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Crime against women in India: A socio-legal overview

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Abstract

The sudden increase in crime against women in India is a matter of concern. The most of the crimes against women are registered either under section 354 and/or section 376 of Indian Penal Code. Recent incident of rape and murder of Nirbhaya in Delhi has raised unprecedented public outcry resulting suitable changes in Indian Penal Code. The tightening of Juvenile Justice Act and Indian Penal Code was done and more Fast Tract Courts were set up for speedy trial of crimes against women. There were registered only 680 cases of rape 2012 and 1559 case were reported in 2013. There was rapid increase in 2014 resulting 1925 rape case reported against the offence. Slow trials of cases are the matter of concern and the same is caused due to unwarranted plea of adjournments. Speedy trial is the legal right of both accused and the victim. No procedure which does not ensure a reasonably quick trial can be regarded as reasonable fair and just and it would full foul to Article 21 of Constitution. Speedy Trial is prescribed under the Criminal Procedure Code also. A large number of cases of rape and molestation are unreported because the women victims of offences are reluctant to lodge complaint as they fear disputation and in many cases police refuse to register the Fir. The Trial Court and prosecution must ensure speedy trial because inordinate delay in trial provides undue advantage to the accused and an inordinate delayed trial may even be even quashed.

Keywords: Crime, Women, Speedy Trial.

Introduction

The increase in crime against women is nowadays a matter of concern for all. The problem has been discussed everywhere Parliament, State Assemblies, Public Forums, Universities & Colleges etc. yet there is no nearer solution. The opinion of people on the point of reason of crimes against women and solution sharply differs from man to man. Some people demand more and more stringent provisions of law and some other demands speedy trial of cases as measure of solution. There was an unprecedented public outcry over the Nirbhaya case and as result a new more stringent law came into force. The tightening of Juvenile Justice Act and setting up of fast-track courts for trial of cases of sexual offences against women were done.

While on paper landmark legal reforms have been brought into existence, many challenges have developed in the way of enforcing them. The brutal murder and gang rape of Nirbhaya exposed policing in the capital Delhi like never before triggering a scientific investigation was made to ensure the accused booked before the court. The Nirbhaya case also saw decisive judicial intervention on two fronts- a speedy trial of Nirbhaya case and constant monitoring to improve safety of women in capital. Soon after the incident, the Delhi High Court set up fast-track courts, one of which tried the Nirbhaya case. The trial itself saw a change of trend in police banking heavily on forensic evidences, junking the usual reliance on eyewitness testimony. These preparedness has, however, hardly and positive effect on the rate of crime against women. There were 612 cases of molestation registered in the year 2012, 3347 cases in 2013 and there is now unprecedented increase and altogether 3932 case have been reported in 2014 so far ^[1]. There were 630 case of rape complaint reported to police in the year 2012 and 1559 cases were reported in the year 2013 and now it has increased upto 1925 in the year 2014 ^[2]. According to the information available in government records, over 33700 Firs were filed for rape in 2013 and in 95.4% case charge-sheet were filed by policed. But conviction rate in as low as 27% only ^[3]. Usually the crime against women are registered under section 354 (outraging modesty of women) and/or under section 376 (Rape) of Indian Penal Code.

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Delay in Trial

The slow trial of cases is in fact a matter of great concern. In 2012, over 500 rape cases were disposed of by regular courts while around 700 and 650 cases were decided in 2010 and 2011 in Delhi. As regards delay in trial of cases, while some experts blame the sluggish pace, shortage of judges, public prosecutors functioning and workload at these courts. Others terms is a "misnomer". The experts believe fast-track courts in the country have failed in the absence of special training to judges trying cases of sexual offences. In contrast, the fast-track courts abroad have been a success, as judges are well trained to handle different kinds of cases. Commenting on the reasons, Justice S.N. Dhingra, a retired Judge of Delhi High Court, said, "Court cannot be fast tracked. The system needs to be fast-tracked. It can happen only by simplifying legal procedures and imparting specific training to judges, lawyers, police so that they can deal more effectively with rape cases. Instead of setting up fast track-courts, it is better to issue directions to regular courts for trying such cases on a priority basis"^[4].

Justice Dhingra suggested further, "Courts should not entertain unwarranted pleas of adjournment. Depositions of material witness in these cases should not be deferred because it can lead to accused getting the chance of influencing witnesses"^[5].

Speedy Trial: A Legal Right

Speedy trial is part of fundamental right to life and liberty of an accused. The Hon'ble Supreme Court has ruled in '*Hussainara Khatoon –V- State of Bihar*'^[6], that a procedure prescribed by law of deprivation of a person of his liberty cannot be responsible fair and just unless that procedures ensure a speedy trial determination of guilt of such person. No, procedure which does not ensure a reasonably quick trial can be regarded as reasonable fair and just and it would fall foul of Article 21 of constitution. There can therefore, be no doubt that by speedy trial we mean reasonably expeditious trial, and the same is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of Constitution.

Undue long delay of justice has effect of bringing about violation of rule of law and renders adverse effect on the guaranteed fundamental right under the constitution and particularly under Article 21 of constitution and denial of this right under mines public confidence in the justice delivery system^[7]. Speedy trial encompasses within its sweep all its stages including investigation, enquiry, trial, appeal revision and retrial^[8]. It is the constitutional obligation of state to provide a speedy trial to the accused and paucity of funds or recourses is no defence to denial of right to justice emanating from Article 21, 19 and 14 of constitution. Section 309 of Criminal Procedure Code also provides that once a trial begins it should continue on date to day basis and conclude speedily. The Hon'ble Madhya Pradesh High Court has also ruled in '*P.D. Sharma –V- Union of India*'^[9] that to allow trial to drag beyond a reasonable period of time would amount to violation of Article 21 of Constitution. Similar was the law laid down by Hon'ble Apex Court in '*Santosh De –V- Archana Guha*'^[10] in which the court held that it is the duty of trial court as well as prosecution to expeditiously conclude the trial.

The Hon'ble Apex Court in '*Rajendra Singh (Dead) through L.Rs. –V- Prem Mal*' has strongly condemned the inordinate delay in disposal of cases and held that people are fast losing

faith in judiciary because of inordinate delay in disposal of cases and therefore the concerned authorities must do the needful to ensure speedy disposal of cases. The Hon'ble Apex Court ruled, "People in India are simply disgusted with the state of affairs, and are in fact losing faith in the judiciary because of the inordinate delay in disposal of case. We request the concerned authorities to do the needful in the people faith in the judiciary is to remain."

Consequences of Delay in Investigation and Trial

The trial court and prosecution should not allow any delay in investigation as well as trial in the cases of crimes against women because it provides undue advantage to the accused persons. A criminal prosecution, pending above five years or more, may form the basis for quashing the same^[11]. If there is no progress in investigation for five years, then the prosecution in such circumstance may be quashed. The Hon'ble Apex Court has ruled in '*Ramanand –V- State*'^[12], that a criminal proceeding pending above several years (i.e. 13 years) may be quashed.

Refused of registering FIR by police abates offence against women

The various surveys conducted by social agencies shows that a large number of crime of rape and molestation are not reported to the police of disreputation in society. May others do not come to courts as police often refuse to lodge FIRs against the complaints of suffering women. The provisions of sections 154(1) of Criminal Procedure Code in mandatory in law and hence police cannot refuse to lodge on FIR. The Hon'ble Full Bench of Apex Court in '*Lalita Kumari –V- Govt. of U.P.*'^[13], has ruled that a police officer is liable for disciplinary action if he refuses to lodge on FIR. In similar situation, the Hon'ble Madras High Court in '*Vijay Raj Jain –V- The Secretary, Home Department & others*'^[14], has issued direction to take suitable disciplinary action against police officers refusing to register FIR and taking prompt action.

Conclusion

The increase in crime against women in India, of course is a matter of great concern for all. The reluctance to lodge FIR by victim, refusal of lodging Fir by police and inordinate delay in investigation or trial etc. are the main reasons for increase in the crimes against women. It is high time that publication of crimes in newspapers against women should now be prohibited and all trial in the cases of offences against women should be speedy and a 'camera trial'. The government agency engaged in women development should now come forward to lodge complaint/ FIR in the place of victim women because the women victims women often hesitate to come forward due to disreputation and harassment.

End Notes

1. The times of India; Dec. 17, 2104
2. Ibid.
3. Ibid.
4. Ibid.
5. Ibid.
6. Hussaina Khatoon –V- State of Bihar; AIR 1979 SC 1360
7. Imtiyaz Ahmad –V- State of U.p.; AIR 2012 SC 642
8. Ramchandran Rao –V- State of Karnataka; (2002) 4 SC

578

9. P.D. Sharma –V- Union of India; 2001 (1) Crimes 245 (MP)
10. Santosh De –V- Archan Guha; AIR 1994 SC 1229
11. Rajendran Singh (Dead0 through L.Rs –V- Prem Mal’ 2007 (4) PLJR 128(SC)
12. Surya Naryan Singh –V- State of Bihar; 1987 PLJR 394 (F.B.)
13. Ramanand –V- State; 1994 Cr. LJ 1221 (SC)
14. Lalita Kumari –V- Govt. of UP; AIR 2014 SC 146
15. Vijay Raj Jain –V- The Secretary, Home Department & Ors; 2002 (3) Crimes 5 (Mad.)

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