

# Can Police and Judicial System be an Effective Deterrence to violence against woman? Level of Institutional Response in Cases of Violence against Women

## Abstract

The problems of women had long been shrouded with thick veils of aged old stereo type traditional notions of honour, prestige & modesty of the family that was solely associated with the life-style, character, social mobility and all the activities of a women in social world. These stereotypes reduced women to physical and mental slavery of the patriarchy. The dominant patriarchy prepared a network of innumerable codes of conduct for the women. She was thus denied the liberty to her life, limb, body and mind. She was converted into a domestic drudge and an instrument for the pleasure of the men. She got confined to domestic servitude with strict restrictions on her movement and freedom. Women were always considered weak, vulnerable and in a position to be exploited.

**Key Words** Vulnerability, Subservience, Information dissemination, Docility.

## Introduction

The Problem- Violence against Woman is a universal phenomenon to be found in all the societies in varying degrees. This is one of the obscured and silent crimes by its' very nature of being a private affair. What is particularly striking that women are either assumed to be attached or to be ignored altogether that is they are not analyzed as a social group in their own right. Those who suggest that women's status improves with economic development, frequently fail to take account the wide-spread structures of patriarchy, which keeps women in sub-ordinate positions<sup>1</sup>. What women do or what they are expected to do varies according to different societies, political or religious ideologies and cultures but there is throughout the world a core of common task that discriminates them from other social groups is associated with their sexuality and reproduction. Mothering and rearing of children are the functions that put them in subordinate and subservient role. This is the role that they are destined to perform. In addition to these, the rural women in the most part of the world are responsible for production of a significant proportion of the household economic resources whether it be the farming or the other contribution to household economy and they are often used instrumentally existing in manipulation and at times even degradation. This gives rise to innumerable conflicts and contradictions often including violence. Thus household often represents as an arena of subordination<sup>2</sup>. The stereotype notions of sanctity, purity, modesty, docility associated with women creates the difference and they fall prey to masculine ego. This is the image assigned to women that becomes responsible for gendered nature of law and justice which is tilted much towards male than female. Their biological structure and the modest stereotyped notions clinging to their image creates grave doubts whether gender equality can be established; for even the laws have been codified by the forces of the patriarchal society. Since all the crimes committed against women are associated with the prestige and honour of the patriarchal society, they become more a private than a public issue; this is one of the major obstacle posed against women by gender biased law and gender biased society.

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With the rise of feminist movement in the west and also in India the issue of gender has become more a public issue. The international convention on women's rights and different forums engaged in discourse on women's rights & their equal status have some positive initiative and this is seen in increased awareness of the state to make women question a public issue. Initiative towards the employment of women has been taken by the government. The institutional response to gender-violence is dead slow and an initiative for practical reform is sought for. The question of concern is not the existence of laws on gender-violence rather the application of these laws in their right course. The legal justice system in India has responded well to the question of gender equality. Despite of the constitutional provision in part III and part IV\*, the policy of reservations of women in politics, several laws under IPC and SLL have been framed giving weight to redress the grievances of the women. Nevertheless the crime against women and the violation of their basic human rights persist to an alarming degree. The institutional response is dead slow and the demand for gender-equality is not being realized. There is still a need of an affirmative action and initiative for the remedies of violence against women. The protective measures incorporated in the constitutional provisions and the preventive measures provided by substantive law (CRPC, IPC, SLL or others) have proved a dead weight on the wheel of administrative efforts, so far as the level of dispensation of justice and the level of accessibility of the aggrieved to adequate remedies are concerned. The question of concern is not the existence of provisions or substantive laws on gender violence rather is the level of application of these laws in their right course.

**The objectives of the study is to-**

1. To analyze the role of police and judiciary in cases of violence against woman.
2. To explore the problems of woman to approach the Police and Legal justice system.
3. To explore the possibilities of making the legal procedures helpful and friendly to woman in cases of violence against woman.
4. To suggest the measures for the solution of the problems of woman victims arising out legal complexities.

**Methodology**

The nature of the topic is empirical but the secondary sources of data has been applied in the study. Though at the few instances primary data regarding the study based on the interview of 100 woman selected through purposive sampling has been also given.

**The study is based on following Hypothesis**

1. The woman are reluctant to approach to police and Judicial advise.

2. The Law and criminal justice system are sometimes biased in dealing with the cases of violence against woman.
3. The Legal procedures and complexities hinder the woman's access to justice.
4. The police response in the cases of violence is negative.
5. The cultural barriers, the institutionalized subordination of woman curtails for them the possibilities of dispensation of justice.

**Description**

Indian women are by and large handicapped in respect to all the pre-requisites essential for access to justice. The wide spread illiteracy, the cultural barriers and sub-ordination, they suffer from and unfriendly process of law have kept most women who have problems away from the law and courts<sup>3</sup>.

Victimized women have traumatic experience in their effort to have the remedy of their grievances from the police and judicial system. Most of the times Police itself becomes a perpetrator rather than a protector of the civil liberties that they are expected to do. The victims in general do not consider the Police or judicial mechanism a deterrence in the cases of violence against woman. In cases of Domestic violence they do not want police intervention. In a study conducted on 100 woman victims of Rewa District of M.P. it was revealed that 63% victims didn't appreciate police intervention in family affairs. When enquired about their response about the role of police in the cases of familial violence the 71% respondents said that The police does nothing except an advice to mutual compromise in familial matters and do not file complaints. Only 15% respondents said that the Police took immediate action in their cases. The society itself supports the attitude by leaving the husband –wife to settle their affair. In the cases other than Domestic violence, the Police itself becomes a perpetrator. In a case (March 21, 1984) two police constables of the palam gate police arrested a boy and a girl who were trying to run away from their homes in Bhawani Khera Haryana. The constables kept them in two different rooms where both the constables raped the girl in their custody. The session judge sentenced them for 10 years rigorous punishment on the basis of evidential proof of the third constable who was the eye-witness. The high court up held the judgment of the lower court and didn't reduce the sentence which was reduced by the Supreme Court from 10 years to 5 years<sup>4</sup>. This is one of the thousand no. of custodial rape cases in which the offenders either escape or get the minimum punishment. The question of concern is- What is the responsibility of the police? How can one be assured of the redressal of his/ her grievance if he/she reports a case of torture in the Police?

In terms of combating violence against women there often exist gaps and ambiguities in the

law criminalizing violence. Laws tend to be piecemeal, focusing on specific forms of violence rather than dealing comprehensively all forms of violence against women. When the law is in place there is often weak law enforcement this leads to victim's apathy and distrust and avoidance of the system<sup>5</sup>. In cases of offences against women like sexual abuse, harassment, dowry deaths and the like victims do not get justice at all<sup>6</sup>.

#### **What hinders women's accessibility to remedial measures in cases of violence against women?**

The right to life and personal liberty is the most fundamental of all the rights given by Article 21. Article 21 reads as – No person shall be deprived of his life or personal liberty except according to procedure established by law. The intensification of women's rights movements all over the world and the international recognition of women's rights evidenced by CEDAW are some of the factors behind the changes of Supreme Court's stance towards gender justice. "Supreme court has tried to mainstream the issues of woman's rights as human right by giving a wider interpretation to article 21 that guarantees personal liberty. The right to privacy is thus extended to women and rape is classified as the violation of human rights. Significantly the Supreme Court has read this right as available against private bodies and Individuals as well. Similarly sexual harassment is treated as the violation of the rights to carry on an occupation, right to live with dignity and the right to equality<sup>7</sup>.

One of the major problems that the judicial system and legal mechanism has to face is the weaker and half-hearted response of the victim towards the legal system; and this is due to their distrust to the legal mechanism. The Police and the courts are the last option for the people not because the victims wish to devise their own strategies to find solution to their problems but because a common perception is that- "the justice dispensed by the courts are too delayed to be of worth or of significance to them." This is the reason that the victims of abuse are likely to work out their own strategies to deal with the abusive situation in the conjugal relationship. It is only when violence becomes recurrent and individual strategies fail to bring about change in the violent behavior pattern of the spouse.

"In general the victims of violence, specially in familial relations adopt following techniques before approaching to police<sup>8</sup>".

1. Personal strategies including talking, promising, threatening, hiding, passive defence, aggressive defence, avoidance.
2. Using informal help sources including family members, in laws, neighbors, friends, shelter, social service.

3. Formal help sources including police lawyers, courts and the social service agencies are the last alternative for the victims.

Avoidance of the formal help sources by the women victims in violent situations have some severe reservations. The women victims are driven by the fear of economic and emotional insecurity. Most of the women are economically dependent on their husbands. They do not have share in the property earned by the husbands. This prevailing insecurity restricts the women to their access to formal help sources till they are left with no other sources.

No women wants to be questioned about her strength of character or privacy of her body- no women wants to relate the agony of her personal life to court room and throw herself open to having bonafied as questioned and her character maligned. She would rather prefer to cling on to a broken marriage<sup>9</sup>.

The basic problem that the victims in India have to face is very delayed and tedious procedure of police & criminal justice system. It is beyond doubt that legal justice contains laws for all sort of offences/crimes committed against body, property or others. The problem lies in the application of law in their right course. The constitution provides for equality before law but there is no provision to ensure people's equal access to these laws. The inadequate knowledge of judicial procedures and protective measures hinders the victim's easy access to law. In several studies it has been revealed that Women victims of violence in the premises of the household don't have awareness about much discussed Protection of woman from Domestic Violence, Act 2005. Most of the Woman had no information about the shelter homes or other protective measures in cases of violence against them. There is no specific legislation in India that deals with domestic violence. Criminal law in India too does not specifically recognize domestic violence as an offence. Most of the offences are contained in I.P.C. The offence of cruelty under section 498-B is cognizable only when the information about the offence is given to the officer in charge of the police station by the person aggrieved or her relatives. If there is no such relative, a public servant, has been authorized to give such information by the state government. It's not an easy task to get a case registered in the police. In an occasional visit to civil lines police station Rewa M.P., I had an accidental opportunity to witness a victim who had come to the police station at 9.00 P.M. with her husband who was heavily drunk; the women was bitterly crying and saying that she wouldn't be back to home with her husband. The station in charge came out of the chamber shouting insults at her to keep quite. The women aged about 22 kept on crying & giggling to punish the ruthless drunk husband who had beaten her ruthlessly. I came back after a short

while without knowing what happened but the police response was no doubt shattering. Madhu kishwar & Ruth vanita quoted in an issue of Manushi- a wife who actually mustered enough courage to approach police station would be viewed as brazen and deviant. Instead of registering her complaint, the police would counsel the women about her role in the house and explain that she must please her husband and obey him. She would be sent back without even registering a complaint. So a special law was needed to protect a women in her own house<sup>10</sup>.

In several studies it has been revealed that the help from informal sources are not availed in time and even if the victims try to seek help from informal sources (like their parents in law or the neighbours or other relationship ) they escape intervening in the familial relationship and advised the victims for dealing the abusive situations themselves; the perception behind it is that intervening in familial matter may worsen the situation. The majority of victims do not share the abusive marital relationship experiences even with their intimate relatives and friends and rely upon their own strategies to get the solution. During the study of 100 women victims of District Rewa, M.P. it was observed that in 82% cases the parents who were informed about the familial violence against their daughters stood in their favour but in maximum no. of cases (64%) they advised them to work out the problem with mutual understanding.

It is surprising that in the cases of abusive situations the victims yield no support from any member of the in-laws family. If a wife is battered by her husband the husband's parents or other members do not approach to her rescue. In an incident a young women was beaten to death for dowry at her residence in the presence of her elderly in-laws who stood as silent spectators and didn't step forward to her rescue<sup>11</sup>.

#### **Traumatic experience of police and criminal justice system**

The victimized women have traumatic experiences of police and criminal justice system. The victimized women need immediate relief because most of the incidents cause emotional disaster and distress. Imagine- How much disasterous is being beaten ruthlessly, being sexually and psychologically abused and violated of your rights by someone who is considered your life-mate or whom you trusted blindly?. This is an emotional disaster and you do not get immediate relief; your hopes with the police and judiciary are shattered. The questioning and traumatic cross-examination by the police or the courts are the shattering experiences for a victim of violence. It's not an easy task to get an F.I.R. lodged in the police.

There is a misconception among the police and criminal lawyers that the section 498-A is misused by women. While it is true that a significant

no. of cases filed under this section, are subsequently withdrawn; the complexities of woman's lives particularly within a violent marriage have to be taken into account. The conviction of the husband may not be the best solution of her problem<sup>12</sup>. However the withdrawl of the cases or the witness becoming hostile is not a determinant that the cases of violence against women are fabricated or engineered. The victim has to undergo different sort of pulls and pressures like threatening, intimidation social prestige honour and the like.

The recently passed the protection of women from domestic violence bill 2005 has some better provisions for the protection of women from atrocities. The act contains the provisions of protection officers, shelter homes and other preventive measures but the problem lies in the level of implementation of the act and the level of awareness of the victim about the provisions of the act. According to a survey conducted by India today – AC NELSON-ORG MARG OPINION POLL, 80% of single women in Mumbai did not know about any help line centres in the city. Over all 69% female and 69% male did not know about the helpline centres to assist them in cases of violence<sup>13</sup>. The need is broader information dissemination about the protective or preventive measures to the women. In the study conducted in Distt. Rewa 98% women did not know about- who is protection officer?. The matter to be investigated is why the police is the last resort in the cases of violence against women. The police tend to disregard small episodes of violence. The police apathy towards the cases of domestic violence treating them a family affair shows the dubious character of police. The police image as presented by media is too negative to motivate the victims to move to police. 'The instances of police excesses high handedness and apathy has become so common that they seldom arouse public irritation. The basic problem is –How to restore faith of the victims in the police and legal system.

In state of Punjab vs. Ramdev singh the Supreme Court reiterated its' approach and enticed the judges to be more sensitive towards sexual offences. The court held that- "Sexual offences apart from being dehumanizing act is an unlawful intrusion on the right to 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 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 women i.e. her dignity honour reputation and not the least her charity. Rape is not only a crime of a person on a woman it is a crime against society. It destroys the entire psychology of a women and pushes her into deep emotional arises. It is crime against basic women

rights and is also violative of the victims most cherished fundamental rights namely right to life contained in Article. 21. The courts are therefore expected to deal with cases of sexual crimes against women with utmost sensitivity.

Though all the forms of crimes that is against dignity and modesty of women are of great concern for the society but the rape is the most reprehensive form of barbarity inflicted upon purity modesty femininity, motherhood and vulnerability, justice Krishna Iyer calls it the deathless shame and greatest crime against human dignity<sup>14n</sup>.

Despite the provisions of the criminal law the justice is not dispensed in many cases due to the tedious and ambitious procedure of justice. In most of the cases the offenders are not convicted in want of evidences. The social background the economic and power status of the offender works much in their favour. They frequently terrorise intimate use money to influence the judicial status of a case on the other side if the victim are not having sound economic status that often happens in rural areas they can not easily hope access to justice or even hope to an F.I.R. registered. This is not a mere fiction, hypothesis or an assumption but the harsh reality of our legal justice system. The legal mechanism is tilted towards the influential and resourceful perpetrators and the victim is stunned to see the natural rights or natural justice being undermined under the heavy weight pressure of legal justice that requires the evidential proof and eye witness that the resourceless victims cannot afford. In plenty of rape cases the court's decision raises a big question mark an judicial mechanism. In Mohd. Habib vs. state (1989) the accused had brutally raped a 7 year minor who had bite marks on her body and her hymen was ruptured. The Hon'ble Delhi high court acquitted the accused on the plea that no mark of injury was found on the genitals of the accused and there was no indication of resistance. It is not very difficult to prove the implied consent or the victim's being habituated to sexual intercourse as it depends upon the maneuvering skill of the counsel. In Madam Kakkad V. Naval Dubey the accused a medical student having raped a minor girl of 8 years was convicted under section 354 of IPC (simple sexual harassment) and was imposed a fine of Rs. 3000/-. Even in the child sexual abuse the offenders are acquitted on benefit of doubt or minimum punishment. Least punishment is given to the offenders who are minors it doesn't matter how heinous their crime is.

Whatever be the reason, there is no denying the fact that the police and judicial response in India is very slow and negative. The biased judgments had always been burning issue in the media. The famous Bhanwari devi case (1992) is an example of the perception to prove. Bhanwari devi, a social activist who was involved in campaigning against and

preventing child marriages. In her efforts of social awareness campaign she was subjected to gang rape in the presence of her husband. The court held that the rapist were middle aged and respectable citizen who cannot commit such type of crime. Since the offender were upper caste man and Bhanwari devi was from a lower caste the rape could not have taken place. The court refused to believe Bhanwari devi's testimony and made several unwanted remarks about her character.

Bhanwari devi was medically examined only 52 hours after the incident as she was denied medical examination in the absence of magistrate's order and the order came after 48 hours. In a series of judgments by the lower courts she could not get any relief. She approached to the Supreme Court. The Honourable Supreme court gave the verdict in her favour. The victims of rape are so much traumatized by cross-examination that they succumb to pressure and withdraw the cases.

The procedure and practice of judicial system need greater reform to ensure that the justice is dispensed to the victim adequately and timely. The courts and judicial system are constantly on work to bring about the reforms but even more powerful is the social mechanism to get the accused acquitted in the cases of violence against women. The attitude of the society towards the violent behavior should be corrected. The concrete work on socio-economic empowerment of women is needed to ensure their access to justice because to quote Radhika Coomarswamy-' Living in anticipation of violence curtail their priorities and choices they make for the future. It makes women search out men for protection rather than companionship and makes women dependent and vulnerable. Fear then socializes women to conform to very sociological norms that ensure their subordination<sup>15</sup>.

The women victim need to be treated with sensitivity; the role of police & judicial system is therefore should not be one of the interrogator but of the facilitator or empathiser. Violence against women not only causes emotional disorder in the victim but also promotes disequilibrium in the society.

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