

Sentencing Policy in cases of Crimes Against Women & Children



Roshan Dalvi
Former Judge
Bombay High Court

Crimes against women

Female Foeticide

Trafficking

Dowry Death

R
a
p
e

I
n
c
e
s
t

Domestic Violence

Sodomy

Outraging Modesty

Aggravated Rape

Sexual Abuse

Crimes against children

Infanticide

Child Traffic

Child Labour

Female Foeticide

Aggravated Rape

Sodomy

Outraging Modesty

Pornography

incest

Paedophilia

Sexual Abuse

Rape

Crimes against children under POCSO

Sexual Assault

Penetrative Sexual Assault

**Aggravated Penetrative
Sexual Assault**

Sexual Harassment

Aggravated Sexual Assault

P
o
r
n
o
g
r
a
p
h
y

The Two Tests

- Lesser numbers, Greater attention
 - At Home
 - In School
 - In Countries
 - In Courts
- The 3 Rs
 - Recognize
 - Resist
 - Report

**Cure the disease and
kill the patient ?**

Impact of abuse / violence

- Destroying psychology
- Devastating life
- Bitter shock
- Disgust
- Disbelief
- Suspicion
- Helplessness
- Frustration
- Anxiety
- Loss of security
- Feeling of guilt
- Fear of disclosure
- Confusion

*I hold that the more helpless a creature,
the more entitled it is to protection by men,
from the cruelty of men – Mahatma Gandhi*

Re-victimization / Secondary victimization

- Police investigation
- Medical examination
- Court trial - Order of re-examination of witnesses
“India’s Other Daughter re-victimized by law(pla)yers”

Justice without force is powerless;
Force without Justice is tyranny.

Interpretation / Precedents

- For degree of doubt
 - AIR 2003 SC 3617 – Reasonable doubt is not an imaginary, trivial or possible doubt, but the doubt based upon reason and common sense
- For sentencing policy
 - 2005 (1) Crimes 40 SC – Sentencing policy should be such as to reflect the conscience of the society
- For extent of punishment
 - 2001 Cr.LJ 1579 (Bom) – Punishment for rape of a 3 year old child should be severe

Be Cruel to be Kind

Interpretation / Precedents

- For reformatory directions
 - AIR 2000 SC 1069 – Psycho therapeutic treatment was ordered for a rapist of a child of 2 years
- For guidelines of lesser punishment
 - AIR 2000 SC 1470 – Significance of adequate and sufficient reasons for lesser punishment explained
- For the test of Justice
 - AIR 2003 SCW 4065 - Held that letting the guilty escape is not doing justice according to law

**To pardon the oppressor
is to deal harshly with the oppressed.**

Stages requiring sensitivity for Sentencing

- The stage of bail
 - Hearing the victim, the accused and the State
- Decision
 - Sentencing
 - Fine
 - Compensation
 - Rehabilitation

Law cannot prevent
what it cannot punish



