

## ROLE OF POLICE AND PROTECTION OF WOMEN AGAINST VIOLENCE

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### Introduction

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<sup>1</sup>. 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.<sup>2</sup> The socio-legal, economic and political changes during the last five decades following independence, have generated new pressures and tensions in the society. The growing restiveness of erstwhile submissive groups in creating new situations and problems for the police to handle. Many methods and techniques which were adequate yesterday, are absolute today.

### History and Development of Police

Whilst the history of policing in India dates back to ancient times on crime and 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, and Bihar at 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

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1. Constitution of India, 1950.
2. Indian Police Act, 1861.

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. These important settlements of East India Company, policing that *Britishers* thought would serve their interests well.

The Indian Police system and its structure, as presently organized is essentially based on 149 years old Police Act, 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 reorganization 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.

### **Function 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.

The police being the most important law enforcement agency have special responsibility to ensure that they are not violated by an individual, group or instrument of the state. It can use force and take legal action to ensure that no one violates them. It is physically the weaker sections of the

society: women, children, sick and the aged-the physically weak; the poor and the destitute-the economically weak and the minorities; the dalits and the backward – the socially handicapped. Who need police protection?

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.

### **Women and Domestic Violence**

During last six decades post independence, the government of India has launched massive programmes concerning socio-economic transformation and development of women through planned approaches and time bound programmes, policies and projects. But even today Indian women are awarded stereotype, traditional and rigid role, in spite of the fact, that they tie up with men in every field. In spite of various rights guaranteed to women and the noble observation that discrimination against women violates the principles of equality and respect for human dignity, discrimination against them has been going on. The word "violence" refers to an Act of aggression that crosses the houndary of other person's autonomy and identity. It is a coercive instrument to arrests one's will over another to prove or feel a sense of act of illegal criminal use of force. Violence within family has become a global problem affecting families of all classes and cultures<sup>3</sup>

The term violence against women can be defined as any Act of gender based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life and violation of human rights of women.

Women constitute nearly one half of the Indian population but they are placed at various disadvantageous positions due to gender discrimination and bias. In the male dominated society, women have been victims of violence and exploitation. India being a tradition bound society; women have been economically, socially, physically, psychologically and sexually exploited for centuries. The concepts like sex-equality, woman's empowerment etc. have come out of the Constitutional provisions after the Constitution of India came into force on 26 Jan 1950. But truly speaking equality of status guaranteed

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3. Yajnik Ameer, Domestic Violence and Protection of Human Rights, AIR 1999 (Journal) 145

by the constitution is only a myth to millions of women who are subjected to various kinds of violence within their domestic home. The domestic violence manifests as verbal, physical or psychological abuse of women. The victims in ability to access to law makes legal remedies ineffective and the inability of the law to reach the victim is even more tragic.

Marital rape is a common form of domestic violence. A government organization for women's rights dealt with a case where in a middle aged woman called up human rights commission and accused her husband for forcing sexual contacts with her. She wanted to avoid any such contact as her husband apparently visited sex workers quite often and she suspected him of having contact venereal and related disease. There is a proposal before law commission of India for inclusion of marital rape in the law but many believe that the provision may be misused and the Indian society is not prepared for such provision as yet. However, there is no doubt that the problem of marital rape is gray area of law and evidence.

### **Women and Torture**

The role of women in India is confined to that of a daughter, house wife and mother. Unfortunately women are not safe even within the four walls of their homes. Housewives are subjected to physical torture and psychological harassment irrespective of their economic status, religion, caste and creed. Perhaps family conflict stress, cultural norms and sexual inequality contribute to wife battering. The worst aspect of violence against women is that it receives social sanctity. Neighbors Authorities and even the police hesitate to intervene in cases of domestic violence because they feel it as a very private domain. Women are vulnerable to acts of violence in the family which include feticide, infanticide marital cruelty, dowry, murder, child abuse, incest, battering etc. At the community level, they face violence in the form of rape, sexual harassment, eve-teasing, trafficking and sexual discrimination. Custodial violence and institutional deprivations and types of gender violence that emerge at the level of state.

The world conference of human rights at Vienna held on Jun 25, 1993 for the first time recognize the violation 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 favored eradication of forms of discrimination against women. Despite these rights of women and setting up of women's commission at the centre and state level, the plight of Indian women, by and large, has still remained miserable. The reason being that a vast majority of women are ignorant of the protective laws or even their existence. The parliament has already

enacted numerous legislations<sup>4</sup> to eradicate gender bias and discrimination against women. The Constitution also provides adequate protection to women against gender injustice and ensures them a life of dignity.<sup>5</sup>

### **Sexual Harassment of Women at Work Place**

One of the evils of the modern society is the sexual harassment caused to the women particularly to the working women by their male counterparts at work places. The Supreme Court in a PIL time and again has been emphasizing on the need for an effective legislation in India to curb sexual harassment of working women. In Vishaka's case<sup>6</sup> the Court laid down guidelines to remedy the legislative vacuum on this issue. It defined "Sexual harassment" as including any unwelcome sexually determined behaviour (whether directly or by implication) like physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornography and any other unwelcome physical, verbal or non verbal conduct on sexual nature. As a result of the judgment any women employee who is subjected to sexual harassment of any kind can take recourse to initiating criminal proceedings, disciplinary action and also seek compensation from the guilty employer or other person for the sexual harassment.

It is gratifying to note that the broad guidelines laid down in Vishaka's case were applied to Bombay High court in 1998 in the case of Mrs. Shehnaz Sani who was working as a ground hostess in Saudi Arabian air lines of Bombay and was sexual harassed by her employer. The Court directed the employer of Mrs Sani to reinstate her with back wages for 13 yrs, during which she was rendered unemployed due to the wrong termination of her services by her boss. This judgment has certainly set a new trend in a protection of human rights to dignity of working women in India.

### **Dowry Death**

Giving of dowry in the marriage of a daughter is an age-old practice in India perhaps because she had no rights to inherit the parental property after her marriage under the old Hindu law. Of late, the greed for acquiring more and more property in the form of dowry has reached a stage when, married women are subjected to physical and mental torture by the husband or her in-

4. The Dowry Prohibition Act 1961, the Suppression of Immoral Traffic [Prevention] Act, 1956 the Maternity Benefit Act 1961, the Indecent Representation of Women (Prohibition) Act, 1961

5. Article, 21 of Constitution of India

6. Vishaka v State of Rajasthan AIR 1997 SC 3011.

laws for non fulfillment of the demand of dowry by the girls parents. Many a times this torture leads to unnatural death of the married women or she is compelled by circumstances to commit suicide.

Despite the Dowry Act<sup>7</sup> and amendment in 1987 providing the stringent punishment the menace of dowry and dowry death persist unabated. Section 3 and 4 of the Act not only prohibit actual giving or taking of dowry, but also make the demand of dowry at that time, before or after marriage, and offence punishable with imprisonment which may be extended to 2 yrs.

### **Protection of Women Against Sexual Harassment by Police**

As a law enforcement agency the police owe a social and legal responsibility to protect women against crimes. However, with the increasing number of women and young girls coming in contact with the police either as complainants or as accused or as victims of crime, there is likelihood of police personal misusing their power and authority and misbehaving or harassing the women for sex. Therefore, adequate safeguard have been incorporated in the Code<sup>8</sup> as also the police Acts and Rules of the state for the protection against possible harassment by the police.

The code of criminal procedure provide that whenever is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.<sup>9</sup> No male persons under the age of 15 yrs or women shall be required to attend any place other than the place in which such male persons or women resides<sup>10</sup>.

The Code of Criminal Procedure further provides for release of any women, or any sick or infirm person accused of non-boilable offence to be released on bail even when the alleged offence is punishable with death or imprisonment for life.<sup>11</sup>

Again, if a person of a women has to be examined by the Medical Officer for the purposes of evidence, she should not be send for such medical examination without her consent and without an order of a Magistrate.

The jail manuals and police acts of the states mostly contain a provision that while arrested women being escorted to jail, one of her male relative should be permitted to accompany the escorting party. In no case fetters shall be imposed on female offenders. Again female inmates should be lodged

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7. Dowry Prohibition Act, 1961.

8. Code of Criminal Procedure, 1973

9. Section 51(2) of Code of Criminal Procedure, 1973

10. Section 160 of Code of Criminal Procedure, 1973.

11. Section 437 of Code of criminal procedure, 1973

separately from males.

### **Conclusion and Suggestion**

The police force, of course, must be made more professional through better training and equipment. Police reforms are overdue and must be undertaken without further delay. The living and the working condition of the police must be improved. Police performance cannot improve in isolation. It is an integral part of the criminal justice system and therefore, its performance and effectiveness will very much depend on the performance of the other components of the system. Reforms do not necessarily mean that the police be given more powers but it does not mean that we take a fresh look at the functioning of the criminal justice system and amend the some of the laws and procedure to enable the police to perform its legitimate role more effectively. The trend of growing adversarial relationship between the police and other components of the criminal justice system must be reversed at the earliest if the rule of the law is to be established in the country.