CHAPTER-5

ROLE OF ENFORCEMENT AGENCIES

5.1. Introduction

The law-enforcement agencies i.e., the police and the judiciary play an important role in the control of crime against women and particularly in rape. The law-enforcement is a continuous process from the time, a crime is reported till the criminal is prosecuted and punished. This is a long process involving various stages such as, investigation, prosecution, trial and judicial decision. The main object of this chapter is to discuss various legal provisions relating to investigation, prosecution, role of lower judiciary relating to the bail and remand, the judicial norms set by higher courts and penal sanctions and sentencing in women related crimes particularly in rape cases.

5.2. The Role of Police

The primary function of the police is the enforcement and administration of laws. For an effective enforcement of laws, police are vested with numerous statutory powers. The role of the judiciary stands next to the police. It has always been assigned high prestige under the democratic constitutional set-up, particularly in view of the challenging tasks entrusted to it.

The police force is the principal agency of the criminal justice for the enforcement of laws. They occupy a strategic position with reference to crime causation, probably next to the family and other personal groups in importance. In its primary duty is not only to prevent the violation of laws like murder, suicide, rape, arson, grievous hurt, cruelty etc. but to prevent other offences like dowry related crimes. The police select the law to enforce according to the nature of crime. Sometimes, they launch a special drive against a particular crime and enforce the relevant law more vigorously.
In India, the police have to perform all the functions enumerated as in other countries, but their work is exceptionally more burden some due to the peculiarities of the socio-economic life of the community. Prof. Bailay remarked in the following words:

Crime in India is bewildering in its variety; the police must cope with a range of crime as diverse as any in the world. While people are vicious to one another in India in much the same ways that they are in the West, what distinguishes the Indian scene is the enormous variety of circumstances within which crime becomes manifest. It is the richness of social and geographical conditions that gives to Indian crime its incredible and fascinating heterogeneity.²

(i) Preventive Role

The prime object of every law is to prevent the commission of crime. Very often, it is said that prevention is better than cure. Similarly, it is better to prevent the commission of a crime rather than to prosecute the offender. The police are vested with certain powers under different laws to perform this preventive function.

The police are assigned powers of preventing crime under sections 149, 150 and 151 of the Code of Criminal Procedure (Cr.P.C.). Wide powers are also given to the police under Section 23 of the Police Act, 1861.

Section 149 of the Cr.P.C. provides that a police officer³ may interpose for the purpose of preventing, and shall, to the best of his ability prevent the commission of any cognizable offence. The word ‘interpose’ used in Section 149, Cr.P.C. connotes active intervention by a police officer to prevent the commission of a cognizable offence. Rape and, most of the women related crimes under the I.P.C. and the Dowry Prohibition Act are cognizable offences.

Under section 150 of the Cr.P.C. a police officer may exercise the power to prevent the commission of a crime if he receives any information regarding the design to commit any cognizable offence. The powers of arrest have been conferred on the police officers under Section 151 Cr.P.C. to arrest a person
without a warrant if he knew that the person arrested had a design to commit a
cognizable offence. Besides, if it appears to such officer that there is no other
way to prevent the arrested person from commission of offence. A person
arrested under section 151 Cr.P.C. cannot be kept in custody for more than
twenty-four hours within which time he must be produced before a Magistrate
either to demand security from him or to proceed against him.

In exercising the power under this section, it is the subjective
satisfaction of the police officer which determines whether to arrest a person or
not, but the Court can intervene where the question is with regard to the proper
exercise of discretion by the police. It will be an abuse of power if a police
officer arrests an individual without ascertaining that the arrested person has a
design to commit an offence.

(ii) Bringing the Offender to Justice

One important function entrusted to the police force is to apprehend the
offender and then to proceed against him according to law. In the process of
bringing the offender to justice two important functions of the police are:

a) Investigation, and

b) Prosecution

Sections 154 to 174 contained in Chapter XII of the Code deal with,
“Information to the Police and Their powers to Investigate”. These sections
have made very elaborate provisions for securing that an investigation does
take place into a reported offence and the investigation is carried out within the
limits of the law without causing any harassment to the accused and is also
completed without unnecessary or undue delay.

First Information Report

The first information of a cognizable offence made to the police officer
is called the First information Report (F.I.R.). The term first information is not
defined in the Code, but it means information recorded under section 154 of the
Cr.P.C. A first information report means the information, by whomsoever given, to the officer in charge of a police station in relation to the commission of a cognizable offence and which is first in point of time and on the strength of which the investigation into that offence is commenced.

The F.I.R. should be lodged with the police at the earliest opportunity after the occurrence of a cognizable offence. The object of insisting upon prompt lodging of the report to the police is to obtain early information regarding the circumstances in which the crime was committed. The F.I.R. plays an important role in the investigation of offence. There are two categories of offences viz., cognizable and non-cognizable, under the Code of Criminal Procedure. Cognizable offence means an offence for which, a police officer may arrest without warrant and a non-cognizable offence means a case in which, a police officer has no authority to arrest without warrant.

Section 154(1) of the Cr.P.C. lays down that information relating to the commission of cognizable offences shall be reduced in writing by the police office and shall be read over to the informant. According to Section 154(3), if any person is aggrieved by a refusal of the part of the police officer in charge of a police station to record the information, he may send by post the substance of such information in writing to the concerned Superintendent of Police. If the Superintendent is satisfied that the information discloses the commission of a cognizable offence, he shall either investigate the case himself or direct an investigation to be made by the subordinate police officer in the manner provided by the Code. This section also makes it obligatory that a copy of the F.I.R. is to be given to informant.

The object of F.I.R. is to obtain early information of alleged criminal activity, to record the circumstances before there is time for them to be forgotten or embellished. The Supreme Court has pointed out the importance and object of the F.I.R. as under:

The principal object of the F.I.R. from the point of view of the informant is to set the criminal law in motion and from the point
of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable step for tracing and bringing to book the guilty party.\textsuperscript{10}

Most women and their parental relatives are not aware that the contents of the F.I.R. are irrevocable. It is an important document and the police officer recording it must read it out to the person filing the F.I.R. Most informants do not know that they must insist upon this.

The F.I.R. can be lodged not only by individuals but also by certain legally recognized organisations. Three All India Women's Organisations viz., the All India Women's Conference, the Mahila Dakshta Samiti and the Guild of Services, have been recognized and authorized to file F.I.Rs. to the police stations or complaints to lower courts directly under the Dowry Prohibition (Amendment) Act, 1984.\textsuperscript{11} The representatives of these organisations were issued 25 certificates as the password for these social workers to lodge F.I.Rs. to the police stations.

The image of police has deteriorated due to irresponsibility and corrupt as well as unlawful practices. Whenever a woman goes to the police station to lodge her report against her husband or in-laws, who have assaulted her or subjected her to cruelty, torture, beating or have done some other crime, police do not take any notice.

In a book by a retired Inspector General of Police, Mr. S.K. Ghosh, there is an admission to the fact of police involvement and connivance in the cases of rape as a generalized phenomenon. In cases of custodial rape such as rape of prisoners by the jailer and other staff of the prison, or of a patient by her doctor, or of a woman employee by her employer or of women hostelites or inmates of remand homes by the members of the management, the state apparatus in most of the cases chooses either to maintain a conspiracy of silence or to hush up the case. In many parts of the country where remand homes for minor girls do not exist, minor victims of rape are kept either in police custody or in prison, sometimes for 8 to 12 years without any legal redress. In such cases the rapists
lead free, ‘respectable’ life and the victims stay confined in institutions. In West Bengal, the Association for Protection of Democratic Rights has taken up the cases of such victims.

When an individual woman accompanied by her relatives or neighbours approaches the police stations she is faced with either a hostile or indifferent attitude of the custodians of law and order. Lewd remarks, jokes, innuendoes, weird smiles and cynical laughter are used by police force to generate fear and uneasiness in the minds of the victim seeking legal redress. Comments on her dress, hair style, looks, figure, sex-appeal and overall physical attributes are considered to be a part of normal behaviour by the police. The National Conference of Rape in 1990 declared, “A woman victim of rape is raped twice – first by the culprit and then by the criminal justice system”.

Police are never taken as a friend of the citizens. How can the women seek the help of the police? When she is mentally upset too much or is physically assaulted and goes to the police who do not care. When a woman reports that she was harassed or beaten by her husband or in-laws, the policeman says, “it is your family affair, why have you come to us? The men are used to beat their wives”. Further, women are not secure in the police station. There are many instances where women going to a police station for help were mentally and physically harassed. Anyhow, when the women organisations interfere and insist on registering the case, the police do not like it. If a women organization reports against any police official no action is taken. Somehow, if the case is registered with great difficulty, it is lodged under wrong section.\(^\text{12}\)

\(a)\) \textit{Investigation}

The criminal investigation commences when the police comes to know of the commission of a cognizable offence or where a Magistrate gives an order to a police officer to investigate a non-cognizable offence. The distinction
between cognizable and non-cognizable offences also demarcates the powers of the police in respect of criminal investigations.

According to clause (h) of Section 2 of the Cr.P.C. 'investigation' includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate. The Supreme Court in case of H.N. Rishbud v. State of Delhi\textsuperscript{13} has viewed the investigation of an offence as generally consisting of:

(i) preceding to the spot;
(ii) ascertainment of the facts and circumstances of the case,
(iii) discovery and arrest of the suspected offender;
(iv) collection of evidence relating to the commission of the offence;
(v) formation of the opinion as to whether on the material collected there is a case to place the accused before a magistrate for trial, and if so, taking the necessary steps for the same by the filing of a charge-sheet under section 173.

Since the F.I.R. is lodged it is obligatory for the police to start the investigation of the offence. In case of cognizable offences, the investigation is initiated by the giving of information under section 154 Cr.P.C. to a police-officer in-charge of a police-station. But in case of non-cognizable offences, Section 155(2) of the Code provides that no police officer shall investigate a non-cognizable case without the order of a magistrate having power to try such case or to commit the case for trial. Sub-section (1) of Section 155 Cr.P.C. lays down that whenever a non-cognizable case is reported in the police-station, the officer in-charge shall record the substance of the information in a book prescribed for this purpose. Further, when a case refers to cognizable as well as non-cognizable offence it is to be recorded as cognizable offence under section 155(4) of the Cr.P.C.
Sub-section (1) of Section 156 Cr.P.C. confers unrestricted powers on the police to investigate a cognizable offence without the order of a Magistrate. This section lays down that the investigation is to be done by the officer incharge of the police station. This statutory right of the police to investigate cannot be interfered with or controlled by the judiciary. Sub-section (2) of Section 156 makes it clear that an irregularity in investigation does not vitiate proceedings or trials.

The procedure for investigation is laid down under Section 157 of the Cr.P.C. This Section lays down that when an officer in-charge of police station has reason to suspect the commission of a cognizable offence, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report. Further, he may proceed in person or shall depute a subordinate officer if the case is not of a serious nature. Sub-section (1)(b) of Section 157 Cr.P.C. gives wide discretion to police officer not to investigate a case where it appears to him that it is not worth investigating.

Interrogation

Interrogation is one of the important part of criminal investigation. Interrogation means to question a suspect and to find out the truth. The suspect of the crime may be questioned either on the spot or at the police station. The police use the method of third degree in interrogation of suspects and it is an illegal practice.

Section 161 of Cr.P.C. empowers a police officer making an investigation to examine any person, who is acquainted with the facts and circumstances of the case. Sub-section (2) of Section 161 Cr.P.C. provides protection to witnesses against question which have a tendency to expose them to a criminal charge or penalty.

Normally the suspect is kept in the police lock-up and the interrogation is carried on in the local police station.
Recording of Dying Declaration

Dying declaration is an important piece of evidence in women related crimes. The police has to arrange for recording the dying declaration whenever it is necessary. Section 32 (1) of the Evidence Act lays down that a statement can be proved when it is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death. It further provides that such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

Sometimes, the validity of the victim's dying declaration is highly questionable. It loses credibility because of the circumstances in which they were recorded. Usually, the dying declarations are not recorded properly by the Magistrate or doctor. It is recorded by a police officer. In case of Dalip Singh v. State of Punjab, the Supreme Court observed:

Although a dying declaration recorded by a police officer during the course of the investigation is admissible under Section 32 of the Indian Evidence Act in view of the exemption provided by Section 162 (2) of the Code of Criminal Procedure, 1973, it is better to leave such dying declarations out of consideration until and unless the prosecution satisfies the Court as to why it was not recorded by a Magistrate or by a doctor.

In another case of Munnu Raja v. State of Madhya Pradesh, the Supreme Court observed:

The practice of the investigating officer himself recording a dying declaration during the course of investigation ought not to be encouraged.

In women related crimes also the dying declarations are generally recorded by the police. It is not even recorded in the presence of any victim's relative. Sometimes, the fitness of the deponent to make declaration is also doubtful.
Examination of Witnesses

Section 161 of the Cr.P.C. deals with the oral examination of witnesses by the police. According to Section 161(1), any person supposed to be acquainted with the facts and circumstances of the case can be orally examined by a police officer making an investigation of the case, or on the requisition of such officer, by any police officer not below such rank as the State Government may by order prescribe in this behalf. Sub-section (2) of Section 161 of the Cr.P.C. provides that where a person is being examined by a police officer under Section 161(1), he is required to answer truly all questions put to him by such officer. He is, however, not bound to answer such questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. No one can be made witness against himself by virtue of Article 20(3) of the constitution. Sub Section (3) of Section 161 lays down that the police officer may reduce into writing any statement made to him in the course of examination of a person and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records. This provision gives wide discretion to a police officer to record or not to record any statement made to him during investigation.

During investigation, the statements of witnesses should be recorded as promptly as possible. Unjustified and unexplained long delay on the part of the investigating officer in recording a statement of a material witness during the investigation may render the evidence of such witness unreliable.

Final report / Charge sheet

On completion of investigation, the Officer Incharge of a Police Station is required to send a report to the Magistrate competent to take cognizance of the case under Section 173, Cr.P.C. If upon investigation by the officer in-charge of the police station it appears that there is no sufficient evidence against the accused, he will close the investigation and send a report to the competent Magistrate to that effect along with relevant records. Such report is
designated as ‘final report’. On the other hand, if it is the considered opinion of
the investigating officer that there are sufficient evidence against the accused,
he has to submit the report to the Magistrate to take cognizance of the case.
Relevant documents should accompany the report. Such report is called
‘charge-sheet’ or ‘challan’.

The formation of the opinion of the officer-in-charge of the police
station whether on the materials collected there is or there is not a case to place
the accused for trial before a Magistrate is the last of the several stages
involved in the investigation by the police. The police have full control over the
proceeding of this investigation and neither the Magistrate nor the High Court
has any power to interfere with such proceeding.\textsuperscript{19}

The Magistrate receiving the report has no power to direct the police to
submit a particular kind of report. If he considers the conclusion reached by the
police officer as incorrect, he may direct the police officer to make further
investigation under Section 156(3), he may or may not take cognizance of the
offence disagreeing with the police, but he cannot compel the police officer to
submit a charge sheet so as to accord with his opinion.\textsuperscript{20}

\textit{Inquiry into Unnatural Death}

Section 174 of the Cr.P.C. empowers an officer in charge of a police
station to make an investigation into the cases of suicides and other unnatural
or suspicious deaths. A new sub-section (3) to Section 174 Cr.P.C. has been
inserted by the Criminal Law (Second Amendment) Act, No. 46 of 1983.

The object of the proceedings under Section 174 is merely to ascertain
whether a person has died under suspicious circumstances or an unnatural
death and if so what is the apparent cause of the death.

Therefore, in the successful prevention and investigation of women
related offences, the role of the police is of an important nature than in other
normal cases. The police must accord highest priority to these cases. They must
undergo transformation, especially, in cases of women related crimes and must
be equipped, motivated and experienced enough to handle these problems. The Government should make its police force a competent investigating agency by attending the needs of police force and saving its from functional suffocation. However, doubts have often been expressed by general public and expert bodies on the competence, integrity and impartiality of the police in discharging their role freely and fairly. The National Police Commission felt that the police in the public estimate, appear as an agency more to realize objects of the ruling party than an impartial and independent agency for enforcing laws. Justice Krishna Iyer went to the extent of saying, ‘policing as done today is an illusion’.

b) Prosecution

Prosecution is an important area of criminal justice system. After the completion of the investigation and the submission of a charge sheet there arises the need for criminal prosecution to establish the guilt of the accused. In the conduct of prosecution the duty of the police is to place all the relevant material before the court. It is not their duty to seek conviction only, but to see that justice is done. Sections 24 and 25 of the Cr.P.C. lay down that the state shall appoint the Public Prosecutors and Assistant Public Prosecutors to plead the cases before the courts. The prosecution set-up envisaged by the Code consists of Public Prosecutors. While the former are to conduct prosecutions and other criminal proceedings on behalf of the state in the Courts of Session and the High Courts, the later are to conduct prosecutions on behalf of the state in the courts of Magistrates. According to the criminal justice system in India, rape is an offence against the state, rather than a crime against an individual. The matter has to be reported by the rape-victim to the police and the first information report prepared by the police, inquest and identification parade conducted by the police and medical examination report is prepared by the recognized government hospital. These have a major bearings on the judgments. After the police file a charge sheet, the trial is conducted in a Sessions court. During the trial, the victim has no choice to select a lawyer to
defend her case. The state appointed public prosecutor represents her. The rape-victim is merely the prosecution witness. Hence, during investigation and rape trial she is completely at the mercy of the state.

5.3. Role of Judiciary

The judiciary performs an important function in the prosecution of offences. After the investigation is complete, the police is bound to submit a report under section 173(2) of the Cr.P.C. on receiving the police report the Court may take cognizance of the offence under sections 190(1)(b) and 193 of the Cr.P.C. and straightway issue process. Sections 207 and 208 of the Code require the Magistrate taking cognizance of the offence to supply to the accused copies of certain documents like police report, F.I.R., statements recorded by police or Magistrate during investigation. Similarly, the Court of Session would, at the commencement of the trial, satisfy itself that copies of documents have been furnished to the accused as required by sections 207 and 208 of the Code. The lower judiciary exercises control over the police in the exercise of their statutory functions, like taking cognizance, granting bail and remand.

(i) Cognizance of offence by the Court

After investigation of the case, the next process of prosecution begins with a Magistrate taking cognizance of the case. This is done under section 190(1) which provides that, subject to the provisions of sections 195 to 199, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf, may take cognizance of any offence –

(a) Upon receiving a complaint of facts which constitute such offence;
(b) Upon a police report of such facts;
(c) Upon information received from any person other than a police officer or upon his own knowledge, that such offence has been committed.
Sub-section (2) of Section 190 lays down that the Chief Judicial Magistrate may empower any magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

Section 193 of the Cr.P.C. provides that, except as otherwise provided by the Code or by any other law, no court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.

When an offence is exclusively triable by a Court of Session according to Section 26 of the Cr.P.C. read with First Schedule the Magistrate taking cognizance of such offence is required to commit the case for trial to the Court of Session after completing certain preliminary formalities.

(ii) Bail

The rules for granting bail to the accused are laid down in the Code of Criminal Procedure. Bail is basically release from restraint, more particularly, release from the custody of police. An order of bail gives back to the accused freedom of his movement on condition that he will appear to take his trial. Personal recognizance, surety bonds and such other modalities are the means by which an assurance is secured for his presence at the trial. The Supreme Court in case of Moti Ram v. State of M.P. held that bail covers both release on one’s own bond, with or without sureties. In State of Maharashtra v. Anand Chintaman Dighe, the Supreme Court observed:

There are no hard and fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court. Where the offence is of serious nature, the Court has to decide the question of grant of bail in the light of such considerations as the nature and seriousness of offence, character of evidence, circumstances which are peculiar to the accused, a reasonable possibility of presence of the accused not being secured at the trial and the reasonable apprehension of witness being tampered
with, the larger interest of the public or such other similar considerations.

The Code has classified all offences into bailable and non-bailable. In bailable offence, the accused has a right to be released on bail. In non-bailable offence, bail cannot be claimed as a matter of right, but at the discretion of the Court.

Section 436 of the Cr.P.C. provides that if a person accused of a bailable offence is arrested or detained without warrant he has a right to be released on bail. Section 437 of the Code provides that a person accused of non-bailable offence is arrested or detained without warrant he may be released on bail. But in such a case bail is not a matter of right, but only a privilege to be granted at the discretion of the Court. Section 439(1) of the Code gives very wide discretion to the High Court and the Court of Session in the matter of granting bail.

In State v. Captain Jagjit Singh, it was clarified by the Supreme Court that where an offence is bailable, bail has to be granted under Section 436, Cr.P.C. but when the offence is not bailable, further considerations arise and the Court has to decide the question of grant of bail in the light of those further considerations. It was specifically pointed out that where there are reasonable grounds for believing that the accused has been guilty of an offence punishable with death or imprisonment for life, the Court should exercise its power in favour of granting bail not as a general rule but only in exceptional cases. It is, therefore, the duty of the Court to review the whole material before it and to come to its own conclusion while exercising the discretion under this provision.

It was perhaps for this reason that it was held by the Delhi High Court in Sant Ram v. Kalicharan, that where a Sessions Judge does not take into consideration the various factors which are required to be considered while granting bail in non-bailable cases and does not keep in view the nature of the offence of which the respondents are accused, falls into an error in forming a prima facie opinion to grant bail. Similarly, in Gurcharan Singh v. State of
Delhi Administration\textsuperscript{28}, it was observed by the Supreme Court that where the Sessions Judge did not consider gravity of offence, status of accused and influence they wielded over the witness before granting the bail, he committed a mistake in exercise of jurisdiction under this provision.

Inspite of these provisions, the most distressing aspect of women related crimes is that the accused get away on bail. In many cases, the culprits are released on bail without any thought given either to the condition of the victim or the gravity of the offence. The courts are too lenient towards the accused in granting the bail in such cases. In some cases, the main accused have been granted bail even when victims were lying in hospital struggling for life. Instances have also been reported where on being released on bail the accused threaten the parents of the victim and witnesses.

In view of the easy bails in the lower courts, the Delhi Administration has now decided to monitor bail orders and initiate proceedings in High Court for canceling bails found to be blatantly unjust and unfair.\textsuperscript{29}

\textit{(iii) Remand}

Remand is the custody of an accused given to the police beyond twenty-four hours. The police are empowered to keep the accused under custody till the investigation is complete but they cannot detain any person in their custody for more than twenty-four hours.

Section 167 of the Cr. P.C. lays down that whenever an accused person is arrested and detained in custody by the police and it appears that the investigation cannot be completed within twenty-four hours as fixed by Section 57, the accused person must be forwarded to a Judicial Magistrate. The Magistrate to whom the accused is forwarded may from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding 15 days in the whole. However, there is no obligation on the part of the Magistrate to grant remand as a matter of course. If further detention of the accused becomes necessary for the completion of the
investigation, the Magistrate may authorize the detention of the accused person otherwise than in custody of the police. But the total period of detention in such case shall not exceed ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years. Such period of detention shall not exceed sixty days, where the investigation relates to any other offence. On expiry of said period of ninety days or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail. The magistrate cannot pass remand orders unless the accused is produced before him. The Magistrate shall record the reasons for granting remand under this section.

5.4. Judicial Norms Set by Higher Courts

The judiciary can play an important role in the course of social justice. Recently, the judiciary is increasingly faced with grave situations of incidents of rape and other crimes against women. There have been a small number of progressive judgments regarding women’s issues particularly in rape cases. In regard to Court’s action Desai and Patel state that, “we do not have any convincing evidence to suggest that judges in lower courts, in High Courts or in Supreme Court are favourable to women’s cause, since at various times different judges have proclaimed path-breaking judgements”.

The attitude of the judiciary and the anxiety of the judges have remained absolutely aloof from the realities of the day to day life. However, over the past decade, the members of the judiciary have displayed contradictory attitudes toward women’s issue. While some have passed path-breaking judgements, other have sought to maintain the status quo and acquitted the accused on the ground of technicalities and inadequacies of law.

I. Judicial Norms Set by the Higher Courts in Rape Cases

The trial procedures and judicial attitudes often present an obstacle to women receiving justice through the legal system. The cases discussed in the following pages reveal how difficult it is to obtain a conviction. Judicial
activism and gender sensitivity seem to be of critical importance if the court procedures are to be used properly in the administration of justice.

II. The Trial and the Victim’s Evidence, Corroboration and Consent

In several of the cases discussed in the following paragraphs, the weight that should be given to the testimony of a rape victim was in issue. Generally, there are no eyewitnesses to these crimes, and in India, because of inadequacy in health services for the mass of the population, doctors may not always be available in the rural areas. There is either no medical evidence of rape, or insufficient medical evidence. Besides, the defense argument that sexual intercourse was with consent, rather than an act of forced intercourse without consent is often supported by claims that there are no physical injuries on the victim to ‘corroborate’ her own evidence of forced sexual intercourse.

The Mathura rape case referred to earlier was a classical example where in the absence of physical injuries, the trial court held that no rape had taken place. Even after the Mathura case, most cases show that courts keep insisting on signs of physical resistance and are reluctant to believe the version of the victim. This is despite the fact that there have been landmark cases which have stated that a rape victim’s evidence need not necessarily be corroborated, and should be accepted unless there are special reasons not to do so. Cases also continue to emphasis the victim’s past sexual history and conduct. If the victim knows the accused, the bias and reluctance to believe the victim is heightened.

Conviction of rape can be set aside on the ground that the prosecution is a girl of easy virtue and had consented to sexual intercourse. Prior sexual experience can be used to challenge the victim’s testimony that she was raped. In _Jaga Ninivasan v. State of Kerala_ a young girl of 16 or 17 years was raped by a neighbour in whose house she was a constant visitor. The girl had no marks of injury when she was examined after more than six days when she finally spoke about the incident to her mother. The doctor conducting the
medical examination stated that since two fingers could be admitted into the vagina of the prosecutrix, she was used to sexual intercourse and there were no signs to indicate rape. The trial court in its judgement however believed the version of the prosecutrix and held that rape had taken place and the prosecutrix was a truthful witness. The medical report of consensual intercourse was therefore rejected.

In appeal, the Supreme Court held that the accused was a bachelor and an eligible ‘catch for girls’ since he earned well, and an inference could be drawn that the meeting the two parties was planned. The court also held that since the girl had gone to see a dance performance after the rape, her testimony of forced sex could not be believed.

Cases at the district court level, which are not even reported in legal journals and are sometimes highlighted only through the media and the efforts of women’s organisations, clearly show the gender bias among sections of the lower judiciary. In one such case taken up by a women’s organization from Haryana, a school girl was gang raped by three persons. In this case, the three rapists had decided to take revenge against the victim’s family because the daughter of one of the rapists had eloped with the victim’s brother.

The victim was forcibly taken to the family home of the girl who had eloped, by the latter’s father and mother, and was raped by three men. Even though the judge believed that the girl had been kidnapped and confined in one of the rapist’s house, he refused to believe that she had been gang raped. The girl was medically examined. In a judgement which is extraordinarily reminiscent of the Mathura case of 1979, the district judge held that rape could not be proved because the victim’s body showed no signs of violence. It is clear that though the Mathura rape case catalysed a change in the law, judicial attitudes continue to be biased against the victims of the most violent rapes.

The judgment implied that the girl was used to sexual intercourse because her hymen was broken and fingers could be easily inserted into her
vagina. This was in spite of the fact that the prosecution had proved that the underclothes and pants of the prosecutrix had semen stains and the underclothes of the accused also had semen stains. The court held that there was no evidence to show that the semen on the prosecutrix’s clothes was that of the accused. The judge then held that it was possible that the prosecutrix might have ‘enjoyed sex with some other person’. Holding that the law requires conclusive evidence, the court held that since no independent witness from the locality had been examined in support of the statement of the prosecutrix, the evidence was not sufficient. This was obviously contrary to the established law declared by the Supreme Court.

Another case which was taken up by several women’s organisations because of its blatantly biased judgement was the case popularly known as \textit{Bhanwari Devi’s case}.\textsuperscript{33}

Bhanvari Devi was engaged as a village social worker in the state of Rajasthan. In 1992, Bhanwari Devi became involved in campaigning against and preventing child marriage. As a result, she and her husband were harassed and threatened by the upper caste Gujjar community in the village. Bhanwari Devi intervened and prevented the marriage of a one-year-old girl. Enraged by this, and to take revenge against Bhanwari Devi, the child’s father along with four others gang raped her in the presence of her husband.

In a judgement which strongly reflects caste bias, the court held that the rapists were middle aged and respectable citizens who could not commit rape. In effect the court held that since the offenders were upper caste men and Bhanwari Devi was from a lower caste, the rape could not have taken place. It refused to believe Bhanwari Devi’s testimony, and made several unwarranted remarks about her character by suggesting that she was a liar and that she might have had sex with another person.

The judge also refused to pay any attention to Bhanwari Devi’s husband’s testimony by the comment ‘how can an Indian man whose role is to
protect his wife, stand by and watch his wife being raped'. The court completely overlooked the fact that there were five offenders, some of whom had assaulted Bhanwari Devi's husband. Bhanwari Devi was medically examined only 52 hours after the rape as she was denied a medical examination in the absence of a Magistrate's order. This order came only 48 hours after the rape. The court went on to decide that there was no explanation why Bhanwari Devi had not filed the case on the same night at the police station, even though the police station was 5 km away; Bhanwari Devi could not have been expected to go there in the middle of the night. This case is a glaring instance of the complete distortion of the criminal trial procedures against the victims of violence.

In a series of judgements, the Supreme Court has held that taking the Indian situation into account and the fact that the rape victims are hesitant to report the incident as they fear that their reputation and future will be affected by this, rape victim's evidence should not ordinarily be disbelieved. In contrast to the judgements of the lower courts, the court has also sought to lay down a precedent that the absence of marks of injuries and signs of resistance did not imply that no rape had taken place, as these did not show that the complainant had consented to the act. The court has also pointed out that the High Courts often erred by relying on minor contradictions in the complainant’s testimony.

Thus in one case where a young girl was gang raped by five men, the court held that it was inconceivable that an unmarried girl and two married women would go to the extent of ‘staking their reputation’ and ‘future’ by falsely alleging rape for the sake of communal interests. It is relevant to mention that in this case the FIR had been lodged the morning after the rape. The court however held that this did not matter. It also made it clear that even if one person or a group of persons acting with a common intention rapes a person, then each of the persons shall be deemed to have committed gang rape.

In another case in 1990, the Supreme Court also took a positive view of the evidentiary value of the complainant's testimony. In this case, the
accused was a police constable. He made out a false case against the victim’s husband and arrested him. The accused then raped the wife, and threatened her that if she complained to anybody, he would bury both her and her husband alive. The trial court held that the evidence of the ‘prosecutrix’ clearly established that the respondent had raped her twice in the room where the couple “were staying”. The High Court, however, held that the evidence of the prosecutrix was not corroborated by medical evidence, and no marks of violence were there on the victim’s body. It thus held that no rape had taken place. The High Court also pointed out minor contradictions in the prosecutrix’s evidence and gave great weightage to them.

The Supreme Court observed that the High Court showed total ignorance of a traditional orthodox Muslim family. The court noted that women who are subject to sexual violence would always be hesitant to disclose this. In this case, it is interesting to note that the Supreme Court relied upon a judgement given in 1983 by the same court, in which it had been stated that absence of physical violence on the prosecutrix was not surprising, as the policeman was a person in authority in a police uniform and the prosecutrix was alone and helpless. No medical evidence was found except semen on the clothes.

Stating that a conviction may even be based on the uncorroborated testimony of an accomplice under the Indian Evidence Act, the Supreme Court held that a prosecutrix of a sex offence cannot be put on par with an accomplice, and was a competent witness, whose evidence must receive the same weight as is attached to an injured person in case of physical violence. The Supreme Court decided that there is no rule of law or practice incorporated in the Indian Evidence Act which requires the court to ask for corroboration if a prosecutrix is an adult. The court held that a court should convict on the basis of the victim’s evidence unless it can be proved to be untrustworthy.

The Supreme Court repeated a dictum in an earlier 1983 judgement in *Bhoginibhai Hirjabhai v. State of Gujarat* which had stated that ‘in the Indian
setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule is adding insult to injury. Why should be evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society.

In another case, the Supreme Court once again held that marks and signs of physical violence on the body of the prosecutrix were not necessary for a conviction of rape, and the lack of these signs of violence did not show that the prosecutrix was a willing partner. The case involved the rape of a poor village woman by a police constable. The court took notice of the fact that the police constable was in uniform and by ‘virtue of his authority he had caused both the prosecutrix and her husband under duress to surrender’. The police had beaten the victim’s husband, and the High Court judge had held that since the victim did not even shout for help she could not be believed.

In another judgement in 1996, the Supreme Court held that the grounds on which the trial court disbelieved the version of the prosecutrix were not sound. It held that the High Court had erred in relying on minor contradictions and that discrediting the victim for not raising an alarm was a travesty of justice. Here, a minor girl had been raped by three men who had forced her inside their car when she was returning from school. The Supreme Court held that the omission by the investigating officer, who did not conduct the investigation properly or was negligent in not arresting the driver of the car, could not become a ground to discredit the prosecutrix’s testimony. The court also pointed out that even if there was a delay in filing the FIR, the court should not overlook the fact that in sexual offences delay was due to a variety or reasons, particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which ‘concerns the reputation of the prosecutrix and the honour of her family’.
The above decisions of the Supreme Court are positive instances where the bias in the lower courts has been rectified. However what is of concern is that the lower courts continue to ignore the jurisprudence. When appeals are not filed or cases do not proceed to the superior courts, there is a continuing denial of justice to women victims of violence.

II. Delay in Concluding Trials

Once the police complete the investigation in a case and file a report in the court, the trial is supposed to begin with the leveling of charges by the court. It is common knowledge that thereafter the cases take between 3 to 12 years to be decided, because even after the decision of the trial court appeals can be made by either party, first to the High court and then to the Supreme Court. Adjournments in the trial courts are often taken at the behest of the accused who, once out on bail, naturally tries to prolong the case. It has also been stated by the Supreme Court that the defense lawyers very often try to deal and prolong the case either in an effort to attempt to influence the witnesses in the meanwhile, or in the hope that the lapse in time will affect their recall.

It is important to mention that the police are normally supposed to complete an investigation within 90 days of the complaint but seldom do so. This entitles the accused to get bail. A delay in final conviction of the accused most often results in the accused being awarded a reduced sentence by the court as he is ironically perceived to have already suffered for the crime.

III. Cross Examination of the Prosecutrix

The victim of rape is often traumatized by the cross-examination that she is subjected to during a rape trial. In fact, in a Supreme Court judgement in which four tribal domestic helps were raped and assaulted by army personnel on a train, the court held that 'the defects in the present system are; firstly complaints are handled roughly and are not given such attention as is warranted. The victims more often than not are humiliated by the police. The
victims have invariably found rape trials a traumatic experience. The experience of giving evidence in court has been negative and destructive. The victims often say they considered the ordeal to be even worse than the rape itself. Undoubtedly the court proceedings added to and prolonged the psychological stress they had to suffer as a result of the rape itself.

In the case of child rape, the child is often not able to explain what happened to her. In one case where a 9-year-old school girl was raped, the Supreme Court observed that since the prosecutrix was an inexperienced girl, ‘she seems to have been toyed with by the cross examiner’. It further stated that it could not be said that the child was fully aware or cognizant of the sex act as she was speaking about something she did not fully understand. In spite of this observation the court held that rape had not been proved. In Gurmit Singh v. State of Punjab, the Supreme Court held that the trial court should not sit as a silent spectator during the cross-examination of a witness. Rather, the court must ensure that the cross-examination is not made a means of harassment and humiliation for the victim. Pointing out the amendment to Section 327 of the Code of Criminal procedure, the Supreme Court reiterated that rape trials must be conducted in-camera to protect the victim.

It is important to note that just having an in-camera trial may not be beneficial for the rape victim. The victim is often scared to depose in front of the rapist and is traumatized by his mere presence. It is therefore necessary to evolve procedures for the examination and cross-examination of a rape victim in an environment where they do not have to face the accused. In-camera trials also often isolate the victim and stop her from being with people she trusts and needs to be with during the trial.

5.5. Sentencing in Rape Cases

It has been said that the seriousness with which a judge views a crime is reflected in the sentence he awards to the culprit. Even after the amendments to the rape laws in 1983, when punishments were increased to a minimum of 7
years ‘in ordinary’ rape cases, and 10 years in cases of ‘custodial’ rape, most of the punishments meted out were less than the statutory minimum. Cases in which life sentences were awarded were cases in which sexual assault and murder of young rape victims was involved.

The amendment gave the court the discretion to lower the sentences for adequate and special reasons given in writing. Often the reasons cited for giving a relatively short sentence of imprisonment show that popular feudal and patriarchal myths about the rapist and the reason why he committed the crime influence the judges reasoning. In Rajau v. State of Karnataka a case criticised by five women’s organisations, a 21-year-old girl was raped by two men whom she knew and agreed to share a room with. The Supreme Court categorised the crime as an ‘act of passion’ and the criminals as ‘victims of sexual lust’. This kind of reasoning reinforces the idea that rapists are not responsible for their acts. The judgement in question also cited the youth of the rapists as an exonerating factor, and the fact that the case had taken 15 years to reach the Supreme Court, as a ground to lessen the sentence from the statutory minimum of seven years to three years. Since the delay in courts is often the result of delaying tactics employed by the accused, this reasoning is questionable. The judgement also implied that in some sense the victim was to blame as ‘she agreed to share the room with the two men’. The victim is perceived here as a ‘temptress’ who had invited rape.

The fact that courts view rape as a sex crime that occurs because of the ‘uncontrollable natural lust’ of men therefore impacts on leniency in sentencing. As stated by Shankar Sen, however ‘this is not so. It is a common mistake to view rape as a sex crime. This myth is reinforced by certain stereotypes about male sexuality such as men’s alleged inability to control themselves if they are aroused. These are however false images. Rape is very often an act of violence that uses sex as a weapon. Recent researches in the field have established that rape is motivated by aggression and by the desire to exert power and humiliate. It is further said that the rapist ‘is not, as is believed,
succumbing to uncontrollable lust, but is proving his own masculinity by degrading the victim. In a reported case a 14-year-old girl who was under the legal age of sexual consent, worked as an agricultural labourer in a village, and was raped by two men while a third immobilised her. The Supreme Court while convicting the rapists allowed the sentence of three years rigorous imprisonment given by the trial court to remain, even though it held that the sentence was inadequate. In the case of State of Punjab v. Gurmit Singh, the court held that because the gang rape had occurred more than 11 years before the judgement and the rapists had not committed any other crime during the intervening period, and all the parties had probably got married, a sentence of five years rigorous imprisonment was appropriate. In another case where it was held that a policeman had raped a woman labourer in a village, the court awarded a sentence of rigorous imprisonment for three years. Ten years had passed by the time the case was finally decided. In the case of State of Maharashtra v. Chandraprakash Kewalchand Jain, the court awarded five years rigorous imprisonment. This case also involved the rape of a young woman by a policeman who had deliberately plotted the crime by implicating the girl's husband in a false case.

In Suman Rani case the doctor who had conducted the medical examination testified that the girl was used to sexual intercourse. The court reduced the sentence for the three policemen who had raped her to five years instead of the statutory minimum of 10 years. When a women's group and others filed a review petition, the court justified the reduction in sentence by saying that when they spoke of 'conduct' of the victim, they meant her conduct in not lodging the FIR till five days after the event. This reasoning was untenable as the delay in lodging the report of rape could only have been relevant to proving the case, as it could have been construed to suggest that the victim was not telling the truth. This could not be a valid factor in the reduction of sentence since in this case the rape itself had been proved.
I. Victim Compensation

Under the present law the fine levelled against the accused can be ordered to be given by the court to the victim as compensation for the injury caused to her under Section 357 of the Criminal Procedure Code.

In the Delhi Domestic Working Women’s Forum case, the Supreme Court gave a direction to the government to set up a Criminal Injuries Direction Board. It further directed that compensation for victims should be awarded by the board not only on conviction of the offender, but should be given by the board whether or not conviction has taken place.

The court further held that the board should take into account pain, suffering and shock as well as loss of earning due to pregnancy if any and expenses of child birth if this has resulted from the rape. These guidelines were reiterated in Bodhisattwa Gautam v. Subha Chakraborty.

II. Judicial Approach to Honour and Chastity

The case law discussed above on sentencing clearly indicates the influence of patriarchal myths relating to rape, and the judicial bias against rape victims and women. These attitudes are reinforced by conventional notions on morality and female chastity.

Most courts have continually reinforced the old stereotypes of women and placed a premium on the notion of ‘honour and chastity’. Rape, according to the courts, is a violation of the woman’s chastity. Rape, according to the courts, is a violation of the woman’s chastity rather than a physical violation of her person, her right to bodily integrity, security of the person, and freedom from violence. The reality of the woman’s pain and trauma is completely ignored. The impact of rape on the woman includes depression, fear, guilt, suicidal tendencies, diminished sexual interest, and related problems which are further exacerbated by the social stigma attached to a victim of rape.
Thus, in a landmark case of *State of Punjab v. Gurmit Singh* it was held that 'no self respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her' and that the rapist 'degrades the very soul of the helpless female'. This landmark case recognised that the rape victims testimony can be accepted and was in that sense an important precedent. Yet it is also the latest in a series of cases in which similar sentiments have been echoed. There is an implication here that a woman's chastity is her honour and what she lives for, and rape takes that away from her. This perception of rape that is reinforced in the criminal justice system makes it most difficult for women to obtain access to justice through the law.

The danger inherent in considering rape as violation of chastity is that if the court believes that a woman does not possess 'chastity' because she is a prostitute or a girl of loose morals, then she finds it difficult to prove rape. This also leads to pronouncements that make it more difficult for a married woman to prove rape. For instance, the Supreme Court in one case commented that 'when the case concerns a married woman it is always safe to insist on corroboration'. There is once again a distinction drawn between women who have 'chastity' and married women who have lost their virginity. In the case of *State of Maharashtra v. C. Kewalchand Jain*, the court held 'that the prosecutrix should be believed since it had not been suggested that she was a prostitute, meaning that if she had been a prostitute they would have reason to disbelieve her testimony.

This type of interpretation prevents the legal system affording protection to women whom it does not believe to be chaste, whether they be commercial sex-workers or unmarried woman who have had previous sexual intercourse. In the *State of Punjab v. Gurmeet Singh*, for instance, the trial court had held that the girl (16 years old) was of 'loose character' and that her story of abduction and rape was false. However, the Supreme Court overturned this judgement and said that 'even if the prosecutrix, in a given case, has been promiscuous in
her sexual behaviour earlier, she had a right to refuse to submit herself to sexual intercourse to anyone and everyone, because she cannot be a prey to sexual assault by anyone and everyone'. The Supreme Court went on to state that no stigma should be cast against such a witness by the courts, 'for after all it is the accused and not the victim of sex crime who is on trial in the court'. This is a landmark pronouncement that can lead to successful prosecution of rapists. However, even in this judgement the familiar notions of chastity were reinforced. It was held that a woman is unlikely to make allegations of rape, as in a tradition bound non-permissive society like India 'it would reflect on her chastity' if she admitted to such an incident. In B.B. Hirjibhai v. State of Gujarat^63, the court noted that if a woman admits to rape she would be 'ostracised, looked down upon etc.' She runs the risk of 'losing the love and respect of her husband'.^64 and if she was unmarried then she would find it difficult to find 'a respectable or an acceptable family'.^65 These judicial pronouncements on chastity and honour further entrench in the minds of people and the woman the 'disgrace' of rape.

There is also a reiteration of the damage done to the 'family honour and name', reinforcing the notion of a woman's 'chastity' as being the property of her husband, father, brother or any other relevant male in her life. In fact, in many cases there is concern shown about the marriage prospects of the girl being ruined, suggesting that this was the main injury, thus ignoring the physical and psychological trauma suffered by a rape victim and the infringement of her right to personal security.

5.6. Concluding Remarks

The questions are generally raised whether the increase in crimes against women in general and rape incidents in particular is due to the failure on part of law or due to the fallacy of judiciary or police authorities? Time and again, various eminent jurists, psychiatrists, law enforcement officers and social activists have expressed their valuable connotations on the nightmarish subject, but the green eyed monster is still surviving.
It is heartening to note that the Indian Judiciary has been sensitive to the status and dignity of women, which may be observed by various ruling of Supreme Court and High Courts. As observed by Krishna Iyer, J. in Rafiq’s case⁶⁷ “The escalation of such crimes has reached proportions to a degree that exposes the pretensions of the nation’s spiritual leadership and celluloid censorship, puts to shame our ancient cultural heritage and humane claims and betrays vulgar masculine outrage on human rights of which woman’s personal dignity is a sacred component”.

The legislature also, with intent to curb such offences, has through various amendments in Criminal Law and Evidence Act, made an effort in that direction. Various legislations have also been passed, time-to-time, to curb such menace. In the present scenario, a related concern, was once raised by Mr. L.K. Advani, whether rape should be punished with death, which was put to rest by various observations of judges as well as the Malimath Committee which was set up for the reform of criminal justice system. According to Malimath Committee it is the certainty of conviction and not the quantum of punishment which would act as a deterrent. Malimath committee rejected death as punishment for rape.

As held in Bachan Singh’s case, death must be imposed only in ‘rarest of rare case’. In order to impose death penalty judges would demand higher standard or degree of proof, which would only result in lower conviction rate, as it is found in most rape cases that the only evidence or witness available before the court is that of prosecutrix herself. Various police officials have expressed that it is the conviction rate which shall go high in rape cases. Death penalty, as often suggested by various politicians for the offence of rape, has been severely criticized by the police officials. Culprits no longer fear punishment since most rape case trials take years and years before they are finally decided and most often than not they end up in acquittal. Never ending trials have also led to a scenario where the complainant is forced to compromise with the accused outside the court secretly due to the social pressure, thereby frustrating the whole purpose of law. What is the use of
increasing the punishment when the chance of conviction itself is a rarity? Therefore it is the surety of conviction in case where accused is guilty, which would make a difference and not the increase in punishment. Rape accused should not go scot free.

Hence the sentencing system should be used as an instrument to curb the crime and death penalty being irreversible by nature, should only be imposed in rarest of rare case. In operating the sentencing system, law should adopt the corrective machinery or the deterrence on factual matrix. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct.

As expressed by various police officials, another reason for increase in rape cases is the problem caused in investigation due to the delay in filing of F.I.R. Delay in filing of F.I.R. may be due to various reasons. Since it is a sexual offence there might be an initial hesitation in the mind of the victim to report the matter to the police as she might fear that the same might affect her and her family’s reputation. The hesitation may also be that by disclosing it, it may cast a stigma on her for rest of her life. The problem faced by investigation authorities in cases of delay is that it becomes difficult for them to procure evidence against the accused. Since it is an offence against body, medical evidence plays an important role. With the passing time, physical injuries get healed up, destroying evidence and resulting in acquittal.

Various social organisations have suggested time and again that a woman should avoid going out after eight O’clock in the night and should also not go alone at secluded or dark places. This suggestion somewhat sounds hypocritical. Why can’t woman move free from all tensions and fear of her being deprived of her dignity? Avoiding problem is not a solution to a problem. Since we have been trying to avoid the problem for many years; now the problems of violence against women have blown out of proportion. Now even public places have become unsafe for women. Many cases have been reported where a woman has been picked up and raped in the public places, such as parking lots, market areas, University Complex, etc.
REFERENCES


3. Police Officer has not been defined in the Cr.P.C. but under the Police Act the term ‘police’ includes all persons enrolled under the Act.


11. Section 7(b) (ii).


13. AIR 1955 SC 196.


15. AIR 1979 SC 1173.


17. Article 20(3) of the Constitution provides, “No person accused of any offence shall be compelled to be a witness against himself”.


25. AIR 1990 SC 625.


27. 1977 Cri.LJ 486 (Delhi).


32. 1995 Supp 3 SCC 204.


45. Letter dated 27.10.93 to the Chief Justice of India by CWDS, Joint Women's Programme, National Federation of Indian women, YWCA and AIDWA.

46. In *State of Rajasthan v. Shri Naryan*, (1992) 3 SCC 615 the court has repeatedly referred to the behaviour of the accused as ‘lust ridden’ and that ‘he had lost control over himself when he saw her’.


49. Under the present law, i.e., Sec. 375 IPC, the age of consent is 16 years.

50. 1996 (2) SCC 272.


52. *AIR* 1990 SC 660.


58. *Supra note* 47


63. AIR 1983 SC 753.


66. In *State of Rajasthan v. Shri Narayan* (*supra* note 64), there is a repeated emphasis on the woman being married, and in *State of Punjab v. Gurmit Singh*, (*supra* note 65), the focus of the judge is on the plight of the married status of the girl and her likely inability to get a suitable husband in the future.