CHAPTER 7: PROSECUTION OF CRIMES AGAINST WOMEN AND GIRL CHILDREN: A PROFESSIONAL APPROACH

Prosecution of the persons accused in crimes has a pivotal role in law enforcement. It is the link between investigation and judicial disposal. Prosecutors are government advocates/counsels who present the case on behalf of the state, the latter having taken over the responsibility of fighting the case on behalf of the victim. Under the Indian Legal System, the victim is not expected to or entitled to have her own advocate appearing as the prosecutor in the court of law. This function is taken over by the state and the state counsel, called the prosecutor, is the only one authorized to represent the victim in the court. There are three distinct varieties of prosecutors. The first category includes the Senior Public Prosecutor, the Public Prosecutor, and Asst. Public Prosecutor who handle the cases charge-sheeted by the police at the courts presided over by judicial magistrates. They deal with the trial of cases in the courts of Magistrates but not in the Sessions Courts. The second category includes the Special Public Prosecutors, Addl. Public Prosecutors who are hired by the government from the Bar. They are the ones who handle cases in the Sessions Courts. The third set of prosecutors is at the highest level where we find the Advocates General of the States, Addl. Solicitors General and the Solicitor General or the Attorney General of the Government of India appearing mostly in the Supreme Court and various High Courts on behalf of the state and in respect of specific crimes. However, the higher rungs of the law officers are called upon to appear in courts only when the matter is of grave importance.

There are instances where the state prosecutors, who are regular government employees, handle trial cases in the Session Courts too. In the Central Bureau of Investigation, the law department-cum- the prosecution directorate is headed by the Legal Advisor. The Senior Public Prosecutor and other formations below him handle the trial of cases in the notified courts dealing with CBI cases. Even sessions cases are conducted by these prosecutors, unlike the situation with the State Governments. The CBI provides scope and opportunity to the prosecutors for upward mobility in the form of Deputy Legal Advisors (DLA) and Additional Legal Advisors (ALA), whereas in the state governments, the Senior Public Prosecutors rarely have such scope for promotion. The DLA and ALA of CBI also conduct trial of cases in various courts. CBI also employs services of special prosecutors hired from
the Bar. On the whole, the fraternities of prosecutors who handle crimes against women in the various courts in India include a large range of legal officers, starting with the Assistant Public prosecutors in the lower courts, who are duly appointed government servants. The Attorney General, the Chief Law Officer of the Government of India and the Advocate General, the corresponding authority in the States are constitutional authorities.

Prosecutors who handle crimes against women maintain a direct link with the police and vice versa. It is essential that they are well aware of the entire case, not only its strength but also the weaknesses, so that they could project the case appropriately. Prosecutors, on the other hand, maintain direct link with judiciary. They are also considered officers of the court. More than presenting the police version, they have the additional responsibility of ensuring dispensation of justice by assisting the trial court in all respects. Prosecutors do have authority and right to take many decisions at their level. For example if a criminal case under trial is to be withdrawn from the court, it is the prosecutors who has to apply his/her mind and move a petition in court requesting for withdrawal of the case. Even if the police and the government decide to withdraw the case, it is the discretion of the prosecutor whether to withdraw or not. The government cannot compel the prosecutor in this regard. The prosecutor is free to take a contrary stand. It may be a departmental matter that the government order is not complied with, but it will not tantamount to an act of judicial indiscipline. Rather the prosecutor is applying his mind, as the law enables and entitles him to do so. This is a good weapon in the armoury of the prosecutor to ensure protection of the rights of the victim in the judicial forum.

The duty of the prosecutor is, therefore, is much more than presenting the case in a court of law. He is the embodiment of the rights of the victim before the criminal court and in the public glare and perception. He incorporates in himself the job of an advocate, a pleader, a human rights activist, an investigator, a scientific expert, a legal counsel, a legal expert and a counsellor. The victim has, naturally, all expectations on him that her case would be truthfully presented, argues and fought out by the prosecutor. However, the mind-set and prejudice of the society, in all its magnitude and dimensions, cannot escape from engulfing the prosecutors too. Therefore orienting the prosecutor to the specific needs of crimes against girl children and the trauma of such victims is an essential requirement in successful
prosecution leading to proper and timely delivery of justice. In this context the following activities are relevant and important.

7.1 Associating prosecutors in investigation

It is essential that the police investigator associates the prosecutor right from the very beginning of investigation. One of the reasons for the success rate of conviction in the CBI being better than many state police agencies is that the law officers in CBI are associated right from the word 'go'. The prosecutors are also legal advisors and, therefore, they are involved even at the stage of registration of first information report (FIR). Thereafter they are consulted in preparing the plan of action and in executing the various steps in investigation. They also carry out regular scrutiny of case records, provide opinion and advice during the course of investigation and finally give a fair assessment of the evidence and opine as to whether the case can be prosecuted or not. They also offer clues, points and suggestions for further investigation. Their comments are useful in directing and orienting investigation. Such advice is meticulously carried out by the investigators and then upon a considered decision is taken whether case can be prosecuted or not. Prosecutors are an inevitable part of the decision making body. More often the prosecutors assume the job of supervising the investigation, a portfolio which is normally perceived to be the prerogative of the supervisory police officers. This exceptional system of supervision of the investigating police by the prosecutors of CBI not only provides extra legal weightage to the case, but also ensures that the best interests of the victim are protected. There will be integration of efforts to ensure successful detection and prosecution.

7.2 Briefing prosecutors with case records

Prosecutors, as is the case with the investigators, may come and go, due to the existing system of transfers and changes. With the change of government, the entire lot of attorneys, solicitors and special counsels are often changed overnight and a new set of legal minds are ushered in. The newly appointed counsels will have to be briefed in detail regarding the cases. Even if the prosecutor is not changed, there is a genuine and essential requirement of briefing the prosecutors before the trial commences. It should be an ongoing process, preferably on all the days when the trial is to take place. Briefing should be carried out along with the entire case records. During briefing, it is better that short notes are prepared mentioning the evidentiary value of the statement of each witness, the points that they are
expected to speak, the documents/exhibits they are expected to prove, the citations in support thereof etc. This intellectual exercise will benefit the investigating officer in carrying out systematic investigation, identifying the weak spots, marshalling of evidence etc. and at the same time, facilitate the prosecutor in presenting the case properly before the courts of law.

7.3 Attending court and monitoring progress

The investigating officers cannot rest content by leaving the job to the prosecutor. They, or their representative, have to attend the court on all days and monitor the progress without any interruption. There should be proper stock-taking and review of the situation by Senior Police officials. In some states and CBI there is a system of court diary, which the prosecutors endorse to the Superintendent of police who, in turn, is expected to study the same. This gives a brief narration of the proceedings of the day and speaks about the future plan of action. This study will facilitate the understanding of the defects, lacunae, problems and also the prospects. Based on this analysis the police managers, in tandem with the prosecutors, can develop strategies for further plan of action that would lead to success in prosecution.

7.4 Monitoring witnesses

Monitoring the performance of witnesses is an essential aspect of prosecution with respect to the advancement of the case. Experience shows that when it comes to crimes against women, the tendency among the witnesses to arrogate this onerous duty is accentuated. The reasons are many. Some are cited below—

- The threat or coercion exercised by the accused, who are always men, and only exceptionally, as in a case of dowry torture, women on the witnesses is a severe impediment. The patriarchal mind-set and prejudice prevalent in most places prevail upon the fraternity of such men to gang up against the victim. In many cases the very fact that the victim women is going to depose in a court of law against the male member of the community is perceived to be a serious threat and challenge to the macho and, therefore, these men organise themselves to ensure that the witness is put under threat or coercion, so that she does not turn up at all. There is one more dimension to the threat perception. The patriarchy embedded in the community psyche feel threatened if a woman is ‘allowed’ to
go to the court of law and depose as witness as, they think, it would embolden not only her, but also the female community. A stage might come, they fear, that women will not be under the clutches of men. They might get liberated. These men shudder to even imagine or comprehend such a situation when their unchallenged authority would be threatened.

The unusual delay in the trial proceedings is a serious discouraging factor on the women victim. This is due to various reasons. This research shows that, more often, these delays are intentional. The accused, in the existing system, gets a long rope. The defense advocates uses it to their best advantage. To cite an example, in the Rajiv Gandhi assassination case, the number of intervening petitions and litigations, initiated by or for the accused in several courts in India, other than the Designated Court, was more than fifty. Each litigation called for attention of the State Prosecutor and consequent delay in the trial of the main case. The absence of witnesses, police escorts, prosecutors, presiding officers, court staff, defense advocates, expert witnesses etc add to the delay. There are many infrastructural problems causing delay in trial. More often witnesses do not turn up as they do not have any incentive. The travel costs and contingent expenditure that they incur are, more often, not reimbursed or the reimbursement is unduly delayed. Witnesses are seldom provided with transport. More often they are not briefed and remain unattended for days. Most of the courts do not have a briefing room or a waiting room, let alone a wash room. In such places, waiting at the court room or the verandah outside for long hours, more often without even a proper place to sit or rest, which is a very common sight in the Indian Courts, is quite irritating and often demeaning for a witness.

The re-victimization which the witness/victim has to face at the hands of the various wings of the criminal justice system is another serious retarding factor. The interviewed victims stated that during the court proceedings, they often get a feeling that they are the accused or the chief abettors. In Bhanwari case, the victim was openly asked as to how wide open her thighs were when she was being raped. Once bitten twice shy. The court scene drama, by its very name, evokes so much reluctance into the minds of women victims that they would prefer abstention.
The cumulative loss of faith and consequent hopelessness in the system, which is a concomitant of several problems being faced by the victim herself and other women in the community, compel her to withdraw from the scene.

The high level of tolerance and resilience, commonly perceived to 'ador' the Indian women, especially the rural women-folk is, in fact, a mind-set which goes against their own interest. This mind-set is sequential to several acts of omission and commission perpetrated by the male members of the community over which women had no control. Therefore, she becomes a victim of servitude and servility. She is taken for granted. She tends to accept all atrocities and rights violations as part of the game. Everything is tolerated without blinking even an eyelid. A culture of silence and silent suffering permeates.

The unsolicited advice by the so-called well wishers in the community also act as a pressure group on the victims, compelling them to withdraw from the scene. These well-wishers 'may be motivated or, sometimes, may come out of sheer hopelessness and frustration emanating from their earlier experience'. Women victims are prone to be carried away by such unwanted advisors, except situations where the law enforcement officials have been able to repose confidence and counsel her appropriately.

Witnesses turning hostile have become a very common impediment in the prosecution of crimes against girl child, as is the case with other crimes too. Added to this is an issue of victims turning hostile, which is much more serious. Reasons are no different from what have been cited above. Some of the decided cases where the victims were made to turn hostile will embellish this point.

A child victim of rape did not come to the court because the trial commenced nine years after the incident. By this time, she had become a major and was, in fact, going to get married. It was embarrassing for her to come to the court and even talk about sexual assault. She was not willing to speak to anybody including the judge, however in-camera the proceedings were. She was not ready to even say that she did have any sexual experience before her marriage, as it was important that she is "treated" a virgin at the time of marriage. Her parents would rather keep her virginity intact by not allowing herself to be exposed in the court. The question is whether to blame the social mores or the delay in the
trial. Had the trial been held immediately after the filing of the charge sheet, perhaps she would have depôsed without any reservation. The loss due to delay is incalculable.

* A girl who was raped at the age of 14 was not willing to depôse in the court at the age of 19 because she was already married with another person and was having a happy family life. She was told by the parents that her depôsition in the court would invite attention of the husband who would come to believe that she is a woman of easy virtue and, therefore, she was advised to keep quite and not to appear in the court at all. After marriage her address was changed and, therefore, she could not appear in the summons and warrants directing her appearance in the court.

* A teenage girl of the so-called ‘low caste’ was gang raped by 2 men from the so-called ‘high caste’. When the trial commenced, the Panchayat decided that the victim cannot depôse against the higher caste persons and bring ‘defame’ to their community! The social pressure was so much that the victim did not attend the court and the case got closed. The accused had no qualms in having sex with the girl despite her being a different community! The ego is pricked only when she speaks out the truth before others! The paradox between precept and practice is obvious.

* Knowing that the victim girl was determined to depôse in the court against the accused, the father of the accused, bought ‘peace’ by bribing the victim’s father and getting the girl married to the brother of accused. The dilemma before the victim’s was whether she would depôse against her husband’s brother or not. The peer group and community pressure was so much that she had to recant and succumb to what they wanted. She decided to turn hostile. She only hopes that the marriage is not a façade to buy her silence and win her over.

* To quote a victim would be appropriate to see what happens in reality. “I am a victim traumatised by the number of investigating officers, their supervisors, media persons, private detectives and a host of public spirited persons who landed up in my house, at different periods of time, many times even at very odd hours and all of them wanting to interview me about the incident. Even the police officers of various ranks did not think it fit to come together and complete their interview together. They came in instalments, each one wanting me to
repeat all that had been said earlier. The media persons, who also made several visits with audio and video mechanisms, wanting to photograph me in different 'poses' and different 'moods', disturbed my peace. Every visit was fun for the visitors, as they were competing with their previous ones to 'discover' new facts and bring out 'new revelations' and new twists. Each one, I learnt, was trying to 'break the story' with new found facts and discoveries on me, as they called. Nobody thought about the revictimisation that I was put to. Finally I decided to leave the place and thereby, buy peace and anonymity. Probably that was the only way I could be at peace with myself. No doubt, I did not appear in court thereafter as I did not want to relive the trauma again. I understand that the case has been closed for want of evidence. You may blame me for the same, but I had no option either'. The statement of this victim speaks volumes about the factors that cause non co-operation of the victim in the existing criminal justice system.

Though these examples are from specific case files and based on the statements of victims, the undercurrents and commonalities bring out the existing trend, which presents serious issues for the law enforcement agencies in carrying out effective prosecution of crimes against women. Monitoring witnesses before, during, and after their deposition in the court of law is an important event which needs to be addressed to by the law enforcement agencies concerned. However all such steps should be oriented to her best interest? Minimum standards of care and protection, keeping her human rights in view, should be implemented.

Witnesses who are briefed before trial do perform better. Since the trial of rape cases and other serious sexual assaults are to be conducted in camera, the victim needs to be told about the same. Even with respect to other offences where trials are openly conducted, women victims need to be prepared in advance to face the court scenes. The victim who is not exposed to the tribulations, the din and bustle of the courts, is likely to develop shock and either forgets what she has to say or refuses to speak out. Briefing, orienting and de-climatizing the victims and witnesses in advance about the facts of the case, the court procedures, the court ambiance, the court craft and court methodology is, therefore, essential.
7.5 Witnesses Security Programmes

One of the mechanisms that could be considered to address the plethora of problems in the context of ensuring witnesses to depose in a court of law, is the 'witness security programme'. Witnesses depose in a court of law if certain parameters are satisfied. These factors, which emerge from this study, could be arranged in a hierarchical paradigm presented in the box below (7.1).

![Box No. 7.1]

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<th>Security</th>
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<tr>
<td>Anonymity</td>
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<tr>
<td>No stigmatisation</td>
</tr>
<tr>
<td>No victimisation</td>
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<tr>
<td>No adverse consequence on self and others (family members etc)</td>
</tr>
<tr>
<td>Quick disposal</td>
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<tr>
<td>Reimbursement of expenses</td>
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<tr>
<td>Motivation for a public cause</td>
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<td>Motivation due to individual reason</td>
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<td>Sense of duty</td>
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These factors are borne out of the study of girls child witnesses who appeared or refused to appear in the trial of crimes against women. Security of the person, stated on top of the hierarchy, includes not only physical security but also emotional security. Experiences that torment one's emotions, while being questioned in a court of law, are strong retardant factors. It has a cascading effect. The tribulations of one victim gets conducted to another by word of mouth and sharing of experiences. Anonymity is, no doubt, a necessary prerequisite of security. If the deposition of the witness would, or is feared to, entail any adverse consequence, the witness would rather withhold from venturing to depose. Delay in getting the witness interview conducted is a crucial factor. Moreover, witnesses are not willing to come if the expenses are not recouped without delay. Motivation can be due to public spiritedness or due to personal loyalties. The responsibility under law to depose in the court and the duty cast on the individual by the legal systems are also factors that facilitate witnesses in coming to courts of law. Therefore, in an ideal situation, the law enforcement agencies need to work their way through this need hierarchy and initiate appropriate steps according to the needs and perceptions of the victims/witness.
Witness security and victim’s security have drawn the attention of all concerned, though nothing much has been done so far in addressing the issues. The Mathur Committee appointed by the Government of India on reforming the criminal justice system has come out with elaborate provisions and agenda for ensuring the protection of victims and witnesses. In a case of human trafficking, the rescued girl children who were rehabilitated to their native town in Andhra Pradesh after their rescue from the brothels of Delhi, were required to appear in the trial court at Delhi for recording their evidence against the accused exploiters who were facing trial. The victims did not want to travel to Delhi and face the exploiters. They did not want to relive the trauma. Therefore the NGO’s moved the High Court of Delhi and the Hon’ble Court had in 2004, directed that the victim’s deposition be done through Video-conferencing. Such innovative programme is very helpful in victim protection.

In a landmark judgment delivered by the Supreme Court of India on 26 May, 2004 in SAKSHI Vs Union and others, the Apex Court has brought out radical and child friendly directives. The Court directed as follows:

**Extending the scope of in-camera trial:** The provisions of Sub-Sectio n (2) of Section 327 CrPC should also apply to inquiry or trial of offences under S.354 and S.377 IPC. This means that the provision of in-camera trial, which was hitherto applicable only in cases of rape, has now been extended to other crimes of sexual assault.

**Placing screen in the court to protect the victim:** The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witness or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore the Supreme Court directed that while conducting trial of child sex abuse or rape, a screen or some such arrangement be made where the victim and witnesses do not have to undergo the trauma of seeing the body or the face of the accused.

**Accused not to question the victim/witness directly:** The Supreme Court observed that often the questions put in cross examination are purposely designed to embarrass or confuse the victims of rape and child abuse. The object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain acts committed by the accused. Therefore the questions to be put on
behalf of the accused in cross examination, in so far as they relate directly to the incident, should be given in writing to the Presiding Officer of the court, who may put them to the victim or witnesses in a language which is clear and is not embarrassing.

Access to the victim during the court proceedings: Whenever a child or victim of rape is required to give testimony, sufficient breaks should be given as and when required.

The Supreme Court reiterated that these directions are in addition to those given in *Punjab Vs Gurmeet Singh* (1996, 2 Sc 384) where the provisions of In-camera trial were made mandatory and it was directed that as far as possible the trial of rape crimes be conducted by lady judges. The judgement of 26 May, 2004 discussed above not only supplements the earlier decisions, but also accentuates the finer principles of child rights and women's rights and, therefore, is really a monumental decision in victim protection and victim care.

7.6 Follow up of judicial verdict.

Professional prosecution does not end with presentation of the case before the court. Several important aspects are yet to follow.

* Seeking court intervention for maximum punishment to the accused.
* Seeking court intervention for maximum fine to the accused.
* Seeking court permission for compensating the victim from the fine imposed on the accused. The need for compensation to the victim has been appreciated by the statutes. The "Delhi Domestic Workers Forum Vs. Union of India" the Supreme Court has directed the government to set-up Criminal Injuries Compensation Board. The rationale of the Board is to compensate the victims even before the conclusion of the trial has been well established. Such compensation has to be initially borne by the state. On conviction, the state, through the judicial verdict, can recoup this amount. However, Criminal Injuries Compensation Board is yet to be set-up. Setting up this board would be a landmark step in the field of victimology especially with respect to crimes against women.
7.7 Gender Sensitisation of Prosecutors

The foregoing analysis brings out a message, loud and clear, that the prosecutors need to be sensitized to gender issues, women's rights and child rights. The logic of sensitisation is to deliver maximum benefit to the female victims, and with least injury and harm. The gender-sensitisation module should incorporate the following agenda:

- Understanding gender
- Role of gender in crimes against women
- How gender plays a role in preventing women victims from deposing in the court of law
- The gender insensitivity, the mind-set, the prejudice and similar attitudinal problems among the prosecutors.
- The mind-set of the law enforcement officials, as to how it operates against the victim and hinders prosecution.
- The mind-set of the judiciary and how it affects the victim and prosecution.
- Methods of overcoming the mind-set and prejudices.
- Putting a 'gender sensitive methodology' into practice in the entire role of prosecutors.
- Gender-oriented protocols on minimum standards of care and attention.

It needs to be noted that sensitisation of prosecutors has to be an ongoing process. The various laws and rulings, focused on the theme of women's rights and child rights, should be one of the important aspects which need to be discussed. The prosecutors have to be trained to analyze their own conduct and action vis-à-vis female victims / witnesses and thereby introspect. This would help in bringing in gender sensitivity in thought and action.

7.8 Gender Sensitisation of Judiciary

Professional law enforcement on crimes against women requires, more than anything, a sensitive judiciary. Sensitivity on the issues of human rights and legal principles are, of course, essential. At the same time gender sensitivity is an essential pre-requisite for a trial judge in dispensing justice with respect to crimes against women. The reasons are many:

- Only a gender sensitive judge can facilitate an appropriate ambience in the court, especially in the context of the fact that the victims of crime are reluctant to go to the court to depose.
- Women victims of crime are under tremendous mental trauma and, therefore, would not like to recall the incidence. This reluctance can be overcome by the efforts of a sensitive presiding officer. Moreover the presiding officer has large
role in reducing secondary victimization of the victim. No doubt the judge has to
be proactive and sensitised to the issues relating to women.

The mindset of the judicial officers is also an important factor to be reckoned
with in dispensing justice towards women victims. A female witness who does
not open her mouth even after repeated requests even by the judge cannot be
dismissed as not wanting to cooperate with the trial. It has been noticed that the
victim goes into hibernation and does not want to come out of the cocoon built
around her by the untold saga of trauma, fear, harassment and depression. A
judicial officer, who is gender sensitive, will appreciate the victim's state of
mind and facilitate the victims to speak out.

More often female child victims do not understand the technicality and jargons of
the adult world. The judge has to be sensitive enough to come down to the level
of the female child and appreciate the facts. The child may speak in bits and
pieces, which to the ordinary mind may not make sense. One has to apply the
logic of the child in understanding these tit-bits and place them in the broader
perspective to develop the full and final story. Similarly the female child victim
may speak in the language of the child. It has to be seen as to what the child
understands by a particular word by placing the word in the given context. The
child's terminology has to be necessarily understood from the child's
perspective. The illustration given in the box below (Box 7.2), from the real life
of an interviewed victim, will elucidate this point.

In a case of child sexual abuse, where the adult accused was continuously sodomising
innocent children of five years, the prosecution depoted in the court that the accused used to
'feed' her with the 'feeding bottle'. She also stated that the feeding bottle was “dirty,
smelly and nauseating”. She “hated” the feeding bottle. It took no much difficulty to
understand as to what the child meant by the “feeding bottle”. However one cannot expect
the child victim to say anything beyond this. For an outsider who reads the statement, no
offence is made out if a person feeds the child with feeding bottle. One has to read between
the lines and understand child psychology and child terminology to know that the “feeding”
and the “bottle” were part of the cruel and criminal act of sodomy unleashed on the
innocent child. The judge appreciates these terminologies from the child’s perspective and
took them into evidence.
The module for gender sensitisation of judicial officers needs to include the following:

- The concept of gender, its scope, ramifications etc
- The gender sensitivity conveyed through international instruments, constitution, the laws and the decisions of the Apex Court
- The issues of human rights of the women victim as emanating from the international instruments, constitution, the laws and the judicial pronouncements and precedents, essentially by the Supreme Court of India.
- The socio-cultural context and the existing discrimination of women, the patriarchal mind set etc.
- The psychology of the victim including girl child victim
- The issues of revictimisation and traumaisation commonly faced by the victim
- The patriarchal mind set, prejudice, the dogmas, in the existing law enforcement scenario which affects the victim.
- The need and requirements of gender sensitive handling of the victim including gender sensitive environment, gender sensitive methodology and gender sensitive attitudes of the presiding officer of the court, the court officials, prosecutors, advocates and all others present in the court scene.
- An introspective analysis of one's own gender sensitivity with reference to specific instances
- Developing protocols of minimum standards of care and attention for sensitive handling of victims, keeping in view a human rights paradigm.

Discussion of judgements, especially those where the victim's rights have been affected adversely, would be a good method. In fact such case studies, which reveal a lot, are available. Moreover the gender sensitization programme, curriculum and process should be an ongoing process and require updating at frequent intervals.

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