On the night of 22rd April 2013 I was shocked to receive a call from a TV channel asking me my reaction on Justice Verma’s death. I didn’t know what to make of it as I was not even aware that he had been ill.

I had last seen him a week earlier, on 15th April, at the NDTY’s function, Indian of the Year, as they were honouring Nirbhaya as India’s daughter and us for the report following her horrendous rape and death. He was there with his daughter and granddaughter and I was there with my spouse. After the function we stayed on for dinner and were relaxed. He looked well and when I asked him he said he was fine but a little tired. I told him don’t take so much on and don’t travel so much; he smiled and said he enjoyed talking and travelling.

Before working on the Justice Verma Committee, I knew him by his reputation and judgments. He was a forthright judge. Mr.CK Daphtary would have been pleased. When I became a judge in 1978, the well respected octogenarian senior lawyer gave me sagacious advice. He said there are four types of judges “the timid judge, the dithering judge, the academic judge and the forthright judge. Be forthright.” And that’s what Justice Verma was FORTHRIGHT.

Justice Verma believed in coming to the point and did not indulge in academic erudition. He wanted to give substantial justice and this is apparent from his decisions. In this connection let me mention two of his well known judgments, the Vishaka case and what came to be known as the Jain Havala case.

In the Vishaka case (1997) he tried to find a remedy for sexual harassment in the workplace, as there was no law to prevent this. He even looked at foreign law and treaties and set out certain guidelines to be followed till legislation was passed. This helped many to overcome this societal evil till the law was passed 16 years later in 2013.

In the Jain Havala case as Seema Chishti has stated ‘he raised the bar for handling corruption cases’. He brought about the constant monitoring by the court of the police and CBI (Central Bureau of Investigation) which came to be known as ‘continuous mandamus’.

As Chief Justice he ensured that the voluntary code of conduct for how judges should behave was agreed to and assets declared–Restatement of Values of Judicial Life.

Ever optimistic and hopeful that things would improve, he was a positive person. He was also willing to accept that certain of his judgments may need reconsideration such as the ‘collegium system’, -- of judges appointing themselves.

When I was asked by Mr. Chidambaram, the finance minister, to serve on the Committee after the Nirbhaya rape incident, I asked him who was to be the chair; when he said Justice JS Verma, I readily agreed. I knew of him as a courageous, independent and honest judge.

It was a great experience for me to work with him. Always courteous, always smiling and wearing his many coloured scarf to keep out the winter cold, he worked tirelessly and anxiously to ensure a good comprehensive report and in time.

May his tribe expand and his soul rest in peace.

12th and 13th July 2013.

Gender Justice, Criminal Law and Curricular Reforms. Harvard Gender Violence Project.

Friends…………

In the words of Pratap Bhanu Mehta, in his article, By her Yardstick, ‘Indian politics is becoming a circus trying hard to stymie profound social changes. Politics is important. But we also need to redirect energies to thinking about the deep undercurrents that will shape us. The “gender revolution” is the most important.’

How do we set about creating the momentum for a quick gender revolution and the ‘ethical maturity of our society?’

We need to harness all our forces. We need to start by changing our attitude and this can only be done by collaboration between the family, the community, and the government. The Media both print and electronic, are powerful tools and useful hand maidens to bring about this awareness. Programmes, like Amir Khan’s Satyamev Jateya, shown on both Star Plus and Door Darshan will go a long way in spreading the message.

Laws need to be strengthened and implementation made more effective and the judicial process speeded up. Government policies and incentive schemes need to be simplified and more focused.

Education is the road to empowerment, so that girls are both emotionally and economically independent and marriage is not the Be- All of their existence. It is important to communicate and high light successful stories of girls who have taken care of their families so as to break the tradition and culture of son preference. As Mary Slade said ‘Every child needs an equal opportunity to struggle.’

We must not allow politicians and others to be lax, about accepting what Khap Panchayats and others are trying to do to reverse the trend of empowerment of women. We must make sure that the Constitution of India is given due importance and is followed in letter and spirit, and the laws implemented. Both men and women have to speak out.

Working women will be confident women, because they are not economically dependent and will get respect even if it is given grudgingly. In fact each one of us needs to speak whenever we see discrimination and injustice. For in the words of Martin Luther King ‘Our lives begin to end the day we remain silent on things that matter.’

Much has changed for the girl child during this period of sixty-five years, since India’s Independence, but not enough. I am hopeful that things will change fast now, as Victor Hugo said; ‘There is one thing stronger than all the armies in the world; and that is an idea whose time has come.’ And I would add stronger than the Khap Panchayats and their firmans, and THEY too can be persuaded to change their ideas and decisions.

So I am confident that by the time we celebrate our platinum anniversary (75th year) there will be equity, equality and justice for the girl child.

You may wonder why I talk about the girl child and not women – the reason is that one should start at the very beginning from where the problem arises. After years of discrimination and uncaring exploitation of the girl child, we cannot allow it to continue. The government has to ensure that it stops, and we have to ensure that our mindset is changed and tradition is not called in to delay it. We have to increase the momentum on making people AWARE of the human violations, making them ASSERT the rights of the girl child and taking ACTION. The girl child cannot wait SILENTLY till tomorrow.

Equality is most important, but the greatest inequality is treating unequals as equal. Can we treat an uneducated girl as equal to an educated girl? NO. We must try and make them both equally educated before treating them equally. Can we treat an economically empowered person on par with one who is not economically empowered nor has the capacity or training to become one? This would be unjust. When there is inequality and injustice, there is oppression and we cannot have such a society. It is our duty to mould our future society in such a way that there is equality.

There are so many evils and aspects of violence and discrimination, such as human rights violations, dowry, domestic violence, sexual abuse, unequal laws, gender injustice, etc., that it is not possible to deal with all of them in this lecture. I have therefore decided to deal with just two; the right to be born and nurtured, and marital rape.

As is more than apparent, girls have not been treated equally despite our Constitution and changes brought about in laws. On one hand they are worshipped as Devis and on the other, the female foetus is indiscriminately destroyed. A survey done in Mumbai some years ago found that out of 8000 abortions, 7999 were female foetus. The sex ratio is adverse. The number of females per 1000 males is 914 (according to the 2011 census) down from 972 in 1901. It has been slowly going down; it was 945 in 1991, 927 in 2001 and now is as abovementioned as low as 914. The 2011 census revealed that there are about 7.1 million fewer girls than boys in the age group of 0-6 years.

A few years ago the famous economics Nobel Laureate Amartya Sen had asked, where are the missing women? From the facts indicated above, there are over 7 million missing women in India.

So between female foeticide and infanticide and neglect of the baby girl we have destroyed her right to be born and her right to be nurtured as a child.

Some years ago infanticide was more prevalent, but with the development of science and technology, amniocentesis and the ultra sound techniques, foeticide has taken over. This imbalance between girls and boys aged 0-6 years as indicated in the 2011 census is very unfortunate and shows the reluctance of Indians to have daughters and to neglect them if they are born.

So how do we change this PATRIARCHAL MINDSET? Changing the laws and making sure they are properly implemented is one aspect. But that is not enough. We need to make a multi-pronged attack. We need to use ADVOCACY.

In South Korea, which was a rigidly patriarchal society, there is now a change in thinking. Apart from socio economic development and changing the laws of inheritance etc., a multi pronged attack was mounted and campaigns featured popular slogans such as ‘One daughter raised well is worth 10 sons’. We have to get rid of the son preference in our country which is encapsulated in expressions and blessings like ‘May you be the mother of a thousand sons’.

Changing the mindset is very important, because law is only a spring board from which to take off. It is the implementation of the law and the way in which the community adopts it that is relevant. What the Girl Child is asking for is not something extraordinary; all she wants is a fair deal; a right to be born; a right to be nourished and loved; a right to be educated and a homogenous environment; a right to choose, and a right to excel. In brief she wants equity, self esteem and dignity.

Interestingly, in India sex imbalance at birth appears to be especially concentrated in middle class families, reasonably affluent and educated families, at least in Haryana, one of the worst affected states. This would indicate that education and development, though very important, is not a sufficient answer. Sex selection foeticide and infanticide distort the natural Child Sex Ratio (CSR).

We can only change the mindset by campaigning and influencing communities and implementing the law vigourously. Women must be a part of the decision making. Some time ago I read in the newspapers and saw on television, over 200 women in a Haryana village, {appropriately called Bibipur}, taking part in a panchayat along with men and passing a resolution that female foeticide is a heinous act and should be treated as murder.

Ritu Jaglan, a post graduate from the village and her brother Sunil Jaglan, (a mathematics graduate), the sarpanch of the village of Bibipur, were the driving force behind the campaign. Over a period of two years they mobilized and sensitized the villagers through plays, rallies and door to door campaigns. The village now takes pride in families who have only daughters. The dynamic young sarpanch motivated the aanganwadi workers Santosh and Asha Rani to go from house to house spreading the message that daughters are as precious as sons and ‘are as capable of carrying on their family lineage.’ They also pointed out the health hazards of foeticide. This resulted in the change of mindset of the villagers and is a model which can be reciprocated in other villages. In fact neighbouring villages of Haryana, Rajasthan, U.P., Delhi and Punjab are also being influenced. This social change is now being brought about by the people themselves.

It is only when people feel that THEY have taken the decision, do they feel responsible to ensure that it is implemented. This is certainly a big step forward; and I am happy to note from the Times of India of yesterday (11th July 2013) that Haryana’s Khap Panchayats, notorious for routinely ordering honour killings in cases of inter-caste marriages, have come up strongly against sex selection and female foeticide. A cluster of 20 villages in Jind district held a meeting in Thua village and made a commitment to improve the sex ratio. This was because the skewed sex ratio had forced villagers to look for brides from states like West Bengal and Jharkand and this had created many problems. They also urged villagers not to give or take dowry ‘so that girls are not considered a burden on the family.’

While dealing with sexual assault, molestation and rape in our report, Amendments to Criminal Law, popularly known as the Verma Committee Report we had discussed many matters including the fact that improvement in infrastructure, living standards, sanitation, health and educational facilities and family was very important.

One of the hotly debated matters was marital rape. This has to be looked at in the historical perspective and the principle of patriarchy. The offence of rape was originally based on the idea of theft of a man’s property. A woman belonged first to her father and after marriage to her husband. So if anyone had sexual intercourse with her before marriage, the father’s right and honour were affected and after marriage the husband’s. Her modesty had been out raged.

Even according to the English common law of coverture, a woman was deemed to have consented at the time of marriage to having intercourse with her husband at his whim. In 1736 Sir Mathew Hale declared that a husband could not be guilty of rape on ‘his lawful wife, for by their mutual matrimonial consent and contract’ she had agreed to this and this consent ‘she cannot retract.’

The situation has changed drastically since then. The question of a woman’s autonomy and bodily integrity are concepts that have developed over the years making rape into an offence against an individual where consent is an essential concept.

In England in 1991, Lord Keith speaking for the House of Lords declared ‘marriage is in modern times regarded as a partnership of equals, and no longer one in which the wife must be the subservient chattel of the husband.’ The European Commission of Human Rights also endorsed the conclusion that a rapist remains a rapist regardless of his relationship with the victim. The very essence of the Convention on Human Rights is the respect for human rights, dignity and freedom.

In South Africa marital rape was criminalized in 1993. In Canada too it is a crime to rape your wife. In Australia in 1991, the common law fiction of irrevocable consent was roundly rejected by Justice Brennan who said it ‘has always been offensive to human dignity and incompatible with the legal status of a spouse.’ These jurisdictions have also recognized that consent is most important and cannot be implied and that marital rape cannot be considered a lesser crime with a more lenient sentence.

Consequently we strongly recommended that:

‘i. The exception for marital rape be removed.

ii. That the law ought to specify that:

a. A marital or other relationship between the perpetrator or (sic) [and] victim is not a valid defence against the crimes of rape or sexual violation;

b. The relationship between the accused and the complainant is not relevant to the inquiry into whether the complainant consented to the sexual activity;

c. The fact that the accused and victim are married or in another intimate relationship may not be regarded as a mitigating factor justifying lower sentences for rape.

Despite our strong recommendation the government did not agree to make marital rape a crime. Many men sniggered and voices were raised against it, including patriarchal insensitivity and the likelihood that it would be misused. Another factor that was bandied about was the difficulty of finding evidence in the bedroom; but this is rather strange when sexual abuse has been defined as an act of domestic violence in the Protection of Women from Domestic Violence Act 2005. Some people raised the bogey that it would result in the unnecessary break up of marriages. But the reality is, it would have been an enabling provision where a woman would have had a choice to lodge a first information report against the husband, if she felt things were going out of hand. (Under the provisions of Act 13 of 2013 the police would have been duty bound to register it.)

However, Act 13 of 2013 still contains the exemption. Exception 2 in Section in section 375 Indian Penal Code reads: ‘Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.’

I am of the view that the non removal of this exception despite our very strong recommendation is unfair to women and violates her dignity and bodily integrity. It is against the spirit of human rights and the Convention for the Elimination of Discrimination against Women. Is a woman to be bound by the feudal fiction of irrevocable consent the moment she takes the marriage vows? Can she never be a woman with her own self respect and individuality? With one breadth the government talks of encouraging women, empowering them and enhancing their rights and with the other takes away their right to refuse sexual overtures. The government has failed to do the right thing by women and been overpowered by patriarchy.

However women should not lose heart. The change will come in time, I hope sooner than later. We need to educate people about the constitutional right of equality. As Professor Sandra Fredman of the University of Cambridge said that awareness programmes must be provided to ordinary people so that ‘marriage should not be regarded as extinguishing the legal or sexual autonomy of the wife.’

Sexual intercourse and sexual contact is in certain circumstances a pleasurable experience, as such the question of consent and choice is of paramount importance. In order for it not to be a crime, the consent has to be unequivocal and voluntary. But can adolescent minors be allowed to indulge in teenage romance? This question was also raised in our discussions. We felt that persons who are 16 years and above can have consensual sex and this consensual sex should not be criminalized as adolescent sexual activity is a reality. In fact this was the position till the Protection of Children from Sexual Offences Act 2012 was passed in mid 2012. But unfortunately, the government did not accept this recommendation. This despite the fact that the law as it now stands does not criminalize a man if he has sex with his wife who is above the age of 15 and below the age of 18, with or without her consent.

I read in the Times of India of yesterday-11th July 2013, that a PIL has been filed in the Supreme Court which has been entertained, wherein it is prayed that even in the case of marriage sexual intercourse should take place only after 18.

Many of our recommendations were not incorporated in Act 13 of 2013 though some were, such as voyeurism and stalking.

We were glad to note that an acid attack (throwing or administering acid) had been included as a specific crime in Bill No. 130 of 2012. We had heard horrible stories of a man stalking a woman and if she objected or turned down his advances, he would throw acid on her face thus destroying her self- worth and esteem and completely ruining her life and causing permanent psychological damage. Consequently, we felt that this might have been averted if stalking were clearly an offence and the matter was nipped in the bud. It would also ensure the security and safety of women.

So who is a stalker – ‘any man who follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman.’

The law provides that this monitoring by a man can also be by use of the internet, email or any other form of electronic communication.

I am happy that this recommendation imposing a punishment of 3 years in jail and a fine was accepted, and learn from the Hindustan Times of 14th June 2013 that a couple of cases of stalking are being reported every day in Delhi.

I also read recently in the newspapers that the government is thinking of making some provision for regulating the purchase of acid, as has been done in Bangladesh, where as a result acid attacks on woman have substantially reduced.

These are positive steps.

We need to ensure that an evil like female foeticide which prevents a girl child from coming into existence, despite laws, is not perpetuated.

We also need to ensure that an evil like marital rape which attacks a woman’s bodily integrity and destroys her freedom of choice is not allowed to flourish and a suitable law is passed.

As Charles Kettering said: “We should be concerned about the future because we will have to spend the rest of our lives there.”

Thank you for your patience in listening.