

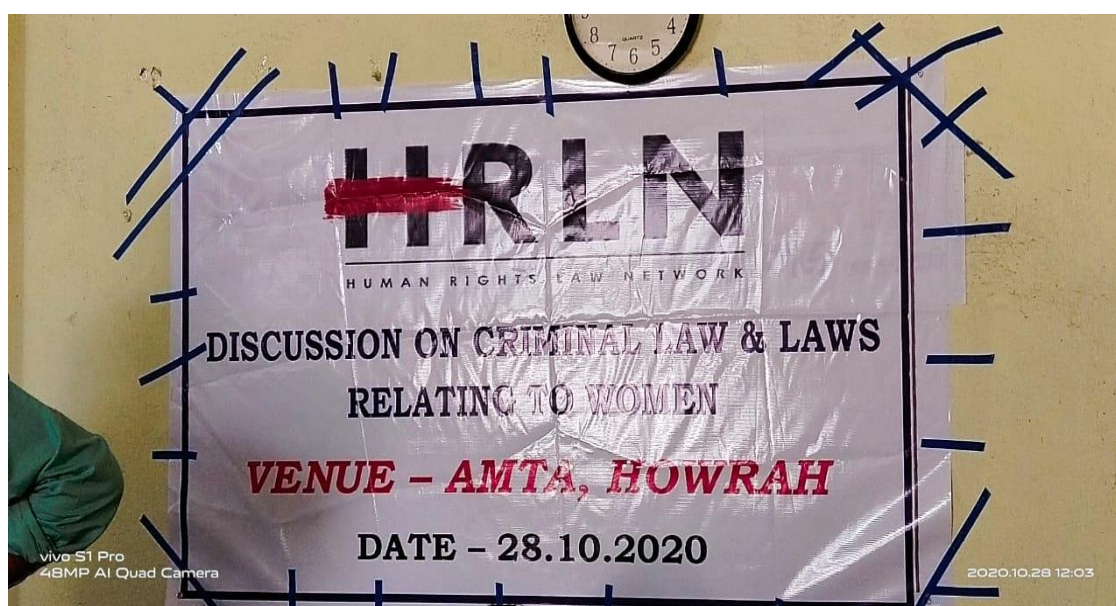
HOWRAH DISTRICT MEETING

Date: 28.10.2020

Time: 11.00am-04.30pm

Reporting by: Piyasha Das

Edited By: Venkatesh Kodukula



Discussion on Criminal law and laws related to Women

SCHEDULE FOR MEETING

Time	Session	Speaker
11- 11.30	Registration	
11.30-12.00	Introducing HRLN	Aparajita Bose, HRLN Kolkata
12.00-1.00	Police Atrocities	Sabyasachi Chatterjee, Advocate
1.00- 1.30	Basics of Criminal Law	Indrajeet Dey, HRLN,
1.30-2.30	Lunch	
2.30- 3.00	Domestic Violence and the law	Sandipan Das, HRLN, Kushal Das, HRLN
3.00- 3.30	Practical approach and criminal law in daily life	Anakani Biswas @ Ankan, HRLN, Pintu Karar, HRLN
3.30-4.30	Personal counselling session and interaction	Team HRLN

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INTRODUCTION

The Constitution of India provides for a federal system wherein powers are divided between the central, state, and local governments. The demarcation of powers is provided in Schedule VII read with Article 246 of the Constitution. Powers are divided into three lists:

1. The Union List: the Union Parliament has exclusive power to make laws with respect to the matters enumerated within this list.
2. The State List: State Legislatures have the exclusive power to make laws with respect to the matters enumerated within this list.
3. Concurrent List: both the Parliament and State Legislatures have the power to make laws with respect to the matters enumerated within this list.

In the event of contradiction between Central and State laws, the Central law will prevail.

Criminal law and criminal procedure fall under the Concurrent List while matters relating to Police and Prisons fall under the State List. The laws that govern criminal law in India are the Indian Penal Code, 1860 (IPC) and the Criminal Procedure Code, 1974 (CrPC). The IPC provides for the substantive law to be followed in case a crime has been committed. The CrPC provides for the procedures to be followed during investigation and trial by the police and courts.

There exist specific courts for criminal trials to held called Sessions Courts at the District level. India has adopted the adversarial system of legal procedure wherein the judge acts as a neutral party and the case is argued by the prosecutor suing the plaintiff and defense attorney who defends their plaintiff. One major distinction between India and other common law countries is that it does not follow the jury system.

“The Semantic meaning of „crime against women“ is direct or indirect physical or mental cruelty to women. Crimes which are „directed specifically against women“ and in which „only women are victims“ are characterized as „Crime Against Women“. It is equally important to clarify the concept of „Violence“ against women. Violence is also known as abuse and includes any sort of physical aggression or misbehaves. When violence is committed at home it becomes domestic violence and involves family members such as children, spouse, parents or servants. Domestic violence may involve different means such as hitting, kicking, biting, shoving, and restraining, throwing objects. In broad terms, it includes threats, sexual abuse, emotional abuse, controlling or domineering, intimidation, stalking, passive/covert abuse and economic deprivation, rape, abduction, kidnapping, murder (all cases of criminal violence, dowry death, wife battering, sexual abuse, maltreatment of a widow and for an elderly women (all cases of domestic violence) and eve-teasing, forcing wife/daughter-in-law to go for feticide, forcing a young widow to commit sati, etc (all cases of social violence), are issues which affect a large section of society.

SPEAKERS SESSION

Speaker 1- Mr. Sabyasachi Chatterjee

The speaker commenced the meeting with a welcome note. He discussed briefly about the deeds and initiatives taken by HRLN across country and also pertinently mentions about the Founder Director of HRLN, Mr. Colin Gonsalves and the cases conducted by him before the Hon'ble Supreme Court and Hon'ble High Court at Delhi.

The speaker discussed the matters related to the Police atrocities upon people. He mentioned and that two journalists of a local television channel of West Bengal were recently arrested by the police, allegedly for extortion. The police had arrested Shafikul Islam who heads the channel, and Suraj Ali Khan who was a reporter there, on July 2, 2020. As per report the police had barged into his home, force entry through the roof door, before arresting him. He had been with his family at the time as they were covering on the misappropriation of relief funds that were intended for the families of those affected by Cyclone Amphan. Shafikul Islam was granted bail from the High Court for two cases. However, this case being more recent, he had been unable to visit the court.

Thereafter he mentioned the atrocities upon the woman in the different sectors of the society. He discussed briefly in the legal aspect relating to the rape cases happening on different parts of the Country and he slapped the social system of "Patriarchy" and how it is poisoning the mentality of society. He also criticized the institution "Police" that how the Police used to let people to use the law as a tool of misuse. He shared his observation that how the police is being atrocious upon people mis-utilizing the provisions laid down in the NDPS Act, The Immoral Traffic (Prevention) Act, 1956 etc. It is also an observation from his view that the most genuine cases of 'Harassment of a Woman' (S. 498A of IPC) was enlightened a rare in number.

He added also that It must not be forgotten that the ethos of the democratic Indian society is that the law enforcement agencies are for the benefit of the people and not vice versa. It is imperative to subside the growing tensions between the need for safeguards by the police and from the police. Both order and liberty are essential, and when this balance is displaced, a need for legislative intervention arises. To resolve this growing crisis and to bring the population to par with the police officials with respect to the power and knowledge that they wield, sufficient sensitization of both the police as well as the people, coupled with the need for a presumption of custodial violence, is crucial.

In the topic Laws relating to woman, the speaker emphasized that a woman is no one's private property. He further added that the definition of 'domestic relationship' is broad enough to cover all sorts of household arrangements; for example, live-in relationships when the couple is not

married. The inclusion of this, as well as relationships which fall under categories of fraudulent or bigamous, was a pioneering step. With regard to live-in relationships itself, in a distinctive judgment passed in the case of *Bharata Matha & Ors v. R. Vijaya Renganathan & Ors*, it was decided that a child born out of a live-in relationship is entitled to property (the property owned by the parents, but not ancestral property). This means that a woman and her child in a live-in relationship cannot be threatened with economic abuse. Of course, although this has more relevance to property ownership and the Hindu Marriage Act, it is gratifying to know that children born out relationships which are not akin to marriage can also have property rights. He also further covered that how the activist of LGBTQ Community also is being falsely implicated in the cases for the atrocious activities by the Police.

Speaker 2- Ankan Biswas

The speaker mentioned how to implicate and use the law in accordance with the Constitution of India as a 'tool' to get Justice judicially and socially. He discussed briefly regarding remedies through of five categories of Writ. Appraising the constitutional remedies he intimated people that for getting justice, the lower judiciary is not the ultimate limit. Fundamental Rights are contained in Part III of the Indian Constitution including the right to equality, right to life and liberty etc. Merely providing for Fundamental Rights is not sufficient. It is essential that these Fundamental Rights are protected and enforced as well. To protect Fundamental Rights the Indian Constitution, under Articles 32 and 226, provides the right to approach the Supreme Court or High Court, respectively, to any person whose Fundamental Right has been violated. At the same time, the two articles give the right to the highest courts of the country to issue writs in order to enforce Fundamental Rights.

Being a victim of a falsely implicated criminal case which is presently conducted before the Hon'ble High Court at Calcutta, he further mentioned that it is common in nature for the human rights workers to be falsely implicated in various criminal cases by the atrocious activities of the Police. He further provided the input that the provision of revisions of such cases is also there and utilizing those provisions are important. He finally imposed on that the Rule of Law and Administration of Justice should be established.

Speaker 3- Mr. Indrajeet Dey

The speaker discussed and criticized the criminal law in the present context briefly. He discussed on the rights of both the Complainant and Accused. He put his valuable inputs on how to register a First investigation Report. He pertinently mentioned that it is important to establish date, time and place of an incident to register an FIR. He mentioned that A Constitution Bench of the Supreme Court in Lalita Kumari v. Govt. of U.P [W.P.(CrI) No; 68/2008] held that under Sec. 154 of Code of Criminal Procedure, if information provide discloses the commission of a cognizable offence, the registration of an FIR is mandatory and no preliminary inquiry is permissible in such a situation. However, if the information fails to disclose a cognizable offence yet indicates that an enquiry id required, a preliminary inquiry may be conducted to understand and analyze where there is a cognizable offence or not. The Supreme Court issued the following guidelines regarding the registration of FIR:

- If a cognizable offence is disclosed via the information provided, Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
- If the information fails to disclose a cognizable offence yet indicates that an inquiry is required, a preliminary inquiry may be conducted to understand and analyze whether a cognizable offence has been disclosed or not.
- If the preliminary inquiry discloses the commission of any cognizable offense, it is mandatory to register an FIR. However, in cases where the inquiry closes the complaint, the first informant must be supplied with a copy of the entry of such closure within one week. The reasons of the closing the complaint must be disclosed to the first informant.
- A police officer cannot avoid his/her duty to register a cognizable offence disclosed by an informant. If there is an officer who makes an error by not registering an FIR based on the information received by him/her that discloses a cognizable offence, action must be taken against the police officer.
- The scope and aim of the preliminary inquiry is to ascertain whether the information provided by the informant reveals a cognizable offence or not, not to check the veracity and authenticity of the complaint.
- The type and method of the preliminary inquiry shall be bases on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:-
 - (a) Matrimonial disputes/ family disputes

- (b) Commercial offences
 - (c) Medical negligence cases
 - (d) Corruption cases
 - (e) Cases where there is abnormal delay/laches in initiating criminal prosecution,
- While protecting and keeping in mind the rights of both the complainant and accused, the preliminary inquiry shall not last for more than 7 days. If there is any delay, the causes of the delay shall be recorded in the General Diary entry of the police officer.
 - Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, it has been directed that all information that related to cognizable offences, whether leading to a preliminary inquiry or the registration of an FIR, be mandatorily and meticulously reflected in the Diary.

In the topic of Laws relating to the woman, the speaker mentioned that Domestic Violence includes causing any harm or injury to the safety, life, health or well being of the aggrieved woman by committing any physical, sexual, verbal or economic abuse. Moreover, it also includes any injury or harm done to the aggrieved woman or her relative with a view to coerce her or any person, to meet unlawful dowry demand. Threats to commit violence are also covered under this definition. He ended up with The DV Act which is applicable to all women, irrespective of their marital status, age or religious beliefs. The broad definition of “domestic violence” under the DV Act protects the rights of women guaranteed to them under the Indian Constitution, to achieve a violence free home.

Carrying upon the same topic, he pointed out that in the last 20 years of criminal law reform a common argument made against laws relating to violence against women in India has been that women misuse these laws. The police, civil society, politicians and even judges of the High Courts and Supreme Court have offered these arguments of the "misuse" of laws vehemently. The allegation of misuse is made particularly against Sec 498A of the IPC and against the offence of dowry death in Sec 304B. One such view was expressed by former Justice K T Thomas in his article titled 'Women and the Law', which appeared in The Hindu. The 2003 Malimath Committee report on reforms in the criminal justice system also notes, significantly, that there is a "general complaint" that Sec 498A of the IPC is subject to gross misuse; it uses this as justification to suggest an amendment to the provision, but provides no data to indicate how frequently the section is being misused. It is important therefore that such "arguments" are

responded to, so as to put forth a clearer picture of the present factual status of the effect of several criminal laws enacted to protect women.

His further input was Domestic violence and abuse by spouses and family members are complex behaviours and the social organization of courts, the police and legal cultures systematically tend to devalue domestic violence cases. Sec 498A was introduced in the IPC in 1983 and the reforms of the past 20 years have not been adequately evaluated at all by the government with respect to their deterrence goals, despite the institutionalization of law and policy to criminalise domestic violence. A program of research and development is urgently required to advance the current state of knowledge on the effects of legal sanctions on domestic violence. The narrow or perhaps almost negligible study done by law enforcement agencies about the deterrent effects of legal sanctions for domestic violence stands in high contrast with the extensive efforts of activists, victim advocates and criminal justice practitioners in mobilizing law and shaping policy to stop domestic violence. It is important to do these studies to correct the general misconceptions that women are misusing the law by filing false cases against their husbands and in-laws in order to harass them and get them convicted. The perspective of the state and its agencies needs to change from that of protecting the husbands and in-laws against potential "misuse" of the laws of domestic violence to that of implementing their real purpose – to recognize that such violence is a crime and protect women who have the courage to file complaints against their abusers.

Speaker 4- Mr. Pintu Kumar Karar

The speaker started his speech with the distinguishing the General Diary Entry and the First Information Report and the relevancy of recording the statement under Section 161 and Section 164 of the Criminal Procedure Code 1973.

He introduced Police atrocities in accordance with the recent Citizenship Amendment Act. He mentioned that the right to protest is a cornerstone of a constitutional democracy and is safeguarded as a fundamental right under Articles 19(1)(a) and 19(1)(b) of the Constitution of India. The right of all people to express their ideas and opinions through the medium of protest is also guaranteed through a number of core international human rights provisions, including the right to free expression under Article 19 of the ICCPR (International Covenant on Civil and Political Rights), which has been ratified by India. He added that as a student of law lawyers are taught the importance of following due procedure, the actions of the law enforcement authorities authorized by the state are completely out of line and unwarranted and disproportionate. The resulting damage of life and property at the site of these universities has forced them to leave their premises and stop academic activities. In a healthy democratic environment, dissent is a necessary component. As a student of law lawyers are aware of how valuable such expression and the constitutional protections bestowed upon for the same.

Further he discussed on the topic Laws relating to woman emphasized that the Indian Courts had been using the provisions laid down in the section 498A IPC to safeguard the women from facing the cruelty faced by them at their matrimonial home. According to his experience, he shared that 9 out of 10 of the cases are always related to dowry, wherein the woman is continuously threatened for want of more money and property which if remains unfulfilled , the married woman is tortured, threatened, abused- both physically and verbally and harassed. Sometimes, dowry may not be the cause but the woman for several reasons like her complexion or family status is tortured to death. In many judgments, the court has not considered mental cruelty caused to the woman but has concentrated only on any sign of physical cruelty. If evidence does not show that the woman was physically harassed, then the court does not look into the case. The said Section only provides for the remedy to woman only and these days it is being used as a strong weapon by the woman. It is a highly debatable issue these days, if this problem is not solved by legislation it may become a bane for the society. People's trust over the judiciary will come to an end. So it's high time that this Section be amended and some changes like mentioned above should be brought up in this law.

Speaker 5- Mr. Kushal Das

The speaker discussed regarding application of the Domestic Violence Act and its remedies. He mentioned that D.V. Act provides a remedy in civil law for the protection of victims of the domestic violence as noted in the statement of object and reasons. He further initiated on the basic objective in enacting the Act is to secure various rights to a woman living in matrimony or in a relationship akin to matrimony, or any domestic relationship. Domestic violence, is, per se, not a criminal offence but is defined extensively and comprehensively to include various conditions. The woman exposed to such domestic violence is given the right to move to Court for any of the reliefs outlined in Section 12 through either a comprehensive proceeding, claiming maintenance, right to residence, compensation etc. or even move to Court seized of any other pending proceeding, such as divorce and maintenance etc.

He further discussed that Section 17 of the D.V. Act has, for the first time, enacted a right to residence in favor of such women. The Act being a beneficial one, the Court should adopt a construction to its provisions which advances the parliamentary intention rather than confining it. If the latter course is adopted the result would be to defeat the object of the law. As noticed earlier, domestic violence is per se not an offence but its incidence or occurrence enables a woman to approach the Court for more than one relief. The Court is empowered to grant ex-parte relief and ensure its compliance, including by directing the police authorities to implement the order, particularly those relating to residence etc.

Speaker 6- Mrs. Aparajita Bose

The speaker shared her aspiring story of her case with the audience. She also emphasized that every lady should be educationally and economically required to be stronger. She also introduced the audience with the kind of work that HRLN does and the help that it provides for everyone in need in the society.

Speaker 7- Mrs. Sanchayita Jadav Dey

The speaker shared her horrifying case of Acid Attack upon her in the year 2014. She spoke about the acid attacks upon irrespective of gender and sex. She further added that Section 326 A IPC was not added in her case and how it was induced later by the pressure of the lawyers. She intimated the audience regarding the compensation scheme for the victims. She intimated further on the different initiatives taken by HRLN for the Acid Attack survivors.

CONCLUSION

Violence against women in its various forms is a violation of human rights, the very nature of which deprives women of their ability to enjoy fundamental freedoms. It is a serious obstacle to equality between women and men. Violence against women remains hidden in the culture of silence. The causes and factors of violence against women include entrenched unequal power relations between men and women that foster violence and its acceptability, aggravated by cultural and social norms, economic dependency, poverty and alcohol consumption etc. In India, where the culprits are largely known to the victim, the social and economic "costs" of reporting such crimes are high. General economic dependence on their families and fear of social ostracization act as significant disincentives for a woman to report any kind of sexual violence or abuse. Therefore the actual incidence of violence against women in India is probably much higher than the data suggests and because of this most of the women's are experiencing violence and living its consequences There is need to break the silence and ensure that violence against women is not just a woman's issue but primarily a political, social, economic and cultural issue that concerns men as well. While men represent the majority of perpetrators of violence against women, they have an important role to play in preventing and combating violence against women. Because of their role models as fathers, husbands, brothers, and sons, men and young boys should be part of the solution and thus be involved in eliminating violence against women. If men felt involved, they should help promote changes in attitudes among other men. It is not women or men working alone to end gender-based violence that yields the best results. It is the partnership between them that has the greatest impact and reach.

INTERACTIVE SESSION

An interactive session was held with the participants. In this session the participants raised various questions which were answered by the advocates of HRLN.

Annexure A

Registration Sheet
 'Discussion on the Use of Law for Women's Justice & Criminal Law'
 Venue - AMTA, HOWRAH
 Date - 28/10/2020

Serial No	Name	Mobile No	Organization	Email-Id	Signature
1	Huqum Mulla	7865008303			
2	LALU PANDIT	9933956459		lalu.pandit@gmail.com	Lalu Pandit
3	MANOJ SHANTRA	6297651802		manojsh.santra@gmail.com	Manoj Sh. Santra
4	SUNON MONDAL	8599634423		mondal.sunon@gmail.com	Sunon Mondal
5	Masud Mulla	8348363246		Masud.Mulla@gmail.com	Masud Mulla
6	Somnath Chakraborty	7692109225			Somnath Chakraborty
7	Somnath Chakraborty	6207373003		somnathchakraborty2019@gmail.com	Somnath Chakraborty
8	Rakesh Debi	629122791			Rakesh Debi

Serial No	Name	Mobile No	Organization	Email-Id	Signature
9	Souven Mondal	6235913602		ad.justiceven@amta.org	Souven Mondal
10	Prady Sankhyan	9479228308			Prady Sankhyan
11	Debasish Das	740768747		debasish.das2000@gmail.com	Debasish Das
12	Abir Kumar Das	9933879227			Abir
13	SK Nishat	86375238			SK Nishat
14	Sabir Sha	639181704			Sabir Sha
15	Soham Saha	769922696			Soham Saha
16	Shikha Das	814671569		shikha.manal@gmail.com	Shikha
17	Sk Sandil	7001971841			Sk Sandil
18	Sk Nishat	5116757169			Nishat
19	Sk Nishat	6296772787			Sk Nishat
20	Rishi Das	7592720948			Rishi

Serial No	Name	Mobile No	Organization	Email-Id	Signature
21	Geetha Lakshmi	9775074846			Geetha Lakshmi
22	Geetha Lakshmi	9333250007			Geetha Lakshmi
23	K H	9091408023			K H
24	Balraj Kanti Ghosh	9143683934			Balraj
15	Carsten Giese	8918473755			Carsten Giese
26	Saroj Rajan Bala	9133476779			Saroj
27	Indira Jyoti	7804772295	HRLN	delokumar@hrln.org	Indira
28	Pooja Chakravorty	8014492810			Pooja Chakravorty
29	Indira Jyoti	7804772295			Indira Jyoti
30	Indira Jyoti	7804772295			Indira Jyoti
31	Subho Nandy	8588874553			Subho Nandy
32	Ankan Bhowmik	9875455162	HRLN	advocateanika@gmail.com	Ankan

33	Priya Kishor	9432483805	HRLN	adepriyankishor@gmail.com	Priya Kishor
34	Aparajita Bose	8697204235		apara@hrln.org	Aparajita Bose
35	Kushal Das	9800856720	HRLN	das.kushal491@gmail.com	Kushal Das
36	Sanchita Jindal	8777646606		Sanchita.jindal@gmail.com	Sanchita Jindal
37	Jyoti Chakravorty	907260150		jyoti@gmail.com	Jyoti
38	Mohammanjon Chatterjee	7602636742			Mohammanjon Chatterjee
39	Anande Nandi	9635119797			Anande Nandi
40	Indira Jyoti	7804772295			Indira Jyoti
41	Indira Jyoti	7804772295			Indira Jyoti
42	Indira Jyoti	7804772295			Indira Jyoti
43	Indira Jyoti	7804772295			Indira Jyoti
44	Gandharvi Malika	8017453121		gandharvimalika@gmail.com	Gandharvi Malika
45	Uday Shukla	9830966944			Uday Shukla
46	Sandhya Das	9038121315	HRLN	sandhya.das@hrln.org	Sandhya Das

Annexure B





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48MP AI Quad Camera

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