

# **THE EMERGING TRENDS IN THE MATTERS OF CRIME AGAINST WOMEN; ROLE OF DISTRICT JUDICIARY : RESEARCH PAPER**

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Hon'ble the apex Court in Babu Ram's<sup>3</sup> on the Role of District  
Judicial has held as under:-

“At long last, the unfortunate and heroic saga of this litigation is coming to an end. It has witnessed a silver jubilee. Thanks to our system of administration of justice and our callousness and indifference to any drastic reforms in it. Cases like this, which are not infrequent, should be sufficient to shock our social as well as judicial conscience and activates us to move swiftly in the direction of overhauling and restructuring the entire legal and judicial system. The Indian people are very patient, but despite their infinite patience, they cannot afford to wait for twenty five years to get justice. There is a limit of tolerance beyond which it would be disastrous to push our people. This case and many others like it strongly emphasize the urgency of the need for legal and judicial reforms. A little tinkering here and there in the procedural laws will not help. What is needed is a drastic change, a new outlook, a fresh approach which takes into account the socio-economic realities and seeks to provide a cheap, socio-economic expeditious and effective instrument for realization of justice by all sections of the people, irrespective of their social or economic position or their financial resources.”

The above mentioned passage from the judgment of the Hon'ble Apex Court in Babu Ram's<sup>4</sup> case shows the attitude of the district judiciary

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3 Babu Ram v. Raghunath Ji Maharaj, (1996) 3 SCC 492

4 Ibid

regarding its day-to-day judicial functioning. It is the traditional approach and mechanical way of working, prevailing in the District Courts responsible for the huge backlog. Justice J.S. Verma report<sup>5</sup> in its conclusion and recommendation part at para no. 3 provides that available personnel of the judiciary and the infrastructure, with a few systemic changes can, at least, reduce half the burden of arrears in courts contributing to delays in enforcing the law of the land. Judges strength can be increased in phases without diluting their quality. In para no. 1 of the report, it is also mentioned that the existing laws, if faithfully and efficiently implemented by credible law enforcement agencies, are sufficient to maintain law and order and to protect the safety and dignity of the people, particularly women, and to punish any offenders who commit any crime. This is not to say that the necessary improvements in the law, keeping in mind modern times, should not be enacted at the earliest.

Speedy justice is not merely an aspect of the right to life with dignity, but is essential for efficacy of the law and its desired impact, as well as for prevention of its violation. The restatement of values of judicial life is a charter of faith for every judicial functionary at all levels.

The Parliament has, on several occasions, amended the provisions of criminal law substantive as well as procedural but the district courts have yet not developed any mechanism to implement these amended provisions for dispensation of justice. Justice J.S. Verma committee has rightly pointed out that if the laws properly implemented they are sufficient to maintain law and order and to punish the criminals. In this research paper, we are discussing where the fault lies and suggesting some mechanism to eradicate the fault for proper judicial functioning. The mere knowledge of law to all the stakeholders of the judicial system will not be sufficient. But all the stakeholders of the judicial system must also have the knowledge of social, economic, political and ethical jurisprudence. This can only be possible through a scientific, social, economic, ethical and legal training in the Academies. The thrust should be that law should be implemented by an ethical person having good knowledge of social, economic and ethical jurisprudence.

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5 Ustice J. S. Verma Report on Criminal Law Amendment Act 2013.

**Problem-** Every day newspapers and the electronic news bulletin apprise us about the menace of crimes against women, which is rapidly increasing in spite of implementation of Criminal Law Amendment Act, 2013. We all know what has happened with Nirbhaya in Delhi. The incident of Delhi cannot simply be categorized as rape, but was committed in such a manner and with the motive if Nirbhaya was not a human being but an article or a sex object which can be used by anyone in any manner. No doubt, a criminal court in Delhi has awarded the capital punishment to all the persons, and rightly so, because such heinous act cannot be accepted from a normal human being and with such an abnormality, no person should be permitted to live in the society. Before few months, a young girl was humiliated in Guwahati in presence of so many male persons. None amongst them opposed it. Even a member of fourth pillar of Indian Democracy, the press and media, was busy in recording the incident without bothering for the safety and security of women physically tortured. The incident was telecasted by all the national channels. Thereafter, the government came into action under the pressure of some NGOs working for women empowerment. We also apprise ourselves with the directions of Khap panchayats regarding social, domestic, economic and educational behaviour of women and girls. The khap panchayats have tried to regulate the individual rights and liberty of women. Justice J.S. Verma report in its recommendations at para no. 2 of part II has held that as a primary recommendation, all marriages in India (irrespective of the personal laws under which such marriages are solemnized) should mandatorily be registered in the presence of a magistrate, which magistrate will ensure that the marriage has been solemnized without any demand for dowry having been made and that the marriage has taken place with the full and free consent of both partners. In fact, in majority of cases, particularly in the rural areas, the girls have no say in the matter of marriages as to with whom they are going to marry. Moreover, khap panchayats decides what a woman should wear, whether they should be permitted to use mobile, their right to marry, their right to choose the professions for economic survival etc. On this issue as well Justice Verma Commission recommendations in part II in para 8 has recommended that the insensitivity of the police to deal with rape victims is well known. The police respect a patriarchal form of society, and have been unable to deal with extraordinary cases of humiliation and hardship caused by the khap

panchayats, as is evident from various judgments of the Supreme Court. The police are involved in trafficking of children (including female children) and in drug trade. To inspire public confidence, it is necessary that there must not only be prompt implementation of the judgment of the Supreme Court in Prakash Singh, but also police officers with reputations of outstanding ability and character must be placed at the higher levels of the police force.

Surprisingly the view of male political leaders on Khap panchayats is more alarming. One of the senior political leaders of Haryana has appreciated and supported the decisions of Khap Panchayats taken on the problem of increasing the incidents of rapes in Haryana. On this problem, it has been suggested by the Khap Panchayats that to curb the problem of rape in Haryana, the age of marriage of girls should be reduced from 18 to 15 years. In the present era of medical science, we know the consequences of early age marriages of girls on their health. Is it not the failure of State to stop the menace of heinous crimes like rape against women? On the other hand, as per suggestion, the punishment of rape should also be given to girls by marrying them at an early age of 15? It seems to be the failure of democratic government.

Mr. Amir Khan, a prominent actor and social worker in his programme 'Satyameva Jayate' based on the scientific research, has stressed that almost 80% of the women in India are suffering with the domestic violence. It is not the wife only facing the agony of domestic violence by husband but daughter is facing the domestic violence by father, sister by brother, granddaughter by grandfather etc. Male preference is a dominant feature of Indian society which resulted in 'foeticide' consequently disturbing the sex ratio in Indian social structure. In fact, the men want to control and regulate the life of the women at their whims. Proper attention on education, nutrition, food and other social benefits is not given for the women.<sup>6</sup>

**Position of women in Indian Society-** As a research scholar-cum judicial officer, I have tried to know the position of women in Indian society on a scientific mechanism under empirical studies. My co-author

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<sup>6</sup> Amir Khan, Gharailu Hinsaa Kee Tradisi, Dainik Jagran, dated 18.06 2012, page no 10

Mr. Pranav Vashishtha has assisted me in conducting the empirical research. The data was collected on the issues whether the gender bias is still a problem in India and it still prevails in India and worldwide? Out of total 641 responses, 92% have admitted that gender bias still prevails in India and is one of the biggest social and political problems. On the other hand, only 4% have denied, whereas, rest 4% have not given their responses

Out of 273 male responses, 88% have admitted gender bias as social and political problem in India. 7% have denied it, whereas 5% have not responded.

Likewise out of 368 female responses, 96% have admitted the gender bias as a problem in India. Only 1% has said no, whereas, 3% have not replied the query.

On the causes of gender bias, I have also framed a question as follows-

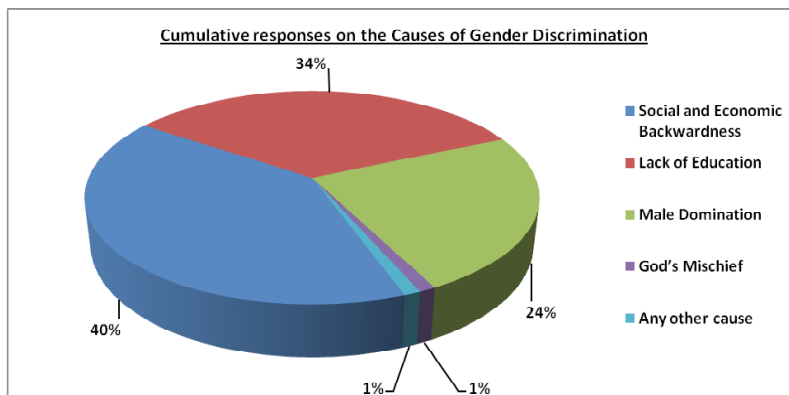
“In your view what are the causes of gender bias?”

Out of total 641 responses, 24% have replied male domination as the cause of gender bias. 34% have answered that lack of education is the cause of gender bias. 1% said God’s mischief as the cause of gender bias. On the other hand, 40% have responded as social and economic backwardness as the cause of gender bias. Likewise, 1% only favoured for any other cause without mentioning that other cause.

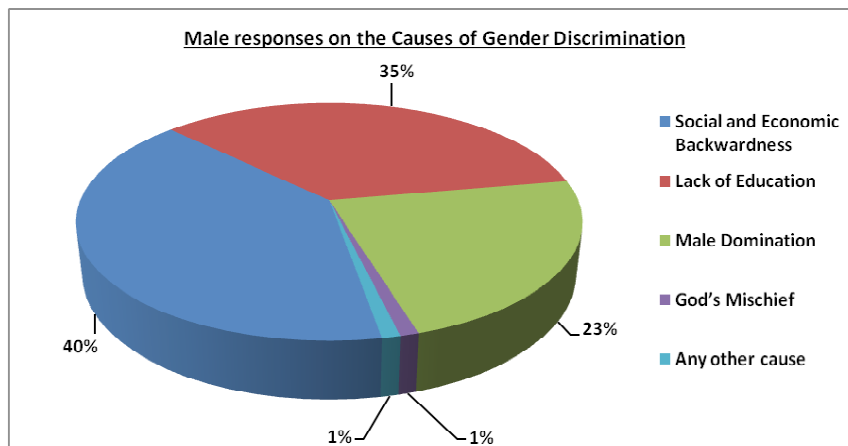
Out of total 273 male responses 23% have replied as male domination as the cause of gender bias. 35% have answered that lack of education is the cause of gender bias. 1% said God’s mischief as the cause of gender bias. On the other hand, 40% have responded as social and economic backwardness as the cause of gender bias. Likewise, 1% only favoured for any other cause without mentioning that other cause.

Out of total 368 female responses 27% have replied as male domination as the cause of gender bias. 32% have answered that lack of education is the cause of gender bias. 1% said God’s mischief as the cause of gender bias. On the other hand, 39% have responded as social

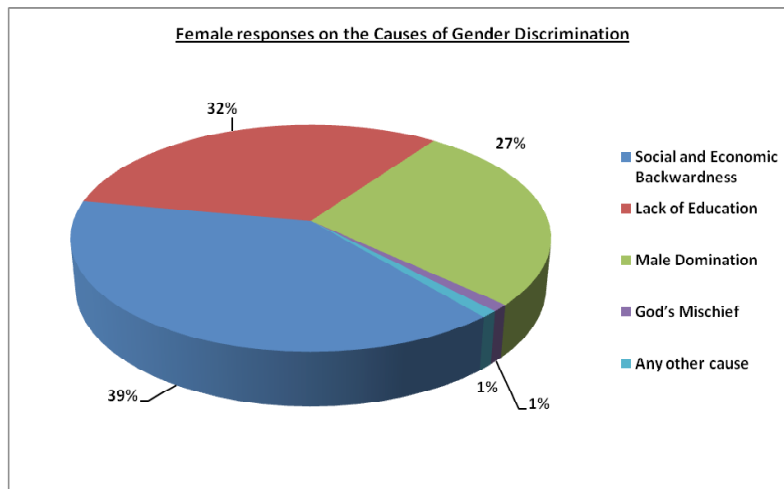
and economic backwardness as the cause of gender bias. Likewise, 1% only favoured for any other cause without mentioning that other cause.



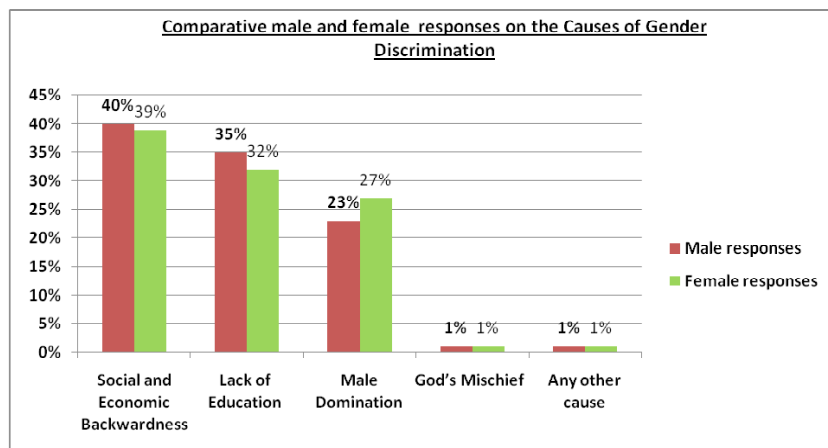
**Chart 1 Cumulative responses on the Causes of Gender Discrimination**



**Chart no 2 Male responses on the Causes of Gender Discrimination**



**Chart No 3 Female responses on the Causes of Gender Discrimination**



**Chart no 4 Comparative male and female responses on the Causes of Gender Discrimination**

Undoubtedly, in the global societies, women still have the secondary status. Being a research scholar, and a feminist, for the satisfaction of my research conscious, I conducted an empirical survey and interviewed so many personalities on the position of women in the society. One of the Hon'ble Ex. Chief Minister has expressed that we should not even talk for equality of men and women in the society. When asked the reasons, Hon'ble the Chief Minister replied 'women in India are considered as mother and goddesses since time immemorial.' How a mother or goddesses can claim equality with male counterpart of the family or the society?' Hon'ble the chief minister also viewed on the present system of nucleus families with working husband and wife, ignoring social, moral and family support to the young ones of the family

Hon'ble the Chief Minister may be right on nucleus families and the lack of supportive family mechanism for children. But, whether every woman in the global societies can be considered and accepted as mother or goddesses to deprive them the rights of equality and equal opportunity with their male counterpart of the society. Considering women as goddesses and motherly figure, gives an idea about the individuality of women and other relational capacity. In relational capacity, as daughter, sister, wife or mother the women may have some rights and privileges. But, when we talked about the individuality of the women, no one is ready to even talk for equal status and opportunity. The failure of recognition of individuality of women also inspires whether a women is a person.<sup>7</sup> Person means a human being capable of exercising rights and privileges and observing duties in the eyes of law. When women are claiming individual rights which may be education, clothing, social recognition or the sexual orientation, it appears that women are lacking legal personality. 'Nirbhaya' incident of Delhi is an example. The way 'Nirbhaya' was behaved by five culprits shows that she was treated as having no legal personality.

After the 'Nirbhaya' incident, United Nations Organization has referred the rape as national problem of India. The statement of United Nations Organization shows that this national problem of rape has direct

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7 Sudhir Kakkar, Is an Indian Women a Person, Times of India, New Delhi, Wednesday, January 9, 2013.



nexus with the male personality and mentality. Male domination in the society is also reflected from views of some prominent persons like Abhijeet Mukharjee, M.P. and son of His Excellency the President of India, commenting on assembly of girls, men and women against the incident of rape with 'Nirbhaya' in Delhi. Likewise the statement of a spiritual guru that if Nirbhaya had accepted the rapists as brothers, the incident would have been avoided again shows the male domination and bias male attitude towards women. No one has stated it that the rapists could have treated 'Nirbhaya' not only as sister but as a dignified human being of Indian society. This all reflects the gender bias which is deeply rooted in the society.

### **Present Trends of Crime against women:-**

Rape is the prevalent crime against women in India and worldwide. Regarding nature, manner of committing the offence like rape and the consequences of rape on women, the view of Brown Miller Susan<sup>8</sup> in his Article 'Against Our Will', 1986, reported and relied in Sakshi's<sup>9</sup>. Following passage is brain storming;

“...in rape... the intent is not merely to ‘take’, but to humiliate and degrade. Sexual assault in our day and age is hardly restricted to forced genital copulation, nor is it exclusively a male-on female offence. Tradition and biologic opportunity have rendered vaginal rape a particular political crime with a particular political history, but the invasion may occur through the mouth or the rectum as well. And while the penis may remain the rapist’s favourite weapon, his prime instrument of vengeance... it is not in fact his only tool. Sticks, bottles and even fingers are often substituted for the ‘natural’ thing. And as men may invade women through other orifices, so too, do they invade other men. Who is to say that the sexual humiliation suffered through forced oral or rectal penetration is a lesser violation of the personal, private inner space, a lesser injury to mind, spirit and sense of self?”

We have seen it in Delhi in a case of rape with the girl of 5 years. Rapist has not only penetrated, but, has also inserted oil bottle and

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8 Brown Miller Susan 'Against Our Will', 1986,

9 Sakshi Vs. Union of India, (2004) 5 SCC 241

candles in to the private parts of the girl. It also reflects the male psychology what he considers a woman?

The above passage also shows that most prevalent crime against women is the rape and sexual exploitation. No doubt acid throwing and other types of crime against women other than rape are also prevalent crimes. But in most of the cases the acid throwing is consequential of sexual harassment. Apart from it, almost all women in India have faced the agony of human rights violations in family and society, but the prevalent crime against the women is the rape and other sexual misbehavior. In Ram Dev Singh's case<sup>10</sup>, His Lordship Hon'ble Justice Arijit Pasayat in para no. 1 of the judgment has held as under:

“Sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity. It degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman; it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of fundamental rights, namely, the right to life contained in Article 21. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized judge is better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.”

In this judgment, Hon'ble the Apex Court has also held that two finger test is illegal and unconstitutional being against the dignity of women. Hon'ble the Apex Court has directed not to conduct such test in future during investigations, and if the test has been conducted, further directed the courts at its threshold not to rely upon this evidence.

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<sup>10</sup> State of Punjab v. Ram Dev Singh (2004) 1 SCC 241.

Apart from the sexual offences we can also see some other types of crime against women such as the crime to deprive the women from ancestral or self acquired properties. One thing is sure that whatever may be the nature of crime against women that is due to the patriarchal nature of society. The majority of crimes against women are of sexual nature, so, I am explaining this crime against women in brief.

In Deepak Gulathi's Case,<sup>11</sup> the apex court of India on the consequences of rape on the women has held-

"Rape is the most morally and physically reprehensive crime in a society, as it is an assault on the body, mind and on privacy of the victim. While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of the helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim, and therefore, a rape victim is placed on a higher pedestal than an injured witness. Rape is a crime against the entire society and violated the human rights of the victim. Being the most hated crime, rape tantamount to serious blow to the supreme honour of the women, and affects both, her esteem and dignity. It causes physical and psychological harm to the victim, leaving upon her indelible marks."

Before explaining the causes and Role of Courts in the heinous crime like rape, it will be proper to understand the term rape. After Delhi rape incident, I have mailed randomly a question on several websites to at least 20,000 persons worldwide. The question was

"A young India girl aged about 23 years was brutally beaten up and raped in Delhi. She could not survive with the injuries inflicted on her body by six rapists. The true homage to the girl will be providing the government of India a mechanism for safety of women in India. May I request you to please give your views in short on the reasons of committing rape and for suggesting mechanism to stop it? I am ensuring to all of my friends to suggest an implementable mechanism to the government of

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<sup>11</sup> Deepak Gulathi Vs. State of Haryana(2013) 7 SCC 675.

India to stop this menace of crime against women in India and worldwide.”

On the above question Mr. Rajendra Goyal, male 46 years, working in education department in Bharatpur, Rajasthan, India has wonderfully replied as follows:

“Has the number of rapes gone up recently or the reporting of rapes has increased? Delhi is anguished and agitating once again. We cannot control crime unless we introduce prompt penalty. In a rape case when the medical report confirms the rape, fixes the rapist, the rapist is arrested and found guilty, when there is no room for mutual consent; why we fail to punish him instantly? Our DIVINE judicial system is too considerate to make us feel that ill is treated then and there. There are few societies that arrange automatic reward/punishment system for doing good/bad. The reason is- power does not tend to woo justice as the very origin of power is unjust and we still are to evolve a society that does not aggregate power snatching it from its individuals.

### **What to do?**

There is a way out. We hitherto have been very myopic. We have been enjoying knowledge (or education or awareness or wisdom or smartness, etc.) without any empathy to the person next to us who is suffering from ignorance; thinking- it's not my job. We have to pay for this myopia and we are paying for this every moment. How wise we are! Just take a trial, start spreading the knowledge you have among those who lack in it for only a decade worldwide and see how thing change for good.

Back to rape! Have we stopped all that arouse just? Have our media films, and all source of it, learned any lesson? Lust is subject to satisfy naturally, to moderate and not to arouse. Whoever adds to its arousal also contributes to such incidents. To look beautiful is a natural right of a lady but this should not involve arousal of lust. Today more and more exposure of body is thought to be more and more civilized. Civilization shouldn't be synonymous to vanity and gaudiness.

Lastly, leadership cannot ensure justice as it is suicidal to itself. If we wish to have a fragrant system within the society we live in, we have to puff out the foul within us and from the person next to me. To educate the ignorant voters to elect the best representative will yield the best result in the shortest time. AMEN”

After the ‘Nirbhaya’ incident, Govt. of India has enacted the Criminal Law (Amendment Act),<sup>12</sup> 2013, to redefine the sexual crimes against women. The crime of rape has been altogether redefined and I will not hesitate to say that this definition and inclusion of some other acts of sexual nature against women in the offence of rape is a new era of criminal jurisprudence. The rape is redefined under the Indian Penal Code as follows:-

**Section 375.** A man is said to commit “rape” if he

- (a) Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) Inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (b) Applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

Under the circumstances falling under any of the following seven descriptions:-

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|-----------|-----------------------------------------------------------------|
| First-    | Against her will.                                               |
| Secondly- | Without her consent.                                            |
| Thirdly-  | With her consent, when her consent has been obtained by putting |

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<sup>12</sup> Criminal Law (Amendment Act), 2013, Act no. 13 of 2013.

- her or any person in whom she is interested, in fear of death or of hurt.
- Fourthly. - With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
- Fifthly- With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
- Sixthly- With or without her consent, when she is under eighteen years of age.
- Seventhly- When she is unable to communicate consent.
- Explanation 1.- For the purposes of this section, “vagina” shall also include labia majora.
- Explanation 2- Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:
- Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.
- Exception 1.- A medical procedure or intervention shall not constitute rape.
- Exception 2.- Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

The rape is made punishable under section 376 of the Indian Penal Code. Section 376 of the Indian Penal Code reads as under;

**Section 376(1)** Whoever, except in the cases provided for in sub-section(2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,-

- (a) being a police officer, commits rape
  - (i) within the limits of the police station to which such police officer is appointed; or
  - (ii) in the premises of any station house; or
  - (iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or.
- (b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
- (c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or
- (d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or
- (e) being on the staff of a hospital, commits rape on a woman in that hospital; or
- (f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
- (g) commits rape during communal or sectarian violence; or

- (h) commits rape on a woman knowing her to be pregnant;  
or
- (i) commits rape on a woman when she is under sixteen years of age; or
- (j) commits rape, on a woman incapable of giving consent;  
or
- (k) being in a position of control or dominance over a woman, commits rape on such woman; or
- (I) commits rape on a woman suffering from mental or physical disability; or
- (n) commits rape repeatedly on the same woman.

Shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine.

Explanation.- For the purposes of this sub-section,-

- (a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;
- (b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;
- (c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police act, 1861;
- (d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.



**Section 376A.** Whoever, commits an offence punishable under sub-section (1) or sub-section(2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that persons' natural life, or with death.

**Section 376B.** Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine ?.

Explanation.- In this section, 'sexual intercourse' shall mean any of the acts mentioned in clauses (a) to of Section 375.

**Section 376C.** Whoever, being

- (a) In a position of authority or in a fiduciary relationship; or
- (b) A public servant; or
- (c) Superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or on the management of a hospital or being on the staff of a hospital abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

Explanation 1. In this section, 'sexual intercourse' shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

Explanation 2. For the purposes of this section, Explanation 1 to section 375 shall also be applicable.

Explanation 3.- “Superintendent”, in relation to a jail, remand home or other place of custody or a women’s or children’s institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

Explanation 4.- The expressions “hospital” and “women’s or children’s institution” shall respectively have the same meaning as in Explanation to sub-section(2) of section 376.

**Section 376D.** Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person’s natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

**Section 376E.** Whoever has been previously convicted of an offence punishable under section 376 or section 376A or Section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person’s natural life, or with death.

In fact in *Sakshi’s*<sup>13</sup> the petitioner under Article 32 of the Constitution, sought *inter alie*, in view of increase of sexual violence against women and specially children, an enlarged definition of rape under Section 375 Indian Penal Code to include all forms of penetration such as penile/vaginal penetration, penile/oral penetration, penile/anal penetration, finger/vaginal and finger/anal penetration and object/vaginal penetration.

No doubt Hon’ble the Apex Court had dismissed the writ petition on the contention that it is well-settled principle that the intention of the

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13 *Sakshi v. Union of India* and ors. (2004) 5 SCC 518.

legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. Similarly it is wrong and dangerous to proceed by substituting some other words for words of the statute. It is equally well settled that a statute enacting an offence or imposing a penalty is to be strictly construed. The fact that an enactment is a penal provision is in itself a reason for hesitating before ascribing to phrases used in it a meaning broader than that they without ordinarily bear.

No doubt, the petition was dismissed but Hon'ble Apex Court was kind enough to issue the following direction in para no. 34 of the judgement-

- (1) The provisions of sub-section (2) of Section 327 Cr.P.C. shall, in addition to the offences mentioned in the sub-section, also apply in inquiry or trial of offences under Sections 354 and 377 IPC.
- (2) In holding trial of child sex abuse or rape:
  - (i) A screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;
  - (ii) The questions put in cross-examination on behalf of the accused, insofar as they relate directly to the incident, should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;
  - (iii) The victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

After Nirbhaya incident, the Parliament woke up under pressure of public and media to frame a law as demanded by the petitioner in Sakshi's case.

But the law drafted seems to be a hurriedly enacted law. Sometimes, it seems that certain rights of the women have been ignored or have not been taken care of while drafting this law. I am quoting an example. Sodomy with wife was a punishable offence before this enactment. The husband was given the liberty to have the sexual intercourse with the wife even without consent of the wife, the wife being above 16 years of age. But the anal penetration is included in the definition of rape under Section 375 of the Indian Penal Code. The result is if the husband has anal intercourse with his wife even without the consent of the wife, the wife not being under 15 years of age, it will not be the rape. Explanation to Section 375 specifically provides that sexual intercourse or sexual acts by a man with his own wife, the wife not being under 15 years of age, is not rape. Meaning thereby, not only the vaginal penetration but any act of sexual intercourse even without the permission and consent of wife, wife being above 15 years of age is not an offence. This shows that wife above 15 years of age is a property of the husband and he can use for sexual purposes on his whims. This concept should have been taken care of while drafting this law. In fact, this law was drafted considering the fact that rape is committed by outsiders only and for the purpose the definition of rape was so extended that it goes against the wife in the matrimonial relations. This is the problem of legislature, judiciary as said in Sakshi's case should not interfere.

The Criminal Law Amendment Act, 2013 also make voyeurism as an offence. The voyeurism is defined and made punishable under Section 354(C) of the Indian Penal Code which reads as under:-

**Section 354C.** Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation 1. - For the purpose of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim’s genitals, posterior or breasts are exposed or covered only in underwear, or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.- Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

Likewise stalking has also been defined and made punishable in 2013 Criminal Law (Amendment) Act. Section 354 (D) speaks as under:

**Section 354D.**(1) - Any man who

- (i) Follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- (ii) Monitors the use by a woman on the internet, email or any other form of electronic communication.

**Commits the offence of stalking:**

Provided that such conduct shall not amount to stalking if the man who pursued it proves that

- (i) It was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
- (ii) It was pursued under any law or to comply with any condition or requirement imposed by any person under any law, or
- (iii) In the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may

extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine”.

Acts of sexual harassment has been redefined and made more elaborate. Section 354A of the 2013 Criminal Law (Amendment), Act provides as under:-

**Section 354A.**(1) A man committing any of the following acts

- (i) Physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) A demand or request for sexual favours; or
- (iii) Showing pornography against the will of a woman; or
- (iv) Making sexually coloured remarks, Shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Human Trafficking is also punishable; disclosure of identity of prosecutrix has also been made punishable

Section 370 of the Indian Penal Code define human trafficking as follows

Acid throwing has been made an independent offence under Section 326(A) and 326(B) which reads as under:-

**Section 326A.-** Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine.

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

**Section 326B.-** Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Explanation 1. - For the purposes of section 326A and this section, “acid” includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2.- For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.

Considering the gravity of the crime of acid throwing Hon’ble the Apex Court in *Laxmi v. Union of India* writ petition (criminal) no. 129 of 2006 decided on 18.07.2013 has given elaborate directions to the Central Government and the State Governments. On 06.02.2013, a direction was given to the Home Secretary, Ministry of Home Affairs associating the Secretary, Ministry of Chemical and Fertilizers to convene a meeting of Chief Secretaries/concerned Secretaries of the State

Governments and the administrators of the Union Territories, interalia to discuss the following aspects-

- (i) Enactment of appropriate provision for effective regulation of sale of acid in the States/Union Territories.
- (ii) Measures for the proper treatment, after care and rehabilitation of the victims of acid attack and needs of acid attack victims.
- (iii) Compensation payable to acid victims by the State/ or creation of some separate fund for payment of compensation to the acid attack victims.

On 18.07.2013, Hon'ble Apex was kind enough to issue the following directions which are given in para no. 7 of the judgment-

7. In the States/Union Territories, where rules to regulate sale of acid and other corrosive substances are not operational, until such rules are framed and made operational, the Chief Secretaries of the concerned States/Administrators of the Union Territories shall ensure the compliance of the following directions with immediate effect:

- (i) Over the counter, sale of acid is completely prohibited unless the seller maintains a log/register recording the sale of acid which will contain the details of the person(s) to whom acid(s) is/are sold and the quantity sold. The log/register contains the address of the person to whom it is sold.
- (ii) All sellers shall sell acid only after the buyer has shown:
  - (a) A photo ID issued by the Government which also has the address of the person.
  - (b) Specifies the reason/purpose for procuring acid.
- (iii) All stocks of acid must be declared by the seller with the concerned Sub-Divisional Magistrate (SDM) within 15 days.
- (iv) No acid shall be sold to any person who is below 18 years of age.
- (v) In case of undeclared stock of acid, it will be open to the concerned SDM to confiscate the stock and suitably impose fine on such seller up to Rs. 50,000/-



- (vi) The concerned SDM may impose fine up to Rs. 50,000/- on any person who commits breach of any of the above directions.

In para no. 8 of the judgment Hon'ble the Apex Court has given certain directions to keep and store acid by the educational institutions as follows:

8. The educational institutions, research laboratories, hospitals, Government Departments and the departments of Public Sector Undertakings, who are required to keep and store, acid, shall follow the following guidelines:

- (i) A register of usage of acid shall be maintained and the same shall be filed with the concerned SDM.
- (ii) A person shall be made accountable for possession and safe keeping of acid in their premises.
- (iii) The acid shall be stored under the supervision of this person and there shall be compulsory checking of the students/ personnel leaving the laboratories/place of storage where acid is used.

Hon'ble the Apex Court has also given the guidelines on framing of rules by Central and State Governments. The provision for compensation of at least three lakhs by the state government/union territories in addition to the rehabilitation which includes a series of plastic surgeries shall be paid to the acid throwing victims. Out of three lakhs, two lakhs shall be paid immediately to the victim.

Throwing acid is the most heinous crime which not only degrades the face and the physic of women/girls but also has the great psychological and mental impact. Considering this issue Hon'ble Apex Court has also directed to publicize the scheme adopted by every State on acid throwing victim.

Some procedural aspects have also been looked into. Proceedings in camera, avoid the face of the accused during recording of evidence when the prosecutrix is a minor and presumption of consent of sexual intercourse when the woman expresses about not consent are the important procedural parts which have been streamlined. An act of

throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act afford an opportunity to exercise the right of private defence to cause the death of assailant.

Thus, it will be right to say that it is the beginning of a new era of criminal jurisprudence particularly in the matters of crimes against woman relating to sexual acts. I will not hesitate to write few words about the implementation of amended provisions of newly enacted and amended laws. At least half dozens of amendments have been made in criminal law with in twenty years without proper implementation. The time has come that every component of the judicial system must be committed for the proper implementation of the amended provisions.

### **Role of District Courts in Dealing with the cases relating to the crimes against women:**

Regarding judicial behaviour in the matters of crimes against women in India, recently Hon'ble the Apex Court<sup>14</sup> has held-

“Almost for the last three decades, the Supreme Court has been expressing its agony and distress pertaining to the increased rate of crimes against women. The eight year old girl (brutally raped by appellant), who was supposed to spend time in cheerfulness, was dealt with animal passion and her dignity and purity of physical frame was shattered. The plight of the child and the shock suffered by her can be well visualized. The torment on the child has the potentiality to corrode the poise and equanimity of any civilized society. The age-old wise saying that ‘child is a gift of the providence’ enters into the realm of absurdity. The young girl, with efflux of time, would grow with a traumatic experience, an unforgettable shame. She shall always be haunted by the memory replete with heavy crush of disaster constantly echoing the chill air of the past forcing her to a state of nightmarish melancholia. She may not be able to assert the honour of a woman for no fault of hers. When she suffers, the collective at large also suffers.”

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14 Shyam Narain v. State, NCT of Delhi, (2013) 7 SCC 77.

The Apex Court in another case<sup>15</sup> has also viewed that-

“It is a matter of great shame and grave concern that brides are burnt or otherwise their life sparks are extinguished by torture, both physical and mental, because of demand of dowry and insatiably greed and sometimes, sans demand of dowry, because of the cruelty and harassment made it out to the nascent brides treating them with total incivility destroying their desire to live and forcing them to commit suicide; a brutal self humiliation of life.”

The court<sup>16</sup> further said that-

“Respect for reputation of women in society shows the basic civility of a civilized society. No member of society can afford to conceive the idea that he can create a hollow in the honour of women. Such thinking is not only lamentable but also deplorable. It would not be an examination to say that the thought of sullyng the physical frame of a woman is the demolition of the excepted civilized norm.

On position of bride in the Indian families, The Court explained-

Respect of a bride in her matrimonial home glorified the solemnity and sanctity of marriage, reflects the sensitivity of a civilized society and, eventually aptomized her aspiration, dreamt of in nuptial bliss. But, the manner in which sometimes the brides are treated in many a home by the husband, in-laws and relatives creates a feeling of emotional numbness in the society. Daughter-in-law is to be treated as a member of the family with warm and effect and not as a stranger with despicable and ignoble indifference. She should not be treated as a house-maid. No impression should be given that she can be thrown out from her matrimonial home at any time.<sup>17</sup>

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15 Gurnaib Singh v. State of Punjab (2013) 7 SCC 108.

16 Shyam Narain v. State (NCT of Delhi) (2013) 7 SCC 77.

17 Gurnaib Singh v. State of Punjab (2013) 7 SCC 108.

It shows the sensitiveness and responsiveness of higher Courts, the Supreme Court and the High Courts, regarding the crimes against women. But the District Judiciary, in majority of cases in India is still lacking in delivery justice, whereas, the District Judiciary is the ultimate judiciary for the majority of the people. Without disturbing our judicial conscious on the constraints and bottlenecks before the District Judiciary, we are suggesting some mechanisms to ensure justice delivery by the District Courts in the matters of crimes against women.

1. Justice Verma Commission in its report on Criminal Law (Amendment) Act, 2013 in the recommendations and suggestions part has mentioned that available personnel of the judiciary and the infrastructure with few systematic changes can at least reduce heavy burden of arrears in Courts contributing to delays in enforcing the law of land. It means, if a scientific mechanism is adopted by the Judges in District Courts, the present strength of the Judges and the infrastructure provided to them shall be sufficient to address the problem of arrears and delay. Now question is what should be the systematic and scientific mechanism to be adopted by the District Judiciary. I am mentioning the following scientific mechanism to be adopted by the Judges in District Courts-

- (a) Atmosphere of the Courts- It is the concept of Total Quality Management Technique. The atmosphere of the Courts should be changed by placing the things and articles in order in the court rooms, chambers, retiring rooms and offices. If the documents, files, papers and articles are placed in order to make the court and offices comfortable and conducive for proper working, it will help the Judges in increasing the judicial productivity. For the application of Total Quality Management Technique, it is not necessary to demand infrastructure as the atmosphere of the Court can be improved with infrastructure provided within the present constraints and bottlenecks. Hon'ble Sri Justice U.C. Dhyani in His Lordship's speech in Administrative Conference of all the Judicial Officers in Dehradun has been kind enough to refer an anecdote that atmosphere prevailing in civil courts is worse than a merchant shop. Thus, it is necessary to improve the atmosphere and

management of the Courts. Broken or without arms chairs, torn papers and unattended documents in bulk are some of the common special features prevailing in civil courts. By adopting the Total Quality Management Techniques, for which elaborate training has been sanctioned and approved by Hon'ble the High Court of Uttarakhand for all the Judicial Officers, the courts may overcome with this problem by improving atmosphere, and consequently, the judicial productivity is bound to improve.

- (b) Every Judicial Officer has to give up the casual, technical and traditional approach while working in Courts dealing with the cases relating to crimes against women. In the matters of remand, bail, recording of evidence and during trial a Judge should be very attentive, cautious and innovative. Polite in behaviour but firm in action policy is required for implementation of amended provisions of criminal law. We have experienced it that legislature has amended the criminal laws on number of occasions. But, the amended provisions of criminal law are not properly implemented by the Courts due to its mechanical and technical approach. It is seen that in District Court's Judges usually become harsh in language but polite in action, on the other hand, the Judges should be very polite in language, but firm in action. Very firmly, but politely, the amended provisions of criminal law should be implemented.
- (c) Fair trial includes the fair investigation. No doubt, as per the criminal jurisprudence, the Magistrates and the Judges dealing with the criminal cases cannot interfere in the working of Investigating Officers. But, the Magistrates and the Judges can, up to some extent, control the investigation in the interest of justice (fair investigation). The Magistrates and the Judges are empowered by law (including judge made law) to call the interim reports from Investigating Officers on a particular point or issue even during trial. Due to the casual approach, the Judges and Magistrates are not exercising this vested power to improve the quality of investigation which may ensure the fair trial.

(d) Role of Criminal Courts in forensic matters and evidence is very important. The recent two judgments by Hon'ble High Court of Uttarakhand at Nainital in Criminal Appeal No. 133/2010, ***Janardan Tewari v. State of Uttarakhand*** and Criminal Appeal No. 187/2010, ***Amar Singh v. State of Uttarakhand*** decided on 18.07.2013 and 28.05.2013 respectively, shows the importance of forensic science in criminal justice administration system. On the basis of negligence of court concerned and investigating agencies in getting DNA profile of skeleton in one case and blood test of injured and deceased in another case, the defence successfully establish a reasonable doubt in favour of accused. Hon'ble High Court acquitted the accused persons in both of the cases. The application of forensic science is very well possible during trial by the Magistrates and the Judges. It is only possible when the Judges and the Magistrates are involving in the trial process and are attentive and innovative.

2. Adoption of scientific mechanism of adjudication- Hon'ble the Chief Justice of High Court of Uttarakhand at Nainital has given a very soft target to the Judicial Officers of the State. The target is to adjudicate all the five years old cases by the end of this year. This target was/is very much achievable, if the Judges have given up the mechanical and traditional approach. On the basis of pendency of the Courts, year wise breakup, staff provided to the Courts and other constraints before the courts, every criminal court must adopt a mechanism in writing under intimation to the District Judge/ Hon'ble High Court for adjudication of cases in a scientific manner. It is not a difficult task, if a proper beginning is made by the Judges. I am hopeful that if transparent, scientific mechanism is adopted the target of deciding all the cases more than two years old within two years is achievable. While adopting the scientific mechanism priority criteria can also be taken into consideration. The priority criteria may be based on critically old cases, old cases, cases relating to crimes against women and children and the cases relating to the senior citizens. Once the beginning is made the target will be very much achievable on self evaluation on every 15 days.

3. An innovative Judge- Working in Courts and enjoying working in Courts are two different concepts. It is the enjoyment of work by a judge

in the Court which makes him an innovative personality. The law cannot be statistic. It is a living organism. To cater the need of society under the changing circumstances, a Judge should never hesitate to stretch the law within the legally permissible limits, to reach to the goal of justice delivery. An innovative Judge only has the capacity to stretch the law in its proper implementation under the changing circumstances of society to ensure the justice delivery. As a innovative Judge, he should be very sensitive in his day-to-day working. He should be very attentive in all the proceedings. May be bail order, remand order, recording of evidence, invoking jurisdiction under Section 165 of Indian Evidence Act, invoking jurisdiction of under section 319 of Code of Criminal Procedure or Section 311 of the Code of Criminal Procedure, a judge has to be very cautious. A Judge in criminal matters has the very casual approach while recording the statement of accused under Section 313 Cr.P.C. A Judge should always have the eyes open throughout the trial of a case. There are certain amendments in criminal law which should be implemented very strictly. The provisions of Criminal Law (Amendment) Act, 2013 regarding the substantive law and the procedure of trial in the cases of crimes against women have to be very strictly implemented.

A Judge has to be very sensitive for the rights of women. Generally, rights of women are neglected and compromised by the Courts. The violation of provisions of law is seen particularly in the adjournment of cases. It should be avoided.

4. A dedicated Judge- The goal of Courts is to do justice through adjudication. Meaning thereby, to reach to the truth is the goal, whereas, disposal of cases is the process to reach to the truth. Hon'ble the Chief Justice in Administrative Conference has shown His Lordship's concern about the working of certain Courts given much above the out turn prescribed by Hon'ble the High Court, selecting the very soft targets. Thus, out turn syndrome should be converted to dedicated work. It is only possible by implementing the concept of social, ethical and legal training to the Judges. The concept of social, ethical and legal training means the law should be implemented by a man of ethics by implementing it strictly to reach to the destination of justice.

5. Developing Feedback Mechanism- It is necessary to get the feedback of working of the judge by himself. Thus, every judge should develop a mechanism for taking self feedback. Feedback provides an opportunity to the judge to correct himself. Manner of getting feedback may be different which may depend on the circumstances of each court.

6. The discipline in the Courts- This means the regulation of the behaviour of a judge as per legal, social and ethical norms. A judge should properly and productively regulate his behaviour in courts and outside the courts. Discipline is a quality inbuilt and linked with the soul of a person. If it is not inbuilt, it can be developed through a scientific training. That is the reason, Hon'ble the Apex Court has directed a lengthy scientific judicial education and training programme for the judges, at the time of recruitment and periodically, as refresher courses. Discipline is a concept and subject of judicial education having little concern with the judicial training. A judge should be self disciplines, disciplines in family affair, in economic affairs, in social affairs and in ethical affairs. If it is, I am sure there shall be no occasion to discuss the integrity of the judges. Nobody even can think of any problem of integrity with any person, who is disciplined in all vocations of life.

Discipline is also a concept of total quality management. It is very easy and safe to say that one should be disciplined, but difficult to learn the habit of being discipline. Time management is more important and time management can only be learnt through the healthy eating habits. Ultimate crux of being discipline is that first of all a judge should be disciplined in food habits. Without going to the controversy whether one should take vegetarian or non-vegetarian, I will prefer to mention that one should eat the food material in the natural form, as made by Almighty God. Eskimos cannot survive on vegetarian food, but they are eating the non-vegetarian food material as such provided by God. Converting the food and change in its quality by external acts, is not a good food. I am sure, unhealthy food will make man indisciplined. In fact, every person is a judge for him to decide what food is good for his health. A healthy person only can manage to be disciplined. The above concepts for me are not the platonic justice which is unachievable. The concepts are very much achievable. Every person is having some inbuilt quality and that should be



developed by a scientific, social, ethical and legal training by Judicial Academies.

If the above concepts are implemented by the Courts, I am sure the situation of District Courts relating to the crimes against women is bound to improve. Disposing of the cases relating to the crimes against women speedily will be attributed to *Damini*, raped and murdered in Delhi bus incident.

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