Crimes Against Women and Dynamics of Gender Justice

A.S. Anand*

Mr. Justice Jaswant Singh, Chairman and Trustees of Bodh Raj Sawhny Memorial Trust, Dr. Karan Singh, Member of Parliament, members of the family of late Justice Bodh Raj Sawhny, ladies and Gentlemen:

I consider it a proud privilege to have been invited by the Trustees of Bodh Raj Sawhny Memorial Trust to deliver this inaugural oration to commemorate the memory of late Justice Bodh Raj Sawhny.

Justice Bodh Raj Sawhny was an eminent jurist who was born on 18th Magh 1937 B.K. After his early education, he joined the Cambridge University and in 1902 received degree of B.A. & LL.B. from that University. He was called to the Bar from the Hon’ble Society of Lincoln’s Inn on January 26, 1903 and received the degree of Bachelor of Civil Laws in 1904 as an internal student of the Exeter College, Oxford University. On his return from England, he practiced Law at Lahore where he also served as a Government Advocate of the then Province of Punjab. His talent and learning were soon recognised and in 1910 he was appointed as a Chief Judge in the Jammu & Kashmir Judicial Service and posted at Jammu. On the setting up of the High Court of Judicature of Jammu & Kashmir State in 1928, he was appointed as a Judge of that High Court. He officiated as the Chief Justice of Jammu & Kashmir High Court also for a brief spell of period before his superannuation in 1936. Justice Sawhny was a keen sportsman and a Tennis Blue both at Oxford and Cambridge. His wide range of interest included Horticulture, Motoring and Shooting.

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1 This is the first Bodh Raj Sawhny Memorial Oration delivered at New Delhi, on December 2, 2000.

* L.L.B. (Lucknow), Ph.D. (London); Chairperson, National Human Rights Commission, New Delhi and formerly, Chief Justice of India.
Justice Bodh Raj Sawhny was one of the architects of the present High Court of Jammu & Kashmir. There are men of principle rare in every age, rarer in our era, who are made of sterner stuff and unbending will - Justice Bodh Raj Sawhny was one such person. He was a sensitive soul and a social catalyst. He was known to be a man of conscience and concern possessing great human values and was made of tough moral fibre. He was compassionate and a great human being. To honour such a man is to honour the judiciary particularly of Jammu & Kashmir. It is, therefore, with all humility that I dedicate this lecture to the memory of that great Judge.

Now to the topic

The title of this evening’s lecture is “Crimes Against Women and Dynamics of Gender Justice”.

International concern with the position of women and the reflection of that concern in treaties regulating particular fields of social activity is not a new phenomenon.

Gender inequities throughout the world are among the most all pervasive, though deceptively subtle forms of inequality. Gender equality concerns each and every member of the society and forms the very basis of a just society. Human rights issues, which affect women in particular, play a vital role in maintaining peace and prosperity of a just society. It is an established fact that women represent very kernel of the human-society around which social change must take place. The last decade of the last century has seen a growing recognition of women’s rights as human rights and as an integral and indivisible part of universal human rights. The promotion and protection of human rights of women, will, however, remain a challenge to all countries in the 21st Century. Traditionally human rights theory primarily focuses on violations perpetrated by the State. This distinction between State responsibility in relation to public and private acts has, to my mind, contributed to a failure to recognise many violations of women’s rights as human rights violations and that has contributed to proper focus not being addressed to the real issues.
Crimes against women have existed invariably with time and place. Even periods of transformation have never been comfortable for them. Types and trends of crimes, however, kept changing with change in mindset and techniques. Unfortunately, women were not only accorded a lower status in the society but they also came to be used as objects of enjoyment and pleasure. Its culmination has been their regular exploitation and victimization. On the continuation of this practice, exploiters became culturally violent, having opted violence as a way of life. Besides, there also developed situational and institutional violence against women along with the new demands of the time where they have to step out of the confines of their homes to earn a living. Thus, crime against women is an outcome of their long history of deprivation of socio-economic conditions. All too often, universal human rights are wrongly perceived as confined to civil and political rights and not extending to economic and social rights, which may be of more importance to women. We must realize that civil and political rights and economic and social rights are integral and complementary parts of one coherent system of global human rights. Violation against women is a manifestation of historical unequal power relations between women and men which have led to domination over and discrimination against women and is a social mechanism by which the ‘subordinate’ position of women is sought to be perpetuated. Women suffer even today, though they constitute more than half of the world population.

In a 1980 UN Report, it was reported:

“Woman constitute half the world’s population, perform nearly two-third of its work hours, receive one-tenth of the world’s income and less than one-hundredth of the world’s property.”

Women comprise 66 per cent of the world’s illiterates and 70 per cent of the world’s poor. Violence against women, clubbed with these inequalities/deprivations is, to my mind, total denial of her human rights.

Is it not a sad state of affairs?

The problem, therefore, needs to be examined in the context of rights for establishment of a just and equitable social order, where nobody
can be treated or exploited by another as unequal. No law, custom, tradition, culture or religious consideration should be invoked to excuse discrimination against women.

With this backdrop, when we have a glimpse on the developments since ‘renaissance’, we find that the thrust has appropriately been on conferment of rights rather than recognition of rights of women. Same is true about the United Nations instruments since its inception, starting with the UN Charter, Universal Declaration of Human Rights (UDHR) to Convention on Elimination of All forms of Discrimination Against Women (CEDAW) and later Beijing and other conferences. It is this process of conferment of rights on women and their empowerment that has come to be recognized as gender justice. Attaining social justice and peace through empowerment of women, is basically another description of the same process. This process has many dimensions, each corresponding to a particular sphere of activity of life, ranging from private sphere (home) to public sphere (outside the home). The process of gender justice, broadly speaking, covers the rights of women against exploitation and victimization. Through law and policy, women have now secured for themselves from crimes committed against them, which negates the whole premises of gender justice. Unless we recognise her rights—her basic human rights—gender justice would only be “lip-service” with no tangible results. For a woman having undergone a criminal assault, all material wealth and status symbols are meaningless. In fact, the incidents of violence or crimes against them are a total negation of their human rights in which gender justice nosedives. Time and again have we in the Supreme Court of India extended the ambit of Article 21 of the Constitution of India and held that mere existence is not the right to live—it is the right to live with dignity. Thus, wherever crimes are committed against women the same should be viewed in the context of violation of her right under Article 21 of the Constitution and not merely as a crime against the society.

Is it not ironical that when Indian mythology places women on a very high pedestal and they are worshipped and honoured—Goddes of Learning is Saraswati, of wealth Laxmi, of power Parvati – we adopt double standards in so far as her guaranteed rights are concerned. There
has been over the decades an alarming decline in moral values all around and that today is a great challenge which we face particularly in our country. In the name of progress and advancement, we are losing out on our moral values, It is rather sad that while we keep celebrating woman’s rights in all spheres, we show no concern for her honour and her dignity. It is a sorry reflection on the attitude of indifference of the society.

In India, in spite of special constitutional guarantees and other legislations, crimes against women are rampant. They are on the increase. The Constitution imposes a fundamental duty on every citizen through Article 51-A(e) to renounce the practices derogatory to the dignity of women. How may of us are aware of this fundamental duty? Not may, I suppose. We take pride in talking of our Constitution making special provision in favour of women – yes, indeed such provisions do exist – they were provided by the founding fathers, after great deliberations. But the question is: Have the women been able to reap the benefits provided for them under the Constitution of India? The answer, unfortunately is not encouraging. There is still a long way to go to achieve the goals enshrined in the Constitution.

In tune with various provisions of the Constitution, the State has enacted many women-specific and women-related legislations to protect women against social discrimination, violence and atrocities and also to prevent social evils like child marriage, dowry, rape, practice of Sati, etc. The problem, however, is in non-implementation of such laws. Besides patriarchy is essentially based in the household in which men dominate women, economically, sexually and culturally. More narrowly, women exchange their unpaid domestic services for their upkeep. In this perspective, the marriage becomes essentially a labour contract through which the husband controls the labour of his wife. Patriarchal social order

1. Constitution of India, Article 51-A reads: “Fundamental duties. – It shall be the duty of every citizen of India –

   (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women”. 
is also responsible for discrimination and violence against women. This includes domestic violence, beating, torture, harassment and dowry death. This social order based on putative qualities of “maleness” and “femaleness” needs to be changed. Women, no less than men, require to be treated as “person, not statistical abstraction.”

Though women can be subject to all types of crimes but some crimes are specific to women, such as rape, molestation, eve-teasing, trafficking etc. In India, crimes against broadly fall in two categories : (a) Crimes identified under Indian Penal Code, and (b) Crimes identified women under special laws.

The crimes identified under the Indian Penal Code (IPC) are : (1) rape\(^2\), (2) kidnapping & abduction for different purposes\(^3\), (3) homicide for dowry, dowry deaths, or their attempts\(^4\), (4) torture, both mental and physical\(^5\), (7) importation of girls (upto 21 years of age\(^6\), (8) molestation\(^7\) and (9) sexual harassment\(^8\).


Notwithstanding the enactment of the laws relating to dowry, rape, violence against women, the ground reality is rather distressing. An article on “Status of Women in India – A Depressing Scenario” which appeared in the *Tribune*\(^9\) points out that rape takes place once in every 54 minutes;

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2. I.P.C., S. 376.
3. Id., Ss. 363-373.
4. Id., Ss. 302/204B.
5. Id., S. 498A.
6. Id., S. 366B.
7. Id., S. 354.
8. Id., S. 509.
eve-teasing in every 51 minutes; molestation once in every 26 minutes and dowry deaths in every 1000 minutes. Misuse of the test to determine the sex of the child in the womb and the termination of pregnancy in the event of a female foetus gives an indication of the despicable behaviour pattern. The evil of abortive female foetus presents a grim reality. According to 1981 census there were 933 women per 1000 men. According to 1991 census report there were 929 women per 1000 men. Maternal mortality accounts for the largest number of deaths among women in general and of the women in reproductive age group in particular.

The reported incidence are much less than the real happenings. During 1998 only, in the State of Kerala, 564 cases of rape, 1768 molestation, 132 kidnapping incidents, 87 cases of eve-teasing, 21 cases under Section 304B, 2013 violations under Section 498A and 2870 other offences were reported.

The crime figures from 1989-1905 show that the rate of violence against women is increasing rapidly. It increased from 67,079 in 1989 to 1,06,471 in 1995 under different crime heads. According to the recent 1998 National Crimes Records Bureau Report noted an increase of 8.3 per cent and 4.8 per cent over the years 1997 and 1996 respectively in crimes against women. In absolute numbers, an increase of 10,073 cases was reported at the all India level in 1998 over 1997. According to recent reports, during the year 2000, upto September 30, 2000, 350 rape cases have been reported only in Delhi10.

Should the flag of civilisation in a civilised society not fly “half-mast” to awaken the consciousness of the society?

It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim’s privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault – it is

often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars.

There has been lately, lot of criticism of the treatment of the victims of sexual assault in the court during their cross-examination. The provisions of Evidence Act regarding relevancy of facts notwithstanding, some defence counsel adopt the strategy of continual questioning of the prosecutrix as to the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or to test her credibility but to test her story for inconsistencies with a view to attempting to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The court, therefore, should not sit as a silent spectator while the victim of crime is being cross-examined by the defence. It must effectively control the recording of evidence in the court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the court must also ensure that cross-examination is not made a means of harassment of causing humiliation to the victim of crime.

Sexual violence apart from being a dehumanising act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self esteem and dignity. It degrades and humiliates the victim and where the victim is a helpless innocent child, it leaves behind a traumatic experience. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely.
Crimes in the form of trafficking of the girl child, prostitution, domestic violence and incest are on the increase. It is an area of concern. Child sex is a rapidly growing business in India, where nearly five hundred thousand children are prostituted. Children do not come flocking to the brothels, they are brought through illegally but highly systematic, organized trafficking networks run by experienced individuals who buy, transport and sell children into prostitution. Approximately 75,000 girls and women enter the trade every year, 80% of them do it out of situational compulsions.

The Immoral Traffic (Prevention) Act, 1956 (amended in 1978 and 1986) had been enacted to combat prostitution but the prostitution is on the rise. Police is unable to keep a check on the brothel-keepers and pimps. Many unfortunate teenaged female children are being sold in various parts of the country for paltry sums even by their own parents, compelled by poverty, who find themselves unable to maintain their children hoping that their children would be engaged in household duties or manual labour. But they are actually selling them to the broker in the flesh trade, who brutally treat them till they succumb to his wishes. Thus, girls and women in large number in the prime of their youth are being forcibly pushed into the flesh trade which flourishes in utter violence of all canons of morality, decency and dignity of a human being.

Prostitution is not prohibited under the amended Act of 1986. Despite the amendment, the legislation falls short of its objective and has not proved to be an effective measure to check commercialized flesh trade. It acts more as supplement to the provisions of the IPC concerning kidnapping, sale, abduction, wrongful restraint of women and children, emphasizing only the punitive aspects of the problem. The Act does not provide for punishment to the client and makes no provision for the rehabilitation of commercial sex workers who are rescued from the brothel. Instead of aiming at the abolition of prostitution as such, the Act makes it per se a criminal offence or punishes a women because she prostitutes herself. May be it is because of a week law enforcement mechanism and inadequacies in the criminal justice system, but the situation in every case invites attention of all concerned agencies: legislature, judiciary and other enforcers of law. It appears that our society is becoming a psycho-sick
society with an uncivilized behavior. Whenever crime is committed against women and that too a violent crime, it sends shock waves to the society but those shock waves burst like bubbles in a very short time. The society must change its attitude.

Internationally also, the U.N. World Conference on Human Rights (1993) at Vienna, which was one of the main turning points in women's right declared that human rights of women and of the girl child are inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic and cultural life at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community. The Conference urged upon governments, institutions, intergovernmental and non-governmental organizations to intensify their efforts for protection and promotion of human rights of women and the girl child. It, for the first time, recognized the gender based violence against women in public and private life as a human rights concern. The Vienna Declaration specifically condemned gender based violence and all forms of sexual harassment and exploitation. The Conference concluded:

“The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community... The World Conference on Human rights urges Governments, and regional and international organisations to facilitate the access of women to decision making posts and their greater participation in the decision making process.”


12. Ibid.
The subsequent UN Conference and regional meetings, especially the Fourth World Conference on Women held in Beijing in September, 1995, concluded that issues critical to the future well being of women of the world in terms of resource development, protection of environment, establishment of peace, improvement of health and education depend on the adjustment of the status of women. For this, it suggested a multi-pronged, integrated approach.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is the main foundation of rights in respect of women to which 1666 countries are members till date (including India). While contributions of women to economy, family and society are not recognised by the states, the Convention recognises that discrimination against women in these areas hampers economic growth and prosperity and detrimentally affects the society in general. It brings into focus the role of education of both men and women in changing the attitudes, which can lead to the equality of rights and responsibility for them and can help in overcoming the prejudices and practices to the goal of actual as well as legal equality and encourages adoption of temporary and special measures directed at accelerating de facto equality between men and women. The UN General Assembly adopted on Optional Protocol to the Convention on October 6, 1999 and called on all states parties to become party to it as early as possible. It has now been ratified by required number of countries and came into force on December 22, 2000.

Regarding crimes against women in different nation-states, the committee on CEDAW places much emphasis on incidence of violence against women. The UN appointed a Special Rapporteur on violence against women and adopted a Declaration on the Elimination of Violence Against Women in 1993\(^\text{13}\). It defines violence against women as:

"Any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to

women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

With a view to converting the equality of women from de jure to de facto, educating females would play an important role. Most of the women in our country are illiterate, and in comparison to males, are ignorant of the basic law. Most of the times, they do not register a case against those persons who violate their person or commit crimes against them. Lack of awareness, political participation, poverty, traditional oppression and customs, place an Indian woman at a receiving end. Though violence stalks women’s lives everywhere, law can do little unless present cultural and social perceptions change. This calls for a resolve from all of us. As regards education of women, according to the census of 1991, the general literacy rate was 52.11 per cent. The female literacy rate was 39.42 per cent as compared to the male literacy rate of 63.86 per cent. These figures indicate that 60 per cent of our female population i.e., six out of every ten females – still remain illiterate. So long as there is disparity between the male and female in education level, the difference between the position of men and women would continue to exist. It is unfortunately true that a woman has, even in her own home been given a rather ‘subordinate’ role to play. Her major concern is expected to be catering to the comforts of the family as a dutiful daughter, loving mother, obedient daughter-in-law and faithful submissive wife. She is perhaps everything except a human being on par with her counterpart – the man. The society has unfortunately made her dependant either on father, mother, husband or son. To usher in gender equity all this must change.

For the emancipation for women in every field, economic independence is of paramount importance. Along with economic independence, equal emphasis must also be laid on the total development of women – creating awareness among them about their rights and responsibilities – the recognition of their vital role and the work they do at home. It is necessary, that a new social system must evolve. The society

must respond and change its attitude. Major surgery is required and not merely cosmetic changes. In *Kundula Bala Subrahmanyam v. State of A.P.*, a case of bride burning, I said:

"Of late there has been an alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young innocent brides. This growing cult of violence and exploitation of the young brides, though keeps on sending shock waves to the civilised society whenever it happens, continues unabated. There is a constant erosion of the basic human values of tolerance and the spirit of “live and let live”. Lack of education and economic dependence of women have encouraged the greedy perpetrators of the crime. It is more disturbing and sad that in most of such reported cases it is the women who plays a pivotal role in this crime against the younger women, as in the case, with the husband either acting as a mute spectator or even an active participant in the crime, in utter disregard of his matrimonial obligations. In many cases, it has been noticed that the husband, even after marriage, continues to be Mamma’s baby and the umbilical cord appears not to have been cut even at that state!”

Awakening of the collective consciousness is the need of the day. Change of heart and attitude is what is needed. If man were to regain his harmony with others and replace hatred, greed, selfishness and anger by mutual love, trust and understanding and if women were to receive education and become economically independent, the possibility of this pernicious social evil dying a natural death may not remain a dream only. The legislature, realising the gravity of the situation has amended the laws and provided for stringent punishments in such cases and even permitted the raising of presumptions against and accused in cases of unnatural deaths of the brides within the first seven years of their marriage. The Dowry Prohibition Act was enacted in 1961 and has been amended from time to time, but this piece of social legislation, keeping in view the growing menace

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16. Id., p.700.
of the social evil, also does not appear to have served much purpose as dowry seekers are hardly brought to book, the convictions recorded are rather few. Laws are not enough to combat the evil. A wider social movement of educating women of their rights, to conquer the menace, is what is needed more particularly in rural areas where women are still largely uneducated and less aware of their rights and fall an easy prey to their exploitation. The role of courts, under the circumstances assumes greater importance and it is expected that the courts would deal with such cases in a more realistic manner. A socially sensitised judge, in my opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions containing complex exceptions and provisos.

Let me, however, caution that fight for justice by females or cry for gender equality should not be treated as if it is a fight against men. It is a fight against traditions that have chained them – a fight against attitude that are ingrained in the society. It is a fight against proverbial Lakshman Rekha which is different for men and different for women. Therefore, men must rise to the occasion. They are individuals who have their own identity. Over the centuries of human civilization, clear-cut gender roles have emerged, based on the stereotype conceptions of feminine and masculine characteristics. Society needs to change its attitude. It is high time that human rights of women are given proper priority.

Primarily, it is for the menfolk to bring about a change and I hope it would happen sooner than later.

Before taking your leave, I wish to recall a short piece which I read years ago. It is:

“I am the woman who hold up the sky.  
The rainbow runs through my eyes.  
The sun makes a path to my womb.  
My thoughts are in the shape of clouds.  
But my words are yet to come.”

Let her speak. Let us wake up and hear her words.

Ladies and Gentleman, thank you for your patience.