

CHAPTER - VI

ROLE OF POLICE AND PROTECTION OF WOMEN RIGHTS

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CHAPTER - VI

ROLE OF POLICE AND PROTECTION OF WOMEN RIGHTS

“O Lord why have you not given women the right to conquer her destiny does she have to wait head bowed, by the roadside, waiting with tired patience, hoping for a miracle in the morrow?”

Rabindranath Tagore

Police are an integral and important component of criminal justice administration. They constitute the first line of integral defence and their functions are no less important and onerous than those relating to protection of the country from external aggression. They are the most visible organization vested with enormous powers and responsibilities with regard to prevention and control of crime and other allied problems of internal law and order situation. It is the primary Constitutional force of the state for protecting and upholding the Constitution of the country and for protecting the individuals in the exercise of their Fundamental, legal and economic rights. As a premier law enforcement agency the Police has a big role to play in ensuring order and peace. The role of the Police has acquired new dimensions and purpose after independence and with the advent of democratic governance in the country. It no longer limited to the role envisaged by the Police Act 1861. The socio economic and political changes during the last five decades following independence, have generated new pressures and tensions in the society. The growing restiveness of erst while submissive groups in creating new situations and problems for the police to handle. Many methods and techniques which were adequate yesterday are absolute today. The police therefore, face problems of varied kind, which need to be comprehensively addressed.

(A) HISTORY AND DEVELOPMENT OF POLICE

Whilst the history of policing in India dates back to ancient times the Police system, in the sense we understand it today, is essentially a system designed by *Britishers*. The system was evolved from the ruins of the old *Mughal* system of policing that existed until East India Company acquired rights of *Diwani* in *Bengal* (including present *West Bengal*, *Orissa*, *Bihar* and present *Bangladesh*). Then they started making changes in the police system prevailing in the country. Initially police

functions were also entrusted to revenue functionaries. Later on in 1808, separate police functionary with the designation of Superintendent of Police was appointed for *Calcutta*. Thereafter, this system was extended to other territories acquired by East India Company and subsequently by the *British Crown*. Three important settlements of East India Company, *Calcutta*, *Madras* and *Bombay*, were first subjected to *Anglo-Saxon* law and to a system of policing that Britishers thought would serve their interests well.

The Indian Police System and its structure, as presently organized is essentially based on 140 years old the Police Act of 1861. Before that the Britishers had accepted the then existing system of policing which had its roots in the criminal justice system as prevalent in the ancient and medieval times. In 1770, the Britishers initiated measures for the creation of a police system to hold effective control over the Indians for the continuance of their domination. The system first began in Presidency towns of Bombay, Madras and Calcutta. Various police regulations came into existence in the years 1782, 1792 and 1816. *Sir Charles Napier* established the police system in the *Sindh* province in 1843. The pattern of *Sindh* policing was followed in Bombay in the year 1847 on the initiative of the then Governor of Bombay, *Sir John Clark*. This system continued until 1855, when the Police Commissioner system was introduced. The first Police Commission was constituted in the year 1860 under the chairmanship of Mr. M.H. Court. This Commission made wide ranging recommendations for the recognition of Police, which among other things included the separation of "Army and Police" and "Police and Judiciary"; and the creation of the Post of Inspector General of Police as the head of the State Police. On the basis of the Commission's recommendations the Governor General promulgated the Indian Police Act of 1861 on March 22.

(i) Beginnings of Policing in West Bengal

Policing, in some form or other, has been existent in India since time immemorial. Before the advent of the British rule, one can discern two distinct police-systems in Bengal¹ - a rural village based system and an urban town based one. In the former, responsibilities for policing rested upon the *Zamindar* who was assisted by

¹ The term "Bengal" does not signify historically West Bengal, as it stands today. Bengal was a larger province during the British regime, comprising of an area of about 248,31 sq. miles and a population of about 66,856, 589. The province of Bengal comprised of five distinct units, namely, Bengal proper, Bihar, Orissa, Chota Nagpur and Assam.

the village headman and one or two watchmen. The latter were the real executive police. The village headman looked after the village security and prevention and detection of crime. He was also responsible for the detection and capture of local villagers who committed crimes in other areas. The duties of the watchman included finding out arrivals and departures of people, observing behaviour of strangers, reporting all suspicious persons to the headman. It was also his duty to detect thieves and recover stolen properties. In case of failure, he was compelled to make good the loss, so far as his means permitted, and the remainder was levied on the whole village.²

The cities and towns had a more elaborate police system. The Administration was entrusted to an officer called the '*Kotwal*'. The *Kotwal* was to raise and maintain a police force, to exercise surveillance over visitors, spies and migrants, to arrest criminals, to keep the prisons etc. He was the unclaimed ruler of many towns.³

Districts were divided into several parts and over each a police official, known as *Daroga*, was placed. The charge of a *Daroga* constituted, on an average, about 20 square miles; he had under him 20 to 50 armed 'burkandazes'; all the watchmen of the village were subject to his orders. He was, in turn, accountable to the District Judge.⁴ In cities, the office of *Kotwal* was continued as before.

The *Daroga* system did not live up to the expectations. Crimes continued to mount and social conditions worsened. In 1814, the Company ordered that the *Daroga* and his force were to be disbanded; that supervisory power over village police was to be exercised by the collector, the chief executive officer of the district belonging to the revenue service. This was implemented in Madras and Bombay. In Bengal, however, owing to the "Permanent Settlement" introduction by Lord Cornwallis, the collector had no subordinate revenue establishment by means of which he could supervise the village police. He had, therefore, no recourse, but to work through the *Daroga*. The *Daroga* system was thus retained in Bengal as a matter of necessity.

The crime situation of Bengal reportedly did not show any substantial improvement. Crimes, especially *Dacoity*, continued unabated. The task of improving

² David H. Bayley, *The Police and Political Development in India*, Princeton University Press, (1969) 36-37.

³ *Ibid.*

⁴ See, Report of the Indian Police Commission, 1902-03, 11.

the police administration in Bengal was once again taken up by Sir J.P. Grant, the then Member of the Gov- General's Council. He wrote,⁵ No one denies that police affairs in Bengal will continue amiss, till an adequate constabulary force and trusty native official... are provided for it...". Thereafter, in 1855, the first Lieutenant- Governor, Sir F. Halliday, put forward some proposals which, of course, did not bear fruit. However, his efforts resulted in the passing of the Chaukidari Act, 1856.8.

Ultimately, it was the *Sepoy Mutiny* of 1857 which woke the British from deep slumber and made them realize the urgency of organising the entire police system on definite lines to suppress uprisings and rebellions in future. Thus, was born the Police Commission of 1860, which ultimately culminated into the enactment of the Police Act, 1861.

(ii) Organization and Structure of West Bengal Police

The West Bengal Police force⁶ is classified horizontally and stratified vertically. A firm division exists between the two categories of the police- armed and unarmed. The unarmed branch or civil constabulary staffs the police stations and departments of criminal investigation. They are uniformed, but unarmed. They are the people with whom the public have contact in the usual course of business. The armed police live in cantonments concentrated at a few points in the state. They are kept as a reserve to be utilized as striking force in situations of difficulty e.g. quelling public disturbances. In West Bengal, there are three categories of armed Police- the District Armed Police (DAP), the State Armed Police (SAP) and the Eastern Frontier Rifles. Table I shows the strength of Armed and Civil Police in the State of West Bengal.

Table I

Strength of Police

Police	civil		Armed		Total		Vacancy
	Sanctioned	Actual	Sanctioned	Actual	Sanctioned	Actual	
Men & Women	38455	35811	25239	24069	63694	59880	-3814
	748	699	-		748	699	-49

Source: State Crime Records Bureau (SCRB), West Bengal.

⁵ Banerjee Sarmila, *Studies in Administrative History of Bengal 1880-1898*, Rajesh Publications, (1978) 186.

⁶ The term "West Bengal Police Force" does not include the Calcutta Police. The latter has a separate Commissionerate System governed by the provisions of the Calcutta Police Act and the Calcutta Suburban Police Act and Police Regulations, Calcutta.

The Police force is organised in a hierarchical structure. At the top is the Director- General and Inspector General of Police (one post)⁷. There are three more posts of equivalent rank, viz. DG (Training), DG (Intelligence Bureau) and DG (Home Guards), followed by the Additional Director- General (16 posts) and Inspector- General of Police (24 posts). Down below, are the posts of Deputy Inspector General, Superintendent of Police, Additional Superintendent of Police, Deputy Superintendent of Police and Assistant Superintendent of Police in the superior ranks. The full rank structure is shown in Table II below.

Table II
Hierarchical Structure of Police

<i>Sl. No.</i>	<i>Rank</i>
1	Director General of Police
2	Addl. DG & IGP
3	Inspector General of Police
4	Dy. Inspector General of Police
5	Superintendent of Police
6	Commandant
7	Addl. Supdt. Of Police
8	Dy. Supdt. Of Police
9	Dy. Commandant
10	Asst. Commandant
11	Asst. Supdt. Of Police
12	Inspector of Police -Unarmed Branch (U.B.)
13	Inspector of Police -Armed Branch (A.B.)
14	Sub-Inspector of Police (U.B.)
15	Sub-Inspector of Police (A.B.)
16	Asstt. Sub-Inspector of Police
17	Head Constable (U.B.)
18	Head Constable (A.B.)
19	Naik
20	JCO
21	Constable (U.B.)
22	Constable (A.B.)
23	Head Police Drive
24	Police Driver

Source: Police Directorate, West Bengal.

⁷ The post of 'Director General of Police' was recommended by the National Police Commission in its 8th Report dated May, 1981 and the same was implemented by the West Bengal Government w.e.f. 1982.

Table - III*Rank wise Distribution of Police*

NUMBER	DG/IG/DIG/SP	ASP/Dy.S.P.	Inspr./SI/ASI	OFFICERS below ASI
Men & Women	DG-4 IC-25 DIG - 37 SP-56	220	Inspr.-696 SI-3794 ASI-3326	45144
Women	DG-Nil IG-Nil DIG-1 SP-1	9	Inspr.-2 SI-71 ASI-31	587

Source: Police Directorate, West Bengal

(B) FUNCTIONS OF POLICE

As an agency for ensuring the essentials of civilized life, the Police have been traditionally responsible for maintenance of law and order, protection of life and property; prevention and detection of crime, and prosecution of offenders. Their functions fall under two broad categories investigative and preventive. The maintenance of public order in a way a part of the preventive functions. The manner in which the investigative functions of the police are to be performed is described in detail in the criminal procedure code. The preventive functions of the police came under four broad types-regulation, restraint, constraint and control.

Though in a sense, the traditional police functions have essentially remained unchanged, they have unquestionably increased in their range and variety and they are exercised in increasingly difficult circumstances. The police force has to discharge its duties in a restless, turbulent age against the shifting background of rapid social and economic change, lowering moral standards and perceptibly declining respect for authority.

With a multiplicity of disruptive forces at work and the agricultural approach adopted by various political parties, the law and order problem had manifested itself in very ugly forms and unprecedented violence. The police have to control agitations of an extraordinary variety-political of various shades and for various objectives, religions, labour, government employees; students, etc., in which there is an ever

increasing tendency towards violence and arson and want on destruction of public and private property.

The National Police Commission identified the following roles, duties and responsibilities of the Police.

- A. Promote and preserve public order.
- B. Investigate crime and, where appropriate, apprehend the offenders and participate in subsequent legal proceedings connected therewith.
- C. Identify problems and situations that are likely to result in Commission of crime.
- D. Reduce the opportunities for the Commission of crimes through preventive patrol and other appropriate police measures.
- E. Aid and co-operate with other relevant agencies in implementing other appropriate police measures.
- F. Create and maintain a feeling of security in the community.
- G. Aid individuals who are in danger of physical labour.
- H. Facilitate movement of public and vehicles.
- I. Counsel and resolve conflicts and promote unity.
- J. Provide other appropriate services in an emergency and afford relief to people in distress.
- K. Collect intelligence relating to matters affecting public peace and crimes in general, including social and economic offences, and crimes affecting national integrity and security.
- L. Perform such other duties as may be enjoined to them by law which is in force for the time being.

Police conduct of a country shows the characteristics of a country. But it is sad to know from the various studies conducted that police play a very significant role in exploiting the women in prostitution. The police are capable of interviewing on behalf of victims but usually lack the will to do so.

The first evidence of coercive force of police in the red light area of South Bombay is the extraordinary presence of police in the streets. On the Falkland Road in Bombay's red light area, where one can find thousands of prostitutes, there exists one of the most visible concentrations of Police activity in India, Police participation in the sex trade,⁸ is confirmed by the bribes the police collect. According to ministry leaders in Bombay, police do perform rescue operations from time to time, often as a token to concerned NGO's and the public.⁹ In a report prepared by *Aids Bhedhav Virodhi Andolan* the raids of the police in the red-light area i.e., G.B. Road, Delhi, is criticized because the raid by the police showed total brutality on the part of the police and they wrongfully detained the person.

It was formed that the police in their zeal to rescue the children failed to notice that their raid was conducted on a day when the Board did not hold Court. The detainees were kept at the police headquarters. During the raid, photographs of the women of G.B. Road were widely published as a result of which they faced acute social harassment from their relatives.¹⁰

The police usually send men to impersonate tricks in order to arrest prostitutes. This way they did not only exploit the women or child in prostitution but also spread the evils of prostitution. According to ministry leaders in Bombay, the police raids are sometimes a mere formality where in the police informs the brothel owner about the raid before hand and hence can ensure that no children are present when police arrives. All the men in police are not same hence the brothel owners try to hide children from the police.¹¹

The police appear to accept and promote prostitution because poverty and for religious purposes, in addition to their own financial gain or otherwise take sexual favours by the women in prostitution.¹²

(i) Directorate of West Bengal Police

The West Bengal Police Directorate (PD) is responsible for the management of the large police force consisting of about 60000 personnel. The DGP and IGP,

⁸ Forced prostitution [<http://www.ijm.org/india.htm>]

⁹ *Ibid.*

¹⁰ To be mother (or a child) on G.B. Road, report by Aids Bhedbhav Virodhi Andolan, *Lawyers collective*, Vol. X (6) 1995, 21-23.

¹¹ Forced prostitution [<http://www.ijm.org/Indiahtm>].

¹² *Ibid.*

West Bengal is at the top of the PD. The officers of senior rank posted at the Directorate are not integrally linked to a vertical structure. The Directorate has essentially a spatial spread, each officer more or less heading the branches independently and taking orders directly from DGP and IGP.

The disposition of the senior officers at the Directorate, besides DGP and IGP is as follows: ADG (Administration) ADG (Planning and Welfare) IG (Organization) IG (Head quarters) IG (Planning and Welfare) IG (Law and Order) DIG (Headquarters) DIG (Organization) DIG (Modernisation and Coordination) DIG (Personnel, IPS Cell) DIG (Planning and Welfare) AIG (S) Besides, one more post of ADG (Legal Affairs) has been created recently.

(ii) Enforcement Branch of West Bengal Police

The Enforcement Branch (EB) has two tiers- the Central Enforcement Branch (CEB) at the state level and the District Enforcement Branch (DEB) at the district level. The DEBs are under the administrative and functional control of the Superintendent of Police, while the CEB is under the direction and control of the ADG and IGP. The EB is responsible for enforcement of the following Acts- Essential Commodities Act, 1955, Prevention of Black- Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, Consumer Protection Act, 1986 and West Bengal Anti Profiteering Act, 1958. The EB also looks after investigation of cheating and forgery cases, allegations of corruption against police personnel etc.

(iii) Crime Scenario of West Bengal

National Crime Records Bureau, Ministry of Home Affairs, Government of India, brought out the "Crime in India, 1999" in May 2001. The figures furnished in "Crime in India 1999" will lead to the irresistible inference that West Bengal is one of the low crime prone zones viewed from the perspective of cognizable crimes under the Indian Penal Code (IPC). An analysis of the crime scene in West Bengal based upon the recent figures is given below.

Table - IV

Incidence and Rate of Cognizable Crimes (IPC) under different crime heads.

Crime head	1998	1999	% variation over 1998
Murder	2122	1902	-10.4
Attempt to commit murder	467	516	10.5
Culpable Homicide not amounting to murder	623	655	5.1
Kidnapping and Abduction	908	945	4.1
Rape	757	819	8.2
Dacoity	426	368	-13.6
Theft	18640	18157	-2.6
Riot	5927	4601	-22.4
Cheating	1080	114	6.0

Source: *Crime in India, 1999.*

(iv) Offences against Women and Weaker Sections of West Bengal

Crimes against the disadvantaged/ weaker sections of society, namely, women, children, Scheduled castes and Scheduled tribes, have been relatively less in the State of West Bengal over the years. Perhaps, the rich cultural heritage of West Bengal has contributed to that position. While incidence of crimes against women is 6,931 and against juveniles 188 in 1999; it is absolutely nil in case of the Scheduled Castes and Scheduled Tribes.¹³

Table - V

Incidence and Rate of Crimes against Disadvantaged Sections in 1998

Section	Incidence	Rate	Rank	% Contribution to All India Total
Women	6811	8.8	21	5.2
juveniles	-	-	-	-
SC	0	0	0	0.0
ST	0	0	0	0.0

Source: *Crime in India, 1998, 1999.*

¹³ Quoted in Menon N.R.Madhava, *Criminal Justice India Series*, Vol. I, West Bengal 2001, Allied Publisher Pvt. Ltd. 1st published 2002.

Table - VI

Incidence and Rate of Crimes against Disadvantaged Sections in 1999.

Section	Incidence	Rate	Rank	% Contribution to All India Total
Women	6931	8.8	22	5.1
juveniles	188		22	3.79
SC	0		0	0.0
ST	0		0	0.0

Source: Crime in India, 1999.

(C) VIOLENCE AGAINST WOMEN

(i) Concept of Violence

‘Violence is a general term referring to all types of behaviour, either threatened or actual, that result in or are intended to result in the damage or destruction of property or the injury or death of an Individual’ (Kadish, 1984). The concept of violence in the Criminal Justice System (CJS) means all types of illegal behaviour or conduct in the line of -the above definition. But violence is difficult to define and it can be safely said that no definition of violence has ever proved completely successful. However, we may note the concept in general. Violence is an act of intense, willful, physical harm committed by an individual or group and characterised as the more severe forms of physical aggression that encompasses a hostile intent. In this way, there are various forms of violence such as emotional or instrumental violence, random violence, collective violence, terrorism and violence of aggression or coercion. A number of researchers view violence as, "an act carried out with the intention or perceived intention of causing physical pain or injury to another person: (Gelles and Cornell, 1985). The physical pain can range from slight pain, as in a slap, to murder. In order to deal with the common sense assumption of using criminal force or weapons against wives or children it is useful to consider two categories of the general definition of violence "normal violence" and "abusive violence". Normal violence is the commonplace slaps, pushes, shoves, and spanking that is frequently considered as normal or acceptable conduct or raising children or interacting with a spouse. On the other hand, more dangerous acts of violence we shall refer to as 'abusive violence'. These acts are defined as acts that have the high potential for injuring the person being hit. Included in this definition are punches, kicks, bites, choking, beating, shootings, stabbing, burning to death, infanticides,

suicides etc. But there is controversy in this kind of definition as it does not take into consideration what actually happened to the victims of violence. In spite of ignoring consequences, this definition is much broader than the more narrow definition of child or wife abuse which typically requires that some diagnosable harm be inflicted. Research on assault and homicide which has been carried out by criminologists, has consistently found that the things which differentiate injurious violence from violence that causes no harm are typically random phenomena of aimless attack or luck (Pittman and Handy, 1964; Pokorny 1965; Wolfgang, 1958).

The word “violence” refers to an act of aggression that crosses the boundary of other person’s autonomy and identity. It is a coercive instrument to assert one’s will over another to prove or feel a sense act of illegal criminal use of force. The term domestic violence is most commonly employed to describe the incident of familiar or intimate battering. Violence within family has become a global problem affecting families of all classes and cultures.¹⁴

(ii) Domestic Violence

The term “Domestic”, historically referenced as an idealized family unit functioning in a protected and secluded manner appropriately shielded from public. Traditionally, the family has been considered a sphere of intimacy and devoid of conflict of interests among the members, a “cultural idea and focus of identity”¹⁵. The idealized conception, the ornamentation of inviolability of family as an institution, has shielded the domestic violence behind an iron curtain, an unacknowledged phenomenon behind the closed doors of family, a private matter between intimates, which is neither a concern of public scrutiny nor of interventions. As a result of it, till the domestic violence escaped the human rights attention internationally. The methods of combating violence as a human rights issue are still emerging under international law.¹⁶ The domestic violence is yet to draw attention as a human right issue within the country.

Domestic violence or family violence can broadly be defined as any unethical, immoral or criminal act committed within the family by one of the

¹⁴ Yajnik Ameen, Domestic Violence and Protection of Human Rights, AIR 1999(*Journal*)145.

¹⁵ *Id.*

¹⁶ Reddy G.B., Role of Judiciary in Protection of Human Rights in India, AIR 1999 (*Journal*) 148.

members, or the emotional 'abuse which seriously harms life, body, psychological integrity or liberty of another member of the family (Mathur, 1994). Domestic crimes consist of (a) physical aggression such as minor or major blows; (b) sexual abuse including rape, incest; (c) emotional abuse which includes verbal humiliation, continuous threat, threat of physical abuse, economic blackmail and confinement in the home; and (d) homicides including dowry death. Thus, domestic violence means all offences committed within the four walls of the family and includes child abuse, sexual abuse, wife battering, ill treatment of newly married women for dowry and such other offences. Family in India means and includes parents, uncles, aunt, nephew, niece and other relatives - either blood related or '*Sapinda relationship*'. Child abuse has been defined by Davis (1962) as "any act of omission or commission that endangers or impairs a child by physical assault, corporal punishment, emotional assault, emotional deprivation, physical neglect or inadequate supervision and sexual exploitation". Sexual abuses include all forms of sexual activities involving genital contact for either the offender or the victim, and would include genital fondling and vaginal or oral intercourse as well. It also includes physical contact such as fondling of breasts, buttocks or sexual kissing, non-contact sexual activity like deliberate exposure of the offender's or victim's private parts for the offenders sexual gratification and photographing the victim in the nude or in suggestive sexual poses. Similarly, other domestic violences such as murder including dowry death, assault, rape, suicide etc. will be taken as defined in the Indian Penal Code (IPC).

In studying domestic violence, we should admit the inherent difficulties to obtain accurate data as this is an area where the dark figure of crime is, perhaps, the highest. Several factors render accurate data difficult to obtain. Chief among them are the inhibitions that surround reporting this form of deviant behaviour. Self reporting by perpetrators is hardly the norm, and other family members often fail to report abusive acts for fear of provoking more violence against themselves or breaking up the family. In most cases, the victims are incapable of making their plight known to the responsible authorities. From an Indian perspective, we may say that domestic violence or crimes are generally not reported to the police for the following reasons:

1. Due to traditional conservative value system, members of a family are reluctant to register cases in the police station considering reputation or prestige of the family.

2. Police is reluctant to record the family disputes in the "Diary" and generally advises the complainant to mutually settle the disputes.
3. Domestic violence may cause embarrassment to the family members if investigated by the police. Hence, the victim avoids reporting to police.
4. Victims of domestic violence have no confidence in the Criminal Justice System as a result, speedy and definite justice is not meted out to the offender.
5. There are many invisible costs of securing justice in terms of tension, harassment, repeated adjustments, inexpressible anguish etc. which the victims want to avoid.
6. Lastly, both the victim and the wrong-doer are bound to each other in love and affection. This close relationship is hard to break. Thus, domestic violence occurs in a fur of emotional moments which is later on adjusted with the passing of time.

Keeping these limitations and theoretical framework in mind, this article will attempt to review the increasing trends of domestic violence in India as is evident in the press, police report, published judgements of the court, broadly in the areas of child abuse including sexual abuse, murder and homicides in the family, wife beating, euthanasia, suicide and the most burning problem of dowry death and cruelty to newly married women by the husband and his family members demanding dowry. Let us first look into available data in India on crime against women as published in the Government of India report, '*Crime in India*' in Table VII.¹⁷

TABLE VII
Crime against Women under IPC & SLL
During 1996-2001

Sl. No.	Crime Head	Year						Percentage variation in 2001 Over 2000
		1996	1997	1998	1999	2000	2001	
1.	Rape	14846	15330	15151	15468	16496	16075	-2.5
2.	Kidnapping and abduction	114877	15617	16351	15962	15023	14645	-2.5
3.	Dowry Death	5513	6006	6975	6699	6995	6851	-2.0
4.	Torture	35246	36592	41376	43823	45778	49170	7.4

¹⁷ Chakrabarti. N.K., "*Domestic Violence and Crimes Against Women in India*" in *Gender Justice*, Edited by or NK Chakrabarti & Dr. Shachi Chakrabarty, R. Cambay & Co. Private Ltd. Kolkata, 2006.

5.	Molestation	28939	30764	30959	32311	-32940	34124	3.6
6.	Sexual harassment	5671	5796	8054	8858	11024	9746	-11.6
7.	Importation of Girls	182	78	146	1	64	114	78.1
8.	Sati Prevention Act	0	1	0	0	0	0	
9.	Immoral Traffic (Prevention) Act	7706	8323	8695	9363	9515	8796	-7.6
10.	Indecent Representation of Women (P) Act	96	73	190	222	662	1052	58.9
11.	Dowry Prohibition Act	2647	2685	3578	3064	2876	3222	12.0
	Total	115723	121265	131475	135771	141373	143795	-11.7

Source: *Crime in India 2000 & 2001, Published by Government of India.*

(iii) Domestic Violence: A Human Right Issue

Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world; and disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.¹⁸ Human Rights of Women are those minimal rights which every women must have by virtue of her being a “member of human family irrespective of any other consideration”.

The human rights law has primarily aimed to protect against the limitations imposed on the individual rights by the state. This conception is aptly seemed as leit-motif of human rights movement in India, and else where, is to resurrect the sovereignty of victims against the state¹⁹ The trespass on civilized life and human dignity manifested in domestic violence, which occurs within the private sphere has therefore eluded the human rights concern. Domestic violence occurring as physical and psychological abuse defiles the very existence of the abused persons, who most often happiness to be a woman.

Available data points out to the fact that a large proportion of violence against women in India is located in the family. In India, of 1842 rural women (1993-94), 40% are physically assaulted by their current male partners. Of 6,926 married men (1996), 28% reported forcing sex with their wives in their current marriage. A study reveals that domestic violence occurs in every third household in India. Up to 80% of

¹⁸ Preamble of the Universal Declaration of Human Rights, 1948.

¹⁹ Yajnik Ameer, Domestic Violence and Protection of Human Rights, AIR 1999 (*Journal*)145-146.

women are subject to a form of domestic violence in their lives.²⁰ Of 1000 women in Punjab, 35% of rural women admit being beaten by their husbands. More than two-thirds of both males and females feel that disobedience is sufficient reason for beating. There were 5817 incidents of dowry deaths in 1993 whereas 4215 cases of dowry have been repeated.

(iv) Women and Domestic Violence

In India, violence against women that occurs in the domestic sphere is the most pernicious. It is not only damaging to women physically, but also liable to have serious psychological effects on both them and their children because of the constant humiliation and fear they live with. Largely viewed as a private family matter, neighbours, friends and often the wife's family rarely interfere in situations of domestic violence. Wives are generally regarded as "belonging" to their husbands. Thus, there is social acceptance of this right to correct her, if she has displeased or disobeyed him in any way howsoever minor. Normal standards of right and wrong are suspended when the victim of abuse is a wife, indicative of the sharp divide between social perceptions of "public" and "private" spheres. The existence of wife abuse is so natural that women who protest rarely find it a reality with which they must learn to live. Women rarely report incidents of domestic violence to the police, believing that this will bring shame and dishonor to the family even when they do usually. Only in serious situations the police tend to treat incidence of domestic violence as Marital disputes and often refuse to register the case.

From the above discussion, it is clear that domestic violence has some special characteristics. These are as under:-

- ❑ It takes place within the privacy of the household.
- ❑ It is committed by person/persons on whom the woman is emotionally dependent.
- ❑ In case of prosecution, it is difficult to have witness to corroborate the Commission of the offence.
- ❑ In general rules of Criminal Jurisprudence are applied in the trial of such offences, it will be almost impossible to convict any accused.

²⁰ Women and the law, Human Development in South Asia (2000) at 93.

- The victims of domestic violence are women/girls unaware of their legal rights and with no material or moral support.
- In a domestic violence situation, the victim would need protection even before the Commission of violence as she is living with and dependent of the assaulter.

We may discuss domestic violence under the following subheadings:

- (a) Wife-beating
- (b) Dowry Harassments
- (c) Dowry Deaths
- (d) Marital Rape

(a) Wife Beating

Declaration on the Elimination of Violence Against Women, 1993 clarifies the term “violence against women” to mean any act of gender-based violence which causes harm to women either physically or psychologically whether occurring in public or in private life.²¹

The most common form of violence against women within private sphere is wife-beating, not just by the husband, but sometimes by members of his family as well-including other women. Even English common law allowed a man to beat his wife with a stick “no thicker than his thumb” and explicitly sanctioned the abuse of women within marriage. A man was allowed to give his wife “moderate” correction.²²

The battering of woman, like other crimes of violence against women has been shrouded in myths. Such myths are based on the mistaken notice that the victim has provoked her own assault, and some consider it as protection against embarrassment, while for others, it is a phenomena of masochistic, meaning thereby that such women experience a sense of sexual pleasure only when she is beaten before being subjected

²¹ *Article 1* of the Declaration on the Elimination of Violence Against Women 1993, reads as follows: “Violence Against Women” to mean any act of gender-based violence that results in or is likely to result in, physical, sexual, psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

²² Blackstone’s Commentaries Vol. 18th ed. (1775) 445, as Quoted in Dutta Nilima, Domestic violence-Tolerating the Intolerable? *Lawyers Collective*, January 1999, 4.

to sex²³. Surprisingly women accepts responsibility for being beaten and never feels frequent beating as a sufficient cause to leave her husband.

Even the parents shift the burden of responsibility for any types of matrimonial disharmony on their daughter and often plead with their son-in-law to make reconciliation and in this way subject their daughters to suffer more torture. This is almost contrary to the attitude of the husband's parents who always tend to support every act of their son, which ranges from beating to burning his wife. Even children who see their mothers being beaten up by their fathers feel happy at any cost because men have glued for centuries to a conveniently set role model and their strength is manifested through women by making them submissive. Even education and financial independency could not help a bit. They continue to depend upon men because of mental slavery as a means of their life style and man take advantage of such brain washed psyche of women and do not hesitate to take pleasure in exhibiting their power.²⁴ Unfortunately in India, there is no specific law against wife beating, but the very act if it were to be simple or grievous can be treated as assault under the provisions of the Indian Penal Code.²⁵ However, the irony of the situation is that, there is no practical utility of these provisions of penal laws. If the wife complains against the husband's cruel behaviour, she does it at her own peril. Because if the Court convicts the husband, then it is only the wife who suffers the post conviction trauma or may disturb her own matrimonial life under such situation, she cannot think of protesting against such cruel behaviour of her husband. She has no option but to remain under forced silence.

But the notion of modern social justice demands rethinking of such attitudes of males against females. Inspiration should be given to the women to come forward to fight against such stereotype attitudes of husbands towards them and not to suffer silently for a wrong done to them. We are not talking about the women's liberalization but emancipation of their inner spirit without any kind of gender war. *Lallu v Bachi*²⁶ is an important case where the Rajasthan High Court held that the beating of the wife amounted to be cruelty of her husband. The judgment went on to explain that it was not necessary for proving the cruelty that there must be many

²³ Patnaik Raghunath, Domestic Gender Issue, VIII (II) *CILQ*, (1995) 141.

²⁴ *Id.*

²⁵ Sections 322-326 of the Indian Penal Code, 1860.

²⁶ AIR 1989 Raj 49.

incidents of beatings the beating by the husband to his wife in certain age cannot be undersigned and ignored. A wife is not a chattel to be beaten at whim and caprice of the husband.²⁷

(b) Dowry Harassments

The practice of giving and taking dowry has been prevalent since *Vedic* period when it was called “*Vahatu*” The *Rigveda* and *Atharveda* mention that the dowry given to *Surya* by her father reached her in-laws house long before she herself entered it. The *Arthaveda* says that when the bride went to her husband’s place her clothes were definitely fine and sanctified by *Mantras*. *Bana* in *Harsha Charitra* also mentions that large number of horses and elephants were given to *Rajyashri* as dowry. So also in *Mahabharata*, we find a mention that *Drupada* lavished his daughter with pearl. Thus, we see that in ancient time the dowry was given voluntarily.²⁸

Ancient Kanyadan Transferred its Appearance

An approved marriage among Hindus has always been considered as a ‘*Kanyadan*’. The twin aspects of this great meritorious act were “*Vardakshina*” and “*Strindhan*” given in all humility by the parents of the bride to the bride groom voluntarily out of love and affection was in vogue in ancient time more to honour the groom than to include him to take the bride. It was not only legal but moral as well and perhaps served a social purpose in those days. It also appears to be very clear that *Stridhan* were also given voluntarily and constituted her separate property. They were given to her as a sort of security and provided her financial protection in adverse circumstances. These two aspects of the Hindu Marriage gifts to the bride as also to the bride groom, got entangled and later on assumed the frightening name of dowry, for obtaining of which to be used and ultimately most Hindu marriages become a bargain such a potential weapon in the hands of parents of the bridegrooms that they put huge dowry demand as a “matter of right” on the pretext of social reputation. Brides bringing small dowry are in majority cases mal-treated by their in laws which results in continued tension in the families and also results in many cases the bride burning. What is most surprisingly is that the spread of education has not helped in curbing the social evil of in dowry, rather the educated youth has become more

²⁷ AIR 1989 Raj 49.

²⁸ Gupta Srinivas, Law on Dowry and Dignity of Women, *IXIV CILQ* (1996) 448.

demanding as, he along with his parents wants to recover every paise spent on his education.

In *Sobha Rani v M. Reddy*²⁹ the husband and wife were both highly qualified. Their marital relationship deteriorated because of the constant demand for money and/or goods from the parents of the wife. Ultimately the wife petitioned for divorce on grounds of cruelty.

The trial Court and even the High Court accepted the evidence produced that there had been demands for money. But both the Courts failed to regard these demands to be harassments and dismissed her petition by saying that she had not produced any evidence which could be regarded as harassment.

When the case went on appeal to the Supreme Court Shetty J. referred to dowry as a “deep rooted evil” and that inspite of the law and the amendments, the “pernicious practice continued”. The judge then clarified the position that there was a difference between the quantum of proof required for a criminal case and that required for matrimonial offence.

He observed:

The High Court appears to have misconstrued the scope of cruelty in matrimonial affairs. The evidence as to harassment to the wife to meet any unlawful demand for money is necessary to constitute cruelty in criminal law.³⁰ Relief asked for in a matrimonial case cannot possibly be denied on the ground that there has been no deliberate or willful ill treatment. The judge concluded by every clearly stating: ...demand for dowry is prohibited under law. That by itself is bad enough. That in our opinion amounts to cruelty entitling the wife to get a decree for dissolution of marriage.³¹ It is a landmark judgement as it very clearly states that demanding dowry amounts to cruelty and nothing further needs to be proved.

The facts of the next case was not far from usual and actually fell into the set pattern of cases dealing with dowry violence. But issues raised in the case were totally difficult from others.³²

²⁹ 1987(2) Scale 1008.

³⁰ *Id.* at 1014.

³¹ *Id.* at 1015.

³² *P. Satyanarayana v P. Soundaryavalli*, 1987(1) ALT 762.

As usual money was demanded and paid by the mother of the bride, by selling her property, along with other Articles as gifts. But the satisfaction for receiving the money and gifts did not last long and demands started being made by the husband and his mother, for more money. To exact money the unfortunate woman was harassed, treated cruelty and physically tortured. Unable to bear the treatment any longer and apprehending danger to her life. She filed a complaint against her husband and in-laws for cruel treatment under section 498-A of Indian Penal Code.

In reply, the husband challenged the Constitutionality of the very sections under which he was charged-section 498-A³³ and the section linked to it section 113-B³⁴ of the Indian Evidence Act 1872.

It was raised by the husband that the very term “cruelty” had not been defined under section 498-A and it was delightfully vague and wide of the mark and therefore arbitrary. This, section violated the Fundamental right to equality because the husband and his relative cannot be singled out from the general body of offenders. Further it violated the right to life by the procedure of lugging the husband and the relatives of the husband.

The Court rejected the contentions and held that the term “cruelty” must be construed in the light of the object the statute seeks to achieve and the purpose which it seeks to observe. Accordingly, cruelty should be read and understood in the light of historical circumstances which necessitated the legislature to bring on statute section 498-A. Examining the other ground of challenge that a husband and his relatives

³³ 498-A. Husband or relative of husband of a women subjecting her to a cruelty whoever being the husband or the relative of the husband of a women, subjects such women to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. *Explanation*-For the purpose of this section, “cruelty” means-(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life limb, or health (whether mental or physical of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

³⁴ .Section 113-B of the Indian Evidence Act, 187Presumption as to dowry death when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with any demand for dowry, the Court shall presume that such person had caused the dowry death. *Explanation*- For the purpose of this section “dowry death” shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860).

could not singled out as a class, the judge came to the conclusion that the relatives and/or husband are often the prime offenders or abettors. He observed:

....The intimates of the House had special knowledge regarding willful conduct or the harassment or cruelty etc. meted out to married woman.³⁵ Understandably, the Court did not go into the merits of the case.

How long a person can stop to get a large dowry is amply demonstrated in the case of *K. Sujatha v Government of Andhra Pradesh*.³⁶ In a writ of habeas corpus, the petitioner, a young advocate alleged that her father-in-law was illegally detaining her husband and sought his release. All her efforts to trace her husband proved futile. In the meantime, she filled petition for restitution of conjugal rights and maintenance. At this stage, the husband came forward with an incredible story that he had been forced to marry the girl since she had threatened to commit suicide.

However, the girl's father tried to settle the matter by paying Rs. One Lakh to the father-in-law as dowry. The boy's father promptly accepted it but insisted for more money. The High Court concluded that the marriage had failed on account of father-in-laws insistence on dowry and the timidity displayed by the husband. The petitioner in boundless frustration represented to the High Court that...enough is enough. I was tired of this life. Out of the hard earned money of parents already a good part of it was spent towards dowry, marriage and litigation expenses. If at least this is compensated in a sum of 2 lakh's, I would treat the whole thing as a bad dream and look forward to a new chapter in life.³⁷ The High Court directed that the girl be paid Rs. 2 lakh's by the husband and his father. The fact that the High Court virtually let the culprits off the hook after coming across such a glaring instance of giving and taking dowry is a little disconcerting.

(c) Dowry Death

It is most alarming and distressing to note that Indian society, where almost half of the population, i.e., women who were once worshiped and highly respected today find themselves tortured, harassed, abandoned, divorced, murdered and are forced to commit suicide on account of the evil of dowry system.

³⁵ *Id.* at 769.

³⁶ 1997 (2) ALT 487.

³⁷ *Id.* at 495.

“Justice is a machine that, when some one has given it a starting push, rolls off on its own.” This seems doubtful if one surveys the rising number of dowry deaths in the country, despite the amended Dowry Prohibition Act, 1986. Dowry deaths are a glaring indicator of fatal domestic violence against women. The amended Act has introduced fairly comprehensive measures to combat the issue; yet even today justice remains an elusive dream for many a dowry death victim’s family. Many women’s organisations are fighting relentlessly against it but cannot be made without the co-operation of the law enforcing machinery and of the judiciary in identifying the guilty and sentencing them accordingly.

It is in this background that the case of *State (Delhi Administration) v Laxman*,³⁸ assumes significance. The death of the young bride did not become another number swelling the figures of unnatural death or of those dying from burns. It became a cause celebre because of the tenacity of women’s organization in taking up the case to the Supreme Court and the judgment of the Court reversing the High Court’s decisions of acquittal of the guilty party.

A significant factor in this case was that neighbours who in many similar cases had not wished to get involved³⁹ and never volunteered to give evidence in Court in this case, not only helped to put out the fire but gave evidence in Court without their evidence as in many such cases the guilty would have been acquitted to carry on with their nefarious game of burning other young girls. The Apex Court gave importance to the evidence of a neighbour, who inspite of the fact that the High Court had expressed severe doubts about her trust worthiness by mentioning her evidence was motivated stuck to the statement she had made.

However the Supreme Court agreed with the observations of the High Court that once education and economic independence for women were achieved the evil of dowry would meet a natural death.⁴⁰ The Court awarded life imprisonment to the guiltyies and spent few lines for praising women by awarding them divinity and special qualities. It may be respectfully submitted that today’s women are not concerned at being treated as goddess or having dose or doses of divinity or being remained that they have special qualities which nature has endowed them with and therefore they

³⁸ AIR 1986 SC 250.

³⁹ *Id.* at 254.

⁴⁰ *Id.* at 267.

must rise. They strive for equality and men must join in the struggle because it is our Constitutional mandate.

The next case brings out the point that, even if a few, but the sensitive judges even the highest Court by their sympathetic approach and an awareness of the social conditions are often able to do justice in one of the most reprehensible offences-the killing of young women. In *State of Punjab v Amarjit Singh*,⁴¹ *Balavinder* the young wife made a statement to ASI accusing her husband before her death. There was a technical fault as the concerned ASI had not got the statement of the dying bride recorded by a magistrate. The Supreme Court speaking through *Shetty J.*, did not stick to the technicalities of rules in such obvious cases of dowry deaths, rather it held⁴². We cannot find fault with the ASI.

This case and few of other cases underline one point. In criminal cases non-compliance of rules, where it does injustice to the accused should certainly be given importance but where rigidity means the acquittal of obvious guilty person, then a different approach has to be adopted. In short, the principle adhered to by many of the traditional judges that it is better that hundred guilty men go free than one innocent person suffer does not always do justice. Protection of society is an important and release of obviously diabolic persons motivated by avarice to heartlessly killing their wives. needs an altogether different approach.

*Wazir Chand v State of Haryana*⁴³ is a case where the Supreme Court took a diametrically opposite view from two Court-sessions and the High Court. On the basis of the evidence both the additional session's judge and the Punjab and Haryana High Court convicted the husband and the father-in-law under Sec.306.⁴⁴ And the section 498A of the IPC and sentenced them.

But the Supreme Court was concerned with the fact that abetting suicide being a serious offence the evidence has to be such that the guilt has to be proved beyond a reasonable doubt. Unfortunately, the Court found some contradictions in the evidence

⁴¹ 1988(2) SCALE 733; *See also Surinder Kumar v. State* (Delhi Administration) (1987) 1, SCC 467.

⁴² *Id.* at 738.

⁴³ AIR 1989 SC 379.

⁴⁴ *Section 306 of IPC*-Abetment of suicide-If any person commits suicide, whoever abets the Commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

of investigating officer and the photographer about the position of the kerosene stove and felt that the benefit of the contradiction must necessarily go to the accused. The exact position of a kerosene stove appeared to be the most important thing in the whole issue. However, after taking into consideration all other facts the Court reached to a conclusion that the young bride had not committed suicide and therefore the accused could not be convicted under section 306.

Mercifully the Court did not take the similar views while dealing with second offences of harassment and dowry demands. The Court found that there were some inconsistencies regarding the precise nature of the Articles demanded but held that those inconsistencies were of little importance.⁴⁵ Unfortunately, the Court failed to see the nexus between the harassment for more dowry and the young girls death and ultimately sentenced the husband and the father-in-law for the offence under section 498-A which consisted of only one year's rigorous imprisonment and a fine of Rs.100/-.

In *Laxman* case⁴⁶ and *Wazir Chand* case⁴⁷ are based on some what similar facts. In the first case murder of *Sudha* was established and on the basis of circumstantial and other evidence her-in-laws and husband were found guilty. In that case there was direct evidence to suggest murder but on the basis of circumstances of the case it was held that the accused had committed murder. In the *Wazir Chand* case,⁴⁸ though the Court concluded that it was a case best fitted under section 498-A but did not accept the plea of abetment to commit suicide under section 306. It is most humbly submitted that in such cases circumstantial evidence should be given due weight age failing which heinous crimes like bride burning will become very minor offences meriting only a year's imprisonment and a paltry fine of Rs.100.

(d) Marital Rape

Domestic Violence is testimony to women's dire straits. At the most private and yet the most painful state is marital rape, perpetuated day after day against the women. In such a case, when the perpetrator of the crime is the husband, legally

⁴⁵ *Id.*

⁴⁶ *State (Delhi Administration) v Laxman*, AIR 1986 SC 250.

⁴⁷ *Wazir Chand v State of Haryana*, AIR 1989 SC 379.

⁴⁸ *Id.*

permitted to have physical intimacy with his wife, the question of force and sexual abuse is different to comprehend.⁴⁹

Marital rape is not recognized under current legal definitions.⁵⁰ A woman surrenders her right to consent to sexual relation at the time of entering into a marriage and the husband is given an unconditional, unqualified right of sexual access to her. Acknowledging basic human right to dignity and self-respect,⁵¹ the husband should not be entitled to have intercourse with the wife without her consent and irrespective of her state of health or her valid objections.

In fact marital rape is much more traumatic than rape by a stranger, because the stranger is not devastating a marriage, betraying a trust, destroying the security of a home. Therefore, the more serious problem in criminalizing marital rape would be that it presupposes that the family structure may be disturbed. Marital rape is also difficult to prove especially when both partners are known to have voluntarily engaged in sexual activity in the past and issue of consent arises at a later point when there is non-consensual sex.

In *Kusum Lata v Kamta Prasad*,⁵² the husband insisted upon having sexual intercourse with his wife about a month after child birth, so that the wife became pregnant again. According to the medical evidence, it was harmful for the wife, considering her delicate condition and state of health, to have been subjected to sexual intercourse at that time or to have become pregnant again so soon. The lower Court

⁴⁹ Tandon Nidhi and Oberoi Nisha, Marital Rape-A Question of Redefinition, *Lawyers Collective*, March (2000), 23.

⁵⁰ Section 375 of I.P.C. defines rape as follows: A man is said to commit "rape" who, except in the here on after expected, has sexual intercourse with a woman under circumstances falling under any of the six descriptions: *First* - Against her will; *secondly*- without her consent. *Thirdly*-with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death, or of hurt. *Fourthly* with her consent when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. *Fifthly* with her consent, when at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent. *Sixthly*-With or without her consent when she is under sixteen years of age. Explanation- Penetration is sufficient to constitute the sexual intercourse necessary the offence of rape. Exception-Sexual intercourse by a man with his own wife the wife not being under fifteen years of age is not rape.

⁵¹ The Preamble of the Universal Declaration of Human Rights, 1948 recognises the inherent dignity of women.

⁵² AIR 1965 All. 280.

dismissed the matter lightly by observing that young and nearly married husbands are liable to indulge in sexual relations with their wives rather excessively. This approach of the lower Court was held completely out of tune with the times and in conflict with the ideas underlying the concept of cruelty. The Court observed⁵³:

That concept (of a proper relationship between husband and wife) appear to be that which is based on mutual respect and consideration by each spouse for the other. It excludes... selfish brutality or disregard for the health needs, desires and feeling of the other by either spouse even in a matter such as sexual relation between the two. The conduct of the husband was held amounting to cruelty. This positive step taken by the Court is really praise-worthy because marital rape is such a form of domestic violence that women undergo in their "sanctuaries" on a daily basis, without being able to escape.

In *Bodhisattwa Goutam v Subhra Chakraborty*⁵⁴ the Supreme Court held that rape is a crime against the basic Human Rights and a violation of the victim's most cherished of Fundamental Rights namely, the Right to Life enshrined in Article 21 of the Constitution. However, this pronouncement did not recognise marital rape.

Marital rape as it presumes consent and asserts "rights and privileges", denies women the right to intimate and pleasurable sexual activity within marriage. What is required is evolving a new definition of rape beyond the parameters of the patriarchal value system. If the husband insists on having sexual intercourse with his wife and causes grave injury or danger to life, limb or health of the wife such a conduct amounts of cruelty to her. It must now be recognised that if the husband during sexual intercourse with his wife treats her with cruelty as defined under the Indian Penal Code, the conduct shall be punished as amounting to rape.

In view of the sufficient justification considered above we reach the conclusion that the marital exception is not in accord with present times. The legislature should remove it from the Indian Penal Code, as the exception has become anachronistic and an "offensive".

(D) ROLE OF POLICE IN ERADICATION OF PROSTITUTION

The profession of Immoral Traffic in Women and Girl is centuries old. In fact, prostitution and civilization have gone hand in hand all over the world. Prostitution is

⁵³ *Id.* at 285.

⁵⁴ AIR 1996 SC 922.

considered as the worst form of exploitation of persons whether such a person is a woman or man. But throughout the history the majorities have been women, reflecting both the traditional socio-economic dependence of women and the tendency to exploit female sexuality. Prostitution, hence, is as an institution and its species of man's tolerance of this exploitation or an organized level in society.

Historically, religious beliefs and social customs prevalent in society from time to time provide the earliest accounts of its origin. In other words, it can be said that prostitution has its roots deep in the fabric of society. However, in order to know the historical background of prostitution, it can be categorized under two headings:-

- (a) Prostitution in pre-Industrial societies, and
- (b) Prostitution in industrial societies.

Women are regarded as the better-half of man. She has a unique position in every society of the world. In Indian mythology women are often worshiped as "Goddess", as "mother" or as 'creator'. It is presumed that the best creation belongs to women. Indian culture inextricably links the concept of power with femininity i.e., 'Adishakti'.⁵⁵ It is said that a man is not complete without women. The ancient Indian scriptures mention that 'where women are worshipped god resides at that place'. It is often said that a society cannot progress or develop without equal participation of women in the social, economic, and political spheres. Hence women are the important part of our society. Despite the fact that women are placed on a very high pedestal and in spite of her contribution in the life of every individual human being, down the ages women have been virtually in all societies and spheres of activity going through a hell like situation in the society. Her life is still subjected to a group of society, which is often discriminated on account of several social barriers and impediments. She has been the victim of manifold miseries, hardships and atrocities caused by the society at large. Women have been the victims of all inequalities, indignities and discrimination from time immemorial. Though causes and consequences may vary from country to country, discrimination against women is widespread.

Justice *K. Ramaswamy* in *Madhu Kishwar v State of Bihar*⁵⁶ has observed that:

⁵⁵ Rao Mamta, *Feminine ordeal against Macabre Crimes*, XII *CILQ* (1999) 435.

⁵⁶ (1996) 5 SCC 148.

“Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self-sacrifice and self denial are their nobility and fortitude and yet they have been subject to all inequalities, indignities, inequality and discrimination.”

For centuries the women have been subjected to various forms of exploitation harassment and torture both in physical and sexual capacities.⁵⁷ However, the most heinous of all is the crimes, which involves the exploitation of women for economic gains i.e., prostitution. Such commercial use of women has created an imbalance in our society as such an immoral act is not only injurious against women but is injurious to the society at large under it the women are under compulsion to offer themselves and their body for commercial purposes.

Prostitutions are a social malady as old as the formation of human society. It is prevalent in India since the ancient periods. In India it has been associated with religions and customs of the society. Though the prostitutes in ancient period had a very respectable status but with the changing trend prostitution has undergone drastic changes wherein prostitution is referred to as the worst form of exploitation of women in general where women enter into such a profession though there are various causes which compel the women to enter into prostitution.

Prostitution in some way equals to offence of outraging the modesty of a woman as under it the women who enter the profession are subjected to exploitation, harassment and torture both physically and mentally. In some cases wherein these women do not agree to submit themselves before their clients they are subjected to worst kinds of treatment especially gang rape or continuous rape by the pimps or the clients to make the subject to their wish such violent act leaves the women vulnerable and at the mercy of the person who has a controlling hand over the brothel and also attacks at the modesty of a women which not only leaves scars on their life but also affects them mentally. Once her modesty is taken away a woman is compelled to carry on the profession and hence every moment when she serves her clients she loses her modesty again and again.

The system of prostitution of women is centuries old. In India there are some tribes who have organized themselves centuries ago around the system of prostitution. Though such practices by the said tribes are not religious in the form but are the result

⁵⁷ Singh Subhash Chandra, Sexual Harassment of Women in the Workplace: Need for a Comprehensive Legislation” 1998 Cri LJ 33 (*Journal*).

of the economic and social factors and hence it may come into the category of traditional and customary form of prostitution. *Banchara and Bedia Tribes* in Madhya Pradesh, various tribes in Rajasthan and the Domare tribe in Andhra Pradesh.⁵⁸

(i) Legislative Provision's

There has been increase in prostitution all over the world in modern times; thus, the need of legislation was felt to regulate it. A number of countries have enacted legislations which set standards and define the limits of acceptable behaviour. In India, besides the Constitution provisions for the prevention of prostitution and protection of persons involved in prostitution there are certain legislative provisions which not only prevent but protect the innocent victims of prostitution from entering into it.

(ii) Indian Penal Code, 1860.

There are certain punitive provisions in the Indian Penal Code 1860⁵⁹ relating to the sexual abuse and exploitation of persons. It contains certain provisions penalizing the sale or purchase of minors of either sex for the purposes of prostitution or illicit sexual intercourse which are as follows:-

(a) Section 366A and Section 366B

In prostitution trafficking of person plays an important role. Thus, in order to give effect to the Article of International Convention for the suppression of Traffic in women and children. Section 366-A and section 366-B was inserted into the Indian Penal Code. These two sections were introduced to punish the export and import of girls for prostitution.

Section 366-A particularly deals with the procurement of minor girls for immoral purposes from one part of India to another.⁶⁰ It further provides any person who induces any minor girl to go from any place or to any act or is forced or seduced

⁵⁸ Giri V. Mohini, *Kanya Exploitation of Little Angels*, Gyan Publishing House, New Delhi, 1999.

⁵⁹ Hereinafter referred to as IPC.

⁶⁰ Section 366A of IPC states: "whoever, by any means whatever, includes, any minor girl under the age of eighteen years to go from any place to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall be liable to fine"

to illegal intercourse shall be punishable with imprisonment, which may extend to ten years and shall be liable to fine.

Section 366-B deals with the importance of minor girls for immoral purposes from foreign country and lays down the punishment for such an offence i.e., imprisonment which may extend to ten years and liable to fine.⁶¹

(b) Section 372 and Section 376:

The IPC provides for penalizing the sale or purchase of minors for the purposes of prostitution of illicit sexual intercourse. It holds guilty individuals who directly or indirectly maintain the sex industry.

The sale and purchase of minors for prostitution forms the subject matter of two specific sections of IPC i.e., Section 372 and 373. Section 372 of IPC deals with the selling of minor for the purposes of prostitution.⁶²

It further provides punishment for imprisonment of either description for a term which may extend to ten years, and also with fine.

Section 373 of IPC contains the corresponding provision.⁶³ It punishes a person who buys, hires or otherwise obtains possession of any age, be employed or

⁶¹ Section 366-B states:- "whoever imports into India from any country outside India or from the State of Jammu and Kashmir, any girl under the age of twenty-one years with intent that she may be or knowing it to be likely that she will be forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine."

⁶² Section 372 of IPC Provides: "whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose prostitution or illicit intercourse with any person or any unlawful and immoral purpose, or knowing it to be likely that such person will, at any age be employed or used for such purposes, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. *Explanation I*- When a female under the eighteen years is sold, let for hire or otherwise disposed of to a prostitution or to any person who keep or manages a brothel, the person so disposing of such female shall, until the contrary is proved be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution. *Explanation II*- For the purpose of this section "illicit intercourse" means sexual intercourse between persons not united by marriage, or by any union of which, though not amounting to marriage is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities or both such communities, as constituting between them a quasi marital relation."

⁶³ Section 373 of IPC says "whoever buys, hire or otherwise obtains possession of any person, shall at any age, be employed or used for the purpose of prostitution or illicit, intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten

used for the purpose of prostitution or illicit intercourse or for any unlawful and immoral purpose, or knowing it to be likely that such person will, at any age be employed or used for any such purposes.

(c) Other Sections of IPC which indirectly deal with the offence in relation to prostitution:

Besides the above mentioned provisions of IPC there are some other provisions which though not directly but indirectly deal with the offences in relation to prostitution. They are as follows:-

(i) Section 354

As it is evident that prostitution in some way not only exploits the women for commercial purposes but to some extent it also out ages the modesty of a woman. Thus, in order to protect the section 354 of IPC punishes any person who assaults or uses criminal force to any woman with the intent to outrage her modesty, with imprisonment of either description for a term which may extend to two year, or with fine, or with both.⁶⁴

(ii) Section 269 and Section 270

In this era where the continuous fear of getting affected with AIDS to prevent it has become a great concern of all, the profession of prostitute not only strikes at the health of prostitutes concerned or the buyers of prostitutes but to the public at large. Hence, Section 269 and section 270 aims at protecting the life of the public at large from getting infected with any disease dangerous to life by punishing the accused with imprisonment or fine, or both.

Section 269 punishes any person who unlawfully or negligently does any act which is likely to spread the infection of any disease which is dangerous to life.⁶⁵

years, and shall also be liable to fine: *Explanation I*- Any prostitute or any person keeping or a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall until the contrary is proved, be presumed to have obtained possession of such female with that intent that she shall be used for the purpose of prostitution. *Explanation II*- "Illicit intercourse" has the same meaning as in section 372.

⁶⁴ Section 354 of IPC lays down: "whoever assaults or uses criminal force to any woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

⁶⁵ Section 269 of IPC provides: "whoever unlawfully or negligently does any act which is and which he knows or has reason to believe to be, likely to spread the infection of any disease

Section 270 provides that whoever malignantly does any act which is likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment for up to two years, or fine, or both.⁶⁶

(iii) The Indian Evidence Act 1872

(a) Section 113 A

The Indian Evidence Act 1872 is provided that when the question is whether the Commission of suicide by a women had been abetted by her husband or any relative of her husband and it is shown that she committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. Cruelty shall have the same meaning as in section 498 A of the Indian Penal Code.

(b) Section 113 B

When the question is whether a person has committed the dowry death of a women and it shows that soon before the death of a woman and it shows that soon before her death such woman had been subjected by such person to cruelty or harassment for or in connection with any demand for dowry the Court shall presume that such person had caused the death dowry. "Dowry death" shall have the same meaning as in section 304 B of the Indian Penal Code.

(E) HEALTH HAZARD

Prostitution is the worst form of exploitation of persons and is the oldest profession in the world. However, the general perception of the trade has changed over the years. The changing socio-economic conditions, stigma, victimization and of late, prostitutes being vectors in spreading, HIV has labeled them as a distinct sexually promiscuous, "immoral" community.⁶⁷ The rises in the evils of prostitution are spreading the HIV and other VD and has become a great concern in today's world.

dangerous to life. Shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both".

⁶⁶ Section 270 of IPC states: "whoever malignantly does any act which is and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both."

⁶⁷ Dubey Nidhi, *The Criminally legal Trade, Lawyers collective*, Jul 2000, 21.

Thus, one of the most alarming aspects of sex trade is the spread of the sexually transmitted diseases. Every day, the prostitution, besides the advent danger of HIV are facing various form of health hazards along with their violation of various rights. The Constitutional right of good health is also not available to them. The worst affected are the women and children but it is ironical to note that they are the one's who are perceived as the carrier of these diseases and are looked with disdain.

Various voluntary workers are working in the field of educating the prostitutes about the threat of AIDS and the protective measures they should adopt along with the test for HIV infecting. Such workers are setting up free dispensary inside the brothel and are contributing to buy medicine for them. Around 1989 a Delhi- Based voluntary workers involved in community work in education, health, law, women's and gay issues and in the peace movement came together over the plight of women working in the G.B. Road Delhi's red-light area. This group coerced the prostitutes to undergo blood tests for AIDS i.e. HIV infection under AIMS-ICMR Scheme.

The joints women's Programme organized a workshop on "Prostitution and AIDS" in December 1989 which was attended by the women from the red-light area and they also participated in the protest *Dharna* organized by the group against the Government "anti-people AIDS policies" on 28th February 1990. National Science Day.⁶⁸

With the advent of HIV, the Immoral Traffic and the Rehabilitation of Prostitution Persons Bill, 1993 was proposed to amend the Act of 1906, which worsen the predicament of prostitutes, by proposing even harsher measures. The Bill proposed to have mandatory testing of sex workers on the pretext of providing health facilities. There are little or no health facilities available to them. This Bill is not passed by the Parliament.

In 1994, the Maharashtra Protection of Sex Workers Bill was proposed where sex work was to be recognized as a legitimate commercial activity. It called for mandatory testing for STD followed by isolation, if found suffering from the same drawbacks. Both these Bills violated the human rights of the prostitutes by making the mandatory testing of prostitute for STD and AIDS and their branding and isolation if found to be suffering from either.

⁶⁸ Ibid at 406.

The plight of sex workers and the poorly structured system was brought to light in the *Surat* sex workers case and in the Mumbai sex workers case in the Bombay High Court, February 1996, 55 simultaneous raids in brothels and other places were carried out and around 400 sex workers were arrested. They were mandatory tested for HIV and were dumped into homes with no basic health care facilities and no rehabilitation Programme to train these women for an alternate source of income.⁶⁹

The Tamil Nadu's Government's experiment of bringing over 800 women to Madras from the special Homes of Mumbai has ended. Many of these women were infected with AIDS. The Government released these women and handed over to their relatives/guardians. It is stated that about 200 of the AIDS infected women from Bombay had declared that they had nobody to take care of them and would continue to remain in the Government homes.⁷⁰

Removal of HIV positive sex workers will not help in combating the problem of the spread of HIV/AIDS. It is neither practical nor ethical. A more positive and practical approach would be the improvement of sex workers. Empowering them would mean creating an enabling environment, where they are unable to negotiate with client, use condoms, and practice safe sex. It is also in the interest of public health as it prevents transmission of HIV infection. One landmark example of such approach is the *Sonagachi* project, West Bengal. The principal components of the *Sonagachi* project are as follows:-

- a. Provisions of health services, including STD treatment.
- b. Primary education and involvement in the decision making process.
- c. Information, education and communication.
- d. Condom programming.⁷¹

Durbar Mahila Samanwaya Committee (DMSC) organized a Millennium mela from 3rd March to 6th March 2001 at *Yuba Bharati Krirangan* (Salt lake Stadium), Kolkata. It aimed at placing sex workers rights on the global agenda. This exciting event was an

⁶⁹ Dubey Nidhi, *The Criminally Legal Trade*, from the *lawyers collective*, Jul 2000, 21 and 22.

⁷⁰ *The Hindu*, New Delhi, Jul 31, 1990, *Legal news and views*, September 1990, 292 and 293.

⁷¹ Dubey Nidhi, *The Criminally legal Trade*, *Lawyers Collective*, Jul 2000, 21.

important landmark in the movement towards the empowerment of sex workers. The *Mela* was organized around six sub themes.

- (a) Empowerment and Community Mobilization of sex workers and sexual minorities.
- (b) Solidarity and networking among sex workers and sexual minorities.
- (c) Violence and social structures of class, gender and sexuality.
- (d) Cultural expression of sex workers.
- (e) Creating and enabling environment for sustainable change.
- (f) Community based response to STD/HIV sex workers initiatives integrated interventions.⁷²

(F) RAPE VICTIM

Rape for a woman is deathless shame and must be dealt with as the greatest crime against human dignity.⁷³ No praise high for the judgement rendered by Anand J., in *State of Punjab v Gurmit Singh*.⁷⁴ It is notable for its empathy for the victims of rape trial process which is justly regarded by many of the victims as worse than the rape itself. The trial Court in this case misinterpreted the statement of a Lady Doctor⁷⁵ and stated that the prosecutrix was a girl of loose character.” The Apex Court characterised this observation as “a wholly irresponsible finding.” Referring to these observations of the trial Court, the Supreme Court noted that the observations lacked the sobriety expected of a judge and the appreciation of the evidence by the trial Court was not only unreasonable but perverse.

Crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women’s rights in all spheres we show little or no concern for their honour. It is a sad reflexion on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. The Court opined that a rapist not only violates the victims privacy and personal integrity, but vitably causes 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 murder destroys the physical body of victim but a rapist degrades the very soul of the helpless female. Therefore there is a greater responsibility on the shoulder

⁷² Dubey Nidhi, Millenium Mela-a report, *Lawyers Collective*, Jul 2001, 21.

⁷³ *Rafiq v State*, (1980) 4 SCC 1262.

⁷⁴ AIR 1996 SC 1393.

⁷⁵ *Id.* at 1396-1397.

of the Court while trying an assured on charges of rape.⁷⁶ Such cases must be dealt with utmost sensitivity. If for some reason the Court finds it difficult to place implicit reliance on the victim's testimony, it may look for evidence which may lend assurance to her testimony. The testimony of the prosecutor must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases of sexual molestation.⁷⁷

⁷⁶ *Id.* at 1404.

⁷⁷ *Id.*