

10 or 15 years at one stretch it will save the believed families of road accident. Due to lack of insurance policy and poor financial position of the owner of the vehicle, the family members of the person who met with accident will not get full compensation. The Legislature has to make suitable laws and amend the Act to provide long term vehicle insurance policies.

- (5) The long delays in settling accident claim by the Motor Accident Claims Tribunal is to be curtailed. As observed by Hon'ble Supreme Court the delay in disposal of compensation case is causing peculiar problems to victims and they are forced to take up a profession unknown to them.
- (6) The time limit should be maximum of 6 months and Court shall empowered to grant some advance relief in case of necessities like marriage and sickness of the dependents to be considered and advance amount of 50 percent to be granted by the Court.
- (7) The Government should consider for creation of accident relief fund placed at the disposal of the District Collector to give immediate relief to the dependants of the deceased on the

spot. The Insurance Company can appropriate the same by way of returning back to Government by the Insurance Companies after settlement by the Claims Tribunal. When there is no insurance to the vehicle the same may be recovered from the concerned owner of the vehicle.

- (8) The police should follow the Motor Vehicle Act strictly and send up report to Motor Accident Claims Tribunal and to the Insurance Company within 30 days as required under the Act.
- (9) We could ensure accident free society by amending laws suitably and by bringing awareness among the public.
- (10) Deterrent punishments are to be imposed on the erring drivers in each case.

This Author had an occasion to interact with the Officers of United Insurance Company Ltd., National Insurance Company Ltd., *etc.*, regarding speedy disposal of claims. All of them in one voice agreed that there is an imperative need for speedy disposal and agreed to extend their co-operation for speedy disposal

The writer wishes to see accident free India by 2020.

SEXUAL VIOLENCE AGAINST WOMEN-ISSUES AND CHALLENGES

By

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Law is response to social problems.....

Sunday the 16th December, 2012... savage acts by six desperadoes who committed the sexual assault on the 23 year old paramedical student in a moving bus shook the nation

as never before. The incident happened at the heart of the nation, the national capital. It hit the heart of the nation. Heart pumps blood to all the cells in the body. The incident at the heart of the nation shook all the parts of the nation. The incident hit the

nerve center of the nation. It made elite and every one to think about the brutal incident. The incident affected the muscle power of the nation. The youth united and raised their voice. The men and women, boys and girls united for the cause and expressed solidarity for the common cause with a view to protect the future generations. The incident affected the mankind. It happened in high security national capital of a nation which consists of 121 crores of people-consisting of 1/7th of the world population. The incident rocked the largest democracy which professes the separation of powers. The incident shows that happening of such an abhorring crime at the capital shows that women and girls at the nook and corner and the rural folk and the tribal girls are not safe and that they are vulnerable. The incident made every parent to think of their daughter and every brother to think of his sister.

It is not that sexual offences have suddenly raised their head. Sexual offences are happening at every nook and corner of the nation with regular periodicity. Many such ghastly incidents have happened at many places. Many of them went unreported. Many of them remained unresolved or undetected. It is necessary to appraise the situation and to discuss the ways and means to prevent such offences and to make India a safe place for the young girls and women.

Such incidents are happening due to a number of reasons. They are happening due to the weakness or wickedness of the human mind. The incident happened in the year in which the 100 years of 'Jana gana mana' had been celebrated. It is necessary to consider the socio-economic factors and socio-legal frame work. The incident shook the collective conscience of the nation. It is necessary to make collective efforts to quell the recurrence of such incidents.

The sexual offences against the women have been happening prior to independence and after independence. There is increasing

incidence of offences of sexual assault and exploitation of women. The Society has been responding. The people have been responding in their own ways.

The recent incident of gang rape on December 16th in a moving bus of a physiotherapy student in the National Capital Territory of New Delhi shook the collective conscience of the people. The happening of the incident at the heart of the national capital city made everyone to lay their arms on their hearts. The students and youth have reacted spontaneously. The Legislature, the executive and the judiciary are also thinking of eradicating such evils. The Judicial Officers are also not aloof and they are also searching for solutions for curbing this menace.

The Indian Constitution has objective of securing to every citizen the justice, liberty, equality and fraternity. The Constitution aims at providing social justice, economic justice and political justice. It aims at promoting fraternity among the citizens, by assuring the dignity of individual and unity and integrity of the nation. *Mahatma Gandhi* described "In the India of My Dreams", that he thinks of an India in which the poorest shall feel that it is their country, in whose making they have an effective voice, in India in which all communities shall live in perfect harmony. This incident makes every one to recall the vision of *Pandit Jawaharlal Nebru* on the eve of attaining independence to think of evolving a system which suits the nation.

The incident shook the nation in such a manner that it made every right thinking citizen to condemn the incident with disbelief and dismay. It is unfortunate that the incident happened on the year in which the national anthem turned hundred years in the biggest democracy with a population of 121 crores.

In *Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632, popularly known as auto *Shankar* case, the Supreme Court has expressed that right to privacy or right to be left alone is

guaranteed by Article 21 of the Constitution. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among others. None can publish anything in the above matters without his/her consent whether truthful or otherwise and whether laudatory or critical.

In *State of Punjab v. Gurmit Singh and others*, AIR 1996 SC 1393, their lordships of the Supreme Court held that the expression that the inquiry into and trial of rape case “shall be conducted in camera” as occurring in sub-section (2) of Section 327 Cr.P.C., is not only significant but very important. It casts a duty on the Court to conduct the trial of rape cases *etc.*, invariably, “in camera”. The Courts are obliged to act in furtherance of the intention expressed by the Legislatures and not to ignore its mandate and must invariably take recourse to the provisions of Section 327(2) and (3) Cr.P.C. and hold the trial of rape cases ‘in camera’.

Such incidents in moving buses and moving trains *etc.*, have been happening. In *Delhi Domestic Working Women Forum v. Union of India*, (1995) 1 SCC 14, the petitioner’s Women’s Forum through public interest litigation brought attention to the pathetic condition of four domestic women servants who were raped by seven army personnel in a running train while traveling by Nuri Express from Ranchi to Delhi. The victims were helpless tribal woman belonging to the State of Bihar. Notwithstanding the occurrence of such barbaric assault on the person and dignity of woman neither the Central Government, nor State Government, has proposed any measures. Such incidents have a need for rehabilitation and Court expressed concern, in that case, about the increase of crimes against women in recent times and suggested that the defects in criminal laws be removed soon. The Court observed as follows : “the defects in the present system are firstly, complaints are handled routinely and not even such attention

as is warranted is being paid. The victims more often than not are humiliated by the police. The victims have invariably found rape trials a bad experience. The matters of giving evidence in Court have been negative and destructive. The victims often so, consider the ordeal to be even worse than the rape itself. Unfortunately the Court proceedings prolong psychological stress they had to suffer as a result of the rape itself.” The Court laid down the following guidelines for trial of rape cases.

(1) The complaints of sexual assault cases should be provided with the legal representation. It is important to have someone who is well-acquainted with criminal justice system. The role of the victim’s advocate would not only have to explain her the nature of proceedings, to prepare her for the case and to assist her in the police station and in Court but also to provide her with a guidance as to how she might obtain help of different nature from other agencies for example, mind counseling or medical assistance. It is important to secure continuity of the assistance by ensuring that the same person who looked after the complainant’s interest in the police station represent her till the end of the case.

(2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned will be of a great assistance to her.

(3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report shall state that the victim was so informed.

(4) The list of advocates willing to act in these cases should be kept at the police station for victims who do not have a particular lawyer in mind or whose own lawyer was unavailable.

(5) The advocates shall be appointed by the Court, upon application by the police at the earliest convenient movement, but in order to ensure that the victims were questioned without undue delay. The advocates would be authorized to act at the police station before leave of the Court was so sought or obtained.

(6) In all rape trials anonymity of the victim must be maintained as far as necessary.

(7) It is necessary having regard to the Directive Principles contained under Article 38(1) of the Constitution, to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment.

(8) 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 the loss of earnings due to the pregnancy and expenses of child birth if this occurred as a result of rape.

(9) The National Commission for Women shall perform the following functions :

- (a) Investigate and examine all matters relating to the safeguards provided for women under Constitution and other laws.
- (b) Call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal. Union of India shall examine and take necessary steps to implement them at the earliest.
- (c) In *Chairman Railway Board v. Chandrima Dass*, AIR 2000 SC 988, the Hon'ble Supreme Court has held that where a Bangladesh woman has been gang

raped in Yatri Nivas of Howrah Station, compensation can be granted under public law for violation of fundamental rights on the grounds of domestic jurisdiction based on constitutional provisions and human rights jurisprudence. Rs.10,00,000/- compensation was given. In *Bodisatwa Goutam v. Subra Chakrobarati*, (1996) 1 SCC 490, the Supreme Court awarded an interim compensation of Rs.1,000/- p.m., to the victim of rape till her charges of rape are decided by the trial Court.

In *Vishaka and others v. Rajasthan and others*, (1997) 6 SCC 241, their Lordships of the Supreme Court headed by the then Chief Justice of India J.S. Verma has observed that in the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender, equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and safeguards against sexual harassment implicit therein.

Their Lordships of the Supreme Court considered that in the Beijing Statement of Principles of Independence of the judiciary in the LAWASIA region the role of judiciary was envisaged. These principles were accepted by the Chief Justices of the Asia and Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary in the Beijing Statement are :

Objectives of the Judiciary :

- (a) to ensure that all persons are able to live securely under the rule of law;
- (b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and

- (c) to administer the law impartially among persons and between persons and the State.

In *Medha Kotwal Lele and others v. Union of India and others*, their Lordships of Supreme Court held in a judgment delivered on October 19th, 2012, that the Protection of Women against Sexual Harassment Bill, 2010 is still pending in Parliament though Lok Sabha is said to have passed that bill in first week of September, 2012. The belief of the constitution framers in fairness and justice for women is yet to be Andhra Pradesh, amendments in the Civil Services Conduct Rules and in the Standing Orders have been made. Their Lordships further observed that the implementation of the guidelines in Vishaka has to be not only in form but substance and spirit so as to make available safe and secure environment to women in every aspect and thereby enabling the working women to work with dignity, decency and due respect. As a largest democracy in the world, we have to combat violence against women. Their Lordships gave further directions in addition to the guidelines issued in Vishaka.

In the light of the abhorring incident of gang rape in Delhi, there are vociferous demands for including death penalty, castration, chemical castration, immolation *etc.*, as punishments from the public. In this regard, we have to consider that Article 51 of the Constitution provides for promotion of international peace and security. Clause (c) of it says that the State shall endeavour to foster respect for international law and treaty obligations in dealings of organized people with one another. India has been respected globally. Indian democracy is marching with the track record of respecting human rights. Article 1 of the Universal Declaration of Human Rights says that all the human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of

brotherhood. Article 5 says that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The Convention on the Elimination of all Forms of Discrimination against Women notes that everyone is entitled to all the rights and freedoms set forth in Universal Declaration of Human Rights without distinction based on sex. Article 7 of International Covenant on Civil and Political Rights, 1966 says that no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. Article 1 of Convention against Torture and other Cruel and Inhuman, Degrading Treatment or Punishment which came into force on 26th June, 1987 defines that torture means an act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or third person information or a confession or for punishing him for an act, he or third person has committed or is suspected of having committed, or intimidating a person or a third person or for any reason based on any discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in a official capacity. It does not include pain or suffering arising only from inherent in sanctions or incidental to lawful sanctions.

Article 6 of the Convention on the Elimination of all forms of Discrimination against Women says that states, parties shall take appropriate measures including legislations to suppress all forms of traffic in women and exploitation or the prostitution of women.

Article 11 provides for right to work for women as an inalienable right of all human beings. It also provides for employment opportunities, free choice of profession and employment, right to social security, right to protection of health and safety *etc.*

Before amendment of law the prevailing law has to be examined. In *Pandurang v.*

State of Hyderabad, AIR 1955 SC 216, an incident of murder occurred at 3.00 p.m. The report reached next day at 10.00 a.m. The haphazard way in which the report was written and dispatched, without the name of the accused, would indicate rustic simplicity rather than clever and well planned deceit. In *Ajay Parida v. State of West Bengal*, 2009 (3) ALT (Crl.) 21, six days delay in lodging FIR in a case of rape was considered as sufficiently explained and case of the prosecution is not affected on the ground of delay. It is well settled that in trail of sexual offences, the corroboration to the evidence of prosecutrix is not mandatory. If her evidence inspires confidence it can be relied upon.

It is open to the Courts dealing with sexual offences which involve multiple offences to order that sentences run consecutively. Normally the consecutive running of sentences is the norm. But in practice the Courts are ordering that sentences shall run concurrently. This aspect has to be re-examined. The rape is considered as a psycho-pathological phenomenon. It is a culturally deviant behaviour in our society. Policing cannot change a culture that produces and legitimizes violence against women. Improving policing is likely to mitigate the problem. More officers, particularly women police officers on the streets will deter street sexual harassment. Capacity building for Investigation Officers and Prosecuting Officer will lead to more effective prosecution, punishment of perpetrators. The primary socialization of children takes place within the family. Respect for girls has to be inculcated in schools. This has to be nurtured in educational institutions. The print media, the knowledge media, authors of literature and novels, electronic media and films have to consider the overall impact they are going to make on young minds. They have to remember that what they are going to print or propagate is going to affect the posterity as well. The

Government and its institutions shall also consider that India is a changing society. The change and continuity would coexist. The change has to be for the better. The Legislature, the executive, the judiciary and the press, the leaders, the celebrities, the film directors all have a role to play in mitigating the problem and curbing the menace. The long term solutions with measured and mature response have to be evolved.

In view of the socio-legal aspects the following measures can be considered. Such incidents may happen anywhere at any time. With regard to institutional frame work and criminal justice system, the proposals for changes have to be considered. First of all it has to be conceded that the existing provisions in the I.P.C., Cr.P.C., and Evidence Act are by and large time tested. There are adequate provisions in these acts to deal with such instances. However, it would be better if separate section is included with regard to gang rape and punishment provided for it. Though the statements recorded by the police of the victim and witnesses have no evidential value except for contradicting the witness with regard to what the witness deposed before the Court and the statements they made before the police at the earliest and with regard to developments, omissions, providing the copies of statements made by the witnesses in rape cases, would not be improper as they act as memorandum of record for them as the human memory fades due to lapse of time. In view of the deviant behaviour of children/juveniles with regard to commission of rape or sexual assault, the age of the juveniles or children shall be considered as sixteen instead of eighteen as an exception. This is because that a rape is going to make the victim to suffer lifetime trauma. It dehumanizes an individual and injures her soul.

Awarding death penalty may be considered in cases involving gang rapes, rape and murders, dacoity and murders with

discretion to award life imprisonment. It shall not be forgotten that the witnesses may show undue and unwarranted sympathy if death penalty alone is prescribed. Castration, chemical castration, *etc.*, are not only against the nature and against the human rights but they are contrary to international covenants and treaty obligations.

With regard to criminal justice system, it includes the role of the police, the prosecuting agency, the Courts and correctional services. The following measures can be considered :

- (1) The Investigation of sexual offences particularly rape cases have to be done by the well trained senior police officers.
- (2) Special investigation teams have to be formed with regard to investigation of complicated or mysterious cases.
- (3) Well trained women police officers shall be entrusted with the investigation of such offences, which involve sensitive issues of women.
- (4) Mobile teams have to be formed for coordinating with the local police officer for giving logistic support and systematic and specialized investigation, with distinct name such as 'Sakthi Rath'.
- (5) There are clues teams in every district. Generally they are being involved in solving the property offences such as robberies, house-breakings and thefts, murders *etc.* Involving them for collection of material evidence or physical evidence may be yield better results.

Involving them for collection of material evidence or physical evidence may be yield better results.
- (6) The number of Courts shall be increased. This will ensure that the sexual offences can be decided faster.
- (7) Top priority shall be given for trial of offences of gang rapes, child sexual

abuses, rape of children, other rape cases, the offences of kidnap and rapes, the attempt to commit rape, outraging the modesty of women and insulting the modesty of women, in that order. This depends upon the experience of the Judicial Officers dealing with such cases.

- (8) Punishments shall be commensurate with the offences. Making the sentences to run consecutively shall be considered by the Judges.
- (9) Periodical training and sensitization programmes, seminars have to be conducted for Judges, Public Prosecutors and police officers.
- (10) Speedy justice shall be ensured without sacrificing fair trails.
- (11) Victim protection, victim compensation and rehabilitation have to be considered.
- (12) Where ever it becomes necessary to give protection to the victim after commission of the offence and till the trial concludes the same has to be provided by the State Government.
- (13) The victim may be in need of psychological support, financial support and medical support and where ever it becomes necessary to provide her psychological therapy, the may be provided.
- (14) The victim compensation schemes have to be evolved as provided under Section 357-A of Criminal Procedure Code.
- (15) The victims are becoming hostile. Poverty may be one of the causes. Interim compensation as suggested in *Bodisatwa Goutham v. Subra Chakravorthi*, may be provided on monthly basis to the victim till her charges of rape are decided by the trial Court considering the economic status of the victim.

- (16) Medical Assistance has to be provided if the victim suffers any injuries which require treatment.
- (17) Medical support and nutrition support has to be provided if the victim becomes pregnant in any such cases. The support from the ICDS may be provided in such cases.

Apart from all these aspects the cultural values, ethical values and social tolerance have to be inculcated by parents and educational institutions while rearing, teaching and nurturing children. Adults also have to relearn their values, opinions, behaviour *etc.* Working environment for the women shall be safe, secure and women friendly. It is the role of one and all. It is the role of society. The nation can be proud if it succeeds in minimizing, preventing and eradicating the sexual offences. All religions also profess that women have to be supported and respected. The spiritual teachings always say that it is the duty of the men to protect the women.

Law is a response to social problems.—

Man is a social animal. Social environment conditions man's conduct. Changes in the society influences man's behavior. Law alone cannot change the society. Man also changes society. Apart from social environment, the inner sphere of the man also moulds his

behaviour. His thought process also changes his behaviour. His thought process is influenced by his intellect. His intellect is also influenced by his mind. Mind is an eluding abstract. Mind moves like a quick silver. It flies like a bird. It swims like a fish. It drills like a rig. Taming the mind is a challenge. Those who be friends their mind can display exemplary conduct. Those who tame their mind can also influence others. They show the path to others. They can bring change in attitude of others. India is a land where taming the mind is practiced. Industrialization, westernization, urbanization and net-spread all affected Indian life. We shall not forget our core values. We have strong value system. We have to rediscover our value system. We have to examine whether we are drifting away from our value system. We have to redefine our value system. Man has to ponder whether he is progressing. He has to consider while progressing the beast in him is surfacing. He has to consider whether he is transcending or tumbling down. If he tumbles down, it leads to bestiality. If he transcends, it leads to divinity.

Author's note :—This Article was submitted during a workshop conducted by A.P. Judicial Academy, Hyderabad in MCR Institute of Human Resources Development held on 8.1.2013.

A BIRD'S EYE-VIEW OF CERTAIN DIRECTIONS LAID DOWN BY THE SUPREME COURT OF INDIA IN PARA 20, PAGES 144 AND 145 OF 2014 (2) ALD (CRL.) 190 (SC) = 2014 (3) ALT (CRL.) 129 (S.C)

By

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In the decision reported in 2014 (2) ALD (Crl.) 190 (SC) = 2014 (5) ALD 1 (SC) = 2014 (3) ALT (Crl.) 129 (S.C), the Supreme Court, after olding in Para No.19 in crystal clear terms "that the territorial jurisdiction is

restricted to the Court within whose local jurisdiction the offence was committed, which in the present context is where the cheque is dishonoured by the bank on which it is drawn," held in Para 20 as follows :