:

- Define sexual assault as a violation of bodily integrity and sexual autonomy;
- Replace existing offences of rape and “indecent” assault with a broad offence of sexual assault graded based on harm;
- Provide for aggravating circumstances including, but not limited to, the age of the survivor, the relationship of the perpetrator and survivor, the use or threat of violence, the presence of multiple perpetrators, and grave physical or mental consequences of the attack on the victim;
- Remove any requirement that sexual assault be committed by force or violence, and any requirement of proof of penetration, and minimize secondary victimization of the complain-ant/survivor in proceedings by enacting a definition of sexual assault that either:

- > Requires the existence of “unequivocal and voluntary agreement” and requiring proof by the accused of steps taken to ascertain whether the complainant/survivor was consenting; or
- > Requires that the act take place in “coercive circumstances” and includes a broad range of coercive circumstances; and
- Specifically criminalize sexual assault within a relationship (i.e., “marital rape”), either by:
 - > Providing that sexual assault provisions apply “irrespective of the nature of the relationship” between the perpetrator and complainant; or
 - > Stating that “no marriage or other relationship shall constitute a defence to a charge of sexual assault under the legislation.”

4.3.2. *Defining sexual harassment*

Recommendation

Legislation should:

- Criminalize sexual harassment;
- Recognize sexual harassment as a form of discrimination and a violation of women’s human rights with health and safety consequences;
- Define sexual harassment as unwelcome sexually determined behaviour in both horizontal and vertical relationships, including in employment (including the informal employment sector), education, receipt of goods and services, sporting activities, and property transactions; and
- Provide that unwelcome sexually determined behaviour includes (whether directly or by implication) physical conduct and advances; a demand or request for sexual favours; sexually coloured remarks; displaying sexually explicit pictures, posters or graffiti; and any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

5. Prevention

5.1. Incorporation of provisions on prevention of violence against women

Recommendation

Legislation should prioritize prevention of violence against women and should include provisions, as elaborated below in subsections 3.5.2 to 3.5.4 of the framework, on the following measures to prevent violence against women:

- Awareness-raising activities regarding women’s human rights, gender equality and the right of women to be free from violence;

- Use of educational curricula to modify discriminatory social and cultural patterns of behaviour, as well as derogatory gender stereotypes; and
- Sensitization of the media regarding violence against women.

5.2. Awareness-raising

Recommendation

Legislation should mandate government support and funding for public awareness-raising campaigns on violence against women, including:

- General campaigns sensitizing the population about violence against women as a manifestation of inequality and a violation of women's human rights; and
- Specific awareness-raising campaigns designed to heighten knowledge of laws enacted to address violence against women and the remedies they contain.

5.3. Educational curricula

Recommendation

Legislation should provide:

- For compulsory education at all levels of schooling, from kindergarten to the tertiary level, on the human rights of women and girls, the promotion of gender equality and, in particular, the right of women and girls to be free from violence;
- That such education be gender-sensitive and include appropriate information regarding existing laws that promote women's human rights and address violence against women; and
- That relevant curricula be developed in consultation with civil society.

5.4. Sensitization of the media

Recommendation

Legislation should:

- Encourage the sensitization of journalists and other media personnel regarding violence against women.

6.1. **Protection, support, and assistance to complainants/survivors**

Comprehensive and integrated support services

Recommendation

Legislation should:

- Oblige the State to provide funding for, and/or contribute to establishing, comprehensive and integrated support services to assist survivors of violence;

- State that all services for women survivors of violence should also provide adequate support to the women's children;
- State that the location of such services should allow equitable access to the services, in particular by urban and rural populations; and
- Where possible, establish at least the following minimum standards of availability of support services for complainants/survivors:
 - > One national women's phone hotline where all complainants/survivors of violence may get assistance by phone around the clock and free of cost and from where they may be referred to other service providers;
 - > One shelter/refuge place for every 10,000 inhabitants, providing safe emergency accommodation, qualified counselling and assistance in finding long-term accommodation;
 - > One women's advocacy and counselling centre for every 50,000 women, which provides proactive support and crisis intervention for complainants/survivors, including legal advice and support, as well as long-term support for complainants/survivors, and specialized services for particular groups of women (such as specialized services for immigrant survivors of violence, for survivors of trafficking in women or for women who have suffered sexual harassment at the workplace), where appropriate;
 - > One rape crisis centre for every 200,000 women; and
 - > Access to health care, including reproductive health care and HIV prophylaxis.

6.2. Rape crisis centres

Recommendation

Legislation should:

- > Provide for immediate access to comprehensive and integrated services, including pregnancy testing, emergency contraception, abortion services, treatment for sexually transmitted diseases, treatment for injuries, post-exposure prophylaxis and psychosocial counselling, for complainants/survivors of sexual violence at the expense of the State; and
- > State that access to such services should not be conditional upon the complainant/ survivor reporting the violation to the police.

6.3. Support for the survivor in her employment

Recommendation

Legislation should:

- > Protect the employment rights of survivors of violence against women, including by prohibiting employers from discriminating

against them or penalizing them for the consequences of their abuse.

6.4. Housing rights of the survivor

Recommendation

Legislation should:

- Prohibit discrimination in housing against survivors of violence, including by prohibiting landlords from evicting a tenant, or refusing to rent to a prospective tenant, because she is a survivor of violence; and
- Permit a survivor to break her lease without penalty in order to seek new housing.

6.5. Financial support for the survivor

Recommendation

Legislation should:

- Provide for efficient and timely provision of financial assistance to survivors in order to meet their needs.

7. Rights of immigrant women

7.1. Independent and favourable immigration status for survivors of violence against women

Recommendation

Legislation should:

- Provide that survivors of violence against women should not be deported or subjected to other punitive actions related to their immigration status when they report such violence to police or other authorities; and
- Allow immigrants who are survivors of violence to confidentially apply for legal immigration status independently of the perpetrator.

7.2. Restrictions on international marriage brokers and ensuring the rights of “mail-order brides”

Recommendation

Legislation should include:

- Measures to minimize the risks posed by international marriage brokers, including: imposing restrictions on the operations of international marriage brokers, restricting abusive men’s ability to use international marriage brokers, ensuring that women who are recruited through international marriage brokers are above the age of majority and have given voluntary and informed consent, and providing every recruited woman with information about her prospective spouse and her legal rights; and

- The right to divorce and to obtain independent immigration status for international brides who are survivors of violence.

8. Investigation

8.1. Duties of police officers

Recommendation

Legislation should provide that police officers should:

- Respond promptly to every request for assistance and protection in cases of violence against women, even when the person who reports such violence is not the complainant/survivor;
- Assign the same priority to calls concerning cases of violence against women as to calls concerning other acts of violence, and assign the same priority to calls concerning domestic violence as to calls relating to any other form of violence against women; and
- Upon receiving a complaint, conduct a coordinated risk assessment of the crime scene and respond accordingly in a language understood by the complainant/survivor, including by:
 - > Interviewing the parties and witnesses, including children, in separate rooms to ensure there is an opportunity to speak freely;
 - > Recording the complaint in detail;
 - > Advising the complainant/survivor of her rights;
 - > Filling out and filing an official report on the complaint;
 - > Providing or arranging transport for the complainant/survivor to the nearest hospital or medical facility for treatment, if it is required or requested;
 - > Providing or arranging transport for the complainant/survivor and the complainant/survivor's children or dependents, if it is required or requested; and
 - > Providing protection to the reporter of the violence.

8.2. Duties of prosecutors

Recommendation

Legislation should:

- Establish that responsibility for prosecuting violence against women lies with prosecution authorities and not with complainants/survivors of violence, regardless of the level or type of injury;
- Require that complainants/survivors, at all relevant stages of the legal process, be promptly and adequately informed, in a language they understand, of:
 - √ Their rights;

- √ The details of relevant legal proceedings;
 - √ Available services, support mechanisms and protective measures;
 - √ Opportunities for obtaining restitution and compensation through the legal system;
 - √ Details of events in relation to their case, including specific places and times of hearings; and
 - √ Release of the perpetrator from pre-trial detention or from jail; and
- Require that any prosecutor who discontinues a case of violence against women explain to the complainant/survivor why the case was dropped.

8.3. Pro-arrest and pro-prosecution policies

Recommendation

Legislation should:

- Provide for the application of pro-arrest and pro-prosecution policies in cases of violence against women where there is probable cause to believe that a crime has occurred.

9. Legal proceedings and evidence

9.1. Prohibition of mediation

Recommendation

Legislation should:

- Explicitly prohibit mediation in all cases of violence against women, both before and during legal proceedings.

9.2. Encouraging timely and expedited proceedings

Recommendation

Legislation should:

- Provide for timely and expeditious legal proceedings and encourage fast-tracking of cases of violence against women, where appropriate.

9.3. Free legal aid, interpretation, and court support, including independent legal counsel and intermediaries

Recommendation

Legislation should ensure that complainants/survivors have the right to:

- Free legal aid in all legal proceedings, especially criminal proceedings, in order to ensure access to justice and avoid secondary victimization;
- Free court support, including the right to be accompanied and represented in court by a specialized complainants/survivors' service

and/or intermediary, free of charge, and without prejudice to their case, and access to service centres in the courthouse to receive guidance and assistance in navigating the legal system; and

- Free access to a qualified and impartial interpreter and the translation of legal documents, where requested or required.

9.4. Rights of the complainant/survivor during legal proceedings

Recommendation

Legislation should:

- Guarantee, throughout the legal process, the complainant/survivor's right to:
 - > Decide whether or not to appear in court or to submit evidence by alternative means, including drafting a sworn statement/affidavit, requesting that the prosecutor present relevant information on her behalf, and/or submitting taped testimony;
 - > When appearing in court, give evidence in a manner that does not require the complainant/survivor to confront the defendant, including through the use of in-camera proceedings, witness protection boxes, closed circuit television, and video links;
 - > Protection within the court structure, including separate waiting areas for complainants and defendants, separate entrances and exits, police escorts, and staggered arrival and departure times;
 - > Testify only as many times as is necessary;
 - > Request closure of the courtroom during proceedings, where constitutionally possible; and
 - > A gag on all publicity regarding individuals involved in the case, with applicable remedies for non-compliance; and
- Cross-reference witness protection legislation, where it exists.

9.5. Issues related to the collection and submission of evidence

Recommendation

Legislation should:

- Mandate proper collection and submission to court of medical and forensic evidence, where possible;
- Mandate the timely testing of collected medical and forensic evidence;
- Allow a complainant to be treated and/or examined by a forensic doctor without requiring the consent of any other person or party, such as a male relative;
- Ensure that multiple collections of medical and forensic evidence are prevented so as to limit secondary victimization of the complainant;

- State that medical and forensic evidence are not required in order to convict a perpetrator; and
- Provide the possibility of prosecution in the absence of the complainant/survivor in cases of violence against women, where the complainant/survivor is not able or does not wish to give evidence.

9.6. No adverse inference from delay in reporting

Recommendation

Legislation should:

- Prohibit courts from drawing any adverse inference from a delay of any length between the alleged commission of violence and the reporting thereof;
- Require that the presiding judicial officer in any case of violence against women inform the jury, assessors or himself/herself that a delay in reporting should not be held against the complainant.

9.7. Removing discriminatory elements from legal proceedings regarding sexual violence

9.7.1. Removing the cautionary warning/corroborator rule

Recommendation

Legislation should abolish the cautionary warning/corroborator rule in regard to complainants in cases of sexual violence by either:

- Stating that “it shall be unlawful to require corroboration of the complainant’s evidence”;
- Creating an assumption of the complainant’s credibility in sexual violence cases;
- Stating that “the credibility of a complainant in a sexual violence case is the same as the credibility of a complainant in any other criminal proceeding”.

9.7.2. Evidence of complainant/survivor’s sexual history not to be introduced

Recommendation

Legislation:

- Should prevent introduction of the complainant’s sexual history in both civil and criminal proceedings.

9.8. No offence of “false accusation”

Recommendation

Legislation should:

- Not include a provision criminalizing false accusations/allegations.

10. Protection orders

10.1. Protection orders for all forms of violence against women

Recommendation

Legislation should:

- Make protection orders available to survivors of all forms of violence against women.

10.2. Relationship between protection orders and other legal proceedings

Recommendation

Legislation should:

- Make protection orders available to complainants/survivors without any requirement that the complainant/survivor institute other legal proceedings, such as criminal or divorce proceedings, against the defendant/offender;
- State that protection orders are to be issued in addition to and not in lieu of any other legal proceedings;
- Allow the issuance of a protection order to be introduced as a material fact in subsequent legal proceedings.

10.3. Content and issuance of protection orders

Recommendation

Legislation should provide:

- That protection orders may contain the following measures:
 - > order the defendant/perpetrator to stay a specified distance away from the complainant/ survivor and her children (and other people if appropriate) and the places that they frequent;
 - > order the accused to provide financial assistance to the complainant/ survivor, including payment of medical bills, counselling fees or shelter fees, monetary compensation and, in addition, in cases of domestic violence, mortgage, rent, insurance, alimony and child support;
 - > Prohibit the defendant/perpetrator from contacting the complainant/ survivor or arranging for a third party to do so;
 - > Restrain the defendant/perpetrator from causing further violence to the complainant/ survivor, her dependents, other relatives and relevant persons;
 - > Prohibit the defendant/perpetrator from purchasing, using or possessing a firearm or any such weapon specified by the court;
 - > Require that the movements of the defendant/offender be electronically monitored;

- > Instruct the defendant/perpetrator in cases of domestic violence to vacate the family home, without in any way ruling on the ownership of such property and/or to hand over the use of a means of transportation (such as an automobile) and/or other essential personal effects to the complainant/survivor;
- For the issuance of protection orders in both criminal and civil proceedings; and
- That authorities may not remove a complainant/survivor from the home against her will.

10.4. Emergency orders

Recommendation

Where there is an allegation of immediate danger of violence, legislation should:

- Provide relevant officials with the authority to order a respondent out of the home and to stay away from the survivor; and
- State that the procedure should occur on an ex parte basis without a hearing and should prioritize survivor safety over property rights and other considerations.

10.5. Post-hearing orders

Recommendation

Legislation should:

- Grant courts the authority to issue long-term, final, or post-hearing orders after notice and an opportunity for a full hearing based on allegations of violence.

10.6. Standing in application for protection orders

Recommendation

Legislation should either:

- Limit standing in application for protection orders to the complainant/survivor and, in cases where the complainant/survivor is legally incompetent, a legal guardian; or
- Allow other actors, such as State actors, family members, and relevant professionals to have standing in such applications, while ensuring that the agency of the complainant/survivor is respected.

10.7. Evidence of complainant/survivor sufficient for grant of protection order

Recommendation

Legislation should state:

That live testimony or a sworn statement or affidavit of the complainant/survivor is sufficient evidence for the issuance of a protection order; and

- No independent evidence—medical, police or otherwise—should be required for the issuance of a protection order following live testimony or a sworn statement or affidavit of the complainant/survivor.

10.8. Issues specific to protection orders in cases of domestic violence

10.8.1. Mutual protection orders and citations for provocative behaviour not to be included in legislation

Recommendation

Legislation should:

- Not grant authority to State officials to cite survivors for “provocative behaviour”; and
- Not authorize State officials to issue mutual orders for protection.

10.8.2 Addressing child custody in protection order proceedings

Recommendation

Legislation should include the following provisions regarding child custody and visitation in protection order proceedings:

- Presumption against award of custody to the perpetrator;
- Presumption against unsupervised visitation by the perpetrator;
- Requirement that, prior to supervised visitation being granted, the perpetrator must show that at least three months has passed since the most recent act of violence, that he has stopped using any form of violence, and that he is participating in a treatment programme for perpetrators; and
- No visitation rights are to be granted against the will of the child.

10.9. Criminal offence of violation of a protection order

Recommendation

Legislation should:

- criminalize violations of protection orders.

11. Sentencing

11.1. Consistency of sentencing with the gravity of the crime committed

Recommendation

Legislation should provide that:

- Sentences should be commensurate with the gravity of crimes of violence against women; and
- Sentencing guidelines should be developed to ensure consistency in sentencing outcomes.

11.2. Removal of exceptions and reductions in sentencing

Recommendation

Legislation should remove provisions which:

- Provide reduced penalties and/or exculpate perpetrators in cases of so-called honour crimes;
- Exculpate a perpetrator of violence if he subsequently marries the survivor; and
- Provide for the imposition of lesser penalties in cases involving particular “types” of women, such as sex workers or non-virgins.

11.3. Enhanced sanctions for repeated/aggravated offence of domestic violence

Recommendation

Legislation should provide for:

- Increasingly severe sanctions for repeated incidents of domestic violence, regardless of the level of injury; and
- Increased sanctions for multiple violations of protection orders.

11.4. Considerations in imposition of fines in cases of domestic violence

Recommendation

Legislation should state that:

- fines should not be imposed in cases of domestic violence if doing so would cause financial hardship to the survivor and/or her children; and
- when fines are imposed, they should be combined with treatment and supervision of the perpetrator through probation.

11.5. Restitution and compensation for survivors

Recommendation

Legislation should:

- Provide that sentences in criminal cases may order the payment of compensation and res-titution from the perpetrator to the survivor;
- State that while compensation may be an element in penalizing perpetrators of violence against women, it should not substitute for other penalties, such as imprisonment; and
- Make provision for the creation of a Government-sponsored compensation programme, which entitles survivors of violence against women to apply and receive a fair amount of compensation.

11.6. Intervention programmes for perpetrators and alternative sentencing

Recommendation

Legislation should:

- Provide that intervention programmes for perpetrators may be prescribed in sentencing and mandate that the operators of such programmes work in close cooperation with complainant/survivor service providers;
- Clarify that the use of alternative sentencing, including sentences in which the perpetrator is mandated to attend an intervention programme for perpetrators and no other penalty is imposed, are to be approached with serious caution and only handed down in instances where there will be continuous monitoring of the sentence by justice officials and women's non-governmental organizations to ensure the complainant/survivor's safety and the effectiveness of the sentence; and
- Mandate careful review and monitoring of intervention programmes for perpetrators and alternative sentencing involving women's non-governmental organizations and complainants/survivors.

12. Civil lawsuits

12.1. Civil lawsuits against perpetrators

Recommendation

Legislation should:

- Permit complainants/survivors of violence against women to bring civil lawsuits against perpetrators; and
- Abolish requirements forbidding women to bring lawsuits against a husband or other family member, or requiring the consent of a husband or other family member in order for a woman to bring a lawsuit.

12.2. Civil lawsuits against third parties

Recommendation

Legislation should allow:

- complainants/survivors of violence against women to bring lawsuits against governmental or non-governmental individuals and entities that have not exercised due diligence to prevent, investigate or punish the violence; and
- Lawsuits on the basis of anti-discrimination and/or civil rights laws.

13. Family law

Recommendation

Legislation should guarantee the following and amend all relevant provisions in family law to reflect this:

- Divorce from a violent husband and adequate alimony to women and children;
- The survivor's right to stay in the family dwelling after divorce;
- Social insurance and pension rights of survivors who divorce the perpetrator;
- Expedited distribution of property, and other relevant procedures;
- Careful screening of all custody and visitation cases so as to determine whether there is a history of violence;
- A statutory presumption against awarding child custody to a perpetrator;
- Availability, in appropriate cases, of professionally run supervised visitation centres;
- A survivor of violence who has acted in self-defence, or fled in order to avoid further violence, should not be classified as a perpetrator, or have a negative inference drawn against her, in custody and visitation decisions; and
- Child abuse and neglect proceedings should target the perpetrators of violence and recognize that the protection of children is often best achieved by protecting their mothers.

14. Asylum law

Recommendation

Legislation should:

- Provide that violence against women may constitute persecution and that complainants/ survivors of such violence should constitute "a particular social group" for the purposes of asylum law.

II. Checklist of steps to be taken when drafting legislation on Violence against women

Step 1: Define the legislative goal

At the beginning of any legislative process a clear legislative goal must be defined. The goal of legislation on violence against women should be to prevent violence against women, to ensure investigation, prosecution and punishment of perpetrators, and to provide protection and support for complainants/survivors of violence.

Step 2: Consult with relevant stakeholders

Inclusive consultation with all stakeholders who are either affected by or will implement legislation is a key element of the preparatory process. It ensures that the realities of women who experience violence are accurately portrayed and that the legislative response is appropriate. It also enhances the potential for legislation to be implemented effectively. The following non-exhaustive list of stakeholders provides a guide as to who should be consulted in the development of legislation on violence against women:

- Complainants/survivors;
- Non-governmental organizations that work on violence against women, including those with experience on violence against particular groups of women, such as indigenous, immigrant, disabled, or ethnic minority women;
- Providers of services to complainants/survivors;
- Government departments, including all national mechanisms for the advancement of women;
- National human rights institutions;
- Police and other law enforcement personnel;
- Prosecutors;
- Judges;
- Lawyers/bar associations;
- Health-care professionals;
- Forensics personnel;
- Social work/counselling providers;
- Teachers and other personnel of education systems;
- National statistical offices;
- Prison officials;
- Religious and community leaders; Media personnel.

Step 3: Adopt an evidence-based Approach to legislative drafting

An evidence-based approach ensures that the development and design of legislation is well-informed, and can enhance the quality and potential future effectiveness of legislation. Legislation should be prepared drawing on reliable evidence including data and research on the scope, prevalence and incidence of all forms of violence against women, on the causes and consequences of such violence, and on lessons learned and good practices from other countries in preventing and addressing violence against women.

Source : <http://www.un.org/womenwatch/daw/vaw/v-handbook.htm>

The Violence Against Women Act (VAWA)

10 YEARS OF PROGRESS AND MOVING FORWARD

The Violence Against Women Act (VAWA) is a landmark piece of legislation that sought to improve criminal justice and community-based responses to domestic violence, dating violence, sexual assault and stalking in the United States. The passage of VAWA in 1994, and its reauthorization in 2000 and 2005, has changed the landscape for victims who once suffered in silence. Victims of domestic violence, dating violence, sexual assault and stalking have been able to access services, and a new generation of families and justice system professionals has come to understand that domestic violence, dating violence, sexual assault and stalking are crimes that our society will not tolerate. VAWA is currently scheduled for reauthorization in 2010. Hearings and briefings were underway in mid-2009 for the reauthorization effort which falls under Commerce, Justice and Science, and Labor, Health and Human Services and Education committees.

A HISTORY OF PROGRESS:

- Creating new system responses – VAWA programs, funding and law reforms have changed federal, tribal, state and local responses to domestic violence, dating violence, sexual assault and stalking by:
- Securing buy-in from formerly unengaged systems, like law enforcement, courts, and social services
- Creating a federal leadership role that has encouraged tribes, states and local government to improve responses to victims and perpetrators
- Establishing new federal crimes of domestic violence, sexual assault and stalking to fill in jurisdictional gaps in prosecuting these crimes
- Defining the crimes of domestic violence, dating violence, sexual assault and stalking, as well as identifying promising practices to respond to these crimes
- Focusing on the needs of underserved communities, such as immigrant and Native American women

VAWA 1994 – Congress, in passing VAWA 1994, envisioned a nation with an engaged criminal justice system and coordinated community responses. VAWA 1994 fostered:

- Community-coordinated responses that brought together, for the first time, the criminal justice system, the social services system, and private nonprofit organizations responding to domestic violence and sexual assault
- Recognition and support for the efforts of domestic violence shelters, rape crisis centers, and other community organizations nationwide working everyday to end this violence
- Federal prosecution of interstate domestic violence and sexual assault crimes
- Federal guarantees of interstate enforcement of protection orders
- Protections for battered immigrants
- A new focus on underserved populations and Native victims of domestic violence and sexual assault

VAWA 2000 – Congress improved on the foundation established in VAWA 1994, including:

- Identifying the additional related crimes of dating violence and stalking
- The creation of a much-needed legal assistance program for victims of domestic violence and sexual assault
- Promoting supervised visitation programs for families experiencing violence
- Further protecting immigrants experiencing domestic violence, dating violence, sexual assault or stalking, by establishing U- and T-visas and by focusing on trafficking of persons

VAWA 2005 – Congress took a more holistic approach to addressing violence against women. In addition to enhancing criminal and civil justice and community-based responses to violence, VAWA 2005 created notable new focus areas such as:

- Containing provisions that exclusively serve to protect immigrant victims of domestic violence but also include immigration protections to alleviate violence against immigrant women that previous legislation had tried, but failed to alleviate
- Developing prevention strategies to stop violence before it starts

- Protecting individuals from unfair eviction due to their status as victims of domestic violence or stalking
- Creating the first federal funding stream to support rape crisis centers
- Developing culturally-and linguistically-specific services for communities
- Enhancing programs and services for victims with disabilities
- Broadening VAWA service provisions to include children and teenagers

CREATING POSITIVE CHANGE

VAWA's effectiveness is evident in the progress that has been made since implementation. We know that local, state, and national laws are changing; programs, businesses, and communities are responding to victims' needs; and studies show that rates of violence and reporting of crime are changing. Consider these highlights from 10 years of VAWA:

- States have passed more than 660 laws to combat domestic violence, dating violence, sexual assault and stalking. All states have passed laws making stalking a crime and changed laws that treated date or spousal rape as a lesser crime than stranger rape.
- Since 1996, the National Domestic Violence Hotline has answered over 2 million calls. The Hotline receives over 21,000 calls a month and provides access to translators in 170 languages.
- Businesses also have joined the national fight against violence. Hundreds of companies, led by the model programs established by Altria, Polaroid, Liz Claiborne, The Body Shop, Aetna and DuPont, have created Employee Assistance Programs that help victims of domestic violence.
- More victims are reporting violence: among victims of violence by an intimate partner, the percentage of women who reported the crime was greater in 1998 (59%) than in 1993 (48%).

**Recommendation of the
Fifth National Conference of Women in Police held at
Thrissur on 25-27, July, 2012**

*“Every crime has a social reason and a social impact
Development therefore will prevent and help in dealing with crime.
It is here that the role of police and the role of women police
become very important....”*

□□□□ □ □□□□□□□

- . Creation of Women and Child Desk in each Police Station to attend to Women and Child complainants.
2. MHA (Ministry of Home Affairs) funded pilot projects pertaining to social development activities carried out by women police may be taken up in each state.
3. A Central Committee in BPR&D may be set up, comprising of a serving police officer (nodal officer) and Senior retired Women Police Officers to:
 - Monitor action taken on various recommendations of the NCWP.
 - Formulate a National Policy on Women in Police, taking best practice examples from other countries also, including flexible and lateral movement to accommodate life cycle.
 - Conduct focused research on best practices within the country and across the globe impacting the performance of women in policing.
4. A Nodal Officer may be appointed with in each State/organization to coordinate with and assist the BPR&D Central Committee and to address issues related to women in police of the States/CPOs. All women in police may be made aware of their Nodal officer.
5. BPR&D may identify training seminars and opportunities abroad relevant to women in police and ensure adequate participation.
6. At least 4 women may be posted in each Police station in the country.
7. Open recruitment - All posts to be meant equally for men and women with physical standards differentiated as per recruitment rules.
8. Open structure for Promotion at every rank with seniority cum merit and not gender based criteria for promotions.

9. Gendersensitization programmes should be conducted for both men and women in police periodically and continuously.
10. Plan funds or Modernisation grants may be allocated for development of infrastructure for women in police and for Capacity building of Women in Police (Gender Flagship Programme of Kerala).
11. All Police tasks with public interface may be allotted in equal proportions to women in police and adequate training may be provided for them.
12. Monitoring of enquiries under Vishakha Guidelines to ensure time-bound and effective action.

INSTRUCTIONS TO CONTRIBUTORS

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The journal welcomes contributions in respect of theoretical and practitioner perspectives, empirical studies, critiques, brief write ups in respect of recent good practices in Democratic Policing, comparative studies, book reviews, cartoons, etc; that is of relevance to the policing world in developing and transitional societies. The journal particularly encourages contributions, in respect of current policing innovations, backed by rigorous quantitative analysis. Argumentative essays dwelling on the core thoughts in Police sciences are also welcome. The journal also publishes news of advances in democratic policing in Police forces across the world. Academic articles/ essays should ideally not exceed 6500 words, and practitioner notes should not exceed 1500 words. Contributors are also requested to include an abstract of 100 words, as well as a brief biography of not more than 50 words. Submissions may be made electronically to janamaithri.pol@kerala.gov.in, or janamaithri.journal@gmail.com or by regular mail to the Editors, *'Janamaithri' - A Journal of Democratic Policing*, Community Policing Research Centre, Police Headquarters, Thiruvananthapuram, Kerala, India- 695003.

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