KAMLESHWAR SINGH

REPORT

Getting Away with Murder

How Law Courts and Police Fail Victims of Domestic Violence

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WHEN major amendments were introduced to Indian penal law in 1986, activists assumed that the legal loopholes used by perpetrators of domestic violence to escape punishment had been plugged. Two new sections (304B and 498A) were added to the penal code, making punishable violence leading to murder of women within seven years of marriage, as well as harassment by a husband or his relatives leading to suicide. At the same time, the Indian Evidence Act was also amended, shifting the burden of proof for such deaths on the accused, which meant that, contrary to normal practice, the husband and his family would be presumed guilty unless proven innocent.

The experience **of Vimochana,** the leading voluntary organisation working on cases of domestic violence in Bangalore, indicates, however, that the number of cases registered by the police and eventually punished by the courts has not increased.

Vimochana looked at statistics routinely recorded by the Police Crime Records Bureau regarding unnatural deaths of women in Bangalore city. The causes recorded for such deaths are revealing. Almost 64 percent of the unnatural deaths of women in Bangalore in 1997 were the result of burning - "stove bursts" or "kitchen accidents" in police terminology. When victims are differentiated by age, the findings are even more disturbing, particularly when we remember that the amended Article 304B was specifically meant to protect women married for less than seven years, women who are the most prone to domestic violence. **Vimochana** found that around three-fourths of the unnatural deaths in Bangalore were of women between the ages of 18 and 30; most of the victims were also married. When **Vimochana** tried to reconcile these figures with those quoted in police statistics, it discovered that although many unnatural deaths of women fall within the ambit of the new penal sections, the number of cases actually booked as penal offences (generally under the new penal provisions introduced by the amendment) figured as less than 100. This is much lower than the number of unnatural deaths or the number of deaths reportedly caused by burning.

The record of punishment is even more shocking. Each year, only three or four cases end in conviction; the average time in court is about seven years.

It is clear then that amendment of the criminal law has not increased the number of cases booked or the number of convictions against perpetrators of domestic violence. It seems to have only discredited the legal process as an ineffective method of protecting weak citizens within the democratic framework. It has also evoked a backlash against women who invoke the law for physical protection. Complaints are heard with increasing frequency that the new provisions are being "misused" to harm innocent persons. Clearly, the post-amendment scene is as bad as the pre-amendment picture; in some ways, things may even have worsened.

Introspection is now essential on several matters. How effective has the law been and why has it not succeeded? Was it a mistake to lobby for fresh laws instead of creating methods of enforcing existing penal provisions and working to alter the attitudes of policemen, judges and of society itself? Can we say that the law is being "misused" when unnatural deaths are increasing and convictions are decreasing? And if (this is a very big IF) the law is indeed being misused, is it also because the law and the judiciary do not protect women and their families from extortion and harassment?

While providing assistance to individual victims of domestic violence,

Vimochana has gained a frightening insight into how the law is systematically undermined. From the very beginning a process is set in motion to institutionalise the belief that a woman is an inferior being, sent to her marital home with gifts of money and jewels and compelled to "adjust" to the conditions laid down by the spouse and his family, with no hope of seeking the shelter of the law against violence or even death.

Unheard Cries for Help

Vimochana has found, time and again, that women who are subjected to marital violence are unable to approach the police and invoke the provisions of the Indian Penal Code which protect individuals of either sex against physical attack. This is not because the law itself is inadequate. Like all penal codes, the IPC too treats assault, grievous assault and murder as crimes. A gamut of legal provisions (Sections 319 to 322,324,327,329,330 and 351) makes physical violence criminally punishable. If such violence results in death, perpetrators can be convicted for culpable homicide, murder, or death by negligence under sections 299, 300 and 301 respectively. Attempts to commit these offences, abetment, criminal conspiracy, wrongful restraint and confinement are all legally punishable. After the 1986 amendment, cases can also be registered against spouses and families when death (homicidal or suicidal) takes place within seven years of marriage, if there is proof of harassment related to dowry or property.

Despite all this, the police are as unwilling to recognise domestic battering as a crime now as they were before the 1986 amendment. Even when the appearance and condition of the victim clearly indicate that she has been battered, police officials in Bangalore continue to insist that they have no legal authority to register the case. The alibi most frequently used is that the victim has not made a complaint. The police disclaims all responsibility in such cases and takes shelter behind the argument that they are helpless when the battered woman is herself unwilling to come forward.

This, however, is a deliberate misinterpretation of criminal law, which in fact provides for *suo moto* intervention by the police when there is visible evidence that a crime has been committed. Section 156 of the Criminal Procedure Code empowers police officers to register and enquire into cognisable offences without waiting for a specific complaint. Offences listed in the penal code relating to assaults and homicides are cognisable, and the police are bound to register criminal cases when they receive information about the committing of such offences. Even harassment which drives a woman to commit suicide, of the kind covered under section 498A of the IPC, is a cognisable offence. In practice, however, the police never intervene in cases of domestic battering. **Vimochana** has found that even when there is overwhelming evidence of injury and assault, (as for example when a seriously burnt woman is brought to a hospital), the police do not register the information or treat it as a cognisable offence (as required by the law) till the victim actually dies. This means that when death unfortunately occurs, much of the evidence required for nailing the perpetrator is not available.

In the rare cases when complaints are made to the police, complainants are treated with indifference, even active hostility. Section 154 of the Criminal Procedure Code, which prescribes in detail how a complaint should be handled in a police station, is seldom heeded. Under the law, all information initially given regarding the commission of an offence must be written down, read over to the complainant, signed by the complainant and entered in a case diary. A free copy of the document must also be given to the complainant immediately. Everything hinges on this paper, which is called the first information report or FIR. Generally, however, the tendency of the police is to discourage or refuse complaints, record them indifferently or wrongly, and deny copies to complainants.

This happens in cases of domestic battering too. The difference is that in complaints of spousal violence, police go far beyond their legal role and take an active part in inducing complainants to return to violent marital homes by false promises and threats. Refusal to treat domestic violence as a cognisable offence and persuading complainants to "adjust" to violent marital life are a direct result of the attitudes of society as reflected in the police. Since such prejudices have not been addressed, legal provisions have had no impact.

The "Counselling" Diversion

After the amendment of the criminal law, counselling centres have been set up in many police offices to pay special attention to "atrocities against women." They are generally funded by welfare agencies like the Central Social Welfare Board, and are often staffed by women trained in social work. In the beginning, such centres were welcomed and supported by activists. Over time, however, it is clear that they have had several pernicious effects. Counselling centres have today degenerated into a useful mechanism for sidetracking women who invoke the law to protect themselves against domestic battering. Any woman who makes a criminal complaint of spousal violence is routinely referred to the counselling cell. Instead of seriously enquiring into the complaint under the appropriate legal provisions, the cell tries to persuade the complainant not

to break up the marriage and counsels her to "adjust" to domestic harassment. The counselling cell thus ensures that the number of cases of domestic violence is kept under control.

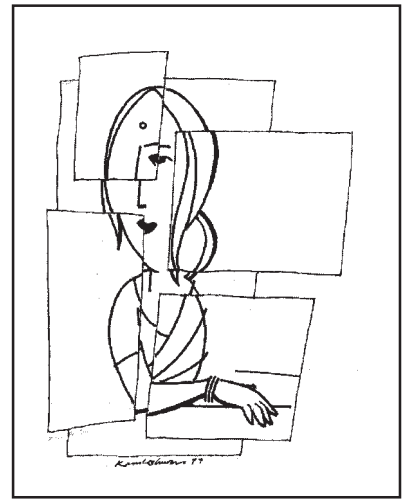
For the police, therefore, referral to counselling is an easy method of underregistering cases which should otherwise be accounted for under sections of the IPC. For the complainant the counselling cell is a heart-rending experience. Given the generally unequal terms of Indian marriages, no woman would willingly admit to breakdown of her marriage and seek outside help under normal circumstances. Going to the police is an extreme step taken by a desperate person. When the law also lets the complainant down and advises her to accept her lot, the last door for escape from violence is shut. Very often the only way out is death - the complainant is murdered or she takes her own life. Counselling centres measure their success by the number of reconciled cases they manage. How many of these women have later ended up in the mortuary is not counted. **Vimochana,** however, has discovered that a very large number of women who have died unnatural deaths had in fact been counselled in centres attached to police stations.

This is not to discredit the large number of committed counsellors and psychiatrists. In Mumbai, a counselling centre run by the Tata Institute of Social Sciences has been in close collaboration with the police for several years. The experience of Bangalore, however, suggests that counselling can be a very critical input with complex consequences. There is no denying that many cases reaching police offices require professional advice and would benefit from easy access to experts. Nonetheless, location of a counselling centre in the shelter of a police office or even blending police action with psychiatric advice can influence the effectiveness of both. A change of heart on the part of a spouse or his family - induced by threats and blandishments - may not be sustained for long. It is essential to maintain a reasonable distance between counselling services and criminal complaints, so there is no attempt to dilute the protection of the law for victims of violence.

There is also the larger question of the role of counselling within our patriarchal setup. In family courts, counselling has been prescribed as a preliminary step in many areas before the law itself is invoked. This, however, has degenerated into a routine formality to be hurried through by parties far beyond the counselling stage of a relationship. Reducing or eliminating such requirements might even offer relief to persons waiting for quick legal decisions. Those voluntarily seeking counselling are in any case free to make their own arrangements outside the courts.

The "Help Lines" Diversion

To offer immediate police assistance to women under the threat of domestic violence, **Vimochana** initially supported the idea of a helpline at the Police Commissioner's office at Bangalore. Once installed, however, the line has been used for counselling instead of police support. The effectiveness of the line is again judged in accordance with the number of reconciled cases, not by the additional number of offences detected or criminal cases registered. Relief to complainants is once more equated with persuading them to return to allegedly violent spouses and their families. With such objectives, it is no wonder that the helpline offers no protection to harassed women. Its sole aim is to dispose of complaints as quickly as possible by sending women back home or referring them to counselling centres. Cases handled are not followed through by the Police Commissioner's office, nor does the office assume any responsibility for reconciled cases that eventually end in violence or death. The most damning discovery about the "helpline" is that complaints received are not even linked up as proof of spousal violence when unnatural deaths occur.



The helpline's inefficiency has had another dangerous repercussion. By systematically undermining one more route of escape from violence, battered women have been virtually imprisoned within the confines of domestic indignity and torture. A discredited helpline has made it even more difficult for suffering women to claim the protection of the law.

Accounting for Deaths

In the beginning, **Vimochana** did not realise the extent and seriousness of the disparities between their figures and those cited by the police. Whenever the voluntary organisation talked of 800 to 900 cases, the police responded with the assurance that they were taking action in the hundred odd cases of dowry deaths registered during the year. Since **Vimochana** had drawn its statistics from the crime records of the police, it was able to give details of each case - the name of the police station, the crime number, the name of the victim and so on. Police authorities then agreed to reconcile the two sets of data. Once this was done, they admitted that their own figures

were confined to cases of "dowry deaths" booked under sections 304B and 498A -provisions introduced by the 1986 amendment - while **Vimochana's** list was much larger, since it included cases which the police had routinely classified as accidents. At this point, the implications of the vast difference between police figures and their own dawned on **Vimochana.** Suspicions aroused by data anomalies were confirmed by **Vimochana** volunteers, from the detailed accounts given by families of victims which clearly indicate that murders and suicides punishable under the law are being shown as accidents and dropped from the list of offences. This means that young wives are murdered with impunity. We need to understand how it has become so easy to conceal such crimes from the eyes of the law and from statutory agencies like the Human Rights and Women's Commissions, activists, legislators and other concerned groups.

The law relating to investigation of an unnatural death is given in Sections 174 and 176 of the Criminal Procedure Code. When a suicide, murder or accident takes place, the police office in charge of the police station the station house officer (SHO), is expected to immediately record all information regarding the death and proceed to the scene of the occurrence for spot investigation. He is also expected to make a preliminary entry in the FIR about the section of law applicable. All cases are initially entered only as unnatural deaths or UDRs under Section 174. Unless subsequently modified into offences under the relevant sections of law after preliminary investigation, action cannot be taken against the offender.

The person who prepares the FIR has a key role to play since s/he can

pick the legal sections to be mentioned in the FIR and s/he also selects what is recorded. Very often the SHO does not take an active interest in the matter and a constable or head constable makes the crucial entries that ultimately determine whether the case will be treated as an accident, murder or suicide. At best, the FIR is prepared routinely and mechanically; at worst, it is actively manipulated to conceal the crime and protect the offender.

There is almost no supervision of this very important function by any higher authority within the police, by independent agencies like the Human Rights and Women's Commissions (who blindly accept police statistics based on registered cases) or by the judiciary (which confines itself to charge sheets that are actually filed by the police after investigation). As police investigation becomes venal and slack, the scope for misusing this power increases. This explains how it has been possible in Bangalore city for more than 700 burn cases of young wives to be each year closed as "stove bursts" and "kitchen accidents" without serious investigation.

Mishandling Investigations

After the FIR is prepared, a spot investigation has to be done. In Karnataka as in other states, detailed instructions have been laid down in police manuals about how a death is to be investigated. These cover many eventualities - death by burning, poisoning, hanging, and drowning, among others. Police officials are trained to study evidence from the scene of the crime - the materials found, their location, the condition and disposition of the body, doors and windows - and arrive at a reasoned conclusion about how the death occurred. They are expected to photograph the corpse and the premises from different angles. They are then supposed to deduce from these materials whether a crime has been committed and proceed accordingly.

In practice, police investigation rarely follows the rulebook. General deterioration in moral and work standards and diversions of police effort from crime detection to security and protocol issues has ensured that criminal investigation is conducted cursorily. In cases of domestic violence, the quality of investigation is at its nadir. **Vimochana** has seen innumerable cases of "stove bursts" in which no stove has been found at the site or seized. In several cases, no photographs have been taken and suspicious objects have not been examined. Generally, there is no attempt to put together evidence about the body and the premises, to arrive at a cogent explanation for the death. It is enough if somebody - a person close to the victim, for example - describes the event as an accident; the police are more than eager to accept this version and enter it in their records.

When domestic violence takes place, attempts are usually made to camouflage the death as suicide by subsequently hanging the body or passing it off as an accident by burning it. In such cases, the police often ignore telltale signs which prove that the death could not have been an accident or suicide - for example, that the body was hanging too close to the floor or that burns had been inflicted after death. Very determined complainants and witnesses are essential before the police can be forced to conduct the thorough preliminary investigation that they are enjoined to do under their own manual.

Such negligence can be administratively handled in two ways. Important cases that are likely to be bungled at lower levels could be investigated by more senior staff, or investigations could at least be closely monitored by supervisory staff. Supposedly, both techniques are being used.

In Bangalore, for example, such cases are, in theory, investigated by an Assistant Commissioner of Police, and not by the Inspector who is in charge of the police station. In practice, however, ACP's in metropolitan towns are too busy with duties of law and protocol to spare much time for direct investigation. The actual legwork is done by lower officials and only general supervision is exercised by the ACP. In Karnataka, in order to give special attention to cases of atrocities against women, a special cell has been set up in the Corps of Detectives to investigate "dowry deaths" outside Bangalore. But today it is no better than the rest of the investigation apparatus, even though it is staffed by a larger proportion of women.

Police officers generally point out detailed guidelines regarding investigations of "dowry deaths" as proof of their committment to the issue, but there is also a logical fallacy in the guidelines relating to investigation of women's deaths. ACPs and the special cell enter the investigation process only when a case is already registered as a "dowry death." Preliminary investigation continues to be handled by the SHO and a team of constables, without any supervision or review. The crux of the matter - determining whether a death is accidental, homicidal or suicidal -completely escapes monitoring and control.

Monitoring "Heinous Crimes"

In Karnataka as in other States, crime investigation is controlled by a detailed monitoring mechanism laid down in the police manual. Certain categories of serious offences are listed as heinous crimes. The list includes murder, culpable homicide, death due to poisoning and dowry deaths. Special monitoring and supervision procedures have been prescribed for this category and the level of investigating officer raised. Deputy Superintendents of Police have to supervise the investigation of heinous crimes. Monitoring requirements are also rigorous and regular reports have to be sent to senior officers up to the level of the Director-General of Police until the investigation is completed, the charge sheet filed, and the case disposed of.

But as already pointed out, there is no requirement of supervision at the stage of classification of an unnatural death as either accident, suicide or murder. This is left to junior officers. So, the investigation is likely to be performed only cursorily. As a result the investigation is skewed from the start.

There is also the temptation to classify such events as accidents to reduce the number of heinous crimes for reporting purposes. Initial investigation of an unnatural death is therefore crucial to ensure that heinous crimes do not escape notice, and that culprits do not escape punishment because of wrong classification of an unnatural death. This is particularly applicable to violence against women, which is more likely to be committed by collusion among members of a family within the four walls of a house, so that it is difficult to find independent witnesses, let alone eye witnesses, to testify about the criminal act. Offences are thus far more often concealed as accidents or suicides. Careless investigation at the beginning has allowed criminals to escape the consequences of their crimes.

Registration of Cases

The selection of the relevant legal provision for handling an FIR and subsequent registration are two extremely important steps for obtaining convictions. In this area, the 1986 amendments seem to have had an unforeseen effect on the police. The tendency is to restrict the registration of domestic violence cases to the two new sections, 304B and 498A, designed to protect newly married women from dowry harrassment. Other relevant sections of the law like those pertaining to murder, assault, criminal restraint or breach of contract - which apply to all individuals - are rarely cited as applicable to battered women.

Since the new sections were meant for a particular purpose, certain requirements have to be met if an offence has to be established. Under 304B, if there is an unnatural death within seven years of marriage, proof of dowry harassment by the spouse or his family is needed. Section 498A which prescribes a lower punishment (up to three years imprisonment as against a minimum of seven years and a maximum of life imprisonment under 304B) has fewer requirements since the seven year marriage period is removed, and the harassment extended to mental cruelty leading to suicide and

extortionary demands is not confined to the period immediately prior to the death.

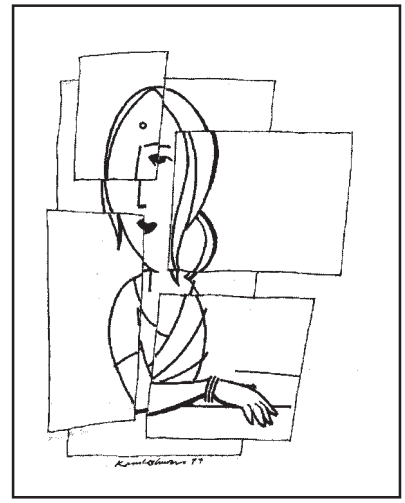
Manipulation of the section chosen for registering the case can affect the chances of success in courts and the degree of punishment awarded. It is practically impossible to convince judges that dowry demands have been made close to the time of death. Since there must be proof of extortionary behaviour, the police have to meticulously put together data relating to the payment of dowry. A convenient way to avoid registering an offence is to record that payments were made willingly. Since today's bitter reality is that families of brides are resigned to paying some dowry at the time of marriage, an inadvertent admission can effectively destroy a case registered under sections 304B and 498A. The only solution is to also include other sections relating to murder or assault, which do not speak of dowry, but this does not happen since here too women have been effectively ghettoised and confined to the dubious protection offered by the special 1986 amendments.

Finally, since domestic violence has been brought under the sole purview of "dowry deaths", complaints of harassment become essential to establish that there has been mental and physical cruelty, even though the offences are cognisable. This is difficult for a variety of reasons connected with the Indian social setup and the functioning of the judicial and police mechanisms.

The Absence of Witnesses

The stock police response to accusations of indifferent registration and investigation of crimes is that they have not received a complaint of harassment. There is some truth in this statement. Families of even badly hurt victims who have survived grievous assaults are extremely reluctant to complain officially against those who have maltreated them. This is the most depressing aspect of the current situation. Complaints are difficult to obtain because nobody - victims, criminals and the police themselves -believes that justice will be done by the police or the courts. They see no purpose in submitting to a painful ordeal of harassment and inconvenience that may last 6 to 7 years, when there is so little hope of justice or fair play. Instead, almost everyone prefers to "compromise" -accept the bitter reality, salvage whatever is left and rebuild their lives anew.

Women who have almost been killed sometimes return to the same spousal families because society and natal families leave them with no other alternative. Parents of victims sometimes arrange marriages with the same family for another daughter. Those who cannot forget the terrible event philosophise it away - "we have lost a daughter; it was her fate; what can we do by complaining about it?" In the face of such odds, if a complaint is actually made, the tendency is to stonewall or discourage it in every way, both to deflate the number of crimes recorded in that jurisdiction, and to use the opportunity to make money under the table. The very few who are determined to seek justice in the courts are thwarted and dissuaded at every turn by indifferent and corrupt police officers, and by prolonged and meaningless court proceedings.



The attitude of complainants is echoed by witnesses (in cases where the police seek out all relevant witnesses, as required in their manual). **Vimochana's** observations regarding the police collection of oral evidence indicate that persons who can provide proof of the crime are rarely interviewed. In many cases those who found the body and moved it, or those who first heard screams, have not been questioned. Persons who have taken the dying victim to a hospital and doctors who have treated her are kept out of the investigation. No attempt is made to establish the mental state of the victim by talking to neighbours, friends and co-workers (if she is a working woman). People who are likely to know about the payment of dowry (like jewellers or close relatives) are never interrogated.

When such negligence is pointed out, the police complain that witnesses do not "come forward" to speak the truth. The reluctance of witnesses is not due to indifference or callousness; it is the natural response to a venal and corrupt system which harasses the innocent and rarely punishes the guilty. In such an atmosphere it is an arduous task to question all relevant witnesses, win their confidence by effective and speedy investigation, and persuade them to attend courts and speak the truth. Nonetheless, the task must be performed so that the community is released from cynicism and hopelessness, and faith in the judicial process can be restored.

The Dying Declaration

In the absence of other witnesses, conclusive proof could be sought from the victim herself, in case she has lived

long enough to talk about the circumstances of her torture. Criminal jurisprudence is built around the belief that a dying person is most likely to tell the truth. Dying declarations recorded by the police, therefore, have clinching evidentiary value. Elaborate procedures have been laid down in case law on this matter. The declaration should be given voluntarily by the dying person; she should be in a fit state to give a coherent statement; and the statement should be signed by her. The police are expected to record that the declaration is voluntary, and the doctor attending the victim is expected to certify that she is fit to give it. In cases of domestic violence, however, received wisdom about dying declarations does not apply. The terrible truth about women dying due to spousal violence is that they are unable to condemn their murderers even on their deathbeds, either because of threats or social conditioning.

The irony is that today the dying declaration has devolved into the essential document required to exonerate criminals, not to punish them. This has happened through the violation of all the requirements prescribed for obtaining the dying declaration. In the first place, the declaration is no longer voluntary. The victim is coerced and persuaded to put her thumbprint on a document absolving her husband and his family of the murderous act. Threats range from physical harm to children and the natal family, to punishment under the law for attempting to commit suicide if she survives! Sometimes, the thumbprint is taken on a blank sheet of paper; often it is taken from a comatose or even lifeless body. The requisite certificates are then built up around it with official connivance. Instead of using the declaration to convict the criminals, it is concocted to acquit them.

Improving Police Investigations

What we have noted so far proves that every stage of the recording and investigation of an incident of domestic violence, even when it leads to death, is poorly handled. From what has been observed by **Vimochana,** the following measures might be required within the administrative machinery itself:

- Selection of the sections under which unnatural deaths of women are classified, add the procedure used for treating them as accidents, murders or suicides must be followed by a responsible officer of appropriate seniority.
- The police must take cognisance of an offence whenever there is incontrovertible physical proof of violence.
- Thorough and quick preliminary investigation must be conducted by the polfcse as per the police manual (collecting evidence from the scene of the crime as well as recording oral evidence).
- Investigations should make maximum use of medical and forensic evidenef from the preliminary stage itself to determine the immediate cause of death.
- Complaints should be taken seriously and appropriate behaviour must be adopted to induce complainants, witnesses and victims to testify courageously.
- The procedure prescribed for taking dying declarations should be scrupulously followed, with the doctor's certificate being taken just before recording the declaration; all interested parties must be removed from the scene during the recording; and a sympathetic and conducive environment must be created for voluntary statements to be made by the victim.
- Monitoring and review must be focused on unnatural deaths and not on "dowry deaths," and must extend all the way down to classification of unnatural deaths and thorough preliminary investigations.

None of these reforms in police and medical practice require additional laws, rules or circulars; they are already part of present instructions which are being routinely disregarded in daily official functioning. Given the present state of the police and the medical system, however, the changes required are not likely to take place if let to this administrative hierarchy alone. To be effective and responsive, criminal investigations and prosecutions seem to call for active intervention by committed members of the public. Instituting the best mechanisms for this purpose is a major challenge.

Doctors are also not doing their duty with regard to certifying the fitness of victims to make declarations in the manner required by the law. Routine slips of paper are signed by them when the patient is admitted to the hospital, permitting the police to take dying declarations. The police use this to record whatever they like at any time. The doctor does not examine the patient at the time the declaration is taken to certify fitness nor does he or she remain at the bedside to ensure that it is properly recorded. Very often the declaration is taken in the presence of hostile and threatening members of the husband's family under their frequent prompting. Documents prepared in this manner eventually figure in court proceedings to secure acquittals for

criminals and their families. In the worst cases, police officials only use the procedure of recording the dying declaration to extort money from the accused.

Even if there are no threats and blandishments, investigating officers do not inspire confidence in dying women. It is easy to imagine the effect that a gruff and aggressive male voice can have on a semi-conscious person traumatised by domestic violence. A more sensitive and responsive agency is necessary to induce victims to reveal the truth.

Inadequate Postmortems

In view of the problems associated with oral evidence in cases of domestic violence, it is essential to bolster it with evidence from the scene of the crime. Forensic and medical evidence can provide valuable insights into the cause of death. These are crucial when we have to establish whether a death is an accident, suicide or murder, especially when murders are camouflaged to appear as accidents or suicides. Vimochana has held meetings with leading forensic and medical experts who have demonstrated the best techniques for establishing whether injuries were accidental, self-inflicted or otherwise. For maximum effect, forensic and medical evidence must be gathered immediately after the body is discovered. Unfortunately, this does not happen.

Under the law, medical evidence must be produced to determine the cause of death when an unnatural death occurs. Postmortems are mandatory when women die within seven years of marriage and their relatives seek a postmortem, or when there is reasonable suspicion of an offence. Postmortems are also essential in all cases where women commit suicide within seven years of marriage. These provisions were added to the Criminal Procedure Code in 1983 so that deaths of women due to domestic violence were not concealed. The problem today isn't that postmortems are not being conducted, but that they are badly done, despite detailed procedures prescribed in medical and police manuals.

Dispatch of bodies for postmortem is delayed by the police themselves and, due to lack of facilities or general indifference, medical officers take their own time to complete examinations and furnish reports. Postmortems are confined to government institutions since private hospitals refuse to take up this task. Facilities for the transport of bodies, storage in mortuaries and for conducting postmortems are primitive. There is also a general disinclination to conduct postmortems because this is an unpleasant task with the potential for prolonged legal harassment through court appearances. For all these reasons, doctors often get postmortems done through untrained lower level functionaries.

Postmortem reports are also perfunctory and inadequate. Some doctors look only for what is recorded by the police as the likely cause of death without making a thorough examination of the body to confirm that there are no other injuries. Many make vague statements that do not clearly state how the death occurred. **Vimochana** has also found major differences in records of injuries maintained by the police, by executive magistrates and by medical officers. Such variations justifiably arouse suspicion and are eventually exploited to secure acquittals when cases come up for trial.

Unfortunately, lapses like these have not led to punishment of culpable medical officers because supervision by higher officials fails to take place. Finally, insufficient attention given to postmortems also stems from the fact that doctors are proving to be as corrupt as the rest of the system.

Poor Use of Forensic Expertise

As for forensic evidence, it is not collected and used effectively for solving crimes and obtaining convictions. Since today this is considered peripheral to mainstream police investigation, effective forensic divisions have not been developed with adequate, qualified staff and good equipment. Forensic experts suffer from low morale and low status, consulted only when the doctor conducting the postmortem seeks additional information, or when a stray case of poisoning occurs.

For other unnatural deaths, the investigating officer draws his or her own assumptions regarding the cause of death from a cursory examination of the body and from the postmortem report. This is especially detrimental in cases of domestic violence against women, where attempts are made to conceal the manner of the death. Forensic help is rarely sought today to determine whether wounds are self-inflicted or not.

A major reason for the inadequate use of medical and forensic evidence in criminal investigation is the delayed involvement of medical officers and experts in the process. There is a sequence of events laid down in Section 174 of the Criminal Procedure Code covering the duties of the investigating officer, executive magistrate and medical officer. Police and medical manuals further elaborate on the procedure to be followed and these have been bolstered with administrative guidelines for investigating "dowry

deaths." The cumulative effect of these various procedures is, however, to delay the medical and forensic examination of the body (in the rare cases where forensic opinion is actually sought) so that much valuable evidence that could have clinched the case against the accused gets destroyed.

After informing the executive magistrate, the investigating police officer is bound to rush to the scene of the crime, to make a spot investigation. However, the body can be sent for postmortem only after the magistrate completes the inquest. This is often delayed due to non-availability of a magistrate (since he or she has many other duties) or because of the time taken for the parents of the victim to arrive for the inquest. Forensic expertise is sought only if there is palpable suspicion of poisoning, or if the medical officer indicates after the postmortem that such expertise is required in order to arrive at a firm conclusion regarding the cause of death. The net effect is that much medical and forensic evidence - crucial to cases of domestic violence because of the nonavailability of dependable oral testimony - cannot be collected or used with conclusive effect.

The Role of the Inquest

Existing codes do take note of the need for externally monitoring police investigations. Section 176 of the Criminal Procedure Code envisages that the executive magistrate will conduct an inquest whenever a woman who has been married for less than seven years commits suicide or dies in a suspicious manner or when a relative of a female victim married for less than seven years asks for an inquest. This provision was introduced by an amendment in 1983 in an attempt to ensure that deaths due to domestic violence were better investigated. Theoretically therefore, under the law, both murders and suicides occurring within 7 years of marriage must be investigated by an independent outside official - the executive magistrate. Unfortunately, over time, this has become almost the weakest link in the criminal monitoring mechanism. The scope of failure is to such an extent that today we find magisterial enquiries being converted into routine endorsements of police investigations. Several factors have contributed to the disintegration of the monitoring power vested with officers conducting inquests.

The Criminal Procedure Code considers district and sub-divisional magistrates, and other officials specially notified by the government, as executive magistrates who can hold inquests. The job is usually done by revenue officers of the Tahsildars level. They are often busy with other work and are drawn for inquest duty whenever required. There is much truth in the police complaint that magistrates are rarely available when an unnatural death occurs and the consequent delay in conducting inquests results in the destruction of valuable evidence. One main reason for ineffective inquests is the absence of clear guidelines and proper training for executive magistrates. Although under section 174(3)(v) of the Criminal Procedure Code, the government can frame rules, in Karnataka (as perhaps, in other States as well), guidelines have not been prescribed for inquests. Magistrates therefore simply follow the lead given by police officers and sign forms meant for recording evidence during police investigation. They do not question witnesses adequately and prepare sketchy reports which are used mainly to close cases.

The courts, however, have repeatedly held that it is the magistrate's duty to determine the cause of death, visit the scene of the crime and provide comprehensive inquest reports. But courts themselves have access only to cases actually booked by the police which, as we have already seen, are a small fraction of the deaths due to domestic violence. As a result, inquest reports are prepared and produced by the police and prosecution only in cases which reach the court; in other cases, they end up as incomplete scraps of paper lost in revenue offices, without meaning or purpose.

Can such a moribund institution be revitalised or should we look for a better alternative? Our experience of inquest proceedings hardly inspires confidence. Executive magistrates are as venal as other officials and just as insensitive and incompetent. Or are they supervised or monitored in a better manner. The problem, however, is to find a workable substitute for the magisterial enquiry. Even the most honest and committed non-official public agency cannot provide the continuous involvement required for this task. Moreover, such an agency would not be amenable to judicial accountability. Training and selection would generate new questions about representation and patronage. It would also be premature to involve judges in preliminary enquiries before evidence is collected and testimonies recorded. Setting up special tribunals, single person commissions and the like is cumbersome with no guarantee of better performance and accountability. The Human Rights and Women's Commissions have not yet evolved into tribunal bodies, sitting in judgment on individual cases of official mishandling. Even if this were to happen, it would not be practical for them to determine the cause of death in all cases of domestic violence. The only workable solution is to revive the inquest, redefine its scope and functioning through statutory measures and integrate it into the monitoring process by subjecting it to judicial control.

To achieve this, the inquest must be converted into a transparent quasi-judicial forum which can better perform its existing function of determining whether an unnatural death is an accident, suicide or murder. By spelling out the role of the inquest (which has already been recognised by courts in case law), the unlimited discretion enjoyed by the police at the juniormost levels today to cover up cases of domestic violence will be removed. At present, inexperience and poor knowledge of investigative techniques have made executive magistrates ineffective in countering the conclusions drawn by the police from the examination of dead bodies and the scene of the crime. As a result, their independence has been badly compromised.

The mistake has been in the present insistence that inquests should be conducted alongside the police investigation at the scene of the crime so that the postmortem and the collection of forensic evidence, for which time is a crucial factor, are both kept waiting till the arrival of the executive magistrate. The problem can be solved if, instead of the magistrate, the medical officer and forensic expert accompany the investigating police officer and examine the body within the first twenty four hours. Determination of the cause of death is, in any case, possible with some degree of accuracy only on the basis of the postmortem and forensic reports. The present anomaly is that inquests are done before the postmortem is complete, which explains the variations between both reports and the sketchy findings of executive magistrates. If the inquest is held within a week of the occurrence, if it reviews in detail whether all the procedures prescribed in police and medical manuals have been followed and results in reasoned conclusions based on postmortem and forensic reports and other available material, the magisterial enquiry can move from an endorsement of the police investigation to a quasi-judicial finding.

The procedure suggested above will work only if the magistrate's finding does not exist in a vacuum but is made part of a judicial review mechanism. Transparency can be assured by holding public hearings as close to the scene of occurrence as possible and by insisting on the production and recording of oral and material evidence in open court. Citizen groups can then keep track of whether complete proof from the premises has been collected, whether first information reports, forensic and postmortem records have been meticulously and accurately prepared, and whether or not all relevant oral evidence has been adequately sought. Further police action (including closure of the case by not treating it as an offence) should be taken only on the basis of the finding at the inquest. To ensure that this is not delayed, time limits should be prescribed for conducting inquests and findings should be pronounced on the spot. Eventually, the conduct and conclusions of the inquest can be questioned in criminal courts. These requirements can be spelt out in rules or executive instructions issued by State governments, as authorised under the Criminal Procedure Code, without the need for statutory amendments.

There are several obvious advantages in standardising inquest procedures. All unnatural deaths of women can be monitored by one forum since no case can be summarily filed away by the police without a magisterial order. The inquest becomes an occasion for an external agency and the public to assess whether an investigation has been thoroughly done and all relevant witnesses questioned. It also ensures that major reports become part of the public record; copies of first information reports, postmortem reports and the inquest report itself can be obtained by any person from the executive magistrate's office. This will be a major achievement, in view of **Vimochana's** experience of total transparency in giving members of the victim's family access to crucial papers as well as information about the progress in police investigation. The procedure therefore can simultaneously take care of many of the lacunae noticed today, such as lack of transparency and accountability in the classification of unnatural deaths, and cursory, delayed and improper investigations. Judicial review and public vigilance must, however, be exercised to ensure that magistrates apply the prescribed methods and do not themselves become negligent and corrupt.

The Legal Process and Courts

Ultimately, convictions can be obtained against perpetrators of domestic violence only through effective prosecution of criminal cases. The record of prosecutors, however, is as poor as that of other officials. More than 90 percent of the chargesheeted cases end in acquittal. This is due to several reasons, some of which stem from the judicial structure itself.

The adversarial British prosecution method adopted by our courts makes the judge an arbiter between opposing advocates. In criminal cases, the State is pitted against the alleged criminal and the judge is not expected to seek the truth but to treat both parties on an equal footing and evaluate their evidence and arguments objectively. In European (especially French) criminal jurisprudence, however, the

judge plays a more active role; he or she is not a mere mediator between opposing parties but a seeker of the truth. This enables him or her to intervene directly - he or she can ask questions, call witnesses, demand the collection of fresh evidence and do whatever is required to discover whether a crime has been committed as well as hold the person responsible. The unequal positions of opposing parties is to some extent neutralised by this arrangement.

It may seem at first glance that the prosecution is at an advantage in criminal cases since it has the entire might of the State behind it. This is in fact the assumption behind many judicial pronouncements which tend to favour the accused and give him or her the benefit of the doubt. In actual practice, however, it is the defending side that prevails today, especially when it has strong financial support and other kinds of clout.

Government advocates attribute their failure to bad investigations as well as to judicial biases, but this is not the full story. **Vimochana** has repeatedly seen how cases for the prosecution are deliberately lost because of poor preparation, the presentation of contradictory and inadequate evidence, suppression of crucial testimony and bad arguments. This is not surprising since prosecutors, like all permanent government officials, are entrenched within a counterproductive structure of incentives and disincentives that does not depend on success or failure in individual cases. The best defence lawyers are often pitted against them with ample financial inducements to get clients acquitted. No wonder so many of the accused, especially those who can afford expensive legal support, escape unscathed from the consequences of their acts.

High acquittal levels are also the result of a total lack of coordination between investigating officers and advocates. They do not work in unison to build up credible and coherent cases. Prosecutors do not exercise their inherent power to modify the sections mentioned in the charge sheet, nor do they demand collection and presentation of relevant oral and physical evidence. They merely proceed on the basis of what is cobbled together during investigation and show no interest in putting together their material to secure convictions. The general indifference of government advocates is manifested in their absence at hearings, letting through bail applications of the accused without opposition, and dropping the testimony of key witnesses for the prosecution. This happens because neither the police nor the prosecution is monitored, and there is certainly no mechanism to hold them jointly responsible for poor results. Even when courts pass public strictures about shoddy work, these are not followed through, and explanations are not sought out by higher authorities. Families and friends of victims are unable to intervene, ending up as mute spectators when prosecutors manipulate evidence and lose criminal cases.

The prosecution often fails because key witnesses turn hostile when the case is in court and they retract their earlier testimony. Defence lawyers sometimes work actively to achieve this by methods fair or foul. The prosecution and the courts, for their part, do little to preserve the integrity of eyewitness accounts. There is no witness protection program and no punishment either for hostile witnesses or for those who corrupt and threaten them. The delayed judicial process and the unwelcome court atmosphere also guarantee that witnesses become discouraged and uncooperative when cases drag on for years. No wonder that successful prosecution in criminal matters are so dismal. ❑

Truth Commission by Vimochana

To bring to light the shocking inadequacies of the criminal justice system in cases of domestic violence, Vimochana and the National Law School of India University organised a Truth Commission at Bangalore from August 15-18, 1999. Two juries were constituted and public hearings held in which families of the victims of domestic violence from all over Karnataka spoke about their experiences. One jury was headed by Justice H. Suresh, former judge of the Bombay High Court With Justice Leila Seth, former judge of the Delhi and Himachal High Courts and member of the Law Commission, Brinda Karat, general secretary of the All India Democratic Women's Association, Padma Seth, former member of the National Commission for Women and Flavia Agnes, lawyer and women's activist as members.

Another jury was headed by N- Madhava Menon, former Director of the National Law School and member of the Law Commission, and also included Justice Sadashivaiah, former judge of the Karnataka High Court, R. Venkataramani, senior advocate of the Supreme Court, Madhu Kishwar, editor of Manushi and Corinne Kumar, founder-member of Vimochana. The Commission has given several suggestions for improving the criminal justice system. There is a proposal to use these recommendations for framing a public interest petition.