

OFFENCES AGAINST WOMEN AND CHILDREN AND
SENSITIZATION OF JUDGES
AND
PRECAUTIONS TO BE TAKEN BY THE MAGISTRATE WHILE
RECORDING THE STATEMENT OF VICTIM AND WITNESSES
UNDER SECTION 164 OF CR.P.C.

SUMMARY

The topic of the workshop is divided into two sub topics as quoted above. The topic No.1 is divided into the offences against women and children and sensitization of Judges in relations to that;

In the last 68 years of independence, if there is one concern, which has been the subject of much debate and has constantly encompassed the judicial mind is the rights of women and children in India. Counted together, they form more than the majority population and yet their voices and choices continue to be in minority. Their social and economic disadvantages further disable them to seek legal remedies. It is in this background that judiciary has exhibited extra precaution in deciding civil and criminal cases involving women and children. Time and again Hon'ble Apex Court and various Hon'ble High Courts have given a purposive interpretation to the legislations to undo age old inequalities and extend the benefits favorably. In spite of timely interference by legislature and judiciary, the equal status of women and children has not translated into actual reality. The vulnerable status of women and child is the only element, which has not witnessed radical change in this globalized and liberalized world. However, the eternal truth remains that no country can see the full swing of development both economic and social until their women and children prosper. Recent statistics of rape, child abuse, sexual

harassment, child marriages and female foeticide depict the grim reality, which prevails today. India is a diverse country with its multicultural, multi-ethnic and multi-religious population where the protection of human rights become sine qua non for peaceful existence. The legislators have defined Human Rights as “the rights relation to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India” under the Human Rights Act, 1993. The women and children are entitled to the same human rights as individuals. This was envisaged by our Constitution makers and the same has to be enforced by the judiciary. It is the duty of the Judges to read between the lines and enforce these rights for the betterment of the society. In order to achieve said goal, there is need for sensitizing judicial officers and upgrading their knowledge regarding recent amendments in laws relating to women and sexual abuse of children.

The Criminal Law [Amendment] Act, 2013 has been recently passed by Parliament on amending IPC, CrPC and the Indian Evidence Act to counter crimes against women. Certain acts of violence like Acid attacks, voyeurism, stalking have been made punishable. Further, rigorous imprisonment of minimum twenty years for gang rape has been prescribed. The amended law places additional duties on Magistrates to ensure fair and speedy disposal of crimes against women especially in heinous offences like rape. It may be appropriate to highlight some of these amended provisions.

Newly amended Section 164[SA] expects the Judicial Magistrate to

record the statement of the person accused in offences punishable under Sec. 354, 376 and 509 as soon as the commission of the offence is brought to the notice of the police. In Sec. 273 of Cr.P.C. a new proviso allows the Court to take appropriate measures to ensure that a woman below the age of 18 years is not confronted by the accused during cross-examination. Section 309[1] now mandates completion of inquiry or trial for rape within a period of two months from the date of filing of chargesheet as compared to earlier proviso which contemplated relevant date from commencement of examination of witnesses.

Since ancient period, in the Indian society there is a concept of joint family. It is supposed that the children and women are safe in the protection of the members of joint family. But, thereafter, it was found that in the family, the woman is not safe and therefore, unfortunately in the year 2005, the enactment, Protection of Women from Domestic Violence Act, 2005 is enacted.

On march 8, 2002 the Government of India through the Departmental of Women and Child and Ministry of Human Resource and Development introduced the Protection from Domestic Violence Bill, 2002 in the Lok Sabha. The women's groups throughout the country vehemently opposed the Bill. As a result of the mass protest, a Parliamentary Standing Committee was constituted in August, 2002 under the chairmanship of Shri. Arjun Singh. On December, 12, 2002, the said committee submitted its report to the Rajya Sabha and Lok Sabha. On February 5, 2004 the Lok Sabha was dissolved and the Bill met with an unnatural death. After United Progressive Alliance

Government took over in 2004, the Protection From Domestic Violence Bill, 2002 has been included in its Common Minimum Programme.

The World Conference of Human Rights at Vienna held on June 25, 1993 for the first time recognized the violations of women's human rights in many ways and held that they are inalienable, integral and indivisible part of the universal human rights and demanded equal status of women with men. It favoured eradication of all form of discrimination against women.

The Government of India being a signatory to the U.N. General Assembly Resolution to adopt the Declaration on the Elimination of Violence Against Women [December, 1993], the Ministry of Human Resource Development has brought out a bill on Protection from Domestic Violence Bill, 2001 [Bill No. 133 of 2002] which has been introduced in the Parliament in the budget Session of 2002.

The Constitution of India guarantees to all Indian women equality [Article 14], no discrimination by the State [Article 15[1]], equally of opportunity [Article 16] and equal pay for equal work [Article 39[d]]. In addition, it allows special provisions to be made by the State in favour of women and children [Article 15[3]], renounces practices derogatory of the dignity of women [Article 51[A] [e]] and also allows for provisions to be made by the State for securing just and humane conditions of work and for maternity relief, [Article 42].

In view of above constitutional provisions, women enjoy a

unique position socially and physically and are, therefore, treated differently by the criminal law. The Indian Penal Code, 1860, deals with various offences committed against the body, marriage, honour and modesty of women. “Woman” as per section 10 of the I.P.C. “Women” denotes any female human being of any age. At the very outset, let us see main offences against women and children. The following are the main offences committed against women.

- 1] Outraging the modesty of a woman [Sec. 354 of I.P.C.]
- 2] Insulting to modesty of a woman.
- 3] Rape [Sec. 376 of I.P.C.]
- 4] Offence under the Dowry Prohibition Act, 1961.
- 5] Dowry death [Sec. 304-B of I.P.C.]
- 6] Abettment of suicide of a married woman
- 7] Bigamy [Sec. 394 of the I.P.C.]
- 8] Causing miscarriage [Sec. 312 of the I.P.C.]
- 9] Causing miscarriage without woman's consent [Sec. 313 of I.P.C.]
- 10] Death of woman caused by act done to cause miscarriage without the woman's consent [Sec. 314 of the I.P.C.]
- 11] Preventing a child from being born alive or to cause its death after birth [Sec. 315 of the I.P.C.]
- 12] Kidnapping, abducting or inducing a woman to compel her marriage [Sec. 366 of the I.P.C.]
- 13] Procurement of minor girl [Sec. 366-A of the I.P.C.]
- 14] Importation of girl from foreign country [Sec. 366 of the I.P.C.]
- 15] Selling a minor for purpose of prostitution [Sec. 372 of the I.P.C.]

- 16] Buying a minor for purpose of prostitution [Sec. 373 of I.P.C.]
- 17] Cohabitation by deceitful means by making a woman believe that she is lawfully wedded to him. [Sec. 493 of the I.P.C.]
- 18] Marriage ceremony fraudulently gone through without lawful marriage [Sec. 496 of the I.P.C.]
- 19] Adultery [Sec. 497 of the I.P.C.]
- 20] Enticing or taking away or detaining with criminal intent a married woman [Sec. 498 of the I.P.C.]
- 21] Cruelty by husband or relative of husband [Sec. 498-A of the I.P.C.]
- 22] Insulting the modesty of a woman by any word gesture of act [Sec. 509 of the I.P.C.]

Sexual harassment is a harsh reality faced by women across the world. However, women are not safe in their workplace also even they have fundamental right to safe a workplace. Following are the sexual harassment at the workplace;

- 1] Physical contact and advances.
- 2] Demand or request for sexual favours.
- 3] Sexually coloured remarks.
- 4] Display of pornography.
- 5] Any other unwelcome physically, verbal or non-verbal conduct of a sexual nature.
- 6] Remarks are made about women's personal appearance and dress.

Apart this, women are facing domestic violence within the four walls of their houses.

By Act 13 of 73 with effect from 03.02.2013, the provision is amended by inserting the provisions under Sec. 354-A, 354-B, 354-C and 354-D. For the offences punishable under Sec. 354-A, sexual harassment, punishment is provided up to 3 years or with fine or with both.

A man committing any of the following acts, A] physical contact and advances involving unwelcome and explicit sexual outrages or a demand or request for sexual favours or showing sexually coloured remarks shall be guilty of the offence of sexual harassment.

Under Sec. 354-B, an assault or use of criminal force to woman with intent to disrobe is made punishable. Under Sec. 354-C, it is provided that any man who watches or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years and shall also be liable to fine and be punished on a second or subsequent conviction with imprisonment of either description for a term which shall not be less than three years but, which may extend to seven years and shall also be liable to fine.

What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this section is an attribute associated with female human beings as a class. It is virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman and knowledge that modesty is likely to be outraged is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. As indicated above, the word 'modesty' is not defined in I.P.C. [**Raju Pandurang Mahale V. State of Maharashtra, A.I.R. 2004 SC 1677**].

Irrespective of strong efforts made by the legislation – that in Indian Society, the women have been placed at various disadvantageous position. It happens due to gender discrimination and bias. Women have been victims of violence and exploitation. India being a tradition bound society. Women have been socially, Economically, physically, psychologically and sexually exploited for centuries. The concept like sex equality, women's empowerment etc., have come out of the constitutional provisions after the Constitution of India came into force on 26th January, 1950. However, it is a time to study whether the equality of status guaranteed by the Constitution is achieved?

In case of **Bodhisattwa Gautam Vs. Subhra Chakraborty,** [**1996 [1] SCC 1901**], the Hon'ble Supreme Court observed as follows;

“ Unfortunately, a woman, in our country, belongs to a class of group of society who are in a disadvantaged position on account of several social barriers and impediments and have, therefore, been the victim of tyranny at the hands of men with whom they, fortunately, under the Constitution enjoy equal rights. Women also have the right to life and liberty; they also have the right to be respected and treated as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life. Women, in them, have many personalities combined. They are mother, daughter, sister and wife and not playthings for centre spreads in various magazines, periodicals or newspapers nor can they be exploited for obscene purposes. They must have the liberty, the freedom and of course, independence to live the roles assigned to them by Nature so that the society may flourish as they alone have the talents and that the society may flourish as they alone have the talents and capacity to shape destiny and character of men anywhere and in every part of the world.”

So far as sensitization of the Judges is concerned, one of the following Judgments of the Hon'ble Supreme Court highlights this aspect. **State of Punjab Vs. Gurmit Singh, 1996 [2] SCC 384**, the Hon'ble Supreme Court observed as under;

“Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must

remember that a rapist not only violates the victim's privacy and personal integrity but inevitably cause serious psychological as well as physical harm in the process. Rape is not merely a physical assault it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity.”

Our country has noticed a serious growth in the offences against women and children. Infamous “Nirbhaya” and “Nithari” serial murder case, coincidentally occurred in the capital city of Delhi, had rattled the conscience of entire nation because of the brutality exhibited by the perpetrators of crime. Then there came to light increasing dowry deaths and acid attacks on young girls. Feeling the concern for lessor protected class of women and children the legislature came under tremendous compulsion to make the existing offences effective and legislate new enactments like Domestic violence Act, Immoral Trafficking [Prevention] Act, The Protection Of Child From Sexual Offences Act, 2012, Prohibition of Dowry Act, etc.,. All these legislations are different than the regular penal legislations brought into force with special intentions to give relief to the women and children victims.

A Judge who deals with these categories of offences is a very important component of the system. Often there are instances coming to fore where he is found lacking sensitivity during the trial or pre-trial stages when came across the survivors of the heinous crimes against

them. Perhaps he must be governing himself by the cardinal principle of adjudicating a trial that he must not be swayed with emotions and has to play a neutral part. Therefore, while such deciding the cases he needs to change mind set about the penal legislations and shall act in a proactive manner while deciding cases and appreciating the evidence. Time and again the Hon'ble Supreme Court has expressed its concern on this aspect in a number of cases.

In **State of Rajasthan Vs. Om Prakash, AIR 2002 SC 2235**, while approving the view taken by the trial court and reversing the judgment in appeal, the Hon'ble Apex Court observed that;

“It is necessary for the courts to have a sensitive approach when dealing with cases of child rape. The effect of such a crime on the mind of the child is likely to be lifelong. A special safeguard has been provided for children in the Constitution of India in Article 39 which, inter alia stipulates that the State shall in particular, direct its policy towards securing that the tender age of the children is not abused and the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that the childhood and youth are protected against exploitation and against moral and material abandonment. It is necessary for the Courts to have a sensitive approach when dealing with cases of child rape. The effect of such a crime on the mind of the child is likely to be lifelong.”

The Court further observed that “The cases involving sexual molestation and assault require a different approach a sensitive approach and not an approach which a Court may adopt in dealing

with a normal offence under penal laws. Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of the sexual pleasure. There cannot be anything more obscene than this. It is a crime against humanity. Many such cases are not even brought to light because of social stigma attached thereto. According to some surveys, there has been steep rise in the child rape cases. Children need special care and protection. In such cases, responsibility on the shoulders of the Courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection. Children are the natural resource of our country. They are country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable position and one of the modes of her exploitation is rape besides other modes of sexual abuse. These factors point towards a different approach required to be adopted.”

In **Sakshi Vs. Union of India, AIR 2004 SC 3566**, Hon'ble Court gave the following directions for holding the trial of child sex abuse or rape;

[I] A screen or scene such arrangement may be made where the victim or witnesses [who may be equally vulnerable like the victim] do not see the body or face of the accused.

[ii] The questions put in cross examination on behalf of the accused, in so far as they relate directly to the incident should be given in writing to the Presiding Officer or the Court who may put them to the victim or witnesses in a language which is clear and it not

embarrassing.

[iii] The victim of child abuse or rape, while giving testimony in Court should be allowed sufficient brakes as and when required.

In case of **Dinesh @ Buddha Vs. State of Rajasthan, 2006 AIR [SC]1267**, Hon'ble Supreme Court has dealt with the issue of child sexual abuse, a more grave form of offence. It observed: “....6. Sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity it degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more idelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society.

In **Vijay @ Chinee Vs. State of M.P., 2010 [8] SCC 191**, relying on its earlier judgment in case of State of Punjab V. Gurmit Singh and Ors., AIR 1996 SC 1393 it has been observed by Hon'ble Supreme Court that “In cases involving sexual harassment, molestation etc., the Court is duty bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any

corroboration unless there are compelling reasons for seeking corroboration. The Court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice.

In **Narender Kumar Vs. State [NCT of Delhi] 2012 [4]SCC 59**, it has been observed by Hon'ble Supreme Court that “ The Courts while trying an accused on the charge of rape, must deal with the case with utmost sensitivity, examining the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the evidence of witnesses which are not of a substantial character. The Court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in the isolation. Even if the prosecutrix is of easy virtue/unchaste woman that itself cannot be a determinative factor and the Court is required to adjudicate whether the accused committed rape on the victim on the occasion complained of.”

In **Pushpanjali Sahu Vs. State of Orissa & Anr, 2012 [9] Scale 441**, the Hon'ble Apex Court has explained the trauma of sexual violence on the women as below;

“before parting, we wish to reflect upon the dehumanizing act of physical violence on women escalating in the society. Sexual violence is not only an unlawful invasion of the right of privacy and sanctity of a woman but also a serious blow to her honour. It leaves a traumatic and humiliating impression on her conscience offending her

self esteem and dignity. This Court in State of H.P. V. Shree Kant Shekari, [2004] 8 SCC, 153 has viewed rape as not only a crime against the person of a woman, but a crime against the entire society. It indeibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. It destroys, as noted by this Court in Bodhisattwa Gautam V, Subhra Chakraborty,[1996] I SCC, 490, the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights and is also violative of the victim's most cherished of the fundamental rights, namely, the right to life contained in Article 21 of the Constitution. The Courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely.”