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**Human Trafficking: The Angle of Victimology – A
Commentary**

Honourable Justice R Dalvi

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‘THE CRIME PROBLEM IS THE OVERDUE DEBT A SOCIETY MUST PAY FOR TOLERATING, FOR YEARS, THE CONDITIONS THAT BREED LAWLESSNESS.’ **EARL WARREN**

Human Rights Jurisprudence has come of age. The informed, enlightened and elite citizens as well as detainees and convicts demand and obtain protection of their human rights. They have a voice and representation. Various legislations and precedents show the wide spectrum of cases relating to human rights. However, one corner of our society – the most neglected, fragile and tortured – remain outside the long arm of the law relating to protection of their human rights. They cannot shout and our justice system does not listen. But they go through egregious torture, physical and emotional, in the prime of their childhood or youth, with none to fall back on or to pick them up from the living hell they are brought to or dumped in. They survive in the darker, drearier side of human rights violations – so violent it can be better described as atrocities. These are the unfortunate and unprivileged humans – women and children - upon whom immeasurable, unfathomable and grave excesses and aberrations take place daily by perpetrators of the crime. Girl children are trafficked into prostitution. Boy children are trafficked into forced labour and sodomization. Young women are also abducted and trafficked as domestic workers, unorganized labourers or sex workers.

This is, though, **‘little children are people with Big rights’**: **Dr. Klaus Kankel**

Types of cases of such trafficking can be endless – rape, aggravated rape, incest, child sexual abuse, forced prostitution, sodomy, bestiality, pornography and a vast array of cases involving outraging modesty. [See : *State of Punjab vs. Major Singh*, AIR 1967 SC 63]. The rights of these women and children form an essential part of the jurisprudence of human rights which still lies in the neglected sphere.

The illustrations of violence upon such victims are like snowflakes. Each case exhibits a distinct act of violence. Some of the cases which have come to Courts show acts of assault, burning, persistent denial of food, perverse sexual conduct, forcing abortion, locking the victim, denying access to her relatives and children, abusing her child and the like.

The malaise of trafficking has been essentially because of the demographic problem which results in unemployment and the consequent poverty. This increases the vulnerability of the lowest strata of the society coupled with lack of education, care and protection and employment opportunities. Low female ratio, poor law enforcement and the demand and profit scenario aggravates women victims’ situation. Sexual trafficking involves business in brothels, massage parlours, bars and includes pornography and paedophilia. Commercial trafficking and exploitation involves industrial and domestic labour and extends to organ removal for transplants, illegal adoptions, beggary and camel racing.

It is little realized that the impact and repercussions of such abuse and violence results in destroying psychology, devastating life by causing bitter shock, disgust, disbelief, suspicion, helplessness, frustration, anxiety, loss of security, feeling of guilt, fear of disclosure, confusion, trauma, hopelessness, anxiety, fear, humiliation, degradation, anger, insomnia & nightmares, depression, social withdrawal, lower self-esteem, embarrassment, betrayal of trust, self blame, guilt and shame.

ALL OVER THE WORLD WOMEN SPEAK THE SAME LANGUAGE – OF SILENCE: ANUSAYA SENGUPTA

The results of such abuses also fall upon a wide spectrum - *social, psychological, sociological and economic*. The social brunt of trafficking are isolation, loss of dignity, loss of safety, loss of marriage, home, job, family and social life. The physical effects are from black eye to death, burns, disability, pain, forced pregnancy, miscarriages and abortions, cuts and bruises, HIV and failed health. The sociological implications arise upon failed marriages and other relationships and the economic burdens are decreased productivity, wages lost, financial and health costs.

THE TROUBLE IS – TOO MANY PEOPLE GROW UP; THEY DO NOT REMEMBER WHAT IT IS LIKE TO BE A 12 YEAR OLD.

These recipients are the ‘victims’ of crime. The Canadian Criminal Code describes a victim as a person to whom harm is done or who has suffered physical or emotional loss as a result of the commission of the offence. Victimology is the science of preventing crime, protecting the victims from crime, prosecuting the crime, allowing them representation in such prosecution on their behalf, and punishing the offender taking into account the perspective of the victim in terms of the aftermath of the crime upon such victims.

In the present set-up, the courts do not allow the victim to be heard or be represented on the premise that it is for the state to prosecute the crime. The public and police prosecutors are not instructed well, are ill-informed, are callous or may even (in some cases) collude with the accused. Our experience has shown that in matters of private complaints when the victims are represented by their own chosen lawyers, the cases are fought out tooth and nail and all the points on merits are brought out before the court. However, that practice prevails in cases of the upper echelons of the society. None gives even a stray thought to the most unprivileged strata of our society.

The Society responding to cases of such victims for acceding to them the right to be treated as humans essentially requires both *preventive and punitive measures*.

LAW CANNOT PREVENT WHAT IT CANNOT PUNISH.

The preventive measures require that the several partners of the Society – the parents, teachers, friends, NGOs would play their part in preventing the crime altogether. If, however, a crime does take place the medical, police, legal and judicial officers are the other partners who come into play. For these partners to play their respective parts the twin requirements are awareness creation and attitudinal change. Providing safety, sanctuary, shelter and refuge to the victims essentially against re-victimization by taking recourse to the social workers and NGOs and the ultimate punishment by the Justice System to those who are seen to have committed the offence of trafficking are the sociological and legal measures.

For the ‘preventive partners’ the principle of ‘lesser numbers, greater attention’ at home, in schools and the society at large is applicable. This calls for attention to the demographic situation in the country. The larger the number of children, the lesser the attention for them. Those children are easy targets.

Once a child falls prey to a target, the principle of the three Rs – Recognise, Resist and Report - comes into play. The seminal requirements in each of the partners of the system is to recognize that the problem exists in every society, in every house. The creation of awareness of the problem translates into education for resisting the problem. Each partner must educate

each child to resist the first criminal advance which ultimately results in violence upon their person. The ultimate training must be to report the crime and not to hush it up upon the mistaken notion of social ostracizing. However, if the 'preventive partners' have failed the child either due to lack of awareness of the pervading crime or due to the inability to resist it, which is primarily due to poverty or lack of education and awareness of the social situation, the duties and functions of the "punishing partners" fall due. The doors of the Criminal Justice System are opened; they swing both ways.

The two essential and basic requirements of the criminal justice system are **infrastructure** and **sensitivity**.

THE CHILD SHOWS THE MAN AS MORNING SHOWS THE DAY: JOHN MILTON

The infrastructure required to combat cases of violence, both outside and within the family, are specialized police, women's police station, (Mahila desk or Shishu desk), Women/Victim Support Centres, Victim Examination Suites, Special Courts, Video Recording of statements and video conferencing of evidence in trials. Sensitivity is required on the part of each of the partners of the system enumerated above in the second category. This would be through training of police, medical, legal officers (public prosecutors) as well as judicial officers. The police investigation, medical examination and Court trial are themselves processes for re-victimization or secondary victimization. Court climate and Court room conduct go a long way in demonstrating sensitivity towards such victims.

In the UK, soon after the offence is committed the victim is taken to a Victim Support Centre. Her medical examination, counseling, interview, statement recording exercise as well as forensics required for the proof of the crime are all taken in the centre under one roof. She is allowed to reside there whilst she passes through the most traumatic period. The victim examination suites are in all such Support Centres. Her statements are video recorded. The accused is arrested and brought to the relevant police station. He is separately interrogated. His interrogation is also audio or video recorded and hence used in court (a copy is kept with the prosecuting agency; a sealed copy is given to the accused/defendant). The evidence in court is video recorded. The victim is not allowed access to the accused and vice-versa. The child victim is allowed to depose in a gentle, friendly atmosphere. A parent, a friend or a NGO is allowed to be by her side. The accused, of course, is allowed to hear the entire evidence of the child victim. He, however, cannot put any question to the child directly. Menacing or threatening questions are not allowed to be put even by his Advocate to the child victim. The Judge hears the questions of the Advocate of the accused and puts them himself / herself to the child victim in the first language of the child to elicit her response in what is popularly known as 'cross-examination' but is not conducted in a similar fashion.

Though it is not possible in many countries, including ours, to provide all essential, innovative and technological infrastructure listed above, each of the 'punishing' partners of the system, by the attitudinal change desired of them and by the sensitivity expected of them, can bring about a quantum leap in assuaging the wounds of the victims of such crimes.

The treatment of victims, of human rights, more specially child victims requires, if not such elitist infrastructure, sensitivity to create an essential humane court climate by an essential humane court room conduct. This requires of creation of special courts and appointment of special officers, priority in disposal of cases with fixed dates and times for each of them, providing victim support and representation, providing contact with court officials which would essentially be humane and prohibiting any contact of the victim with the accused. The court room conduct would require evidence to be recorded not only '*in camera*' but also '*in*

chambers' with a specific place delineated to all present, maintenance of victim's confidentiality, recording of evidence in a friendly gentle atmosphere albeit to elicit the truth - as also to provide rest time and intervals to a specially traumatized victim. [See : *State of Punjab vs. Gurmit Singh*, 1996 2 SCC 384; *Sudesh Jakhu vs. KCJ*, 1998 Cri.L.J. 2428].

The entire exercise involves two essential aspects for victim protection: **victim support** and **victim representation** [See : *Vijay Valia vs. State of Maharashtra*, 1987 MLJ 49, 58; *Zahira Habibullah Sheikh & Anor. vs. State of Gujarat*, (2004) (4) SCC 158].

MANKIND OWES TO THE CHILD THE BEST IT HAS TO GIVE.

Victim support enjoins the victim to be allowed the emotional support of a friend or relative. It may include a guardian *ad litem* appointed by the court who may be a social worker or NGO [See: *Sakshi vs. Union of India*, AIR 2004 SC 3566]. Victim representation involves allowing the victim to be legally represented. The Victims of Crime Act in the U.S., which allows such support and representation to all the victims of crime as also to the witnesses is essentially based upon the concept of "*the victim's right to speak; the nation's responsibility to listen*". It enjoins all victims in all cases to be heard at the stage of granting bail, in the trial, at the stage of sentencing and whilst granting parole. The victim impact statements allowed to be made by the victims of crime in Canada are required to describe the harm done or loss, physical or emotional, suffered by the commission of the offence which is considered by the court.

Hearing the victim, the accused and the State at the stage of bail would put the entire matter in perspective. Allowing the victim a separate representation through a lawyer of his / her choice at the stage of recording of evidence as also arguments for the appreciation of the evidence recorded would take the court in the right direction. The representation of the victim at decision making process would include hearing the victim on sentencing, fine, compensation and rehabilitation. [See: *Gaurav Jain vs. Union of India*, (1996) 10 SCC 550; *Delhi Domestic Working Women's Forum vs. UOI*, 1995 1 SCC 14; *Vishal Jeet vs. UOI*, AIR 1990 Supreme Court 1412 and *Indian Hotel & Restaurants Association (AHAR) vs. State of Maharashtra*, 2006 (3) BCR 705,781]. At the stage of parole, when the victim may be caught unawares and traumatized, hearing the victim with regard to the restrictions to be put upon activities of the accused as is done in the U.S. could minimize her agony. These twin protection measures may eliminate or at least lessen the need for the more expensive witness protection measures available to victims in the western countries.

The action required **in cases of human trafficking** would be to prioritise and institutionalize the issue and provide manpower resources. This requires a police –N GO partnership for rescue and post rescue efforts. A provision for sharing of a data base of the traffickers and the trafficked is a technological innovation which goes a long way. Mutual sharing of information by regional and bi-lateral co-operation amongst countries with active participation of the investigating agencies as also the survivors of the crime is required by way of the support services for the victims. The support services in the support centres by support groups and the Government, which are provided for victims in certain urban areas must include training, employment, health services, counseling, parenting, legal assistance, shelter and refuge, telephone helpline, self defence classes and yoga and meditation classes.

The action required **in cases of forced labour** of children victims, male or female, is to strengthen the labour laws and the policy framework (See : *M.C. Mehta vs. State of Tamil Nadu*, (1996) 6 SCC 756) increase co-ordination between Government, trade unions and employers, monitor recruitment and employment agencies, create value oriented education in

schools and universities, enforce ethical trade practices by rejection of products and services of forced labour (as is done by the U.S., U.K. and Canada) provide for education [See: *Unni Krishnan vs. State of Andhra Pradesh*, AIR 1993 SC 2178 & *Bandhu Mukti Morcha vs. Union of India*, AIR 1984 SC 802] and rehabilitation of victims and ultimately easing the criminal justice system.

The essence of the jurisprudence of victimology is to treat the accused and the victim separately, distinctly and differently and with dignity. This is more so in a case of child victim. He or She is on the receiving end of a system which brings out its own special dilemma caused not only by the *Accused versus victim* scenario, but the *child versus adult* syndrome. He or She, therefore, requires to be in a child friendly atmosphere after his/her victimization and traumatization. The trafficked victim is required to be rescued; not arrested; he or she is required to be interviewed by counselor; not interrogated by police officer. The accused on the other hand is required to be interrogated as an essential part of the investigation process. The truth of the case is to be elicited from the victim over a period of days, even months in grievous cases. Her story unfolds before the counselor bit by bit, stage by stage, day by day. It cannot be extracted from her by coercion, duress, pressure, threat, intimidation, force or the like. [See: *State of Haryana vs. Premchand* 1990 1 SCC 259].

CURE THE DISEASE AND KILL THE PATIENT?

The three arms of the Society and the law dealing with trafficked victims are **prevention, protection and prosecution.**

I HOLD THAT THE MORE HELPLESS A CREATURE, THE MORE ENTITLED IT IS TO PROTECTION OF MEN AGAINST THE CRUELTY OF MEN: MAHATMA GANDHI

Poverty alleviation by population control is the key to prevention. Identification of vulnerable people as well as suspected traffickers at the source locations and in transport locations by vigilance border squads results in prevention up to a point. Maintenance of database of crimes and criminals as well as missing persons and use of forensic science for obtaining fingerprints, DNA reports, even stringent visa requirements are modes of restricting the malaise of trafficking in persons including the offence of paedophilia.

Once a woman becomes a victim of the crime involving the trafficking his or her protection becomes imperative [For need for victim protection, See: *Javed Alam vs. State of Chattisgarh & Anor* (2009) 6 SCC 450 and *Zahira Habibullah Shaikh vs. State of Gujarat*, 2004 4 SCC 158]. The identity of the victim is required to be changed for her protection. Care, support and shelter is to be provided to runaway children. Co-ordination amongst Police and NGOs (NGO & Police partnership) in all jurisdictions has gone a long way in alleviating damage to the psyche of the victims.

Prosecution of cases of trafficked victims must be initiated by surprise raids on brothels and hotels [See: *Prerna vs. State of Maharashtra*, (2003) 2 MLJ 105 & Order dated 20th October 2006 in Criminal Writ Petition No.1694 of 2003]. This requires pro-active intelligence and Police/ NGO partnership at the grassroots level. A small requirement, though seemingly innocuous but which lends considerable support to the victims, is to let her collect her child, her documents and her movable property at the time of the raid/rescue, be it otherwise paltry. Arrest of the brothel keeper, hotel owner and customers should be made at the same time as the rescue of the victims. [Ibid] Production of the victims is essentially to be before the Child Welfare Committee (CWC) under the Juvenile Justice Act so that the victims could be directed to a counselor for interview rather than Police Officer for interrogation. [Ibid]

Counseling includes or must be followed by medical aid, legal aid and shelter for the victim. The production before the Magistrate by the Police Officer must be only in respect of the brothel keeper, hotel owner and customers; it is they who are the accused in the case – ‘sex workers’ are the victims; not the accused. Sensitization and training of Police Officers and Prosecutors in this exercise is an effort in the right direction.

The application for bail in these cases deserves a special and separate note. It is the accused who would apply for bail. Once the Court is satisfied that the accused is a trafficker [See: *Shaikh Jaffar vs. State of Maharashtra*, 2008 Criminal Law Journal 2413] bail should not be granted. Bail application is invariably made jointly on behalf of both the brothel keeper as well as the sex worker in cases of human trafficking. This is an entirely misconceived procedure. The Supreme Court has deprecated this practice. [See: *Guria, Swayam Sevi Sansthan vs. State of U.P.* Cr. Appeal No. 1373 / 09 in SLP Cri. No. 2585 / 06]. The victims are not required to be released on bail. The accused do not deserve bail. The strongest case against bail that could ever be made out is in the case of an accused of a trafficked victim. Article 23 of Constitution of India bestows the highest right to a victim – the fundamental right which prohibits trafficking. It is, therefore, the constitutional right of the victim not to be trafficked. When a victim is sought to be trafficked his/her fundamental constitutional right is discounted. It is inconceivable how a person accused of an offence which blatantly violates the fundamental right of the victim would be entitled to his own personal liberty. This fact itself must satisfy all courts that a case for bail of the trafficker is not made out. The repetitious nature of the crime, inasmuch as the accused resorts to the crime as his / her career option and adopts a career in crime is the other reason not to bestow upon him the undeserved liberty. The intimidation and threat to the victim, both in letter and spirit, actually and emotionally is the third reason for a case against total rejection of bail.

THE CONCEPT OF FAIRNESS TO THE ACCUSED MUST NOT BE STRETCHED TILL IT IS NARROWED TO A FILAMENT: JUSTICE BENJAMIN CARDOZO

This is, however, not the order of the day. That is because the entire judicial mind set revolves upon the person accused of the crime; the suspect, the detainees, the accused. The trafficked victims, belonging as they do to the lowest economic rung of the Society, cannot shout and there is none to hear. The accused, on the other hand, has legal representation and the judicial sympathy derived through decades of jurisprudence relating to human rights which revolve only around him. Hence, the long arm of the law reaching the accused in restricting his liberty is as much required as the arm of the law which is now required to be lengthened and strengthened to grant the victim the solace and security he or she deserves. Both are two sides of the same coin [See: *Sucha Singh & Anor. vs. State of Punjab*, AIR 2003 SC 3617].

BE CRUEL TO BE KIND: WILLIAM SHAKESPEARE

Act I of the Drama would come to a close when the victim is protected and the accused is arrested. This would result not only in justice in the case in which the criminal machinery is set in motion, but would augur for the benefit of the other victims who could be spared the agony and the injury of trafficking by the accused being brought out of the crime circle.

TO PARDON THE OPPRESSOR IS TO DEAL HARSHLY WITH THE OPPRESSED

The next stage in the prosecution of the offence of such victim is to meet the needs of the mullah after the man is taken care of. The legislation in this regard is near perfect. Sealing the brothel or hotel where the crime took place is the unique provision of the anti-trafficking law in India (ITPA). Attaching and confiscating the other properties of the brothel keepers and

hotel owners is the next step. Though no effort is made in that direction and no properties are usually ascertained, an honest and dedicated interrogation of the accused would bring to light many a property that the brothel keeper may have amassed. Sealing the venue of the offence takes the steam out of offender. The repetitious nature of the offence ceases. Capital outlay which is required is difficult to be procured for the second time. This, itself results in a siesta in the criminal activity. It would come to the rescue of many a prospective victim.

Perhaps the only statutory provision which prohibits any appeal or stay being granted by a higher Court [See: Section 18(3) of ITPA] is upon the order of sealing the property of the trafficker. A salutary provision contained in Criminal Law Amendment Ordinance, 1944 relating to confiscating sealed and attached properties can be aptly used in case of sealed immovable property of the trafficker. The law of presumptive evidence contained in Section 114(a) of the Evidence Act can be usefully relied upon in case of movable properties like Bank Accounts and other investments in the name of the trafficker for being brought within the purview of the sealing provision. [See: *State of Maharashtra vs. Tapas D. Neogy*, (1999) 7 SCC 685, 695.

JUSTICE WITHOUT FORCE IS POWERLESS; FORCE WITHOUT JUSTICE IS TYRANNY.

It is for this special unique requirement of protection of the basic human rights of victims of trafficking cases that the law (ITPA) provides for Special Courts (Section 22), Special Police Officers [Section 13(1)], Trafficking Police Officers [Section 13(4)], Correctional Service Officers (Section 21) and NGOs and as per the latest practice, "Tourism Police."

The recommendations required in the future are for the **legislature**, **executive** as well as the **judiciary**.

STAND UP AND BE COUNTED

Sprucing up the legislation begins with the vocabulary. Prostitute and sex workers are required to be called victims. They are required to be rescued; not rounded up. Statutory legal aid is to be provided to the victims so that there is separate legal representation for the victims right from the stage of their initial appearance before a Judicial Authority. Anonymity of the victim is required to be accompanied by the publicity for the accused trafficker. Section 8 of ITPA and Section 110 of the Bombay Police Act (BPA) require to be consigned to the shelves.

The executive needs to set up an infrastructure in shelter homes for victims, their protection and rehabilitation. Risk assessment for welfare of the victims, drawing the profile of the victims and traffickers in computerized national data base, setting up of victim / witness protection groups, affording them para-legal training preparatory for their trials, setting up networking agencies between the Police, Prosecutors and the Counselors (NGOs) are the areas in which more work is required to be done if the human rights of these victims are to be granted to them as per the enjoinder of our Constitution.

Victims of trafficking between two countries – the source, transit and destination countries – require surveillance upon the conspirators, abettors, financiers and transporters. It is to meet this special exigency of the high profile crime that the legislation provides for specialized trafficking officers (CBI). The push-back Policy adopted across borders has resulted in repetitive crimes and repetitive violence upon the victims. Hence, repatriation across the border can be only after assured safety of the victim. This requires bilateral understanding and agreement between the countries, collaboration with NGOs and inter-departmental working groups.

The judiciary which comes at the far end of the ladder can play its part in prosecution of the crime and punishment of the offender, though not in prevention or protection of the victims. The application of the Convention on the Rights of the Child which is the parent universal legislation is the base upon which the sensitivity required of the judiciary lies. The very first stage of judicial sensitivity is at the stage of remand before the Magistrate. The distinction between the accused and the victim is the first step in understanding the seminal requirement of this unique offence. Once the victim and the accused are treated differently, as they respectively deserve, the next step is in the verification and identification of the victims. The sensitized Judicial Officer must understand that the victims have been indoctrinated into blatantly lying about their age – the minors, who are seemingly so, are made to state that they are well past the protective minority age. Hence, a Judicial Officer must understand the distinction between the possible minority which is seen *ex-facie* and the proved minority which can be verified only from a birth certificate which documentary evidence is rarely available in cases of such victims. Their age can be determined upon their birth certificate and upon their evidence of minority [See: *Ravinder Singh Gorkhi vs. State of U.P.*, (2006) 5 SCC 584 and *Kakali Mahato vs. State of W.B.*, 2008 Cri.L.J. 362]. There are ‘verified minors’ who are below 18 years of age and ‘verified majors’ who are above that age. A large number of victims are ‘possible minors.’ All those victims deserve care and protection. They cannot be ‘released on bail.’ They cannot be interrogated by the Police. They could not have been ‘rounded up’ and produced before the Magistrate. They are not accused; they are victims. Their human rights have been violated by the accused who are also produced before the Magistrate alongside the victims. It is, therefore, that only those accused, who are accused of the offence of trafficking and who require to be arrested, require making the application for bail and it is, therefore, that bail to a trafficker must be an exception rather than a rule. A salutary requirement in a Magistrate’s Court is a list of the NGOs or Social workers in the local area to whom the victims may be directed and whom the victims may look upon for solace and shelter. Once the emergent emotional needs of the victim are satisfied, the rehabilitation process begins. He or She is required to be rehabilitated not only economically but emotionally. He or She is required to be prepared for the trial. He or She is required to stand on his or her own feet. The emotional support by the NGOs goes a long way in a victim representation. The victim representation, therefore, is not only a representation by the Legal Officer in the trial. It extends to the social worker who may have gained his or her confidence to be present during the trial – and it is for the Judge to see that these necessities are met.

The actual trial merits a fine blend of infrastructure as well as sensitivity. Infrastructure of the kind stated above is provided in some western countries. However, a lot can be achieved even through sensitivity alone, which works on zero budget. The holding of the trial ‘*in chambers*’ and ‘*in camera*’ is the first step in demonstrating sensitivity. The Judicial Officer sits across the table from the victim. He is bereft of his intimidating uniform. He de-robes in his chamber. He calls in the victim and places her or him directly opposite him at the same level. He then calls in the Prosecutor as well as Defence Advocate. They flank the victim. The victim’s mother, friend or the social worker is allowed in the chamber. Lawyer of the victim is also allowed to represent him or her. The Police Officer remains at the door. Only a Typist or Computer Operator need be present to record his or her testimony. The accused is brought in and kept behind the victim. Voices are automatically lowered. The questioning is automatically more humane. The victim has emotional support. The accused gets a fair trial. He or she can hear the testimony. He or she is available for identification if and when required. The identification can come at the fag end of the examination-in-chief, till which time the victim would not even have known of the presence of the accused. In cases of extreme torment identification of the Accused maybe satisfied upon the testimony of his

description avoiding direct identification by pointing out the Accused [See: *Sakshi vs. Union of India & ors.*, AIR 2004 SC 3566, *Sudesh Jakhu vs. KCJ* 1998 Cri.L.J. 2428 and *State of Punjab vs. Gurmit Singh*, 1996 2 SCC 384]. The questions in cross-examination may not be allowed to be direct. They may be rooted through the Judge in the language the victim understands unless it is the language of the Court that he or she does. Certain intervals and rest times can be provided, if merited and when the victim shows signs of exhaustion or being overwhelmed by his or her memories of the story he or she may be narrating. Abusive, menacing and intimidating questions in cross-examination can be filtered by the Judge (As above). Since he or she is not an accomplice, no corroboration of such evidence is required. [See: *Vijayendra Kumar vs. State of Bihar & Anor.*, 2005 (1) Crimes 35 (SC)]. Disclosure of defence of the Accused is of special note once the trial is over. Inference may be drawn against the Accused for not having explained the circumstances in the evidence put to him [See: *Vishnu alias Undrya vs. State of Maharashtra*, (2006) 1 SCC 283].

This scenario goes beyond an ‘*in camera*’ trial. A trial in camera as is popularly understood ousts the outsiders and the onlookers. These are not persons who intimidate the victim. The victim is intimidated essentially by the judge, the prosecutor, the defence advocate and the accused. These are the parties who cannot be done away with in any trial. The victim’s protection, therefore, essentially rules out what is popularly an in camera trial. He or she would have all of the persons whom he/she wants to avoid. This would not lessen his or her trauma. He or she would, in fact, feel more alone. An ‘in chamber’ trial essentially negates the fear of the Judge which comes only from the authority he or she wields and is exhibited from the dress he or she wears. The Judge at the same level as the victim is itself the formula for quick relief. The friend, relative or social worker being close at hand is a further reliever. The matter of lack of knowledge of the presence of the accused is the ultimate relief. It costs no judicial system a penny to put in place such effort at sensitization which the society owes the victim of the highest violence.

Once the offence is proved beyond reasonable doubt, if it does, deterrent punishment by way of sentencing, heavy fine, and compensation is the essence of the sentencing policy in an offence of such a heinous nature. The sentencing policy should reflect the conscience of the society [See: *State of U.P. vs. Kishan*, 2005 (1) Crimes 40 (SC), *Ramesh alias Lalya Anand Jagtap vs. State of Maharashtra*, 2001 Cri. L.J. 1579 (Bombay), *Sucha Singh & anr. vs. State of Punjab*, AIR 2003 SC 3617, *State of Karnataka vs. Krishnappa*, AIR 2000 SC 1470, and *Kamal Kishore, etc. vs. State of Himachal Pradesh*, AIR 2000 SC 1920].

PUNISHMENT SHOULD BE LIKE DEATH – WHICH SPARES NO ONE.

Rehabilitation of victims rather than their release or repatriation in the same hands is a must. Rehabilitation of the victim must follow the punishment of the offender. Given the time that the judicial system takes, the victim would be on his or her way to rehabilitation by the time he/she presents himself of herself in the trial. Though he or she is not brought to trial, he/she is an essential component of it. His or her protection as a victim and witness before and after the trial, therefore, follows as a matter of corollary and is encapsulated in the rehabilitation effort and process.

LIBERATION IS NOT DELIVERANCE: VICTOR HUGO

Victimology is the most neglected aspect of our criminal system. Contained as it does in victim protection, victim support, victim participation and victim representation, it requires a new approach to old thinking. It requires a change of mindset. It calls for attitudinal change with or without legislative amendments. It is the most salutary right of the victim who wants

to bring the offender to justice. It has woefully fallen short in case of child victims of trafficking or sexual violence, women victims of dowry death and trafficking of the male child in cases involving pornography and paedophilia.

THE TRUE TEST OF CIVILIZATION IS HOW THE SOCIETY TREATS ITS MOST UNPRIVILEGED MEMBERS.

The need of the hour is, therefore, a synergy of all the stake-holders – parents, teachers, community (including diverse groups such as artists and inter-religious forums), police, panchayat, NGOs, prosecution, government, media, corporates, industrialists and the youth. The holistic approach to the solution of the problem would run through the stages of prevention, protection, preparation, prosecution, participation, until punishment and parole.

"YOUR ATTITUDE DETERMINES YOUR ALTITUDE"