Chapter 8
CONCLUSIONS AND SUGGESTIONS

Crime is a social phenomenon and a crimeless society is impossible. It is only a person living in the utopia can think of such a society. What is shocking is the rate at which the crimes are increasing. In addition, with more women coming into the mainstream of national development and given a status on par with men, the crimes committed by them and the crimes committed against them shows an ascending trend. The possibilities of criminal law in bringing down the rate of increase of crime has to be explored.

It is quite interesting and fruitful in this context, the basis on which the Constitution of our country has incorporated the Covenants of the International Organisation. India is a signatory to the Covenants and Protocol on Human Rights. Thus while speaking of the Human Rights the ‘Humane’ aspects of the right is not to be forgotten. If the right does not help a person to live with dignity it is not worthwhile calling it a right. When the focus is on the question of Women’s dignity as human right, it is obvious from the nature of crimes committed by them and against them, they are forced to live in an environment not conducive to their dignity.

Analysis of the Constitutional provisions dealing with women’s right reveals that the courts have been playing a major role. In their eagerness to
protect the interest of women and that they are not discriminated from men, the courts have taken a formal approach to equality. In some cases they have laid emphasis on the biological weakness of the women and this they have utilized to differentiate them from men. As a consequence of this approach whatever benefits they could have derived from the special legislation has been deprived to them. So far as the courts take a protectionist approach, they have been deprived of women will continue to be dependants. The corrective, approach if employed will try to remove their subordination and make them stand on their own foot in some cases. The courts have to access each case according to the social value and take a pragmatic approach, which will be within the framework of law. Thus balance has to be struck between a formal approach, protectionist approach and a corrective approach.

The crimes are multi-causal and multi-dimensional whether it is committed by the woman or against the woman. India is a tradition bound country where some customs and practices continue to exist. These customs and practices also may contribute indirectly to the commission of certain crimes against women.

Prostitution is one crime, which exists, in the Indian society as a custom of the dancing girls in temples is one such form of custom. Though the practice of prostitution has not been made a crime, it is the act of soliciting committed by women for which they are forced to undergo imprisonment or pay fine. The Suppression of Immoral Traffic in Women
and Girls Act has been replaced by the ‘The Immoral Traffic (Prevention) Act 1986. This Act also continue to treat women soliciting in prostitution as criminals. The stigma attached to this profession leaves them with no other option but to continue in the profession or to be blackmailed by pimps.

The punishment imposed by the Immoral Traffic (Prevention) Act does not contain stringent provisions to prevent the pimps and the flesh racketeers from continuing the trade. Most often they escape from the clutches of the law. Even if they are caught no proof is given against them in the court, as the victims are scared to depose against them. So they come out with a clean slate and carry on the profession as usual. They see prostitution as a legitimate labour freely chosen by thousands of women.

As a consequence, the crime of prostitution continues unabated. Even young girls are forced into the trade without their willingness. It has become an organised industry with enormous economic turn over. Today it is the economic and the business structures involved which drives the activity in an organised manner defeating the legal intervention, which has sought to eradicate or prevent prostitution. Much more has to be done through legal process to protect the society from sexually transmitted diseases and to promote the façade of public order.

The awareness among women of their rights is slowly increasing. The change that has occurred in the society due to modernisation and urbanisation has also brought a change in the public opinion of a section of
the society who is canvassing for decriminalisation and possibly legalisation of prostitution. The prostitutes want to identify themselves as ‘sex workers’ and extend to them the conditions of work, which the labour and business laws provide to industrial labourers. Their movement is fast spreading in USA and UK. It is slowly picking momentum in big cities of India.

Prostitutes have been blamed for spreading sexually transmitted diseases in society. The World Health Organisations programme on HIV/AIDS also reveals that prostitutes are responsible for the spread of the disease. The possibilities of devastating consequences from HIV to prostitutes, clients and other associated with them warrant a re-evaluation of traditional legal approaches. It is time that the practice of prostitution is decriminalised. The laws, which we have today, only, benefit the customers with little or no regard for the well being of the prostitutes.

What cannot be abolished, suppressed, or prevented has to be regulated. The new approach of decriminalisation is a better strategy to deal with the problem. If a legislation in this area should be drafted it must first guarantee the right of equality, freedom and human dignity of the sex workers. The health of the sex workers has to be protected from sexually transmitted diseases and HIV/AIDS. The welfare of the children of these women also requires concern. The condition to be specified in the legislation should make it uneconomical for the sex workers to carry on the
trade thus indirectly driving them to seek a better profession. Policing, like what conditions they impose on the customers have to be spelt out in the legislation so that they can regulate the trade.

The sex workers in some part of our country are demanding special privileges for their children like reservations to be made in educational institutions. By doing so the children are identified as a separate group. This sort of segregation would further divide the society into narrow groups. The trend may not be proper, as it would stigmatise them from other members of the community. In later life these children may find it difficult to accommodate with the other members of the community. They should be absorbed in to the main stream of the society.

The statistics of crimes against women is spiralling at a jet speed. The researcher has taken for study the major crimes like rape, dowry death, marital cruelty and sexual harassment for these crimes create mental injury and debars or dehumanises a woman to a great extent.

It is found that the criminal law in dealing with such crimes is unable to meet the challenges and to bring down the crime rate. This only reflects the shortcomings in the criminal justice system, which sometimes makes us think whether an alternate devise has to be worked out.

The criminal justice system consisting of legislators, policemen, lawyers and judges who are personals ‘drawn’ from the masses. They continue to function with a conservative attitude towards the status of
women and their rights. Most of the court proceedings and judgements passed in cases relating to sexual offences are prime examples of prevalent male-oriented notions of female morality and social decorum. Except for a few exemplary instances when the court passes a favourable judgement, in a majority of cases the plea of the female victim is struck down on the basis of some flimsy obscure reason, treated with utmost seriousness.

The Legislators function in such a way that the main focus is on what legal measures ought to be taken in quickest manner. The crime problem is studied superfluously. The root of the problem has to be unravelled rather than studying the symptoms, which are only the manifestations of the problem.

The sociological realities have a strong base in the society. Centuries of thinking have gone into these sociological realities and some of them have led to the commission of crime. Centuries of such thinking cannot be resolved just by the stroke of the pen. The attack should be from all directions if the crime rate has to come down. Plethora of laws and amendments are made to combat these crimes. These laws have proved futile because of the total dependence, which is made on the law alone. Sometimes we are carried away by statistics and are content that the law has served the purpose. It has to be understood that century of old practices and custom cannot be changed over night. So the legislators while drafting the
laws have to be aware of the social realities in their mind so that the law can be more meaningful.

The law relating rape has found to be a failure, as it has not adequately addressed to the various types of sexual assault. It has become outdated in terms of language and failed to acknowledge the true nature of the crime. There are serious contradictions that inhibit women and children from reporting the crime and seek judicial redress. Rules of evidence and procedure do not take adequate account of the crime. There is an urgent need to review the existing law of rape with respect to procedure, evidence and punishment.

The law is subject to the interpretation of the judges and lawyers and they have to work within the limitations of the law. While redefining the definition of rape the Law Commission in its 172nd Report felt that the definition of rape has to be expanded to cover the broader experiences of sexual assault. It is also proposed to make the offence gender neutral. The existing definition of rape, which is confined to penetration by a penis, fails to cover many other types of sexual abuse and violence. The new definition as recommended by the Law Commission in its 172nd Report covers not only penile penetration but also penetration in other part of the body or by other object. So far as young children are concerned, as per the Law Commission, penetration need not take place and yet rape is considered to have been committed. Grievous injuries may occur on such minors, so the
law has taken into cognisance of such criminal act. All these criminal acts are grouped together and are renamed as sexual assault.

The researcher’s submission is that the definition of rape has to be retained in Section 375. A separate section dealing with other types of sexual assault can be incorporated. The degree of injury inflicted on the rape victim, child rape victim and victim exposed to other types of sexual assault varies. So they need separate handling. There may be possibility of misinterpretation of the law, if all the criminal acts are grouped together under one offence.

This may give scope to the defence counsel to identify some lacuna in the definition of the term sexual assault as it is a very exhaustive term and encompasses various acts. The lower court judges, carried away by the defence counsel’s representation in the court, where the main objective of the lawyer is to see that the act of the accused does not fall within the purview of the definition of sexual assault and seek an acquittal to the accused. Ultimately the accused goes totally free without any punishment even in genuine cases fit for conviction.

Child rape is causing grave concern to humanity. If the assault is committed by the close relatives like father, grand-father or brother and by persons in position or trust or authority needs to be handled with severe penalty. The recommendation of the Law Commission in its 172nd Report is to impose a punishment of rigorous imprisonment for a term which shall
not be less than ten years but which may be extended to life imprisonment and also liable to fine. Proviso is added to the section to allow the court to exercise its discretion to reduce the sentence to less than the minimum after furnishing adequate and special reasons for awarding lesser punishment.

The proviso has stated that 'adequate and special' reasons should be specified and this is considered as a safeguard. The courts have interpreted the 'adequate and special' reasons in various ways, which in most cases only works to the advantage of the accused. Factors like age of the victim; the nature and gravity in which the crime has been committed are some of the reasons to explain why the judge chooses to invoke the proviso while imposing the sentence. But the judge must remember that the crime is committed within the four walls of the house, wherein a woman is expected to live with safety and the confidence in her, that the home is the best place where she can live in safety has to be reassured by him, while passing the sentence.

Delay in reporting of the crime of rape has to be read in a proper perspective. Refusal to register the complaint should be dealt with seriously. The officer responsible should furnish reasons to the higher authorities as to why he had not recorded the complaint immediately.

Rules of evidence and procedural laws in the case of child rape need to be relaxed. Provision should be made in the criminal procedure code to record the evidence of the child in a place familiar to the child and the
presence of the accused can be waived. There should be a statutory provision to ensure that the girl is interrogated preferably by a woman police officer or a person associated with the welfare of the child if a woman police officer is not available as recommended by the Law Commission in its 172nd Report. Children who are raped suffer greater mental agony and trauma. So they should be made to undergo treatment under a medical psychiatrist.

Medical examination of the rape victim and the accused needs special attention. The Law Commission’s 172nd Report has elaborately framed rules as to what are the matters to be stated in the report. Making arrangements to conduct the examination as early as possible has to be done by the police officers and explanation has to be given as to why the delay occurred. Wherever possible lady doctor has to conduct the examination in the case of women victims or else in the presence of a respectable woman of the locality if a male doctor examines the victim.

In custodial rape the trial should be conducted within a specified time. Penal action should be taken against the officers who do not cooperate with the court in conducting its proceedings. Section 375 deals with the punishment of officers who had raped. The Law Commission’s 172nd Report has recommended changing the quantum of punishment to each type of offences stated in the section and a minimum is fixed. Proviso is also appended to the section to allow the court to reduce the sentence to lesser
than the minimum sentence of imprisonment after adducing special and adequate reasons. The court reduces this sentence by giving special reasons. Either the legislatures have to state the broad grounds of the reasons or the Supreme Court has to lay down guidelines. The age, character and antecedent of the accused can be taken into consideration to reduce the quantum of punishment. In case of custodial rape severe punishment should be imposed as opposed to other types of rapes.

A reported case of rape of an 18-year-old girl by way of punishment is noteworthy (The Hindu, July 6, 2002). The tribal jury directed 4 persons to commit rape on a girl who was found guilty because her 11-year-old brother was found walking with a girl of another tribe. In an era of Human Rights this type of punishment is anachronistic. However the Pakistan Supreme Court has taken serious note of this case.

Section 155(4) of the Evidence Act is grossly misused. This objectionable Clause needs to be deleted from the Evidence Act. Judge should ensure that Section 146 of the Evidence Act is not misused by the defence counsel when he is cross examining the victim.

In the French system of Criminal Jurisprudence the investigation work is entrusted to the investigating magistrate who supervises directly the work of the Police. The investigating work as done by our Police makes it easy for the accused to escape. So adopting the French System of conducting the investigation can be effective. The Public Prosecutor also
directs the way in which the investigation has to be conducted. The confidence we have lost with the working of the Police in investigation can be regained adopting the French System of investigation.

The Law Commission's 172nd Report also has discussed the issue of 'consent' since it is the central point in the offence of rape. It is to be understood from the factors and circumstances of each case. Such a definition would be dangerous, as it would narrow down the concept in its meaning and application.

There is only limited scope in the Criminal Procedure Code to award compensation to the victims of rape. The Courts are showing unconvincing reluctance to invoke the fragmentary compensatory legislative scheme. However, exercising its inherent powers the Apex court in some cases has given effect to the right of the victim to claim interim compensation during the pendency of the criminal trial. It is difficult to comprehend the judicial attitude and its inconsistent approach to the victim of rape to be compensated.

It is high time for the legislature to be sensitive to the victims of rape. A suitable legislation has to be enacted at the earliest, which will provide compensation to the victim, defining the criteria for eligibility for seeking compensation from the offender and or the State. The Criminal Injuries Compensation Board as existing in UK, compensation is awarded to the victims of rape. Similar to that Criminal Injuries Compensation Board
can be set up in India which will decide the mode of assessment of the compensation and the rights, responsibilities and powers of the Board for fixing the compensation has to be stated in the legislation.

In dowry death and matrimonial cruelty cases the lower court have proved a total failure on many occasion. The Supreme Court has made certain judicial assumptions for proving facts and has thus saved the time of long drawn battle of the courtroom. The High Court and the Session’s court can also follow this pattern while deciding cases of dowry death and matrimonial cruelty. The procedural law should be amended to make it convenient for the judges to draw presumptions in dowry death and matrimonial cruelty cases.

Granting of bail to the accused should be restricted till the investigation is over. Even after the investigation only in exceptional cases bail should be granted.

Recording the dying declaration in bride burning cases needs to done as early as possible. The officer who is entrusted with the work of recording may not be available at the critical time. The veracity of this report is invariably questioned by the defence counsel. In extreme cases when the Medical Officer only is near the victim and when he records the statement it should be taken as relevant unless the accused establishes that he is an interested witness in the case.
On the question of returning the articles given as dowry to the relatives of the victim the courts are only giving directions as to the disposal. An amendment to section 304-B IPC if made as to the disposal of the property will make it easier for the lower courts to give the directions properly.

Where husband is found guilty of the offence of dowry, wide publicity through press and electronic media is necessary to create enough awareness in the minds of the public and he should not be allowed to remarry till the court finally resolves the matter.

In matrimonial cruelty, the neighbours and friends of the victim have a better picture of the incidents that occurs. Some women organisations are also actively associated and acquainted with the problem. Therefore their services can be utilized if the FIR has to be recorded and the police officer should not be reluctant to record the FIR.

Cases of matrimonial cruelty needs investigation to be done by an officer who will not bring further rupture in the family. It is a very delicate task where the psychology of the woman, her husband and members of the family has to be carefully handled. Persons well trained to tackle such cases have to be entrusted with such investigation. These matters cannot be taken to the Family Court. In extreme cases the wife may find it difficult to continue to live in the matrimonial home. Provisions should be made in the Act (IPC) to allow the criminal court to order for separate residence or else
provide maintenance for the wife. If need be the trouble shooters especially the mother-in-law may be directed to live in the home for the aged under the directions of the court.

Sexual harassment is an offence, which is increasing day by day. The use of the term, altered from the earlier ‘eve teasing’ is confused with the Supreme Court judgement on sexual harassment at workplace. The offence as it exists today is scattered in different chapters of the IPC. A proper definition of sexual harassment is required to be legislated. The Law Commission in its 172nd Report has suggested a definition by adding a new section 376E. The Section intends to cover wide variety of sexual offences and is called as unlawful sexual contact. This can only be a stop gap arrangement as the definition does not specifically state whether it is in work place or not.

Due to the directions of CEDAW (Convention on the Elimination of All Forms of Discrimination against Women) regulations have been laid down by the Court regarding sexual harassment. It is expedient that remedial measures be taken to bring out comprehensive legislation. More over wide publicity is to be given of the action taken against the employer. A committee may be constituted to look into sexual harassment cases consisting of a women activist, a doctor preferably a psychiatrist, a lawyer and a respectable person of the locality. If the woman of sexual harassment
makes any frivolous or vexatious allegation, action may be taken against her besides granting appropriate relief to the alleged offender.

Adjournment sections of the Criminal Procedure Code should be amended in such a way that the courts should not adjourn the cases relating to rape, dowry death and sexual harassment; unless the reasons are very compelling. If the advocates are absent but the parties are present and willing the Judge should not cause further delay.

The trial has to be conducted as expeditiously as possible and on day-to-day basis. If delay occurs the officer responsible for the delay should be made accountable.

All Women Police Station, have been established in some States to deal with crimes relating to women. Women victims can have better access to such police stations. The Police Officers being only women, the victims need not have the fear or phobia of availing the services of a Police Officer. The Police Officers, to the best of their ability should try to drive out the wrong opinion, which people have formed against them. Moreover such Women Police Stations are required in rural areas. Wherever conciliation is possible the problems can be resolved in the Police Station rather than taking it to the court.

Lack of accountability of the officers involved in tackling the crime erodes credibility in them. Even if there is a genuine case there is hesitancy on the part of the victim to report the matter. The press, women
organisations and other activist group have been pointing out the defects. But no action is taken against the officers because they may have the backing of the politicians or a clout with the Government.

The Judiciary has a major role to play. People are slowly losing the confidence with the working of the criminal justice system and it is the judiciary, which has to prevent the confidence of the public being shaken.

Judges can play a crucial role to give fresh lease of life to law, which has to change according to the challenges of the society.

Judges should be gender sensitive. A critical analysis of decided cases reveals that the administration of criminal justice in vogue is highly pro criminal and regards the victim as a non-entity. Thus throughout the trial sympathy arises and ultimately it benefits the accused when there is little doubt regarding the evidence or if there are two interpretations of facts the one in favour of the accused is taken.

In order to repose confidence in the judiciary they should avoid inconsistent judgements. Sentences, which Courts sometimes award, add more injury to the women victim than the suffering undergone by the commission of crime.

Co-ordination of the Police, Prosecutor and Judge is a must. If each organ functions independently of the others no purpose is solved. Periodical meeting of these personals is to be held so that they can make an appraisal of the work and set right the defects in the working.
We cannot point an accusing finger at the legal system also. Social values and religious values are degenerating. These values require uplift. If the entire community has to live peacefully, it has to carry the message that respecting and upholding the dignity of women is possible if the crimes committed against women are reduced, if it is not possible to eradicate.

The emerging jurisprudential thinking round the world requires public authorities to be more sensitive to Human Right. They should also resort to all possible means and strategies to strengthen Human Right. Women’s Right to live with dignity without fear or violence is a part of Human Right. Therefore, if their right to live with dignity is strengthened, it would tantamount to upholding of Human Rights.