

ALL INDIA MEETING OF CHIEF JUSTICES OF HIGH COURTS ON WOMEN EMPOWERMENT VIS-A-VIS LEGISLATION AND JUDICIAL DECISION

INTRODUCTION

A one day All India Meeting of Chief Justices of High Courts on Women Empowerment vis-a-vis Legislation and Judicial Decisions was convened in New Delhi at the Parliament House Annexe on 11th December 2004 by the National Commission for Women. The Chief Justice of India Shri Justice R C Lahoti was the Chief Guest. The CJI delivered the Inaugural Address and also presided over both the working sessions. Shri Justice B P Singh and Shri Justice B N Srikrishna shared the dais along with the CJI and the Chairperson of the National Commission for Women. Among other dignitaries present on the occasion were Prof. N.R.Madhava Menon, Director of National Judicial Academy, Bhopal, Prof. Nomita Aggarwal, Dean and Head of the Department of the Faculty of Law, Delhi University and Prof. Ranbir Singh, Director of NALSAR, Hyderabad. List of participants is annexed.

INAUGURATION

Member of National Commission for Women Mrs. Baby Rani Maurya welcomed the dignitaries present on the dais by handing over floral bouquets. The Meeting began by welcoming the CJI, Chief Justices of the High Courts and other dignitaries by the Chairperson of the National Commission for Women Dr. (Mrs.) Poomima Advani. Thereafter, she proceeded with the Welcome Address and the Opening Remarks.

OPENING REMARKS BY CHAIRPERSON, NCW - DR. POORNIMA ADVANI

Dr. Advani began by stating that 11th December 2004 was a red-letter day because senior judiciary members along with the National Commission for Women were deliberating on issues of gender justice. She highlighted the fact that there has been a shift from 'emancipation' to 'empowerment' in the field of women's rights. The approach in issues of women empowerment is important to remember; from 'welfare and charity based' to a 'rights based approach'. This has become possible due to the joint contribution of the legislature and the judiciary.

She emphasized that the Indian Constitution forms the bedrock of gender justice by stressing upon Equality and Non-Discrimination for women. She equated the Indian Constitution with the Bill of Rights. However, the courts have given a new content to the rights outlined by the Constitution. The Chairperson gave at least two illustrations; judgments in which the Courts have insisted upon the Uniform Civil Code and guidelines laid down by the Supreme Court for dealing with Sexual Harassment at the place of work for women. The courts have been prompt in filling up the vacuum left by legislations pertaining to women.

Dr. Advani, lamented the fact that inspite of good legislations the fight for women's rights is far from over. The implementation of the legislation leaves much to be desired. In matters of crime against women, the lackadaisical investigation, prosecution and adjudication prevents women from getting justice. Non-registration of crimes against women is also an important aspect in the whole criminal jurisprudence system, which needs to be tackled with urgency. Women have been weighed down by centuries of discrimination and negative socialization.

Dr. Advani pointed out some instances of non-implementation of the legislations by the executive. For instance, the Dowry Prohibition Act, 1961 envisages the institution of dowry prohibition officers. However, most States have not appointed these officers and the dowry menace goes on unabated. The Prevention of Immoral Traffic Act, 1986 has been unsuccessful in preventing prostitution. Sec. 8 of the PITA ensures that only the woman is accused of prostitution while the pimps, brothel - owners and agents often go scot-free. Bonded labour continues to flourish despite the Bonded Labour Act. To sum it all up, Dr. Advani stated that despite good laws, women continue to face the brunt of multiple problems peculiar to their gender.

Dr. Advani pointed out the working of the Family Courts created under the Family Courts Act. The emphasis of the legislation was on 'family', 'counselors' and 'simplification of procedures'. However, the reality points otherwise. The appointment of counsellors is a technical formality, the city civil courts are nominated to function as family courts and lawyers make cumbersome briefs, thus ensuring no respite to a woman litigant who is not well versed with law and legal procedures. She informed one and all present that two years back in a meeting of Family Court judges conducted by the National Commission for Women, a majority of them felt that appointment to the Family Courts was a "punishment posting" for them.

Dr. Advani highlighted the lack of privacy especially in matters of crime against women. She called upon the media, both print and electronic, to maintain a balance in reporting crimes against women. The disclosure of the identity of the victim directly violates the right

to privacy of women. In the Ahmedabad rape case, Bijal Joshi, the victim left a suicide note stating that the publication of her photograph, the disclosure of her name and address by the media had made it impossible for her and her parents to lead a life of honour. The present day trend of sensational reporting and the televised dramatic presentation of the crime is an aspect that needs to be deliberated upon by the media itself.

Dr. Advani presented the various recommendations made by the National Commission for Women in matters of Domestic Violence, the role of Parivarik Mahila Lok Adalats to facilitate early disposal of cases pertaining to women, Legal Education of Women as a continuous and ongoing process, priority of trials where the woman is involved in any capacity whatsoever and non-implementation of the guidelines given by the Apex Court in the Vishakha case both by the government departments and private organizations.

Dr. Advani pointed out the deficiencies and lacunae in the definition of Rape in the Indian Penal Code and the subsequent lackadaisical investigation and lack of infrastructure. It was also pointed out by her that the IPC had been amended only twice with respect to women's issues in the 150 years of its existence. She informed that the task of reviewing the IPC with respect to crimes against women had been given as a project to the National School of Law, Bhopal.

Dr. Advani concluded her address by mentioning an incident at the gender sensitization programme conducted by the British Council, New Delhi where the judges were called upon to describe their most romantic and intimate moment. When this was met with total and stunned silence on the part of the judges, a question was put to them which was quoted verbatim by Dr. Advani, "when you have a difficulty in describing your most romantic and intimate moment, how do you expect a rape victim to give an account of her worst intimate moment?"

The CJI then released '**Search for a Vision Statement on Women Empowerment vis-à-vis Legislation and Judicial Decisions**' prepared by Dr. Padma Seth, former Member of the National Commission for Women and presently Executive Director of the Indian Trust for Innovation and Social Change.

INAUGURAL ADDRESS BY HON'BLE CHIEF JUSTICE OF INDIA SHRI JUSTICE R.C. LAHOTI

In the Inaugural Address the CJI stated that the leaders of the Indian judiciary had assembled together under the auspices of the National Commission for Women for a fair, frank and heart to heart discussion on the issues of women empowerment. The CJI maintained

that the Indian Judiciary enjoyed a reputation of being gender sensitive. He pointed out that in the last three decades, there had been a change in women empowerment issues. The CJI quoted an incident from the book in a Doll's Home in which 'Helmer tells Nora that first and foremost she was a wife', to which Nora replied, "I am first an individual". The CJI drew an analogy of this incident to the desire of the contemporary woman to be treated as an individual with dignity and equality.

The CJI traced the development of the international norms and standards pertaining to women from the Universal Declaration of Human Rights, the Convention for Elimination of all forms of Discrimination Against Women (CEDAW), the General Recommendations of 1992 on CEDAW on Violence Against Women, the Vienna Conference of 1993 and the Declaration on the Elimination of Violence Against Women, 1993.

The Indian Constitution was a quantum leap in women's rights and it treats women as a class. It provides for affirmative action in favour of women and prohibits discrimination against them. The CJI quoted the relevant Constitutional provisions pertaining to women. The CJI then conceded that women had faced social and economic handicap for centuries. Despite the rights granted by the Constitution and special legislations, the reality is that there is widespread non-implementation of the legislations, structural inequalities and power imbalances within the society. Law is a means of bringing silent changes in substantive laws and procedures, which have relevance to the women's rights. However, the courts can go beyond the limitations of written law and have often done so. The CJI stated, "All law is not justice and all justice is not law". Justice is a combination of various factors; namely, good legislation, implementation, etc. Law in action is more important than law itself.

In the delivery of gender justice, gender sensitization of the judiciary plays a major role. Collective qualitative philosophy of justice should be that personal predilections and inhibitions should have no role to play. "Bad interpretation can defeat the best intentions of a good law". The CJI said that landmark decisions of the judiciary in the last two decades have shown sensitivity towards gender justice. However, this sensitivity is individualistic and needs to be institutionalized. He suggested that this meeting should bring out a model of gender sensitization.

The CJI then went on to praise the Vision Statement released by him and said that all judges should read it and acquaint themselves with the contents therein. However, the CJI pointed out that there were very high expectations demanded from the judiciary. The Separation of Powers has not been completely obliterated in India and hence it was too much to expect the judiciary to legislate. Secondly, the judiciary cannot overlook the essential norms of criminal jurisprudence while deciding on cases pertaining to women. Lastly, the book contained

expressions such as, “unconcerned judges”, “unmindful judges”, “no quest for social justice” etc. which could have been avoided.

The CJI then appealed to his brother judges to keep the following points in mind whilst dealing with cases pertaining to women.

- Be informed of the historical and cultural background, understand feelings and have regard towards women.
- Treat women as equals.
- Treat women with dignity and honour; inculcate confidence in them.
- Make sure that women do not face any harassment when they approach the courts.
- Make efforts to render women victims quick, speedy and cheap justice.

The CJI offered the following court - room tips to the fellow judges.

- Treat women with courtesy and dignity. There should be no comment, gesture or action detrimental to the honour of women.
- Gender bias comments, gestures or actions should be avoided in and around the court-room.
- The court proceedings should begin on time and in an orderly manner to avoid repeated hearings so that women witnesses are not harassed.
- The examination and cross-examination of women witnesses should be done by the presiding judge himself or under the direct supervision of the presiding judge.
- The female members of the Bar should be encouraged in the profession by assigning jobs like court commissioner for inspection, amicus curiae, legal aid work, etc.
- In cases of Crime Against Women, delay in disposal should not defeat justice itself.
- The CJI especially appealed to Chief Justices of High Courts to look out for brilliant female lawyers who have the potential for elevation to the Bench.

The CJI concluded his inaugural address by making two precautionary observations. Firstly, the issue of gender justice should not become a war between two sexes. Both should complement each other rather than suspect each other. Secondly, perception changes were needed for greater social awareness.

The CJI wished the meeting a great success.

SESSION I

The session was chaired by Hon'ble CJI, Sh. Justice R.C. Lahoti, and Hon'ble Shri Justice B.N.Srikrishna and Dr. Poomima Advani, Chairperson, National Commission for Women co-chaired the session.

FIRST SPEAKER : MS NIRMALA SITHARAMAN, MEMBER, NATIONAL COMMISSION FOR WOMEN STRENGTHENING INVESTIGATIVE MACHINERY : NCWS EXPERIENCE

Under the National Commission for Women's Act a major mandate of the Commission's work is Investigation. Sections 10(1) and 10(4) of the Act are relevant to the powers of investigation. Investigation is necessitated due to failure of system and failure of law investigative agencies, which leads to denial of justice to women. Apart from formal complaints received by the NCW, the Commission also takes *suo-moto* cognizance of incidents. Ms. Nirmala Sitharaman credited the role of the active and vigilant media in this regard. However, she also added the caveat, that sometimes an over zealous media draws maximum attention, thus resulting in undue pressure on the Commission.

During the year 2004, the NCW investigated matters in several states by coopting retired judges, senior police, NGOs and committed individuals. However, the NCW almost always faced an uphill task regarding the production of documents and other demands of the investigation teams from others. On the part of the bureaucracy and the policy there was an "over cautious" approach to "protect and safeguard interests", which often lead to non-cooperation with the NCW. Ms. Nirmala Sitharaman cited the example of doctors in government hospitals who are responsible for preparing the MLC in a medico-legal case and handing it over to the 'police for further investigations. However, the reality is that MLCs are not exhaustively prepared and people often have to pay money to get the same. In matters involving inter-state investigation, the NCW faces lack of co-operation and non-disclosure of information, both, from the police and the bureaucracy.

After compilation, when the investigation report is sent to the concerned agencies, there is no reply forthcoming on actions taken on the recommendations of the Commission. A general reply is given with regard to the action taken without giving specific reply on each recommendation. As a result of all this, the complainant suffers and most often approaches the court.

Ms Nirmala Sitharaman suggested that when the NCW has investigated a matter and subsequently the same matter reaches the Court, the judge should ask if any Commission has

already investigated on the same and if so, due regard should be given by the judge to the report. This independent report should be juxtaposed with the prosecution case for full justice to the complainant. Ms. Nirmala Sitharaman also pointed out that the investigation of the Commission is 'victim focused' while that of the prosecution is 'accused focused'. A consideration by the court of the investigation by the NCW will strengthen the Commission.

Ms. Nirmala Sitharaman pointed out that institutions like the Panchayats and Co-operative Societies that could have played a major role in protecting the rights of the women have been themselves violating the rights of the women.

Ms. Nirmala Sitharaman concluded by giving an assurance to the complainants and the NGOs that the Commission would carry out its tasks with "solemn dedication".

Shri Justice Srikrishna replied to the suggestion offered by Ms. Nirmala Sitharaman by stating the legal position with respect to consideration of investigation report by the courts. The courts can only take legally admissible evidence into consideration. The investigation report may be educative to a judge but is not legally admissible. However, the NCW investigation team could tender evidence, which may be taken into account by the courts.

SECOND SPEAKER : PROF. MADHAVA MENON, DIRECTOR, NATIONAL JUDICIAL ACADEMY, BHOPAL

JUDICIAL VERDICTS ON WOMEN RELATED CASES

Prof. Menon mentioned about few caveats regarding his paper. Firstly, he described his paper as an impressionistic account and not as a very well researched document as the time available was too short for comprehensive research.

Secondly, he mentioned that while making remarks on judiciary as a whole, dependence on the decisions of higher courts only would not be very appropriate as the huge bulk of cases related to women is pending with the lower courts, which is unfortunately not available because it is not published.

Thirdly, he mentioned that the alternate yardstick for assessment of judicial performance in gender justice is the manner in which judges treat women in court whether they appear before them as litigants, witnesses, victims, lawyers or subordinate staff. This is where women face discrimination and develop perceptions of justice\injustice which build or erode their confidence in the system.

Lastly, he said that the number and positions of women in the judicial establishments is also indicative of how well the judiciary is disposed to the practice of gender justice.

Prof. Menon commented that a sensitized judiciary is the best guarantee for gender justice. He further observed that as a judicial trainer, it was his job to ensure that the justice delivered is in tune with law and the decision is not just but it appears to be just. He maintained that gender justice is a concept understood differently in different cultures and at different time periods in history. However, today this concept is susceptible to judicial determination and judicial administration. It can also be argued that the judicial system as a whole has not changed enough to absorb the emerging standards of equality of women.

Prof. Menon maintained that the Constitution of India guarantees gender justice in terms of equality and dignity and the Indian Judiciary has come to play a decisive role in governance based on fundamental rights and rule of law. In this context the most relevant would be to appreciate that the gender justice is the sum total of what a woman get through the system.

Quoting late Prof. B. Sivaramayya in his "Fifty Years of the Supreme Court of India", Prof. Menon pointed out that by employing traditional constructions of 'solemnized' in bigamy cases the Court has defeated gender justice. In rape cases, the Court's approach has varied between strict and liberal interpretations. In property matters, the liberal approach of court gave the widest possible interpretation and enlarged the traditional property rights of women. However, the Court showed reluctance to assert the same activist approach and refused to invalidate discriminatory features of the customary Hindu Law of Succession. On sexual harassment, the activist court has openly advanced the cause of gender justice based on international human rights instruments and has laid down a series of guidelines to be observed in all institutions employing women, until legislation is enacted for such purpose.

Prof. Menon quoted the Chief Justice of India while describing the seven points regarding the treatment that should be meted out to women. He emphasized that the women must be treated with dignity; gender bias is to be carefully guarded off in the court room and protection should be extended to any female present in the court; examination etc. of women should be conducted by the court itself; court proceedings involving women must be dealt with expeditiously; female members of the Bar may be encouraged in the profession by giving them assignments as Court Commissioners; preference must be given to female lawyers in the matter of assigning legal aid work and crimes against women must be dealt with on priority basis.

Prof. Menon quoted Shri Justice A.S. Anand (C.J.I., then) that the judges need to be proactive and take charge of courtroom to ensure that the subtle play of discrimination through spoken and unspoken words are eliminated.

THIRD SPEAKER : HON'BLE CHIEF JUSTICE OF ANDHRA PRADESH HIGH COURT

The third speaker, Chief Justice of Andhra Pradesh while narrating his experiences criticized the trend of permitting advocates to plead in the Family courts. 'It defeats the very purpose of Family Courts. These Courts should preserve their distinctive culture which is very different from the normal courts.' He went to the extent of even suggesting that there should be a different bar for Family Court lawyers. Its membership should be confined only to those advocates who are sensitive to women's issues and who can imbibe the culture of the Family Courts (FC) but this suggestion was discarded outright by the CJI who asserted that as a matter of fact our effort should be to sensitizes all advocates towards women's issues.

SESSION II

Hon'ble Shri Justice R.C. Lohati chaired post lunch proceedings. Hon'ble Shri Justice B.P. Singh and Dr. Sudha Malaiya were Co-chairpersons. Dr. Malaiya invited the Chief justices of High Courts to recount their experiences and the contributions of their Court to the cause of gender justice. She asked them to give suggestions for improving the working of the Family Courts.

FIRST SPEAKER : HON'BLE CHIEF JUSTICE OF MADHYA PRADESH HIGH COURT

According to the Chief Justice of MP the effort of the judges presiding over the proceedings of the FC should be to try for the reconciliation of the parties and to prevent the family from breaking up. At this juncture Dr. Padma Seth narrated her experience when she happened to visit Andhra Pradesh "there the Mahila Courts seemed to be just an extension of the normal Sessions Court where no trials are ever held in camera and they also seem to be riddled with the same problems. Women fail to attend these Courts because there is no woman police officer to escort to accompany them and they remain in prisons for longer periods than the maximum punishment for crimes, which they are alleged to have committed. The long term spent in jail by these women results in their stigmatization even by their near and dear ones and the neighbours. To overcome this she suggested that the High Courts should regularly seek the records from the jail and either discharge such under-trials or expedite their trial.

DISCUSSION

The CJI asked the NCW to take the initiative in such cases and ensure that such trials are not delayed. He also asked the NCW to suggest an amendment to the legislature by which section 498A IPC and Section 138 Negotiable Instruments Act are included in the jurisdiction of the FCs so that when the parties have arrived at a compromise the proceedings under these sections can be quashed.

The Judge from Assam drew the attention of the participants towards the sad plight of women who after separate in from her husband finds itself on the street without any shelter because she is compulsorily evicted from her erstwhile matrimonial home maximum after six months. 'This provision should change' said he. He also pointed out another discrepancy in the maintenance laws - while the parents and wife both are entitled to maintenance without any age limit but a male child be deprived of maintenance on reaching the age of majority and the girl child on getting married. The CJ from UP concurred. He pointed to another discrepancy in the maintenance laws. He said, "I do not understand why should the wife who is maintaining herself and the children also be entitled only to a fraction of the husband's income (Maximum half of the husband's income)." He suggested that Sections 496, 497 and 498 all should be included in the jurisdiction of he FCs.

Suggesting an easy way out till legislative changes are made he said that all changes need not be made by law some charges can be made by mutual understanding also.

There was lot of discussion on the provisions related to the appointment of councillors in the FCs. It was agreed that liaison should be established with the universities to get the cooperation of students from sociology, law and psychology who can become trained councillors and be on the permanent rolls of the family courts with a status and pay of their own.

The Judge from Tamil Nadu pointed out to the harrowing tales of women victims who are treated as accused. She cited several instances where the woman victim, due to her motherly instinct and concern for the welfare of the children, kills the children and herself also but if by chance she is saved she is tried as a murderess. She also brought out the difficulties that women face in collecting the maintenance amount and the fact that the husband always understates his income for deciding the maintenance amount and there is no method to verify the same. Some judges came out with the suggestion that the maintenance amount should be deducted like deductions for the Income Tax and it should also be made tax-free.

The subtle methods of depriving women of their share in the property were also highlighted and to defeat such a fraud it was suggested that the share to which the woman is entitled should always be given to her and registered in her name and after that she can exercise the option of giving it to her brothers.

The Tamil Nadu judge asserted that for real empowerment we have to educate women. The justice from Assam suggested the compilation of laws related to women and their translation in local language for the benefit of women.

VALEDICTORY ADDRESS : SHRI JUSTICE A.S. ANAND, CHAIRPERSON, NHRC

Shri Justice Anand began by stating the gender inequities existed throughout the world. Even in the 21st century, there was no total gender equality and equity. He then outlined the Constitutional provisions with respect to women. The question is, have women been able to reap the benefits provided by the Constitution. The judge replied in the negative. The State has also enacted specific legislations in favour of women. However, gender biases weaken the implementation of law. The judge then traced the evolution of international norms and standards dealing with women. He specifically mentioned the 4th Beijing Conference in which it was declared that 'gender equality is the fundamental pre-requisite of gender justice'. During the September 2000 Conference at New York, it was declared that it is not only the individual but collective responsibility to uphold the dignity and honour of the most vulnerable, which included women.

J. Anand presented detailed statistics to show the divide between law and reality. He specifically raised issues of HIV AIDS, illiteracy, poverty and sex-ratio with respect to women and the girl-child. He also quoted instances of the law not protecting the rights of women. In India, there is no concept of 'marital rape' except under judicial separation. Similarly, women faced discrimination in respect of property rights and succession laws. He quoted Kofi Annan, Secretary General of the United Nations: "Women need to be empowered".

J. Anand lamented that legislation was not self-applied. Whenever, yawning gaps are left by the legislature, the judiciary has happily stepped in to provide gender justice. J. Anand mentioned the scourge of trafficking in women and girls, which had reached menacing proportions especially in South East Asia. He highlighted the lacunae in the Prevention of Immoral Traffic Act, which seeks to punish the woman and not the pimp, agent and the brothel-owner. Prosecutions and the rate of conviction of these people are negligible. He stressed on the need for rehabilitation and reintegration of such women and creation of awareness in the civil society. The NCW had a major role to play in this regard.

He also emphasized that, there can be no real development of any country without the cooperation of women. No legislation is self-applied; the need of the hour is to go to the root of the problem and solve it. Many a time the judiciary has come forward and filled the yawning gaps of legislation by judicial activism. Empowerment of women should be treated as an individual as well as a collective responsibility, specific targets should be laid down and effort should be made to achieve them.

Mrs. Nita Kapoor presented Vote of Thanks.

LIST OF PARTICIPANTS

- 1. Hon'ble Shri Justice RC. Lahoti** **In the Chair**
Chief Justice
Supreme Court of India
5, Krishna Menon Marg
New Delhi-110011
- 2. Hon'ble Shri Justice A.S. Anand**
Chairperson
National Human Rights Commission
Sardar Patel Bhawan
New Delhi.
- 3. Hon'ble Shri Justice B.P. Singh**
Judge
Supreme Court of India
11, Moti Lal Nehru Marg
New Delhi-110011.
- 4. Hon'ble Shri Justice B.N. Srikrishna**
Judge
Supreme Court of India
4, Jantar Mantar Road
New Delhi-110001.
- 5. Hon'ble Shri Justice Devinder Gupta**
Chief Justice
High Court of Andhra Pradesh
Hyderabad.
Mob. 094544400

6. Hon'ble Shri Justice B. Subhashan Reddy

Chief Justice
High Court of Kerala
Thiruvananthapuram.

7. Hon'ble Shri Justice S.N. Jha

Chief Justice
High Court of Jammu & Kashmir
Srinagar-190001
Jammu & Kashmir.
Tel.: 0191-2546185
Mob.: 94191-80927

8. Hon'ble Shri Justice R.V. Raveendran

Chief Justice
High Court of Madhya Pradesh
Jabalpur - 482002
Madhya Pradesh.

9. Hon'ble Shri Justice B.K. Roy

Chief Justice
High Court of Punjab & Haryana
Chandigarh.

10. Hon'ble Shri Justice V.S. Sirpurkar

Chief Justice
High Court of Uttranchal
Nainital-231692
Uttaranchal.
Tel.: 235895/231694
Mob.: 9412087711

11. Hon'ble Shri Justice D. Biswas

Chief Justice (Acting)
Gauhati High Court,
Gauhati.
Tel: 0361-2529778

- 12. Hon'ble Shri Justice Ajoy Nath Ray**
Acting Chief Justice,
High Court of Kolkata.
West Bengal.
- 13. Hon'ble Shri Justice Yatender Singh**
Judge
High Court of Allahabad
UP.
Tel.: 2420462/2624430
- 14. Hon'ble Shri Justice N.V. Ramana**
Judge
High Court of Andhra Pradesh
Tel.: 23442520.
- 15. Hon'ble Ms. Justice Indira Banerjee**
Judge
Kolkata High Court.
Tel.: 033-24171052/24223042
Mob.: 9830040822
- 16. Hon'ble Shri Justice Vijay Kumar Shrivastava**
Judge
High Court of Chhatisgarh
Bilaspur
Chhattisgarh.
- 17. Hon'ble Shri Justice K.R. Vyas**
Judge
High Court of Gujarat
Tel.: 26576065
Mob.: 9328215003
- 18. Hon'ble Ms. Justice Gita Mittal**
Judge
High Court of Delhi
Tel.: 26418311

- 19. Hon'ble Shri Justice H.L. Dattu**
Judge
Karnataka High Court
Bangalore.
- 20. Hon'ble Miss Justice R.M. Doshit**
Judge
High Court of Gujarat
Tel.: 26853148
- 21. Hon'ble Shri Justice I.A. Ansari**
Judge
Gauhati High Court
Gauhati
Tel.: 2606999/2604674
- 22. Hon'ble Shri Justice Kurian Joseph**
Judge
High Court of Kerala
Thiruvananthapuram
Tel.: 0484-2393901
- 23. Hon'ble Shri Justice Deepak Gupta**
Judge
High Court of Himachal Pradesh
Shimla.
Tel.: 0177-2656005
- 24. Hon'ble Shri Justice Uma Nath Singh**
Judge
High Court of Punjab & Haryana
Chandigarh.
Tel.: 0172-2725610
Mob.: 98550-842-42

25. Hon'ble Ms. Justice Prabha Sridevan

Judge
High Court of Madras
Chennai
Tamil Nadu.
Tel.: 044-24992059
Mob.: 9840251214

26. Hon'ble Shri Justice S. Radhakrishnan

Judge
High Court of Mumbai

27. Hon'ble Shri Justice M.H. Kadri

Director
Gujarat State Judicial Academy
Gujarat High Court
Tel.: 26445157
Mob.: 98250-49097.

28. Prof. N.R. Madhava Menon

Director
National Judicial Academy
Bhopal.
Tel.: 0755-2696766

29. Prof. Ranbir Singh

Director
NALSAR University of Law
Hyderabad
Tel.: 08418-245159

30. Shri S.C. Arora

Addl. Registrar-cum-
Principal Private Secretary to
Hon'ble Chief Justice of India
Supreme Court of India
New Delhi.
Tel.: 23794548

31. Ms. Nomita Aggarwal

Dean
Faculty of Law
University of Delhi Delhi.
Tel.: 27666480
Mob.: 9811213021

32. Ms. Vandana

Lecturer
Faculty of Law
University of Delhi
Delhi.
Tel.: 27325130

33. Ms. Geeta Sekhon

Lecturer
Faculty of Law
University of Delhi
Delhi.
Tel.: 24673009

34. Ms. Shobha Saxena

Reader CLC
University of Delhi
Delhi
Mob.: 9810228939

NATIONAL COMMISSION FOR WOMEN

1. Dr. Poornima Advani

Chairperson
National Commission for Women

2. Dr. Sudha Malaiya

Member
National Commission for Women

- 3. Smt. Baby Rani Maurya**
Member
National Commission for Women
- 4. Smt. Nirmala Sitharaman**
Member
National Commission for Women
- 5. Smt. Nita Kapoor**
Joint Secretary
National Commission for Women
- 6. Shri S.K. Garg**
Under Secretary
National Commission for Women
- 7. Smt. Romi Sharma**
Under Secretary-cum-Public Relation Officer
National Commission for Women
- 8. Shri H. Kumar**
Sr. Research Officer
National Commission for Women
- 9. Shri D.S.Miyan**
Coordinator
National Commission for Women
- 10. Shri A.L. Narula**
Coordinator
National Commission for Women
- 11. Shri V.K. Gupta**
Coordinator
National Commission for Women
- 12. Ms. Nandini Thockchom**
Coordinator
National Commission for Women

**TEXT OF THE SPEECH
DELIVERED BY**

**R.C. LAHOTI
CHIEF JUSTICE OF INDIA**

**AT
ALL INDIA MEETING OF CHIEF JUSTICES OF HIGH COURTS ON
WOMEN'S EMPOWERMENT VIS-À-VIS LEGISLATION AND
JUDICIAL DECISIONS**

**ORGANISED BY
THE NATIONAL COMMISSION FOR WOMEN**

CONFERENCE HALL, PARLIAMENT HOUSE ANNEXE, NEW DELHI

DECEMBER 11, 2004.

INTRODUCTORY

The leaders of Indian judiciary and those who feel convinced of the need for women empowerment – by law and by legal means have assembled here today to have a free, frank and heart to heart discussion on women empowerment vis-à-vis legislation and judicial decisions. It is a welcome move. I would not, even for a moment, subscribe to the view that Indian judiciary is not sensitive to needs of justice. It is one of the judiciaries in the world which enjoys a high reputation of being justice-sensitive. However, the National Commission for women feels that it should be more gender-justice-sensitive.

During last three decades there has been a sea change in the concept of women empowerment. I am reminded of a dialogue from *In a Doll's Home* written by Henrik Ibsen. Helmer tells to Nora "First and foremost, you are a wife and mother." Nora replied-"That I don't believe any more. I believe that first and foremost, I am an individual, just as much as you are." This dialogue carries a forceful message. A woman today expects herself – and rightly so – to be treated as an individual, a living human being entitled to the same dignity and status, as her male counterparts.

International Treaties and Conventions

20th century has witnessed the upsurge of women empowerment movement universally. The Universal Declaration of Human rights, in the dignity and worth of the human persons, and in the equal rights of men and women, contemplated the entitlement of all cherished freedoms to all human beings without any distinction of any kind, including discrimination based on sex. The world Conference on Human Rights at Vienna in 1993 had declared the human rights of women and the girl child to be "inalienable, integral and indivisible part of universal human rights" and eradication of any form of discrimination on the basis of sex, is the priority objective of the international community. The Convocation on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979 is the United Nations' landmark treaty marking the struggle for women's rights. Described as the Bill of Rights for women, it spells out what constitutes discrimination against women and propagates strategies based on 'non-discriminatory' model, so that women's rights are seen to be violated, if women are denied the same rights as men. The General Recommendation 19 to CEDAW, formulated in

1992, deals entirely with the violence against women and explicitly states that gender based violence is form of discrimination which seriously inhibits a women's ability to enjoy rights and freedoms on the basis of equality with men and asks state parties to have regard to this, while reviewing their laws and policies. The Declaration on the Elimination of Violence Against Women (1993) is a comprehensive statement of international standards with regard to the protection of women from violence. The Declaration sets out the international norms which States have recognized as being fundamental in the struggle to eliminate all forms of violence against women. Any "grave or systematic violations" are liable to be inquired into and penalized ever since Optional Protocol of December 2000.

For centuries women in this country have been socially and economically handicapped. They have been deprived of equal participation in the socio-economic activities of the nation. The Constitution of India has taken a long leap in the direction of eradicating the lingering effects of such adverse forces so far as women are concerned. It recognizes women as a class by itself and permits enactment of laws and reservations favouring them. Several Articles in our Constitution make express provision for affirmative action in favour of women. It prohibits all types of discrimination against women and lays carpet for securing equal opportunity to women in all walks of life, education, employment and participation. Article 51 of the Constitution obligates the State to honour international law and treaty obligations. Our natural obligation to renounce practices derogatory to the dignity of women has been elevated to the status of Fundamental Duty by Article 51-A.

In spite of all these development, the truth remains that widespread violations of women's rights continue to persist. The forces of globalization and extremism and the unwillingness of other segments of huminity continue to pose a threat to women's human rights. Structural inequalities and power imbalances facilitate such violations. Urge for easy money, at time greed, facilitating a life full of comforts, possibly luxury, has recent few years made women more susceptible to exploitation and violence.

Law Vs Justice

Laws have taken silent and slow steps in the direction of political participation of women preventing gender biases and removing lacunas in procedural laws and laws relating to evidence. The law cannot change overnight a society, but it can certainly ensure that the disadvantaged are not given a raw deal. The courts can certainly go beyond mere legality insulating women against injustice suffered by biological and sociological factors. But all law is not justice; nor is all justice law alone. At times there could be more justice without law and likewise there could times when strict adherence to, or mindless application of laws, could lead to injustice.

Justice is a combination of various factors : enactment of laws responsive to the changing needs of time, their effective enforcement, progressive and pro-active interpretation and application so as to fill up any void that is left and not taken care of by statutory enactments. It is the law in action and not just the law which is important. If one were to ask to name a significant single factor which could make the delivery of justice, just and meaningful, the answer would be-a sensitized judiciary – a judiciary which views the circumstances and situation in a holistic manner. Judges too have their own philosophy and their own convictions depending on the background wherefrom they come, but then, there is a collective qualitative philosophy of justice dispensation in which personal inhibitions and predilections have no place.

Role of Indian Judiciary

We have this morning assembled together on the invitation of the National Commission for Women to discuss, deliberate and dwell upon issues relating to women empowerment vis-à-vis legislation and Judicial decisions. In such a meet the judges have a two – pronged role to play. Firstly, it is the judiciary which interprets and implements the laws. A judge is an eye-witness to a real life drama – how the script written by legislature is played by real life characters. The parties while critically evaluating the laws may tend to have a partisan look; a judge can make a correct and realistic evaluation of the laws and find out authoritatively the difficulties in implementation of or lacunas in legislation. Today we propose to identify and catalogue such difficulties and lacunas. Secondly, and which is more important, a judge while administering the laws, if deprived of requisite sensitivity may frustrate the objectives sought to be achieved by the best of the laws.

However, one thing shall have to be clearly borne in mind, i.e., the role of the judiciary, in the vindication of gender justice. According to Justice V.R. Krishna Iyer, "case – law, creative, imaginative and gender friendly, has its logic and limitation. Judges cannot make law but only interpret it and decide specific cases and controversies within defined bounds although in that process they do make law interstitially. But legislation is essentially a wider function covering vaster spaces and free to weave fabrics of fundamental mutation. So it is substantive codification, radical in transformation of the social order, that we need, an avant-grade operation operation parliament must perform. Magnificently as the judiciary has acted, they have not and could not usurp legislative functions. Landmark decisions delivered by the Indian judiciary, in particular during last two decades, bear testimony to the fact that judges cannot be accused of gender injustice. They have shown the requisite sensitivity is individual and needs to be institutionalized. The purpose of this meeting is to share the experiences, have an

exchange of views and to learn and devise by our experiences a model of gender justice sensitization.

About the Book

Let me say a few words about 'Search for a Vision Statement on Women Empowerment vis-à-vis Legislation and Judicial Decision' the Book which has been prepared by the Indian Trust for Innovation & Social Change and published by the National Commission for Women and which I will have the privilege of releasing today. It goes without saying that the National Commission for women, under the leadership of Dr. Poornima Advani as Chairperson, has done an excellent job. The Commission has carved out its place in the working of Indian constitutional governance. It has succeeded in wiping out tears from the eyes of several aggrieved women and it has certainly succeeded to a large extent in empowering the women by developing their confidence through education, literacy, campaigns, philosophy propagation and field work. By the courtesy of Dr. Poornima Advani, I have received several publications brought out by the Commission and turning over the pages I have benefited much by adding to my knowledge and widened my vision.

I have looked into the Book – 'Search for a Vision Statement on Women Empowerment', which will be in your hands a few minutes hereafter. I can say without hesitation that it is also a digest of almost all judicial pronouncements relevant to the subject in the field of substantive and procedural law and practices. However, I have a caveat to enter on three points. Firstly, the Book projects too high expectations from the judiciary and, while doing so, the concept of separation of powers between legislature, judiciary and executive seems to have been obliterated at some places in the Book. It is too much for the Commission to expect from the judiciary to legislate and to vindicate women empowerment by crossing its constitutional and jurisdictional limits. Secondly, inspite of the concept of affirmative action and protective discrimination being acceptable to us as ordained by the Constitution, we cannot afford to overlook certain basics of criminal jurisprudence. We cannot convict an accused even if there is no evidence and even where the standards of proof well settled in criminal jurisprudence are not satisfied. Thirdly, at places the edge of the pen used by the writers seems to have gained more sharpness than needed. Expression like – "unconcerned and unmindful judges bogged by technicalities in the courts" (page 41); "The effort of the judge was diverted to proving the accused innocent and that was truly a case of miscarriage of justice" (page 67); "There is no quest for social justice but more emphasis is given on technicalities and procedural requirements. In the sample cases cited above, these are only illustrative to show how the

attitude of the Judges of the various High Courts are almost the same and similar" (page 70); and "Insensitive Court" (page 132) and a few such like observations could have been avoided without compromising with the theme and message of the Book.

However, I am not critical of the criticism of judiciary leveled in the Book. It may be zeal or may be over zealousness of the authors. Nevertheless, whatever has been said therein, is with objectively and all good intentions. I will appeal to the judges and readers to receive the message which is intended to be given by the Book.

What do we do

I would suggest the following principles to be kept in mind by the judges to achieve the goal of gender justice:

- (1) Be informed of the historical and cultural background in which the women have lived over the ages and understand their feelings and have regard to their needs as a class.
- (2) Because the women are weaker sections of the society, strike a balance in your approach in dealing with any issue related to gender, or where a woman is victim, in such a way, that the weaker are treated as equals.
- (3) Treat women with dignity and honour and inculcate confidence in them by your conduct, behaviour and ideology whenever they come to you as victims or seekers of justice.
- (4) Do not allow them to be harassed and certainly do not do anything yourselves which may amount to harassment of a woman; and
- (5) Make efforts to render a woman victim quick, speedy, cheaper and effective justice. True to its meaning.

These are the broad principles. I take this opportunity to share with you a few court-room – tips which I have myself followed as a trial court judge and also as a member of higher judiciary. These are :-

- (1) Women to be treated with courtesy and dignity while appearing in the Court. Any comment, gesture or other action on the part of any one in or around the court-room which would be detrimental to the confidence of the women is to be curbed with a heavy hand.
- (2) Any gender bias is carefully guarded against in the court-room and this protection should be extended to any female present or appearing in the court either as a member of the staff or as party or witness or member of legal profession. A message should

clearly go that any behaviour unbecoming of the dignity of woman shall not be tolerated by the Court.

- (3) Court proceedings involving women must begin on time and proceed with in an orderly manner and with dispatch so that they are concluded as expeditiously as possible avoiding the need for repeated appearance of women in the Court.
- (4) The examination and cross-examination of women witnesses must be conducted by the court itself, or under the direct supervision of the presiding judge.
- (5) The female members of the Bar may be encouraged in the profession, may be by giving assignments as Court Commissioners for inspections and recording statements of witnesses.
- (6) Preference may be given to female lawyers in the matter of assigning legal aid work or amicus curiae briefs so that they have more and more effective appearances in Courts.
- (7) Crime against women ought to be dealt with on priority basis so as to decide finally at an early date lest the delay should defeat the justice.

Finally, two precautionary observations. let the issue of gender injustice not be perceived as a war between two sexes. Long before, when consciousness in society towards gender injustice was not present then resentment on part of women was justified; but now the approach should be of complementing each other rather than competing on perceptions, which may not be real or may be non-existent. Societal bonds are based upon integration, mutual dependence and respect. They are not just contractual but based on deep organic unity. It is true that male sex is most of the time blamed as inflictor of gender injustice: but it cannot be ignored that male sex also suffers from and feels pained at gender injustice, as the woman subjected to injustice is sometimes his mother or his daughter or sister or wife. Therefore, perceptual change is needed for greater social awareness and sensitization which breeds equality of sexes and not rivalry of sexes.

Justice Michael Kirby of Australia says – “ In a pluralist society judges are the essential equalizers. They serve no majority; not any minority either. Their duty is to the law and to justice. They do not bend the knee to governments, to particular religions, to the military, to money, to tabloid media or the screaming mob. In upholding law and justice, judges have a vital functional in a pluralist society to make sure that diversity is respected and the rights of all protected.”

I would also like to quote Justice Leila Seth – a prominent lady judge, who also held the office of the Chief Justice of High Court – “ So, can a Women get impartial justice from

a man ? Or conversely, can a man get impartial justice from a women? The answer is
"Yes"..... in both cases. But judges have to learn the language of equality and be impartial and try and place themselves alternately in the shoes of the two disputants and appreciate the problem and give an objective decision. This process of learning the language of equality is slow – but has to be encouraged. Otherwise there will be no equality and no justice. As one learns a new language when one goes to a new country, so must we learn the language of equality as we enter a new century, with hope and with desire to remove injustice."iii

Ladies and Gentlemen! Thanks to all of you listening to me with patience. I wish you a nice day, full of meaningful deliberations. I wish this Meeting a grand success. I hope, at the end of the day, we would all be returning to our respective jurisdiction armed with the messages of this Meet and better sensitized judge towards gender justice.

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- i. **ARTHUR T. MORGAN**, *Quotation*, p. 412.
 - ii. **JUSTICE V.R. KRISHNA IYAR** : Search for a Vision Statement on Women Empowerment vis-à-vis Legislation & Judicial Decisions – 'A Vibrant Vision and Militant Mission', page (xvii)
 - iii. **JUSTICE LEILA SETH** : ' Gender Sensitization of the Judiciary', page 103 – The World of Gender Justice edited by Murlidhar C. Bhandare.

GENDER JUSTICE AND JUDICIARY : AN ASSESSMENT

Prof. (Dr.) N.R. MADHAVA MENON

Director

National Judicial Academy, Bhopal

Admitted laws alone cannot make justice available to citizens in society. Seeking equality in an unequal society is a task demanding concerted action on the part of the individuals, the community, government and the judiciary on a continuing basis. This is what women as a class must realize in their struggle for equal justice in the democratic republic of India.

Gender justice is a concept understood differently in different cultures and at different periods in history. However, with the adoption of universal standards against inequality and discrimination and the evolution of a rights-based approach in the empowerment of women, the concept is today susceptible to judicial evaluation and judicial determination. In this process the Indian Courts have played a significant role during the last five decades with the support of the liberal provision of the Constitution, with the aid of a series of pro-women international human rights instruments and an increasingly assertive women's movement within and outside the country. The complaint seems to be that more could have been done if the judges were so inclined. Furthermore, it is argued that the judicial system as a whole did not change enough to absorb the emerging standards of equity and equality vis-à-vis women with the result the bulk of women approaching the subordinate courts neither receive equal treatment nor are able to access the full benefit of the principle of equal justice under law.

It requires a lot of research to prove or disprove the above proposition. As such, any assessment can only be provisional and tentative. It serves no purpose to apportion the blame for the status of women today on different wings of government on society at large. Given the fact that Indian Constitution demand gender justice on terms of equality and dignity and given the fact that Indian judiciary has come to play a decisive role in government based on fundamental rights and rule of law, what needs to be addressed is how the performance of judiciary in this regard can be further improved towards advancing the realization of the

constitutional mandate of justice to women. Judicial performance in this regard involves not only few landmark decisions of superior courts against discriminatory practices but extends to the entire range of adjudicatory practices at staff of lawyers and courts towards women's issues and the extent of participation of women get from the system as a whole though progressive judgments from superior courts do provide the direction for change in substance and procedure. By declaring the coming year (2005) as a year for judicial Excellence, the chief justice of India alerted the entire judicial establishment to make a difference in the coming days and months on the quality and efficiency of the system. It is a unique occasion for the courts in India to give a push to the unfinished agenda on gender justice in terms of the constitutional promises and the equal justice under law.

Three-fold Criteria for Performance Assessment

There are possibly ways in which the performance of the judiciary in relation to gender justice can be assessed. First, of course, is a review of gender-related decisions of courts on issues of family relations, criminal justice administration, labour and employment matters etc. Unfortunately in this regard the vast body of decisional law of the subordinate courts where the bulk of women ordinarily seek justice are not available for review. Though in a precedent-bound system, one can expect the decisions of superior courts to be the applicable law, it is common knowledge that approaches and attitudes towards facts and evidence of individual judges can make a lot of difference in the outcome of the case despite the law being common to all. In other words, evaluation of judicial decisions on gender justice can only give a partial not necessarily the true picture of judicial performance in this regard.

A second yardstick for assessment of judicial performance in gender justice is the manner in which judges treat women in court whether they appear before them as litigants, witness, victims, lawyers or subordinate staff. This is where women experience discrimination and develop perceptions of justice/injustice in the system which build or erode their confidence in the system. Therefore, it is a critical input in the assessment of the system in respect of gender justice. There are some studies now available in this respect of gender justice not comforting to the judiciary.

Finally, the strength in terms and position of women in the judicial establishment is indicative of how well the judiciary is disposed to the practice of gender justice.

Gender Justice Through Judicial Decisions

Writing about Gender Justice and Fifty Years of the Supreme Courts of India, the late lamented Professor B. Sivaramayya classified the role of the court into a long early period of

traditionalism (1950 to 80s) and a more recent period of activism. It will be interesting to recall briefly the author's assessment courts traditionally activist roles and what it did to gender justice or injustice.

1. Employment traditional rules of construction the author argues that the Courts defeated gender justice in adjusting challenges to bigamous marriages. The courts said that marriages celebrated "without proper ceremonies and in due form" cannot be recognized as marriage to sustain conviction for bigamy (AIR 1971 S.C. 1153; AIR 1979 S.C. 713). Depending on dictionary meaning of "solemnized" the court "elbowed out the policy and purpose of the legislation". By making the burden heavy on the prosecution without regard to the object of the legislation, the court helped accused in bigamy cases go scot-free and let women put to gross subordination and inequality (D. Sivaramayya, fifty years of the Supreme Court, OUP and ILI (2000) pp. 291-92).

In *Yamunabhai V. Anantrao* (AIR 1988 S.C. 644) the Supreme Court even refused to accept the plea of the second "wife" to an order maintenance under Section 125 of Cr.P.C. on the ground that the marriage was void. No amount of social context and social justice arguments on the light of such women could change the traditional approach of the judiciary to the gender inequalities in the situation. The Court was however persuaded to consider sanction of interim maintenance pending decision of the validity of the second marriage.

2. The courts approach on violence against women varied between strict and liberal interpretations. In rape cases the court initially insisted on corroboration of the testimony of the prosecutrix, too delay in filing the FIR against the prosecution case and reduced sentences of rapists including child rapists on extraneous considerations ignoring the trauma of rape victims.

Over the years, the legislature and the judiciary tightened the law of rape and came to the help of victims of sexual violence. In a recent case the Supreme Court turned activist and directed the National Commission for Women to frame a scheme for payment of compensation to the victims of rape on view of the gaps in the criminal law in this regard (1995) 1 SCC 14). Minor variations in the testimony of female victims are no longer considered enough for impeaching the testimony of the victims of sexual violence.

3. In respect of construing property rights of women, the court has adopted a liberal approach and buttressed the rights of women to claim "constructive possession" under

the Hindu Succession Act (AIR 1959 S.C. 577) even in absence of actual possession. In fact, the approach of the court gave the widest possible interpretation and enlarged the traditional property rights of Hindu women. However, the Court showed reluctance to assert the same activist approach and refused to invalidate discriminatory features of the customary Hindu Law of Succession (AIR 1996 S.C. 1864).

4. On the issue of preferential rights of a male to guardianship of a Hindu minor, the court found gender-based inequality in section 6(a) of the Hindu Minority and Guardians Act, 1956 and invoked the provision of CEDAW and Beijing Declaration to restore gender justice by interpreting the words "after him" in Section 6(a) to mean "in the absence of" for whatever reason. (Gita Hariharan, 1999 (2) SCC 228). Thus the constitutionality of the Statute was upheld while giving mothers of minor children equal rights become natural guardians when the father was alive.
5. On sexual harassment at work place, an activist court openly advanced the cause of gender justice based on international human rights instruments (Vishakha, 1997 (6) SCC 241). The court felt that the absence of legislation should not be allowed to perpetrate gender based violence against women at work places and laid down a series of guidelines to be observed in all institutions employing women, until legislation is enacted for the purpose. The court literally legislated on what constitution sexual harassment and how complaints have to be processed promptly and fairly through a mechanism which the court itself devised through the judgment. The decision constitutes a landmark in gender justice development through judicial decision.
6. Maintenance is an issue on which the court has of late taken progressively liberal approach promotive of women's right to equal justice. While in one case the court felt that maintenance should encompass provisions for residence (1995 (5) SCALE 199) in another it ruled that the Muslim Women (Protection of Rights on Divorce) Act should be interpreted beneficially in favour of Muslim Women on the line of the Shah Bano judgment (2001(7) SCC 740). This was done even when the legislature took a regressive step in denying a section of women what the secular law has provided to avoid deprivation and exploitation.
7. Recognizing the importance of the Directive Principle on Uniform Civil Code for promoting equality of women, the court on several occasions exhorted the legislature to initiate necessary steps in realizing the object of the Directive. Besides, the Courts itself tried to involve incrementally using constitutional rights and judicial review some uniformity

in matrimonial laws (Sarla Mudgal, AIR 1995 S.C. 1531) of different communities. However, on Uniform Civil Code, the Court later restrained itself stating that removal of gender discrimination in personal laws "involves issues of State policies with which the court will not ordinarily have any concern" (AIR 1997 S.C. 3614).

Thus perceived, the picture which emerges of judicial performance on gender justice is a mixed to traditionalism and restraint giving hope and despair intermittently. Of course, given the complex social reality and the reluctance of the legislature to give what is due to women though policy changes, courts can do very little to change the situation all of a sudden. Yet the court has compelled change and exposed the double standards of political parties and governments in their approach to the plight of women. In whatever, the judges did, they invoked the spirit of the Constitution and the provision of international human rights instruments. In fact, by doing so, they brought in a revolutionary principle of domestic application of international law through judicial interventions and gave to themselves a potential weapon for continuing improvement in delivery of justice to women and other weaker sections of society.

Gender Justice and Judicial Proceedings

Writing on the procedure aspect of justice dispensation, and its gender justice dimensions the Chief Justice of India* recently formulated some best practices for courts to follow. He said:

"Theoretically and strictly speaking a judge is not supposed to show favour or soft approach for a women who should be treated like any other party of witness before the Court. In practice the judges keep in mind that any women appearing either as a party or as witness, or as victim of any crime or harassment, is to be treated with understanding and consideration so as to inculcate confidence in her during the court proceedings. A few practices have come to be recognized well and do not offend the sense of justice. These are:-

1. Women to be treated with courtesy and dignity while appearing in the court. Any comment, gesture or other action on the part of any one in or around the court-room which would be detrimental to the confidence of the women is to be curbed with a heavy hand.
2. Any gender bias is carefully guarded against in the court-room and this protection should be extended to any female present or appearing in the court either as a member of the staff or as party or witness or member of legal profession. A message should

*Hon'ble Shri Justice R.C. Lahoti, Judiciary and Gender Justice, NJA Occasional Papers No.3 (2004)

clearly go that any behaviour unbecoming of the dignity of women shall not be tolerated by the Court.

3. Court proceeding involving women must begin on time and proceeded with in an orderly manner and with dispatch so that they are concluded as expeditiously as possible avoiding the need for repeated appearance of women in the court.
4. The examination an cross-examination of women witnesses must be conducted by the court itself or under the direct supervision of the presiding judge.
5. The female members of the Bar may be encouraged in the profession, may be by giving assignment as court commissioners for inspections and recording statements of witnesses.
6. Preference may be given to female lawyers in he matter of assigning legal aid work or amicus curiae brief so that they have more effective appearances in courts.
7. Crime against women ought to be dealt with on priority basis so as to decide finally at an early date lest the delay should defeat the justice."

A former Chief Justice of India spoke passionately about the need for "education for judges" in issues relating to gender justice as, according to him, "a socially sensitized judges is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos. Judicial education should not be treated as an affront to the independence according to their own judgment. The object of judicial education is to change one's awareness, knowledge, skills and behaviour in relation to gender issues and to provide an opportunity to evaluate and discuss the issues against existing understanding and social context Gender sensitive judges can take a more proactive role in the proceedings rather than simply responding to the material presented by the lawyers. They can exercise their discretion to assist the processes wherever appropriate. They can recognize the need to obtain the best quality evidence form witness particularly women in criminal trials who have been subjected to violence and women litigants in civil cases. They can pay particular attention to the way in which this evidence is recorded. In their appreciation of the evidence they can be aware of the gender context and take to avoid stereotyping. Deciding a case in the courtroom involves settlement of the disputes between the parties and a decision about the application of law. Judges have the ultimate control over this process. They determine what evidence can be given under the rules of evidence. An important factor in this behalf is change in the outlook and perception of the Judge.

The learned Chief Justice[@] who is now the Human Rights Commissioner went on to say:

“In recent years, the role of the judiciary has extended beyond issuing directives on social issue concerns to ensuring effective and fair implementation of the same. As a judge this requires elimination of subtle ways in which the courtroom perpetuates discrimination and violation of women’s rights to sexual integrity. As judges we need to be proactive and take charge of our courtroom to ensure that the subtle play of discrimination through spoken and unspoken words are eliminated”.

“There are umpteen number of cases to show how individual judges have been trying eliminate gender bias in courts with varying degrees of success. To encourage such judges and to sensitize other judges regular training courses are required. No judicial officer can function effectively without proper training. Such courses should be set up with a view to evolve capacities. Strategies and attitude in presiding officers of courts to eliminate gender bias from judicial processes”.

One thing which emerges from the above observations of an eminent judge who has been the Head of Judiciary is an admission that gender bias does exist in varying degrees in court proceeding the judges do need continuing social context education to change their perspectives and approaches towards women if gender justice is to prevail.

The same view was expressed in a recent international conference of judicial educators in Canada (Second conference of the Organization of Judicial Trainers, Ottawa, 30th Oct – 5th Nov, 2004). Gender-based discrimination is widely prevalent in court systems all over the world and judges have to be sensitized to overcome institutionalized inequalities in order to deliver equal justice to women. In fact, the Conference observed that equality and equity are the foundations of justice and fairness everywhere and if the system is not seen to adhere to the principles of equality including affirmative action, there is every possibility of justice being derailed even under democracy and rule of law. Therefore, the conference resolved to pursue an active and dynamic programme of judicial education around equality jurisprudence which the conference termed as the “Social Context Education for Judges”.

Gender Justice and Composition of Judiciary

Finally, though not of the same significance, it is pertinent to ask about the strength of women in the judicial establishment in any discussion on gender justice and judiciary. Of

[@] Justice (Dr.) A.S. Anand, Justice for Women: Concerns And Expressions, Universal law Publishing Co., Delhi (2002) PP. 71-72

course judges are not entirely responsible if women are under represented in judiciary. Today whether one looks at the legal profession or the judiciary, representation of women is as low as 5% and 2% respectively which certainly needs to be progressively corrected by a conscious policy of affirmative action.

Further, judiciary has to explain a lot as to why the Family Courts instituted expressly to deliver gender justice has not been performing to expectations. Though they are supposed to be managed by women specially trained and supported by a variety of professional services, most family courts function like any other civil court defeating the gender justice goals of the legislation the judiciary for whatever reasons.

In conclusion, one may like to suggest few steps the High Courts and Supreme Courts may like to consider to enhance the confidence of women in the judicial system and to restore the image of the judiciary as a women-friendly institution. These may be attempted during the year of Judicial Excellence (2005) under a committee of women judges constituted by the Chief Justice of India.

1. An organized programme of judicial education on gender justice be imparted to judges at all levels through the National and State Academies.
2. A well conceived co-ordinated effort to make Family Courts around the country to perform its tasks in a women-friendly manner may be initiated. There are enough empirical studies available now to show where it is not performing and why. The Rules may be appropriately revised and experienced judges specially selected may be appropriately revised and experienced judges specially selected may be put on the job to make a difference in the state of affairs.
3. The legal services Authority be asked to launch a series of affirmative action programmes specially targeted at women in court proceedings as well as in Lok Adalats so that there is substantial reduction in arrears involving women.
4. A special drive to process expeditiously criminal cases involving women victims may be launched at all level of the judicial system so that jail do not have undertrial women prisoners particularly charged with less serious offences.
5. In the recruitment of judges, special effort may be made to select as many women as possible to promote some degree of gender balance in the judiciary.

SUGGESTIONS MADE BY HON'BLE CHIEF JUSTICE ON BEHALF OF HIGH COURT OF ANDHRA PRADESH

SUGGESTIONS FOR LEGISLATIVE CHANGE-BOTH PROCEDURAL AND SUBSTANTIVE LAWS-TO REALIZE THE GOALS OF WOMEN'S EMPOWERMENT/GENDER JUSTICE

1. Section 7 of the Family Courts Act relating to jurisdiction needs to be amended to bring all offences against women relating to marriage under Chapters XX and XXA IPC within the exclusive jurisdiction of the Family Courts.
2. Offences under the Dowry Prohibition Act, 1961 should be made compoundable just like section 498-A Indian Penal code having been made compoundable in Andhra Pradesh, so as to enable the Family Court to make successful attempts for restoration of the martial home.
3. The summary procedure for the proceeding before the family courts should be prescribed in the Family Courts Act itself to avoid any ambiguity and deviation.
4. section 11 of the Family Courts Act should be amended to make trial in-camera mandatory.
5. The provisions of the Hindu Succession Act should be amended on the lines of Sections 29-A to 29-C introduced in the Hindu Succession (A.P. Amendment) Act, 1984 to confer a caparcentary right to property on women in the joint family and ancestral properties.
6. Registration of marriage should be made compulsory by appropriate legislation on the lines of the A.P. compulsory Registration of Marriages Act, 2002.
7. HIV/AIDS should be made a specific ground for judicial separation or divorce under the Marriage Laws and a premarital test for both the spouses for detection of HIV/AIDS should be made statutorily compulsory.
8. DNA test should be made compulsory in all cases of rape, paternity and maternity disputes by amending the civil and Criminal Procedure Codes.

9. The mandatory waiting period of six months under section 13-B of the Hindu Marriage Act and one year for presenting a petition for divorce under section 14 of the Hindu Marriage Act should be permitted to be relaxed in exercise of judicial discretion of the court in appropriate and exceptional cases.
10. The Minority and Guardianship Laws including Hindu Minority and Guardianship Act should be amended as to make either the mother or the father equality entitled to act as guardian of the children depending on the facts and circumstances of each case.
11. A comprehensive law on domestic violence should be enacted without any further loss of time.
12. A specific provision shall be made in the Code of Criminal Procedure to make willful default in investigation by the concerned police officer into any offence against women punishment like the specific provision under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.
13. Abnormal delays in realization of maintenance awarded to deserted wives and children should be avoided by amending Section 125 Cr. P.C, providing for attachment before judgment of the movable and immovable properties of the husband/father and for a declaration of his movable on his appearance before the Courts and for confiscation of his entire property to be applied for payment of past and future maintenance awarded by the Court, in case of default.
14. Deserted wives and children of non-resident Indian husband/fathers are really left without any legal remedy due to service of notices on and execution of orders against the erring husband/father being practically impossible. Remedial international understanding and convention should be evolved and implemented expeditiously.
15. The state of Andhra Pradesh provided 33¹/₃% reservation for women in education and empowerment, equitably distributing the same in vertical and horizontal reservations. This has to be emulated by the Union and other State Governments.
16. The constitutional reservation for elected officers in Panchayats and Municipalities should be extended to all Public Offices, including the state Legislatures and Parliament.

SUGGESTIONS FOR IMPROVING THE INVESTIGATIVE MACHINERY AND PROCESS FOR IMPROVED PROSECUTION

1. The experiment of having separate Mahila Courts for exclusively trying the offences against women adopted in Andhra Pradesh in exercise of the powers conferred under Section 9, 11 and 16 of the Code of Criminal Procedure.
2. Mahila Police Stations should be established to exclusively investigate into all offences against women at every District headquarters and sub-Divisional headquarters.
3. All offences against women, which are triable by a Court of session shall be investigated into by an Officer not below the rank of Deputy Superintendent of Police.
4. At least one Head Constable and four Constables of Police should be attached to each Family Court for early and effective execution of the warrants, summons and notices issued by the Family Courts.
5. Offences against women should be investigated into by women Police Officers, as far as possible.
6. Those using internet to tease and harass women, should be prosecuted for cyber crimes under the Information Technology Act, 2000 read with section 354 of the Indian Penal Code.

SUGGESTION FOR IMPROVING THE WORKING OF THE FAMILY COURTS

Better implementation of the provisions of the Family Courts Act, 1984 is needed in the following aspects.

1. A separate cadre of Family Court Judges should be created to ensure particularly that persons committed to the need to protect and preserve the institution of marriage and to promote the welfare of children and qualified by reason of their experience and expertise to promote the settlement of disputes by conciliation and counseling are selected in which preference shall be given to women, as enjoined by sub-section (4) of section 4 of the Family Courts Act.
2. The state government shall in consultation with the High Courts provide by Rules as prescribed by section 5 for the association of the institution, organizations and persons engaged in promoting social welfare and the welfare of the family and should accordingly involve such institutions, organization and persons in the working of the Family Courts.
3. The state Government in consultation with the High Court should frame appropriate Rules under section 6 read with section 23 and appoint sufficient number of counsellors to assist the family courts, selecting persons with the requisite experience and expertise.
4. The duty of the Family Court to make efforts for settlement as prescribed by section 9 is observed only in breach, and it should be ensured that every endeavour shall be made by the Family Court to assist and persuade the parties in arriving at a settlement, which is also the mandate of Chapter XV, Section 89 and Order X of the Code of Civil Procedure and section 23 of the Hindu Marriage Act.
5. The liberty given to the family courts to lay down its own procedure with a view to arrive at a settlement or at the truth enabled by section 10(3) is never utilized and Family Courts should be encouraged to adopt such procedure.
6. Though section 14 provides for receiving of evidence or information, that may not be relevant or admissible under the Evidence Act, the same is not being done and it has to be done to make any technicalities not stand in the way of effectually dealing with a disputes.
7. Section 15 provides for recording a memorandum of the substance of the witness only, but in practice the oral evidence is recorded elaborately and fully, defeating the object

of simplification of the rules of evidence and procedure. As such, the Family Courts should be made to strictly follow section 15.

8. Though section 11 makes the holding of the proceedings in-camera optional, the Family Courts should be made to invariably conduct proceedings in-camera to help the parties to resolve their disputes in a free atmosphere. Section 22 of the Hindu Marriage Act, already makes it mandatory.
9. Though the Family Courts Act enables the State Government to set up the Family Courts in areas other than cities and towns with a population exceeding one million, the same is never done and as many family courts as required may be established beyond cities and towns.
10. Though the right to legal representation is not as of right under section 13, the Family Courts should provide legal assistance to the parties, who are unable to engage Advocates.
11. All matters before the Family Courts should be decided within six months, for which purpose the respective High Courts can issue appropriate Circular orders to the Family Courts, as already directed by section 21-B of the Hindu Marriage Act.
12. Sufficient number of Dowry Prohibition Officers should be appointed under section 8-B of the Dowry Prohibition act, 1961 to enable effective implementation of the provisions of that Act, and an advisory Board shall also be constituted as provided by sub-section (4) thereof, apart from conferring powers of Police Officers on Dowry Prohibition Officers under sub-section (3) thereof.

Creation of congenial atmosphere

Duty is cast on the state to provide an affable and congenial atmosphere to those approaching the courts for justice, and in this regard, the following steps should be taken;

1. The Family Courts should be housed separately, and they shall not be housed within the regular Court Compounds, where civil and criminal cases are dealt with.
2. The family courts should be provided with a waiting Hall, equipped with basic amenities like, seating arrangement, counselling rooms, toilets etc.
3. Dress Code for the Presiding Officers and Lawyers should be exempted, so as to give women approaching the Courts seeking justice a feeling that they are ventilating their grievances not to any hostile person, but to their well wishers and friends. If such atmosphere is created, women can ventilate their grievance freely without inhibitions.

4. Steps should be taken to ensure that anti-social elements are kept at bay to protect women, approaching courts seeking justice from indecent behaviour and harassment or the like.
5. Steps should be taken to protect witness deposing in matrimonial matters and to prevent offences against women.

GENDER EQUALITY : CONTRIBUTIONS OF DELHI HIGH COURT

By **Gita Mittal**, Judge
Delhi High Court

Women who constitute half of the world's population and work two third of the world's working hours, earn just one tenth of the world's income which is the clear reflection of gender based discriminated. The reasons for this are to be found in the patriarchal gender mode on which family and State operate, long established socio-economic traditions and customs and social events and physical differences. However, as education and communication are emphasized, the women is transiting to emancipation from domestic confinement and more and more women are questioning and challenging differential treatment.

It was the concern of our leaders, the founding fathers that the constitution itself recognized gender justice. The preamble mandates equality and reasonable discrimination is permitted in favour of the woman under Art 15 (1) & (3). To effectuate the directive principles contained in Art 39 (d) & to eliminate discrimination between sexes in payment of wages for similar work, in 1976 **the legislature enacted the Equal Remuneration Act**. Thus equal pay for equal work is not a mere demagogic slogan – it is a constitutional goal and right, capable of attainment through constitutional remedies. Effect was given to International Conventions as Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in our statutes also.

The year 1990 saw the enactment of the National Commission for Women Act, 1990 so as to constitute the National Commission for Women to provide for matters connected therewith or incidental thereto.

Despite the host of progressive and protective legislations social justice to women has remained an anachroism. It is the judiciary alone which has risen to the occasion and its role in ensuring gender justice can by no means be underplayed.

The Apex Court over the years has upheld validity of various legislations in favour of

women and struck down State's action in matter of public employment which were discriminatory on grounds of sex; upheld actions creating job opportunities, reservation of seats of women in academic institutions and local bodies, recognized the right to protection from sexual harassment at work place/discrimination; struck down rules requiring female employees to obtain the permission of the government in writing before solemnizing and determination of service of air hostesses on first pregnancy as well as requirement of husband's consent before applying for public employment as being violative of Articles 14, 15 and 16 of the Constitution.

The National Crime Records Bureau of the Ministry of Home Affairs has drawn up a report covering crimes in India in 2002. According to it, every hour, two women are raped, there are three kidnapping and abduction case, one dowry death, four molestation cases, one case of sexual harassment and six cases of cruelty by husbands and relatives. The statistic thus show 17 crimes committed against women every hour.

The values of Justice and Equality aptly encapsulate a large part of the idealism that went in to creating the Indian Constitution. However, when idealism lapses into theory, predictably enough, it is the vulnerable sections of society and economy that are the worst hit. Historically, the largest group to be burdened with playing out this role has been that of women.

Today, the pressing need for gender-sensitive amendments in legislation in India is inarguable. However, equally significant is judicial recognition of the imperative need for gender justice and equality, as well as judicial support to women's rights, particularly over the last two decades. From replacing legislative vacuums with comprehensive principles as the Supreme Court did in the case of *Vishakha Vs. State of Rajasthan 1997 (6) SCC 241*, to interpreting and implementing existing laws in a gender sensitive manner, the judiciary has heeded the urgency of gender justice. While there is procedurally and substantively much that remains to be accomplished and altogether altered in this sphere, the judicial pronouncements provide a brief overview of the gender – sensitive stance adopted by the judiciary over the last few years.

Delhi being the capital city of India and on account of its location is the recipient of the largest percentage of migratory population. It being a cosmopolitan city, its status and problems are peculiar. The growing population tests already limited resources of land and housing, water, electricity, health education etc. All systems are stretched beyond capacities while the city fights for even bare necessities as land for sewage treatment plants and sanitary land fills sites. The society lives at a break-neck space and the traditional joint family system has fast

broken to family units. The city being a seat of the Central Government, the Delhi High Court is faced with matters of every jurisdiction. However, different aspects of gender justice have been addressed by the High Court.

The Delhi High Court has had occasion to deal with certain aspects of gender based injustice on several occasions. Most noteworthy are :-

- (1) A young girl child was orphaned on account of the death of her parents one after another and their maid and her three sons took control of the child as also property left. She was not permitted to attend school. Attempt were made to marry the child to one of the sons and to sell the property. Fortunate for the girl child, dispute arose on the booty sharing and allegations of the ill treatment came to light. Pratidhi, an NGO moved the Juvenile Welfare Board for taking action which passed an order of eviction and ceiling of the premises. The child was taken custody of by the Board but one of the maid's sons removed the child illegally. With difficulties, the child was thereafter lodged in a remand home at Nirmal Chhaya in Delhi. On appeal, the Additional District Judge set aside the orders of the Juvenile Welfare Board directing sealing and eviction. This order made by the A. D. J. was challenged under Article 226 of the Constitution of India before the High Court of Delhi. A learned single Judge of the Court interpreted the provisions of the Juvenile Justice Act, 1986 and Guardian & Ward Act holding that the Court may exercise the power of Juvenile Board. Court guardian was appointed of the property of the minor and a method of rehabilitation of the child was evolved in conjunction with the SOS village society. The case was a prime example of the positive contribution made by the Court to gender justice and the decision is reported at (2001) 57 DRJ 256 entitled Pratidhi Vs. NCT of Delhi.
- (2) Agony of a victim of grave and sexual abuse does not end with the offence. The victim or witness is a woman or may be a young girl child whose sensitivities are brutalized by the torture of facing hostile cross- examination at the hands of an aggressive defence counsel. In a recent judgement dated 28th July, 2004 in CrI. W.P. No. 356/2003 entitled Shiba Abadi Vs. State & Anr., a learned Single Judge interpreted legal provisions holding that video conferencing can be utilized for recording of evidence of witness in such offences. The Court directed that the father of the child would be the support person to remain present at the time of deposition of the child and questions to be put by the defence counsel in cross-examination would be handed over to the Presiding Judge. The trial Judge would put the questions to child witness in the child's language to ensure that

there is no further trauma to the person. Testimonial aids have been permitted to the child and the judgement has directed that the Presiding Judges must ensure that the child victim or witness is examined in a congenial, cordial and friendly atmosphere even in Judges' chambers and preferably in the post – lunch session when the court is less crowded.

- (3) Delhi High Court has also recognized the need and requirement of a home for the wife on disputes arising between the spouses. The same may be in her abode prior to the eruption of matrimonial differences or the husband must give ample monetary support to the wife to enable her to run the house for herself and her children which would be taken as the matrimonial home in two judgements entitled B.R. Kanchan Vs. Akash @ Yusuf Hussain reported at 9 (2201) DLT 681 and Anu Seth & Anr. Vs. Rohit Narayan & Another reported at 87 (2002) DLT 486.
- (4) Delhi University's action in not permitting women students who had taken maternity leave to appear in the annual examination, even though they fulfilled the attendance requirement and compelling them to take the supplementary examination was deprecated and held to be in contravention of Article 14 & 15 of the Constitution in Neeru Gupta Vs. University of Delhi & Another, 63 (1997) DLT 458.
- (5) Termination of service in the contravention of Article 14, 15 & 16 in Smt. Balvinder Kaur Vs. U.O.I. & Ors. Reported at (1995) 3 AD (Delhi) 365.
- (6) Despite extensive legislation, the malaise of trafficking in women plagues our society. The huge volume of migratory labour as well as lack of employment adds to the problem in Delhi. Raids and searches are also rendered as counter productive for want of rescue homes and the experience being that on repatriation, the rescued woman is again sold into prostitution and finds herself in the fates worst than before.

The Division Bench of the High Court of Delhi in a Public Interest Litigation entitled The Honest Organisation Vs. U.O.I. & Others in Crl. Writ petition No. 532/1992 undertook the commendable task of examining the rights of such rescued women and monitored their rehabilitation. Several marriages of such rescued women were also effected with assistance.

- (7) The provisions of Section 9 of the Hindu Marriage Act, 1956 and other similar provisions providing for restitution of conjugal rights have been the subject matter of challenge in several litigations. Taking a view that the husband alone does not have the sole right to

decide the place of matrimonial home, several High Courts were of the view that the provision was unfair. However, the Delhi High Court in its judgement entitled Harvinder Kaur Vs. Haminder Singh Chaudhary reported in AIR 1978 Delhi 296 relied on the Constitutional Guarantee of parameters of equality under Article 14 of the Constitution and rejected the view that the husband has the exclusive right to decided the place of matrimonial home. The Supreme Court upheld the Constitutional validity of Section 9 of the Constitution of India stating that the object of the restitution decree was to preserve matrimonial tie and aim at cohabitation and consortium and declined to introduce constitutional law in the privacy of matrimonial home. The view taken by the Delhi High Court was upheld by the Supreme Court in Saroj Rani's case in its judgement report at AIR 1984 S.C. 1562. The Court was of the view that there were sufficient procedural safeguards to prevent Section 9 of the Hindu Marriage Act from becoming the tyranny.

The problems are multifarious. However, issues relating to family dominate the Courts. This can be realized from the fact that five courts are only devoted to matrimonial actions in the District Courts. The following figures would indicate as to the extent of cases under the Hindu Marriage Act, 1956 over the last few years:

Year	Institution	Disposal
1999	5474	5775
2000	5855	5707
2001	6037	5922
2002	6381	5684
2003	6985	6672

(Compiled from a report prepared by Asian Development Bank for the India Administration of Justice, Technical Assistance Project)

These are, however, certain areas which statutes need to be addressed imperatively and legislative amendments deserve to be examined. These would include the following :-

- (1) Offences arising out of marriage under Section 498A and 406 of the Indian Penal Code are not compoundable resulting in havoc to families. The same is against the basic tenet of family law that families should be reconciled. Safeguards which can be suggested are that compounding be made permissible with the leave of the Court. Further a two level procedure akin to the procedure for divorce by mutual consent under Section 13B of the Hindu Marriage Act, 1956 could be adopted. Needless to emphasise that keeping in

view past experience, compounding should not be permitted to be utilized as a tool of extortion at the instance of an unscrupulous complainant.

- (2) Maintenance presupposes need and inability to maintain. Under Section 24 of the Hindu Marriage Act, a lady spouse and under Section 125 of the Cr. P.C., a needy spouse as well as dependent parents are entitled to seek maintenance irrespective of their ages.

On the other hand, a daughter is entitled to maintenance under Section 26 of the Hindu Marriage Act and under Section 125 of the Cr. P.C. only till she is 18 years of age. At 18, in this country she has barely completed her schooling and does not have any source of livelihood.

The only available remedy for a child who has attained 18 years of age is to file a suit for maintenance under Section 20 of the Hindu Adoption & Maintenance Act, 1956. The jurisdiction valuation and court fee for such a suit is at ten times the annual maintenance claimed. A suit as an indigent person *in forma pauperis* is not efficacious. This remedy is, therefore, prohibitively expensive and protracted.

It is, therefore, necessary to remove the age restriction imposed on a child in seeking the relief of maintenance under Section 26 of the Hindu Marriage Act and Section 125 of the Code of Criminal Procedure. Just as the spouse and the parents, the only consideration for entitlement to maintenance should be an inability to maintain herself.

- (3) Courts are finding it extremely difficult to **enforce/get execution** of orders passed under **Section 125 of the Criminal Procedure Code** and resource is being taken to proceedings for child custody under Guardian and Wards Act, 1890 to pressurize the other spouse to avoid maintenance order. At the same time, the petitioner in a divorce petition pursues the same with utmost vigour while protracting prosecutions under the Indian Penal Code. The demeanour of the spouses in all these proceedings depends on the intention of the spouse prosecuting the litigation. Ends of justice would be served only if a single court was seized of all jurisdictions under the Hindu Marriage Act, Guardian & Ward Act and also to conduct the trial under Section 498A/406 of the I.P.C. Hence to rejudicate petition under Section 125 of the Cr. P.C., the statute prescribes different courts for instances the Hindu Marriage Act, 1956 and the Guardian & Wards Act, 1890 are to be conducted by the District Judge while proceedings under Section 125 of the Cr. Procedure Court 498A / 406 are conducted by Magistrates. Necessary statutory amendments for holding all these proceedings before Court would achieve laudatory results. Similarly,

proceedings under the other Divorce Acts relating to other religions also need similar consideration.

- (4) It is imperative to incorporate statutory amendment whereby it would be mandatory on the court to dispose of an application for interim maintenance under Section 125 of the Cr. Procedure Code immediately on appearance of the respondent.
- (5) Amicable dispute resolution by conciliation and mediation should be made mandatory. In order to make the same meaningful and effective, statutes should incorporate provisions for creation of panels of experts in the field. It should be made mandatory for the courts to make a detailed consideration as to the result of the afore stated endeavour.
- (6) Case property in matrimonial offences relating to Stridhan under Section 406 ranges from valuables as jewellery to cumbersome articles as pieces of furniture which are released to the complainant wife on superdari. Accused persons are able to harass the complainant repeatedly requiring her to produce the seized goods which may have been released to her on superdari. The agony of an already traumatized wife is compounded by having to travel from home to court and of having to ensure security of these articles in crowded courts. When the case is adjourned on account of absence of an accused and she is required to repeat this process, the complainant's rejection can be very well imagined. Therefore, amendments are necessary in the Evidence Act as well as Crl. Procedure Code keeping in view the nature of such case properties and litigation.

Special attention is needed to the rights of contract migrants, construction workers, home workers and part time workers. Social security benefits of working women also need to be addressed by a legislation.

Pending legislative amendments there are areas where certain administrative actions could ensure gender justice. Proceedings under Section 125 Cr. P.C. and 498 A and 406 could be heard by the same Magistrate as also proceedings under the Guardian & Ward Act under the Hindu Marriage Act.

Similarly, provision of a meeting room for effecting visitation under court orders would be of utmost benefit to meet legislative intent as also placing of courts hearing family matters, near each other. Court hearing family matters should not be allotted matter of other jurisdiction. Training in human behaviour and psychology would ensure gender sensitization. Further family courts should be assigned large court rooms to ensure privacy which is the mandate of legislature and some degree of separation should be ensure in the proceedings.

Justice V.R. Krishna Iyer has put it succinctly while stating:

"The fight is not for human worth. The claim is not to end inequality of women, but to restore Universal Justice."

In the words of Kofi Annan:

"Gender equality is more than a goal itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance."

While Article 51 in Part VA of the Constitution provides that it is the duty of every citizen to remove practices that are derogatory to the dignity of women, the fact is that inequality and indignity often flow from edicts themselves like personal law. For instance, under Islamic law, a Muslim man alone has the right to have four wives, while the woman is explicitly prohibited from marrying more than once. Similarly, amongst Christians, a man can obtain a divorce if his wife is guilty of adultery, while a woman is required to prove a second cause such as desertion, cruelty, rape, incest, sodomy or bestiality. As long as personal laws such as these are allowed to subsist under the Constitution, the goal of gender justice will remain a theoretical ideal.

Even criminal laws in many areas silently endorse male domination. For instance, under S. 376 of the Indian Penal Code, the punishment for committing marital rape is imprisonment upto 2 years, or with fine or both. This implies that even if a man is found guilty of marital rape, he can be let off after being sentenced to imprisonment of just one day. Rape must be treated as a crime that violates women's rights, irrespective of whether the victim is married to the perpetrator or not.

However, there are also several progressive legislations such as the Pre Natal Diagnostics Act, which makes it illegal to find out the gender of an unborn child, thereby reducing the incidences of fetal foeticide. Also the Devadasis (Prevention of Dedication) Acts which have been enacted in several states, are helping to prevent the exploitation of young girls under the garb of religion.

The Supreme Court had noticed the failure to implement the Constitutional mandate under Article 44 of the Constitution suggesting rationalization of personal laws of minorities to develop religious and cultural amity referable by entrusting the responsibility to Law Commission and Minority Commission.

It is difficult to foresee the enforcement of the Constitutional Mandate of the right to equality and status and opportunity till such time as women, irrespective of their religious commitment, are conferred equal rights on par with men in personal matters.

Rights may remain uniform but the rituals which are inherent part of the culture and the religious would have to be maintained. Else we would be faced with vehement assertions of secularism which forms the basic structures of the Constitution.

Interestingly while there is no uniform Civil Code in India, certainly a common criminal code exists. The criminal law is equally applicable to all citizens irrespective of their religion. However, in the case of Civil Law, particularly in the matter of personal laws, there is no uniformity and laws relating to marriage divorce, maintenance, guardianship and succession governing different religions vary from religion to religion. Such laws their strength and basis from the respective religion. Thus, we have the Hindu Succession Act, The Hindu Marriage Act, the Hindu Minority and Guardianship and the Hindu adoption and Maintenance Act, Shariat Act, the Dissolution of Muslim Marriage Act, the Muslim Women (Protection, Right & Divorce). Act which are the basis for Muslims. Indian Christians are governed by the Indian Christian Marriage Act and Indian Divorce Act and the Kochi Indian Succession Act. This lack of uniformity in the personal laws results in women belonging to different religions having drastically different rights by virtue of the religion they were borne into or embrace.

India has seen men fighting for gender justice, education of mother has been advocated by great thinkers and philosophers and social scientists including Swami Vivekanand and the Mother.

Indian women who have been pioneers in their respective field have included Sarojini Naidu, Smt. Vijay Lakshmi Pandit, Smt. Indira Gandhi, Kalpna Chawla, Kiran Bedi, Naina Lal Kidwai, Arundhati Roy.

If we give it some thought, Mahabharata may not have happened if Ghandhari had removed her blind fold and Ramayana would have run differently if Swarupankha had not tried to entice Lakshman.

Hence the age old adage that behind every great man there is always a women. It only underscores the great role of woman and their contribution toward individual and social life and in the national perspective. The contribution of the legislature and the judiciary cannot by any measure be overstated. It stands out, even in the milieu of the goals which are yet to be achieved.

CONTRIBUTION OF A.P. HIGH COURT TO GENDER JUSTICE VIA SPECIFIC JUDGEMENTS

by Justice N.V. Ramana

Introduction

In the early years of Indian independence, the attitude of society, as reflected in several judgements, dealing with the plea of discrimination against women, was paternalistic in nature. The social thinking and the approach to the question of the role which women had to play in society was tradition bound. The protectionist attitude of the past is slowly giving way to the realization that a woman is in every respect entitled to claim equal rights with man. This change in the attitude of society, on the question of gender based discrimination, is voiced in numerous post 1970's judgements of the higher judiciary.

On this momentous occasion, perhaps for the first time in post-independent India, constitutional functionaries representing all three wings of the State have gathered here to discuss, deliberate and focus attention on empowerment of women. The presence of the Honourable Chief Justice of India, Chief Justices and Judges of the High Courts reflects judicial concern regarding the plight of women and the urgent need for women empowerment.

Since, the Chief Justices and learned Judges of High Courts all over the country are present here, I will confine myself only to the specific contribution made by the Andhra Pradesh High Court, through its several judgements, in furthering the cause of gender justice and empowerment of women. Several landmark judgements of the A.P. High Court are, for convenience sake, classified topic wise.

1. RESERVATION

a) In Education

30% reservation for women for admission in the integrated M.B.B.S. course was upheld as a special provision for women under Article 15(3) of the Constitution of India⁽¹⁾. This judgement of the Division Bench was affirmed by the Supreme Court⁽²⁾.

b) In Employment

The A.P. Law Officers (Appointment and Conditions of Service) Rules, 1999 are the Rules governing appointment of Law Officers in the State of Andhra Pradesh. Under Rule 7(2) thereof, 33½% reservation is required to be provided for women in appointment of Law Officers including Assistant Government Pleaders in Lower Courts. The Government was directed to prepare a roster for each unit as contemplated under Rule 7(2) and fill up the posts of Law Officers, including Asst. Government Pleaders, as per the norms following the Rule of reservation⁽³⁾.

Section 66(1) (B) of the Factories Act, which provides that no women shall be employed in any factory between 10 P.M. and 5 A.M. was struck down as being in violation of Article 14 and 19(1) (g) of the Constitution, creating discrimination on the basis of sex, and as it was contrary to International Labour Organization and other International Covenants. The State Government was directed to extend safeguards provided to women working during night hours in certain Industries and to women workers in other industries also⁽⁴⁾.

c) In Political Offices

Amendment to the A.P. Cooperative Societies Act, which provided for nomination of two women members to the Managing Committee of Cooperative Societies from among women members of the general body, was held to be a valid legislative measure designed to protect and promote interests of women and ensure their effective participation in a gender measure in the Cooperative movement and that Article 15(3) of the Constitution fully protected it from challenges based on Articles 14 and 15(1) of the Constitution⁽⁵⁾. This judgement of the Division Bench of the A.P. High Court was affirmed by the Supreme Court⁽⁶⁾.

d) In Other Areas

Questions, as to whether women reservation could be provided in the matter of allotment of fair price shops, if so what should be the extent of reservation and as to whether the said reservation could be 100%, arose for consideration in "P. Katama Reddy vs. R.D.O. Anantapur". The Decision of the State Government to allot Fair Price Shops henceforth only to women candidates was upheld by the Division Bench of the A.P. High Court as directly traceable to the fundamental rights, specifically provided in favour of women, under Article 15(3) read with Article 15(1) of the Constitution of India. However, this reservation for women in the matter of allotment of Fair Price Shops was directed to be fixed at 30%⁽⁷⁾.

2. PERSONAL LAWS

a) Maintenance

The right of a wife to receive maintenance is a personal right vesting in her with a corresponding legal obligation on the husband to maintain her. This liability to provide maintenance does not exclude the right to receive maintenance from the profits of immovable property. If it is necessary to enforce or preserve such right effectively, it could be made a specific charge on a reasonable portion of the property. Where the right of the wife for maintenance is jeopardized by the conduct and dealings of the husband with reference to his properties, Courts can create a charge on a suitable portion thereof, securing payment of maintenance to the wife⁽⁸⁾.

Section 125 of Criminal Procedure Code does not prescribe any period of limitation to claim maintenance and the husband is, therefore, not entitled to plead that his wife had waived her right to claim maintenance solely on the ground that she made the claim after a long lapse of 12 years after she left her husband's house⁽⁹⁾.

Pendency of proceedings for maintenance under the Hindu Marriage Act is not a bar for the wife to claim maintenance from the Criminal Court under Section 125 of the Criminal Procedure Code⁽¹⁰⁾.

The Civil Court under Section 151 of the Civil Procedure Code has inherent power to grant interim maintenance in a suit for maintenance filed under the Hindu Adoptions and Maintenance Act, 1956⁽¹¹⁾.

A destitute widowed daughter has the right of maintenance against her brothers, on the death of her father, if she cannot get sufficient provision from her deceased husband's family for her maintenance⁽¹²⁾.

In an application filed by the divorced wife against her husband under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986, the Magistrate, having regard to the reasonable needs of the divorced woman for her residence, food, clothes and other articles, is expected to assess the reasonable and fair provision for the future of the divorced wife or till she gets married for the second time, (which is beyond the iddat period), and on such assessment direct the husband to pay the same. If the husband fails to pay that amount, the divorced Muslim woman can approach the Court under Section 3(2) of the Act for recovery of that amount along with Mahr or Dower and other jahez articles⁽¹³⁾.

b) Partition

A Suit for Partition of the Petition Schedule Property and separate possession, where the wife has contributed amounts for constructing the building would lie before the Family Court, in view of the wide language of Section 7(1) of the Family Courts Act⁽¹⁴⁰⁾.

c) Succession

Female heirs are also entitled, under the Hindu Succession Act, 1956, to an equal share in the ancestral property of the father⁽¹⁵⁾. Under the proviso to Section 6 of the Hindu Succession Act, if the deceased is survived by a female relative specified in Class-I of the Schedule, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession and not by survivorship. Section 29-A of the Hindu Succession Act was introduced, by A.P. Act 13 of 1986 w.e.f. 5.9.1985, conferring coparcenary rights on female children who were not married prior to 5.9.1985 notwithstanding anything contained in Section 6 of the Act. In "DODLA CHINNABBAI REDDY v. DODLA KUMARA SWAMY REDDY", the Division Bench of the A.P. High Court held that the rights of daughters who were married prior to 5.9.1985 were identified and protected under Section 6 barring coparcenary rights. *The intention of the State Legislature in introducing Section 29-A was not to abrogate the rights already conferred under Section 6 of the Act but was intended to confer additional benefits on female children keeping the benefits under Section 6 intact*⁽¹⁶⁾. The right of a woman, who gets property under a decree in a maintenance suit and was alive at the commencement of the Hindu Succession Act, 1956, gets enlarged into an absolute right under Section 14(1) of the Hindu Succession Act and the alienation made by her is valid⁽¹⁷⁾⁽¹⁸⁾. By virtue of Section 29-A of the Hindu Succession Act, the daughter becomes a co-parcener in her own right by birth and ranks with the son in all respects. An unmarried major daughter is, therefore, entitled to hold one standard holding separately under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, and the land held by her cannot be said to be in excess of the ceiling limit⁽¹⁹⁾.

d) Custody of Children

The theory that the father has unlimited and unrestricted right to the custody of the minor child even to the extent of disregarding the welfare of the child is inconsistent with Article 21 of the Constitution. The claim by the father for the custody of his minor child from his deceased wife's parents (maternal grand parents of the child) was negated holding that it would not be in the interest of the minor child to be handed over from the care and custody

of the active and loving maternal grand mother to the passive and silent paternal grand parents⁽²⁰⁾.

Conversion to a different faith cannot be regarded as a disqualification for custody of the minor so long as the guardian is capable of providing a congenial, comfortable and a happy home to the minor. A mother, who has again married a man belonging to another religion, is entitled for custody of her child⁽²¹⁾.

e) Restitution of Conjugal Rights

The remedy of restitution of conjugal rights, available to a husband against his wife, as provided for by Section 9 of the Hindu Marriage Act was held to be a savage and barbaric remedy violating the right to privacy and human dignity of a woman guaranteed by Article 21 of the Constitution. A wife who was keeping away from her husband cannot be forced to join her husband without violating her right to privacy and a Court decree enforcing restitution of conjugal rights constitutes invasion of personal identity and individual's zone of intimate decisions⁽²²⁾. This view of the A.P. High Court was not accepted by the Supreme Court and Section 9 was held to offer inducement to both husband and wife to settle the matter amicably and that it served a social purpose as an aid to the prevention of break up of marriage^(22A).

f) Divorce

Under Section 10 of the Indian Divorce Act, 1869 a husband may present a Petition for dissolution of marriage on the ground that his wife is guilty of adultery. A wife on the other hand, may present a Petition for dissolution of marriage on the ground that her husband is guilty of bigamy with adultery, adultery coupled with cruelty, adultery coupled with desertion etc., and not merely on the ground of adultery. While interpreting the provisions of Section 10 of the Indian Divorce Act, 1869, the Special Bench of the A.P. High Court held that it was somewhat strange that in the 20th century, a Christian wife was not in a position to get a decree for dissolution of marriage on the ground adultery alone, when the husband was entitled to ask for dissolution on the ground that his wife was guilty of adultery. The Special Bench observed that it would be incongruous to allow such discriminatory provisions to remain in the Statute book after the coming into force of the Indian Constitution guaranteeing equal protection of laws to every citizen and prohibiting discrimination on the ground of sex and that it was high time that suitable amendments were made in the Indian Divorce Act to bring it in line with other enactments⁽²³⁾.

Section 10 of the Indian Divorce Act, 1869 was subsequently, held by a Full Bench, to be inconsistent with Article 14 of the Constitution of India. The Full Bench held that there is no justification to differentiate between the husband and wife and subject the wife to more onerous grounds for obtaining divorce than the husband. Section 10 of the Indian Divorce Act was held to discriminate between the husband and the wife without any reasonable basis or reasonable classification, and this discrimination between women and men based on sex alone, rendered Section 10 of the Indian Divorce Act a violation of Article 15 of the Constitution of India⁽²⁴⁾.

Pursuit of an academic career by the wife with the consent of her husband and her inability to forsake that pursuit immediately at the call of her husband, would not amount to desertion warranting dissolution of the marriage under Section 13 of the Hindu Marriage Act, 1955⁽²⁵⁾.

3. CRIMINAL OFFENCES

a) Dowry

Demand of dowry, made even before the proposed marriage, is an offence if it is made as consideration for the marriage, whether called Stridhana property or otherwise⁽²⁶⁾.

In "S. GOPAL REDDY v. STATE OF A.P."⁽²⁷⁾, the Supreme Court affirmed the view taken by the A.P. High Court in Cr. R.C. No. 446 of 1990 dated 16.10.1990 that any demand for dowry, made as consideration even before marriage, amounted to an offence punishable under Section 4 of the Dowry Prohibition Act, 1961.

A sale deed, transferring immovable property, executed as consideration for marriage constitutes Dowry and since it is in violation of Section 4 of the Dowry Prohibition Act, the sale transaction is void⁽²⁸⁾.

b) Bigamy

While interpreting Section 44 of the Special Marriage Act, it was held that a Muslim male was not immune from prosecution for Bigamy under Section 494 or Section 495 of the Indian Penal Code if the marriage was solemnized under the Special Marriage Act. A wife could, in such a case, file an application before the Mahila Court and pursue the remedies contemplated under the Family Court's Act, 1984⁽²⁹⁾.

c) Rape

The criminal justice system should consider the plight of the rape victim both while dealing with the case and the sentence. Too many rapists are being permitted by the police

and courts to evade justice and even those who are convicted receive light sentences. Offence of such a nature warrant maximum punishment so that society knows that such criminals cannot play with the life, dignity and chastity of the weaker sex. Decency and morality in public life can be promoted and protected only if Courts deal strictly with those who violate social norms⁽³⁰⁾.

In case of sexual offences it would not be wise to insist upon other evidence to corroborate the evidence of the victim girl. Feminine tendency to conceal the outrage of masculine sexual aggression is relevant to improbabilise the hypothesis of false implication. The refusal to act on the testimony of a victim of the sexual assault, only because of absence of corroboration, would only be adding insult to injury. Corroboration is not the *sine qua non* for conviction in rape cases⁽³¹⁾.

4. OTHER PROTECTIVE MEASURES

a) Maternity Benefits

The Maternity Benefit Act, 1961 has been enacted to give effect to Article 42 of the Constitution of India and refusal of authorities to count the period of maternity leave, availed by a women lecturer for undergoing Tubectomy operation, as on duty, was held not only as discrimination shown against the woman, but also as negating the woman's rights thereby rendering the action illegal, arbitrary, capricious and in violation of Article 14 of the Constitution of India⁽³²⁾.

b) Indecent Representation/Forced Labour

Indecent representation of a woman depicting in any manner her figure, form, body or any part thereof, in such a way so as to have the effect of being indecent or derogatory to or denigrating woman is punishable under Section 6 and 7 of the Indecent Representation of Woman (Prohibition) Act, 1986 offends Articles 14, 21 and 51-A of the Constitution of India and the International covenants accepted by the United Nations Organisation⁽³³⁾.

The words "forced labour" in Article 23 of the Constitution of India, in the context of women being engaged by the College of Fine Arts to act as models in nude and semi-nude forms, for imparting fine arts to students, was interpreted to include not only physical or legal force, but also force arising from compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compel her to provide labour or service even though the remuneration received for it is less than the minimum wage⁽³⁴⁾.

Conclusion

Judicial activism, as reflected in several innovative and far reaching judgements, has gone a long way in furthering the cause of Gender Justice, which is perhaps not matched by Legislative or Executive action. While much has been done by the higher judiciary in our country towards empowerment of women, much more undoubtedly needs to be done to further the cause of Gender Justice and ensure equal and whole-hearted participation of women in the economic, social and political growth of our great nation.

To conclude, in the words of Swami Vivekananda in MY INDIA : THE INDIAN ETERNAL":-

"...All nations have attained greatness by paying proper respect to women. That country and that nation which do not respect women have never become great, nor will ever be in future..."

I thank you for giving me this opportunity to participate in this National Seminar.

1. P. SAGAR v. STATE OF A.P.
(AIR 1968 AP 165)
2. P. SAGAR v. STATE OF A.P.
(AIR 1968 SC 1379)
3. G. SESHAMMA vs. GOVERNMENT OF ANDHRA PRADESH
(2000 (3) ALD 54)
4. K.S. TRIVENI vs. UNION OF INDIA
(2002 (5) ALT 223)
5. TOGURU SUDHAKAR REDDY v. THE GOVERNMENT OF A.P.
(1991 (3) ALT 173)
6. TOGURU SUDHAKAR REDDY v. THE GOVERNMENT OF A.P.
(AIR 1994 SC 545)
7. P. TAKAMA REDDY vs. R.D.O.
(1997 (6) ALT 548)
8. ALLURI BALA SATYA KRISHNA KUMARI v. ALLURI VARALAKSHMI
(AIR 1976 AP 365)
9. GOLLA SEETHARAMULU v. GOLLA RATHANAMMA
(1990) 2 DMC 257)

10. G. SUNDARABABU v. SMT. UDAYA BHANU
(1991 (1) ALT 49)
11. P. SRINIVASA RAO v. P. INDIRA
(2002 (1) ALD 296 (FB).
12. KOTA VARAPRASADA RAO v. KOTA CHINA VENKAIAH
(AIR 1992 AP 1)
13. MUNEER HASSAN KHAN v. FAREEDA KHATOON
(2003 (1) ALD (CrI.) 553 (AP))
14. MARIAMMA NINAN vs. K.K. NINAN
(1997 (2) ALD 712)
15. SUNDARI DHARMANNA v. NARSU BAI
(1997 (4) ALD 188)
16. DODLA CHINNABBAI REDDY v. DODLA KUMARA SWAMY REDDY
(2002 (6) ALD 415) (DB)
17. GUDURU BHASKAR REDDY v. SMALPALLI VENKATA SUBBA REDDY
(2002 (4) ALD 570)
18. P. RAMESHWAR RAO v. I. SANJEEVA RAO
(2003 (5) ALD 564)
19. NIMMAGADDA SAMBASIVA RAO v. STATE OF A.P.
(1999 (4) ALT 353)
20. L. CHANDRAN v. MRS. VENKATALAKSHMI
(AIR 1981 AP 1)
21. SHEELA v. JEEV
(AIR 1988 AP 275)
22. T. SAREETHA v. T. VENKATA SUBBAIAH
(AIR 1983 AP 356)
23. SAROJ RANI v. SUDARSHAN KUMAR
(AIR 1984 SC 1562)

24. R. HEMALATHA v. R. SATYANANDAM
(AIR 1979 AP 1)
25. YOUTH WELFARE FEDERATION v. UNION OF INDIA
(1997 (1) ALD 347)
26. KOSURI (CHANDANA) DHANUM KUMAR v. KOSURI VENKATA VARA PRASAD
(1998 (3) ALD 608)
27. D. SURENDER REDDY v. STATE OF A.P.
(2002 (1) ALD (CrI.) 351 (AP))
28. S. GOPAL REDDY v. STATE OF A.P.
(AIR 1996 SC 2184)
29. BANDI SUBHASH REDDY vs. K. SATYANARAYANA REDDY
(1996 (3) ALT 691)
30. S. RADHIKA SAMEENA v. S.H.O., HABEEBNAGAR POLICE STATION
(1996 (4) ALD 1)
31. M. VENKATESHWARLU v. STATE
(1995 (1) ALD 370)
32. LINGISETTY SREENU v. STATE
(1997 (1) ALD (CrI.) 948 (AP))
33. T.M. BHRAMBIKA v. STATE OF A.P.
(2002 Suppl. (2) ALD 347)
34. CHANDRA RAJKUMAR v. COMMISSIONER OF POLIE
(1998 (1) ALD 810)
35. NANDIGAM KRISHNA RAO v. VICE CHANCELLOR, J.N.T.U.
(2003 (1) ALD 751)

WOMEN EMPOWERMENT VIS–A–VIS LEGISLATIONS AND JUDICIAL DECISIONS

By Justice Bhawani Singh

Chief Justice, High Court of Gujarat

Can the world do without women? Answer cannot be yes. Then why all sorts of discrimination is perpetrated against them. Why not empower them in all activities and make equal to men.

Kofi A. Annan, United Nations Secretary – General in his statement to the Security Council on 24 October, 2000 said :

“Women, who know the price of conflict so well, are also often better equipped than men to prevent or resolve it. For generations, women have served as peace educators, both in their families and in their societies. They have proved instrumental in building bridges rather than walls. They have been crucial in preserving social order when communities have collapsed. This Council, in its statement on International Women’s Day this year, acknowledged that women and girls are particularly affected by the consequences of armed conflict. You recognized that peace is inextricably linked to equality between women and men. And you declared that maintaining and promoting peace and security requires women’s equal participation in decision- making. I am here today to ask you to do everything in your power to translate that statement into action. To help ensure that women and girls in conflict situations are protected; that perpetrators of violence against women in conflict are brought to justice; and that women are able to take their rightful and equal place at the decision-making table in questions of peace and security.”

At the 4th World Conference for women held at Beijing in 1995 – many resolutions for the advancement of women were passed. Resolution No. 30 reads thus:

“Woman play a critical role in the family. The family is the basic unit of society and as such should be strengthened. It is entitled to receive comprehensive protection and support. In different cultural, political and social systems, various forms of the family exist. The rights, capabilities and responsibilities of family members must be respected. Women make a great contribution to the welfare of family and in the development of the society, which is still not

recognized or considered in its full importance. The social significance of maternity, motherhood and the role of parents in the family and in the upbringing of children should be acknowledge. The upbringing of children requires shared responsibility of parents, women and men and society as a whole. Maternity, motherhood, parenting and the role of women in protection must not be a basis for discrimination, nor restrict the full participation of women in society. Recognition should be given to important role often played by women in many countries in caring for other members of their family".

United Nations Report for the year 1980 records that :-

"Women constitute half of the world's population; perform merely two-third of its work, receive one-tenth of the world's income and less than one-tenth of the world's property".

Krishna Iyer J. has very eloquently portrayed the ideological mould of the Indian psyche "womanhood". India has most definitely adored, but when it comes giving women their rightful place in the society, we as a Nation have failed miserably. We have entered the 21st Century, a new Millennium, yet, our population lives in times of Manu and preaches his Dharm Sastra, which says that women should never be independent. As a daughter she is under the surveillance of her father, as a wife of her husband and as a widow of her son. It is said that women from the womb to the tomb, are suffering from the male domination syndrome. They are mere commodities, token participants in State power, business or profession.

Recent efforts to document the real situation of women worldwide have produced some alarming statistics on the economic and social gaps between women and men. Women are the majority of the world' poor and the number of women living in rural poverty has increased by 50 percent since 1975. women are the majority of the world's illiterate; the number rose from 543 million to 597 million between 1970 and 1985. Women in Asia and Africa work 13 hours a week more than men and are mostly unpaid. Worldwide, women earn 30 to 40 percent less than men for doing equal work. Women hold between 10 and 20 percent of managerial and administrative jobs worldwide and less than 20 percent of jobs in manufacturing. Women make up less than 5 percent of the world's heads of State. Women's unpaid housework and family labour, if counted as productive output in national accounts, would increase measures of global output by 25 to 30 percent. (*The World's Women 1970-1990; Trends and Statistics (United Nations Publication.)*)

Exceptions apart, women have been perceived physically weak, morally infirm and irrational from times immemorial despite work inside and outside the household. Gender inequality has

been an issue of grave concern. Discrimination against women is not a phenomenon restricted only to underdeveloped countries. It is prevalent in the developed countries as well in different forms. Women, over the ages, have been victims of reprehensible violence – domestic as well as societal. The States have enacted number of women related legislations, however, statistics suggest that discrimination against them, instead of abating, is increasing. There is no lack of legislation, but lack of implementation of the same, giving rise to gender inequality. In all fields of human and State activity, there has been increase in crime against women – be it rape, molestation, eve-teasing, harassment at work place, dowry death, all, constituting criminal offences apart from being violation of human rights – right to live with dignity in an atmosphere where there is no unlawful assault on her modesty. Constitution of India enshrines in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles of State Policy, the principle of gender equality. Article 14 ensures every citizen equality before the law or the equal protection of the laws. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. Within the framework of democratic polity, our laws, development policies, plans and programmes have aimed at women's advancement in different spheres. Five Year Plans propose welfare and development of women. The empowerment of women has been recognized as core issue in determining the status of women. The National Commission for Women has been set up by Act. of Parliament in 1990 to safeguard the legal entitlement of the women. Article 39 envisages that the State, shall, in particular, direct its policy towards securing amongst others that the citizens, men and women equally, have the right to an adequate means of livelihood; that there is equal pay for equal work for both men and women; that the health and strength of workers men and women and the tender – age children are not abused and that citizens are not forced by economic necessity to enter avocation unsuited to their age or strength. Article 51A(e) renounces practices derogatory to the dignity of women. The 73rd and 74th Amendments (1993) to the Constitution of India provide for reservation of seats in the local bodies, Panchayats and Municipalities for women, thereby laying a strong foundation for their participation in decision making at the local levels, while matter with regard to the reservation for them in the parliament is being discussed constantly. India has ratified various International Conventions and Human Rights Organisations committed to secure equal rights for women. Ratification of the Convention of Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993, the Mexico Plan of Action (1975), the Nairobi Forward Looking Strategies (1985), the Beijing Declaration and the Platform for Action (1995), the Outcome Document Adopted by the UNGA Session on Gender Equality and Development and Peace for 21st

Century "Further Acitons and Initiatives to Implement the Beijing Declaration and the Platform for Action", are also endorsed by India. Apart from the goals initiated in the Constitution, legislations like Immoral Traffic (Prevention) Act, 1956, Dowry Prohibition Act, 1961, Medical Termination of Pregnancy Act, 1971, the Family Courts Act, 1981, Indecent Representation of Women (Prohibition) Act, 1986, Commission of Sati (Prevention) Act, 1987, National Commission for Women Act, 1990, Sexual Harassment of Women at the Work Place Prevention Bill, 2000, Protection from Domestic Violence Bill 2002, Foreign Marriage Act, 1969, have been enacted to recognize the status of women in India, give them protection, empower them, eliminate gender disability manifested in various forms in various fields of activities, change social and economic structure, which marginalizes them as against men. Aim is to create environment in which they enjoy human rights and fundamental freedoms equal with men in all spheres – political, economic, social, cultural and civil – equal access to participation and decision making in social, political and economic life of the Nation, the health care, equality in education at all levels, career and vocational guidance, employment, equal remuneration, occupational health and safety, social security and public office; provide for legal system and eliminate all forms of discrimination against women; prevention of all forms of violence against women, sensitise judicial system making it more responsive to women's aspirations, creating environmental where women can fight for their rights fearlessly.

Apart from other fields, position of women in legal profession and Judiciary is no good. It is no good. It is said that women practitioners constitute less than one-tenth of male practitioners, perform in less than one-twentieth of the Court work, receive little or at times no income and mostly depend on their parents or spouse. Of course, their entry into the legal profession has been late and minimal, initially after fighting legal battles (**Regina Guha ILR Vol. XLIV p. 290 Calcutta Series and Sudhanshubala Hazra ILRI p. 104 Patna**). However, their performance at the Bar and the Bench has been exemplary and excellent. Their number is increasing, be it as law students or lawyers or Judges at various levels, of course, in most cases fighting for survival with great difficulty. More so, when they are considered for appointment to the Bench, all sorts of objections are made and indignities are cast by their counterparts without justification.

Women's access to justice is denied when the lack legal awareness and when the justice rendering system is slow and gender insensitive. However, gender sensitization has been understood by the Judiciary. Training of Judicial Officers in gender and law has been undertaken to eliminate the danger of gender bias and gender insensitivity in judicial proceedings. The

Supreme Court and High Courts have rendered landmark judgements from time to time, be they on rape, dowry death, sexual harassment at work place (*Vishaka and others V. State of Rajasthan [AIR 1997 SC 3011]*) or property rights. High court of Gujarat had also occasion to consider and decide cases pertaining to rights of women. Some such are Special Civil Application No. 1481 of 1991 **B.R. Acharya & Anr. V. State of Gujarat & Anr. (1981 GLR (Vol. 29) p.33)**. Government Rules for recruitment to the Post of Ladies Superintendents and Shelter Homes and Reception Centres were upheld on the ground that Government policy of selecting women at such posts could not be faulted, since under Article 15 (3) of the Constitution, State could make special provision for women and children. In special Civil Application No. 8272 of 1990 **Kumbhar Yakub Jusab V. Bhuj Municipality & Ors. (1991-2 GLR (Vol. 32) p. 755)** it was held that requirement of reserving seats for women, Schedules Caste and Scheduled Tribe candidates, depending upon the total number of Councillors, under Section 6 of the Gujarat Municipalities Act, 1963, was a statutory obligation required to be complied with. Criminal Appeal No. 716 of 1995/Criminal Appeal No. 912 of 1995 *Dharmendre Dhirajlal Soneji V. State of Gujarat (1997 – GLR (Vol. 38)P.200)* decides against indecent representation of women as defined under Section 2 (c) of the Indecent Representation of women (Prohibition) Act, 1986 through any medium. Criminal Appeal No. 1206 of 1986 **State of Gujarat V. Sudhir Mehta, Manager, Milton Pvt. Ltd., Gandhidham (1998 GLR (Vol.39-1) p. 560)** held compliance of Sections 48 (1) and 102 (2) Gujarat Factories Act, 1948 and Rule 80 of the Gujarat Factories Rules, 1963, providing for Creches (“Ghodiaghar”) mandatory and non-compliance thereof made punishable instead of imprisonment, by fine at the rate of Rs. 50/- per day of default. In Criminal Revision Application No. 453 of 1997 **Mumtazben Jusabbhai V. Mahebubkhan Usmankhan Patan & Anr. (1999 – 1 GLR(Vol. 40) p. 609)** it was held in the context of Section 125 of Criminal Procedure Code, 1973 and Section 3 of Muslim Women (Protection or Rights on Divorce) Act, 1986, that in certain situations, the Criminal Court does not cease to have power to award maintenance to Muslim women after divorce. In Civil Revision Application No. 1185 of 1998 **Bijal Chandreshbhai Bhatt V. Chandreshbhai Sahdevbhai Bhatt (2000-1 GLR (Vol. 41) p.515)** deals with complete free legal services to women and minor children, irrespective of what their income is in the context of Articles 39A/21 of the Constitution and State Legal Services Authority Act, 1987. Similarly, in Civil Revision Application No. 1146 of 1999 **Ashok kumar Kantilal Rathod V. Bhavnaben Ashok kumar Rathod (2000-4 GLR (Vol.41)P.3453)** need to inform women litigants about availability of free legal aid has been emphasized under Section 12 of the State Legal Services Authority Act, 1987.

Some suggestions may be, effective implementation of laws concerning women, be they criminal, civil or societal; life security, employment, property and health; engagement in decision-making processes equal with men; rehabilitation and free education; provision for better facilities at home and in employment since women have the responsibility at home to children and other family members and in many cases, attend offices from morning till evening; they should be given representation in institutions including Parliament and State Legislatures; declaration and conventions issued and confirmed by the Nation be implemented sincerely and effectively; frequent conferences of women should take place, reports and suggestions emanating therefrom implemented effectively.

CRIMES AGAINST WOMEN, LAW AND JUDICIAL APPROACH-NEED FOR FRESH LOOK

By Justice Bhawani Singh

Chief Justice, High Court of Gujarat

World is passing through the new century but one of the issues of the 20th century which still challenge to the law enforcing agencies is issue relating to the status, position and protection of women in the society. The status of women has undergone considerable change throughout the world during the twentieth century and this is leading to restructuring of the relationship between the sexes but despite the human rights declaration and new laws and guarantees provided in this behalf by the developed and under developed countries of the world rampant discrimination and exploitation of women is present everywhere in the world.

Past some years a considerable amount of attention has been given to the problem of crimes against women and domestic violence. New legal procedures and new legal techniques have been developed to face this menace. In England, Matrimonial Homes Act, 1969 was enacted to tackle the problem of a spouse who in the event of marital break down is thrown out of matrimonial home. Domestic Violence Act and Domestic Home Act were enacted to provide protection to battered wives. The report, however, show that despite enactment, cruelty on wives still continues, which has resulted in the emerging of a new society in European countries in which a women prefers to live with a man without formally going into a legal marriage contract. Similarly, in such countries laws relating to sexual crimes and abuses have been drastically amended, but still the rate of such crimes is on the increase.

In India, despite the constitutional guarantee of equality of laws and equal protection of laws and constitutional mandate of social justice, discrimination and exploitation of women continues. The incidents of bride burning women battering molestation and rape and brazen ill-treatment of women are on the increase. Despite amendments in the substantive and procedural laws relating to these acts to provide a fool proof mechanism to punish the offenders, horrible incidents of violence and crime against women and weaker sections of the society continue. These incidents are proof of the fact that our laws relating to the offences

against women and weaker sections of the society need a fresh look to bring them up to the expectations of the society.

To provide protection to married women against the act of cruelty by husband and in-laws, a new chapter and a new section 489-A was inserted in the Penal Code. The offences of cruelty to married women in such cases are, under the new law, punishable with imprisonment, which may extend to 3 years as well as fine. Cruelty to married women has been defined to include willful conduct, which may drive the wife to commit suicide or an attempt to commit suicide or may cause injury or danger to her life, limb or health. Cruelty also includes such harassment of the wives, which may coerce her or her parents or relations to meet any unlawful demands of dowry by her husband or in-laws. In the statements of object and reasons of the bill, it was very cogently stated:-

“The increasing number of dowry deaths is a matter of serious concern. The extent of evil has been commented upon by the Joint Committee of the Houses to examine the working of the Dowry Prohibition Act, 1961. Cases of cruelty by the husband and relations of the husband which culminate in suicide by, or murder of the helpless women concerned, constitute only a small fraction of the cases involving such cruelty.”

Under these provisions of law, a willful conduct of husband or in-laws of such a nature as is likely to drive a woman to commit suicide or cause grave physical or mental injury to her or harassment of women by her husband or in-laws with a view to coerce her to meet any unlawful demand, amount to cruelty and is punishable as such. Offences have been made cognizable under certain circumstances only, and it is doubtful whether it will work successfully if offences are not made cognizable in all circumstances.

In the recent past, a great challenge to the Criminal Justice System of India was thrown by dowry deaths, which led to the enactment of a new section 304-B in the Penal Code by means of the Dowry Prohibition Amendment Act, 1986, under the section, when the death of a woman is caused by any burn or body injury or occurs otherwise than under normal circumstances within seven years of her marriage, and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called “dowry death” and such husband or relative shall be deemed to have caused her death. “Dowry deaths” under the section have been made punishable with imprisonment for a term which shall not be less than seven years, but which may extend to imprisonment for life.

By amending the first schedule to the code of Criminal Procedure, 1973, these offences have been made cognizable, Non-bailable and triable by the Court of Session. The Supreme Court has in many cases particularly dealt with the subject in Surinder Kumar V. State (AIR 1987 SC 692), State V. Laxman kumar and other (AIR 1986 SC 250), state of Punjab V. Iqbal singh (AIR 1986 SC 1532) and S.D. Soni V. State of Gujarat (AIR 1991 SC 917). While in Surinder Kumar's case, all the three courts, Trial court, High court and Supreme court, unanimously found the husband and in-laws guilty of burning the wife of death by pouring kerosene oil on her, in Laxman's case, the Trial court and the high court acquitted the husband of the similar charges but the Supreme Court found him guilty of burning his wife by pouring kerosene oil on her and highlighting it.

In-depth study of these cases shows that unless our courts appreciate the facts and evidence of such type of cases very carefully, cautiously and in proper perspective, there is every likelihood of culprits escaping the punishment.

Dowry deaths take place not only when bride is put to death when she fails to bring dowry, but also when her life is made so miserable that she gets dejected from the world, and such behaviour and circumstances compel her to commit suicide.

In Iqbal Singh's case, Ahmedi, J. made analysis of the provisions of section 498-A, 304-B and 305 of Penal Code and observed that when a situation is such where the husband or his relatives by their willful conduct creates a situation which he knows will drive the woman to commit suicide and she actually does so, the case would fall squarely within the ambit of section 309 of the Penal Code.

The Court observed that as crimes relating to dowry are committed in the privacy of residential homes and in secrecy, the Legislature introduced sections 113-A and 113-B in the Evidence Act to strengthen the hands of the prosecution.

The offence under section 498-A of the Penal Code is non-bailable and it is cognizable only if the information relating to the commission of offence is given to the officer In-charge of a Police Station by the victims of the offence or relative of the victim of the offence or in the absence of any relative by the public servant authorized in this behalf.

Another serious violation on the person of women is sex crimes. Women speak of wide range of sexual assault, from the experience of indecent exposure in the park, countryside and on the street to finding pornographic message and images. Whilst women are in such cases the main victims, the domain of sexual assault has been nevertheless largely deined by

men, and masculinist legal definitions have circumscribed what conduct constitutes assault for legal purposes. Indecent assault is committed by both the acquaintances and strangers and spans a wide ranges of behaviours, from conduct involving physical contact with a victim to assault, which falls short of rape. Domestic violence is another sphere in which men inflict force and cruel dominion over women. Women thus face various forms of violence and sexual harassment. In the home, in work places, in school and colleges and in everyday public life, women have been intimidated and made to feel uncomfortable as a hostile environment created around them. Most forms of harassment have been so institutionalized as part of everyday life that women who have objected have faced a lot of resistance and when they complain or report about it, they are made to suffer embarrassment, discomfort and loss of dignity and are treated as if they are outcasts.

Out of the all the sex crimes, rape is the most heinous offence. While all rapes, result in total emotional devastation, child rapes particularly inflict gross physical damage on the victim. Rape is the most heinous of the sexual offences even more disastrous than murder for the victims continues to lead a traumatic life. Its gravity is not in the injury to the body alone but in the injury to self respect and self esteem. The physical batterings and assault, which accompany rape, are not only what constitutes rape but it is the injuries added to the insult. Even the Apex court of the country expressed its concern over it in Delhi Domestic Working Womens Forum case (1995) 1 SCC 141 when it said;-

“It is rather unfortunate that in recent times, there has been an increase in violence against causing serious concern. Rape does indeed pose a serious of problems for the criminal Justice System. There are cries for harshest penalties, but often times such cries eclipse the real plight of the victim. Rape is an experience, which shakes the foundations of the lives of the victims. For many, its effect is a long-term one, impairing their capacity for personal relationships, altering their behaviour and values and generating endless fear. In addition to the trauma of the rape itself, victims have had to suffer further agony during legal proceedings.”

The official record of rape depends upon women’s willingness to report and police to record such incidents. Women have been reluctant to report sexual assault for a variety of reasons. This reluctance to report to the police arises because of fear of retaliation, shame, distrust of the reaction of family and friends, lack of confidence in the police and in the court process. In addition, widely publicized rape acquittals in particular, have a significant impact on women’s perception on criminal justice system. Even where conviction are secured, judicial comments on the prudence or otherwise of women’s behaviour further erode and undermine the confidence in the system of justice.

Though a lot has been done by way of amendments and judicial interpretations to protect the interest of rape victims still a lot is to be done in this behalf. Sweeping legal reforms are required instead of small adjustments in the existing laws and procedures. Legislative reforms must give equal status to the word of the complainant and the accused in court and must put into perspective the crime's sexual element. The law as it stands at present still admits chances of escape of the guilty. The most important element in such cases in this behalf is the consent of the victim. In the early days of debate of rape, rape was referred to as forcible rape. Under the ordinary law, injury to the body was not always sufficient, it had to be accompanied by the injury to the genitalia. In the medical jurisprudence, it was stated that victim must maintain resistance to the last, giving up only when overcome by, unconsciousness, complete exhaustion, brute force or fear of death. Consent could only be vitiated or negated where there was evidence of force resistance, fraud or fear.

In *Tuka Ram V. State of Maharashtra*, [1979 (2) SCC 143] also known as *Mathura Case*, the Supreme Court held that though there was sexual intercourse, there was no rape because there was no mark of physical injury and hence there was no proof that Mathura had physically resisted. In an earlier case *Pratap Mishra V. State of Orissa* (AIR 1977 SC 1307), too a similar view was taken. In this case, a lady who was running in fifth month of pregnancy, and was staying at a Guest House with her husband was raped by three persons, one after the other. The Supreme courts held that the absence of any injuries either on the accused or the prosecutrix clearly showed that she did not put up any resistance to the alleged rape committed by the accused. The only irresistible inference therefrom was that she was a consenting party and that was reinforced by other circumstances in the case.

It shows that the judicial trend at that time was that if there was no mark of physical injury then there is lack of resistance from the victim and consequently, it was presumed that she consented to the act. This position has, however, in view of Criminal Law Amendment act, 1983, changed now. Certain amendments were made in the Penal Code, section 375 and 376 were amended and section 376-A to D were added and a new section 114-A was added in Evidence with whom sexual intercourse has been committed has consented, but she had consented in such a circumstance that she could not have withheld her consent. These amendments also take care of gang rapes for which Explanation 1 to section 376 of Penal Code provide that where women raped by one or in a group of persons acting in furtherance of their common intention, each person shall be deemed to have committed gang rape within the meaning of sub-section. Under the explanation where the group of persons attempt to rape a women, and some succeed and some do not, all of them are liable for the offence.

Supreme court in Parmodh Mahta Vs. State of Bihar (AIR 1989 SC 1475) observed that the Explanation has been introduced by the legislature with a view to effectively deal with the growing menace of gang rape. In such circumstances, it is not necessary that prosecution should adduce clinching proof of a completed act of rape by each one of the accused on the victim.

These amendments have also provided provisions to deal with custodial rapes. Under these provision in cases of custodial rapes, once sexual intercourse by the accused is proved and the victim gives evidence that she did not consent, the court will presume that she did not consent.

The problem of giving or not giving the consent by the victims has now been overcome by means of a new section 114-A which provides that where sexual intercourse by accused is proved and the question is whether it was without consent of women alleged to have been raped and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

In spite of this amendments, the problem would arise of convicting an accused in cases where the victim is not in a position to come to the court due to death etc. This situation arose in State of Karnatka V. Mahabaleshwar Gourya Naik (AIR 1992 SC 2043). In this case one Naik, 18 years of age at about 2.10 p.m wrongly restrained the victim, a girl of 15years, took her in a jungle and committed rape on her without her consent and by force. Thereafter, girl committed suicide. The medical evidence was in favour of the accused, but the Supreme Court rightly posed a question:-

“ should a prosecution case of rape be thrown over the board because of non-availability of victims on account of her death?”

The Supreme Court after analyzing the evidence took the view that if not actually rape, an attempt of rape was established. On assessment and evaluation of evidence, the court found that the accused committed an offence under section 376 read with section 511 under the penal code and sentenced him to undergo the rigorous imprisonment of 5 years.

In the case of rape, in contrast to other offences the court lays much stress upon the person of victim rather than the nature of offence or brutal act of the accused. For instance, in such cases, there is a trend to go into the character of women while coming to the conclusion whether or not consent to the act was given and also while awarding the punishment to the accused, once the offence is proved.

In *Premchand V. State of Haryana* (1989 Supp(1) SCC 286) the Supreme Court reduced the mandatory minimum sentence of 10 years awarded to two police officers for raping a woman of easy virtue as there was no proof of physical resistance. Courts have, thus, gone to the character of the victim while awarding conviction or sentence to the accused. This view has also changed now. While some courts have in the past held that past moral character of the victim goes to the very root of the issue, others have held that past immoral character is immaterial to the issue of consent. This change is indicated in the famous case of *Bhanubi cited as state of maharashtra V. Madhukar Narayan Mardikar*, JT 1990(4) SC 169. In this case, a police inspector entered the hut of a prostitute Bhano Bai during night. It was observed that women of easy virtue is entitled to privacy and no one can invade her privacy and every person can not violate her person as and when he wishes. If any act is done against her wishes, she is equally entitled to the protection of law. Therefore, because she is a woman of easy virtue, her evidence cannot be thrown overboard.

Vishaka and others V.State of Rajasthan and others (AIR 1997 SC 3011) recognizes guarantee of gender equality and right to work with human dignity. It holds, sexual harassment of working woman amount to violation of rights of gender equality and right to life and liberty, therefore, as logical consequence, amounts to violation of right to practice any profession, occupation or trade under Articles 14, 15, 19(1) (g) and 21 of the constitution.

While as the amendments in statute and recent decisions of the courts including the Apex court of the country do reflect a change in the attitude of the law makers and a law interpreters towards such offences, there is scope for having a fresh look over the laws concerning women and weaker sections of the society. Large number of acquittals in such cases point out to the defect in the system. In a recent judgment reported as *Delhi Domestic Women's Union V. Union of India* (1995(1) SCC 14), the Supreme Court has analyzed the defect of the existing system. It has been found that the complaints are handled roughly and are not given such attention as is warranted. The victims, more often than not, are humiliated by the police. The victims have invariably found rape trials a traumatic experience. The experience of giving evidence in the court has been negative and destructive. The victims often say, they considered the ordeal to be even worse than the rape itself. Undoubtedly, the court proceedings added to and prolonged the psychological stress to suffer as a result of the rape itself.

Supreme Court quoted from *Modern Legal Studies, Rape and the Legal Process* by Jennifer Temkin, which said:-

"It would appear that a radical change in the attitude of defence counsel and judges to sexual assault is also required. Continuing education programmes for judges should include re-education about sexual assault. Changes in the substantive law might also be helpful in producing new ways of thinking about this type of crime.

Supreme Court further indicated broad parameters in assisting the victims of rape.

1. The complaints of sexual assault cases should be provided with legal representation. It is important to have someone who is well acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victims the nature of the proceedings, to prepare her for the cases and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counseling or medical assistance. It is important to secure the continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represents her till the end of the case.
2. Legal assistance will have to be provided at the police station since the victims of sexual assault might very well be in a distressed state upon arrival at the police station. The guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.
3. The police should be under a duty to inform the victims of her right to representation before any questions are asked of her and that the police report should state that the victim was so informed.
4. A list of advocates willing to act in these cases should be kept at the police station for victims who do not have a particular lawyer in mind or whose own lawyer is unavailable.
5. The advocates shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims are questioned without undue delay, advocates should be authorized to act at the police station before leave of the court is sought or obtained.
6. In all rape trials anonymity of the victims must be maintained, as far as necessary.
7. It is necessary, having regard to the directive principles contained under Article 38(1) of the constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss and some are too traumatized to continue employment.

8. Compensation for victim shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earning due to pregnancy and the expenses of child birth if this occurred as a result of rape.

The courts have and are doing their job, it is now the turn of the Legislature and the Executive to have fresh look on the laws relating to crimes against women. No doubt, the Indian Penal Code and the Indian Evidence Act have been amended, but in the words of Supreme Court of India [in Delhi Domestic Working Women's Forum V. Union of India (supra)] inspite of it, victims of such violence are not able to get adequate remedy in securing justice. State has to endeavour ways and means and provide laws, which can ensure the safety, security, privacy and decency to the victims of such crimes, which by and large are from weaker sections of the society.

SUGGESTIONS AND RECOMMENDATIONS OF NATIONAL COMMISSION FOR WOMEN

1. A special cadre should be created for Family Court Judges, Incentives should be given to family court judges such as done by the state of Rajasthan, where such judges shall serve upto the age of 62 years.
2. Mahila Courts should be set up in all districts.
3. Jurisdiction of Family Courts concerning Sec. 125 of CrPC should be considered.
4. Offences under Sec. 498A of IPC should be made compoundable.
5. With respect to Under-trial women prisoners the following points are recommended :-
 - (a) They should not languish as under-trials beyond 12 months.
 - (b) Bail should be the norm and not the exception.
 - (c) Bail should be granted on priority.
 - (d) Criminal cases should be expeditiously decided.
6. Trials in cases involving women victims/witnesses should be conducted in-camera.
7. Amendment to the Hindu Succession Act should be carried out to grant coparcenary rights to women.
8. Laws with respect to Guardianship and Minority of children should be amended to grant equal rights of guardianship to the father as well as the mother.
9. Enact a comprehensive law on Domestic Violence against women.
10. Abnormal delays in realization of maintenance to wives and children to be avoided. Sec. 125 of CrPC should provide attachment of husband.

RECOMMENDATIONS AT THE MEETING OF THE CHIEF JUSTICE OF HIGH COURTS

1. Uphold the dignity and honour of women by conduct, behaviour and ideology.
2. Understand the feelings and needs of women as a class.
3. Strike a balance in approach while dealing with any issues relating to gender particularly in a case where a woman is a victim so that she has the satisfaction of getting equal treatment.
4. Avoid harassment of women as victims, complainants, accused and even as lawyers or prosecutors.
5. Render women victims quick, speedy, cheaper and efficacious justice.
6. Avoid gender bias comments, gestures or actions in and around the Court Room.
7. Enhance the confidence of the women as and when they approach the courts in any capacity whatsoever. More specially examination and cross-examination of women victims and witnesses must be conducted by Court itself or under the direct supervision of judges.
8. Special consideration be given to women victims belonging to the marginalized classes such as the SCs, STs, dalit women and women workers engaged in the unorganized sector.
9. Cases of Crime Against Women ought to be dealt with on a priority basis & Women shall not be ordinarily kept as Under-Trials.
10. Encourage judicial education on gender justice and gender sensitization to be imparted at all levels from the trial courts to the Supreme Court through the national and state judicial academies.
11. Female members of the Bar should be encouraged in the profession by assigning jobs like Court Commissioner for inspection, amicus curiae, legal aid work, etc.

12. In the recruitment of judges, make special efforts to select as many women as possible.
13. Activate effectively the Legal Services Authority of the concerned High Courts.
14. Organize Lok Adalats regularly to settle cases pertaining to women.
15. Make efforts for attitudinal and behavioural changes through training programmes like Social Context Education of Judges.
16. Make efforts to provide equality in justice not out of compulsions of legislation but out of a humane vision.

**ALL INDIA MEETING OF CHIEF JUSTICES OF
HIGH COURTS ON WOMEN EMPOWERMENT VIS-A-VIS
LEGISLATION AND JUDICIAL DECISIONS**

11TH DECEMBER, 2004

Compiled by
SMT. NOMITA AGGARWAL
DEAN, FACULTY OF LAW
DELHI UNIVERSITY



NATIONAL COMMISSION FOR WOMEN
NEW DELHI

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FOREWORD

The Indian Constitution is unique in that it prohibits discrimination against women and permits discrimination for them. The right to equality before the laws is a fundamental right: men and women are equal before the law. Yet the State is specifically permitted to make laws in favour of women as part of a deliberate affirmative action to enable them to overcome traditional handicaps. Further, respect for the dignity of women has been made a fundamental duty of Indian citizens and all actions derogatory to such dignity are liable to be struck down. Again, a constitutional innovation of immense significance.

2. The Indian society is another matter. A civilisation in evolution over the millennia has developed its own institutions values and customs, some pan-Indian and some community-based. Social institutions and customs are more resistant to change because they are more rooted in history and more dependent on mind-sets. Gender equity is a relatively recent concept and most patriarchal societies have accorded an inferior status to women within the family and outside. Therefore, one finds rampant injustice and discrimination against women in everyday life.

3. It is between these two poles, the constitutional and the societal, that the legislature and the judiciary operate. Progressive laws have been passed in pursuance of the constitutional mandate, and sometimes in pursuance of international covenants. Legal changes have also been made in response to popular demands when the conscience of society has been aroused by some singular incidents of vicious injustice. But that does not change social practice instantly. Even the implementation of existing laws is riddled with inadequacies because at every stage, from registration of crime to its investigation and prosecution, traditional mindsets operate to the disadvantage of women.

4. The judiciary itself has been a great beacon of light and justice where women's rights are concerned. Our courts have interpreted the Constitution and the Statutes justly and liberally and sometimes gone even beyond their call to invoke higher principles of modern jurisprudence or international declarations to provide justice to women. They have often

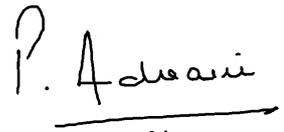
directed the State to legislate in order to incorporate these principles in our laws and, at times, laid down the law for the interregnum. This, of course, is more true of the judiciary at the higher levels particularly in the Supreme Court and the High Courts. Of course there have been instances where the activists have felt let down by certain interpretations based on the letter of the law or procedural niceties. At the subordinate rung of the judiciary, enlightened approach has been less evident and many a woman in distress has found to her dismay that the gentleman on the bench can be as insensitive as any other section of society the police, the administration, the bar or the media.

5. The National Commission for Women, being the country's apex institution for the protection of women's rights, had earlier undertaken the gigantic task of preparing gender sensitization modules for reorienting the mindsets of these various sections of society. The one of the judiciary was assembled with the cooperation of the National Judicial Academy at Hyderabad and later released to the various judicial academies as a toolkit for the training of judicial officers of all ranks. This collaboration between the NCW and the judicial fraternity has been a development of great significance and great potential.

6. Realising the central importance of the judiciary in transforming the scene of gender justice and the stellar role that the higher judiciary of the country has played in this behalf, the All India Meeting of Chief Justices of High Courts and Supreme Court was conceived so that the contribution made by the various High Courts in advancing gender justice could be documented and a road map prepared for pushing the frontiers further. The readiness of the Honourable Chief Justice, His Excellency Shri Justice Lahoti, to bless the project paved the way for this unique experiment and the detailed guidance and counsel provided by Shri Justice B.P. Singh and Shri Justice B.N. Srikrishna greatly contributed to the success of the enterprise.

7. The opening remarks of the Honourable Chief Justice set the tone for the day's deliberations on the subject : 'Search for a Vision Statement on Women Empowerment Vis-a-Vis Legislation and Judicial Decisions.' While there were, expectedly differences of nuances, there was widespread agreement about the prevalence of violations of women's rights and the need for a sensitised judiciary which understands the language of equality and dispenses justice untouched by personal inhibitions and predilections. The contributions of the various High Courts, contained in the various papers, which were read and discussed, in the working sessions, underlined the commitment of our senior judges to the whole gamut of issues concerning women's life and status in our society.

8. The distinctive contribution of the whole day meeting was the emergence of a consensus that women appearing in the courts, whether as victims, litigants, defendants, witnesses or counsels, need to be viewed with much greater sensitivity than they have seen so far. The Honourable Chief Justice gave a series of tips of practical value in this regard - courtesy, avoidance of bias, priority in disposal and encouragement to women lawyers. All this amounted to a veritable new code of conduct for the judiciary, when dealing with women, and a charter of rights for women approaching the portal of justice.



POORNIMA ADVANI

Chairperson

National Commission for Women

Place : New Delhi

Date : January, 2005