STUDY OF RAPE LAW AND IMPACT OF THE LAW IN INDIA

A Dissertation to be Submitted in Partial Fulfillment of The Requirement for The Award of Degree of Master of Laws

Submitted By

SNEHA SONI

Roll No. 1200997051

School of Legal Studies

Under The Guidance

Of

Dr. Gitu Singh

Professor

School of Legal Studies

BBD UNIVERSITY

Session: 2020-21

CERTIFICATE

This is to certify that the dissertation titled, "Study of rape law and impact of the law in India" is the work done by Sneha Soni under my guidance and supervision for the partial fulfillment of the requirement for the degree of Master of Laws in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.
I wish his success in life.

Date: Dr. Gitu Singh

Lucknow Professor

DECLARATION

"Study of Rape Law and Impact of the Law in India"
I understand what plagiarism is and am aware of the University's policy in this regard.

SNEHA SONI

I declare that

(a) This dissertation is submitted for assessment in partial fulfilment of the requirement for the award of degree of **Master of Laws.**

(b) I declare that this **DISSERTATION** is my original work. Wherever work from other source has been used i.e., words, data, arguments and ideas have been appropriately acknowledged.

(c) I have not permitted, and will not permit, anybody to copy my work with the purpose of passing it off as his or her own work.

(d) The work conforms to the guidelines for layout, content and style as set out in the Regulations and Guidelines.

Date : ……

Place- Lucknow **SNEHA SONI**

UNIVERSITY ROLL No. 1200997051

LL.M. (2020-21)

(Criminal and Security Law)

ACKNOWLEDGEMENT

I would like to express my special thanks of gratitude to my Supervisor and Professor Dr. Gitu Singh, who gave me the golden opportunity to do this wonderful and interesting dissertation of ***"Study of Rape Law and Impact of the Law in India",*** and also helped me to understand it in brief.

I came to know so many new things, I am really thankful to him.

Secondly I would also like to thank my parents who morally supported me a lot in finalizing this dissertation.

NAME: SNEHA SONI

ROLL NO. 1200997051

Table Of Content

List of Cases

1. A.G. of India v. Lachma Devi, (1989) Supp 1 SCC 264: AIR 1986 SC 467: 1986 Cr LJ 364
2. A.R. Antulay v. R.S. Naik, AIR 1992 SC 1701: (1992) 1 SCC 225
3. Adri Dharan Das v. State of West Bengal, (2005) 4 SCC 303: AIR 2005 SC 1057
4. Ashwini Kumar Saxena v. State of Madhya Pradesh, JT 2012 (10) SC 529: (2012) 9 SCALE 90: 2012 Cr LJ 4731
5. Bachan Singh v. State of Punjab, AIR 1980 SC 898: (1980) 2 SCC 684: 1980 Cr LJ 636: 1980 SCC (Cri) 580
6. Bachpan Bachao Andolan v. Union of India, (2011) 5 SCC 1
7. Balchand Jain v. State of Madhya Pradesh, (1976) 4 SCC 572
8. Bhagwan Singh. State of Madhya Pradesh, 2002 (2) Supreme 567 AIR 2002 SC 1621: 2002 AIR SCW 1532: (2002) 4 SCC 85
9. Biswamohan Debbarma v. State of Tripura, 2016 (2) Gau LT 905
10. Brij Bhushan . State of Delhi, AIR 1950 SC 129: 1950 (51) Cr LJ 1525
11. C.B.I. v. State of Rajasthan, (2001) 3 SCC 333
12. Common Cause, a Registered Society u. Union of India, AIR 1997 SC 1539 (1996)
13. D.K. Basu v. State of West Bengal, (1997) 1 SCC 416: AIR 1997 SC 610
14. D.P.P. v. Morgan, (1975) 2 All ER 347: 1976 AC 182: 61 Cr App Rep 136 (HL)
15. Delhi Domestic Working Women's Forum v. Union of India, (1995) 1 SCC 14: 1994 (4) SCALE 608: 1995 SCC (Cri) 7
16. Garikapati Veeraya v. N. Subbiah Choudhry, AIR 1937 SC 540: 1957 SCR 488 168
17. Gian Singh v. State of Punjab, 1986 Supp SCC 676: AIR 1987 SC 1921
18. Gurbachan Singh v. State of Bombay, AIR 1952 SC 221
19. Gurbaksh Singh Sibbia D. State of Punjab, AIR 1980 SC 1632:
20. Gurcharan Singh v. State (Delhi Administration), AIR 1978 SC 179
21. Hussainara Khatoon v. Home Secretary, State of Bihar, Patna, (1980) 1 SCC 81:
22. Jareena Khatoon v. State of Jharkhand, 2015 (1) E C C 358
23. Jarnail Singh v. State of Haryana, 2013 (2) NCC 431: 2013 (3) CCR 194:
24. Jarvie v. Magistrate's Court of Victoria at Brunswick, 1995 (1) VR 84
25. Jaswant Singh v. State of Haryana, 2000 (3) Supreme 320: AIR 2000 SC 1833:
26. Kaitamaki v. R., (1985) AC 147: 79 Cr App Rep 251 (PC)
27. Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977
28. Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 Cr LJ 3139 186, 392, 400,
29. Koppula Venkatrao v. State of Andhra Pradesh, (2004) 3 SCC 602
30. Kumar v. State of Tamil Nadu, 2013 (4) E Cr C 203: 2014 (4) SCC (Cri) 492:
31. Lachmi v. State of West Bengal, 2016 (1) Cal LT 443
32. Lakshmi Singh v. State of Bihar, AIR 1976 SC 2263: (1976) 4 SCC 394

33. Lata Singh v. State of Uttar Pradesh, (2006) 5 SCC 475
34. Laxman Naik v. State of Orissa, AIR 1995 SC 1387
35. Lehna v. State of Haryana, (2002) 3 SCC 76: (2002) 1 SCALE 273
36. Machhi Singh v. State of Punjab, (1983) 3 SCC 470:
37. Madho Ram . State of Uttar Pradesh, AIR 1973 SC 469
38. Maneka Gandhi v. Union of India, (1978) 2 SCR 621: AIR 1978 SC 597
39. Mohd. Ali v. State, (2015) 7 SCC 272
40. Mritunjay v. Pranab, AIR 2013 SC 3334
41. Mukesh Kumar v. State of Chhattisgarh, (2012) 120 AIC 439 (Chh)
42. Mukesh v. State of Chhattisgarh, 2014 (4) E Cr C 284: 2015 (145) AIC 143:
43. R. d. Allen, (1839) 9 C&P 31
44. R. v. Billam, (1986) 1 All ER 985: (1986) 1 WLR 349
45. R. v. Dhokia, (1990) Times 3 (CA)
46. R. v. Fletcher, (1859) Bell CC 63
47. R. v. Fletcher, (1886) LR 1 CCR 39
48. R. v. Harling, (1938) 1 All ER 307: 26 Cr App Rep 127 (CCA)
49. R. v. Harrison, (1938) 3 All ER 134: 26 Cr App Rep 166 (CCA)
50. R. v. Hill, (1781) 1 East PC 439
51. Ram Charittar v. State of Uttar Pradesh, (04-04-2007 - SC)
52. Ram Deo Chauhan d. State of Assam, AIR 2001 SC 2231: (2001) 5 SCC 714
53. Ram Manorath v. State of Uttar Pradesh, 1981 SCC (Cri) 581
54. Ram Singh v. State of Himachal Pradesh, 2016 (2) Crimes 264:
55. Rama Chandra Reddy v. Public Prosecutor, AIR 1976 SC 1994
56. Rama Nand v. State of Himachal Pradesh, (1981) 1 SCC 511: AIR 1981 SC 738
57. Ranjit D. Udeshi v. State of Maharashtra, (1965) 1 SCR 65: AIR 1965 SC 881
58. Rao Harnarain Singh @ Shroji Singh v. State, AIR 1958 Punj 123: (1958)
59. State of Andhra Pradesh v. Borden Sundara Rao, AIR 1986 SC 530:
60. State of Andhra Pradesh v. Ghanshyam Singh, AIR 2003 SC 3191:
61. 2003 Cr LJ 4339: 2003 AIR SCW 4547: (2003) 8 SCC 13
62. State of Assam v. Ramesh Dowarah, 2016 (158) AIC 11: 2016 (1) RCR
63. Vishal v. State of Punjab, 2015 (4) RCR (Cri) 617: 2015 (3) PLJ (Cri)
64. Yakub v. State of Maharashtra, (2013) 5 RCR (Cri) 7
65. Yeswant Rao v. State of Madhya Pradesh, AIR 1992 SC 1683:
66. Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra,AIR 1975

LIST OF ABREVIATIONS

- AC Appeal Cases
- AIR All India Reporter
- ccs Central Civil Services
- CEDAW Convention on Elimination of Discrimination Against Women, 1999
- CMRA Child Marriage Restraint Act, 1929
- Cri LJ Criminal Law Journal
- CrPC Code of Criminal Procedure, 1973
- COHSE Confederation of Health Service Employees
- DLR Delhi Law Review
- FIR First Information Report
- FGM Female Genital Mutilation
- HMA Hindu Marriage Act, 1955
- IAS Indian Administrative Services
- IEA Indian Evidence Act, 1872
- IPC Indian Penal Code, 1860
- IPS Indian Police Services
- LSD Lok Sabha Debates
- MICAVA The Minnesota Centre Against Violence and Abuse
- NCW National Commission For Women
- NOC Notes on Cases
- NOW National Organization for Women
- NWS National Women' Study
- PTSD Post Traumatic Stress Disorder
- RI Rigorous Imprisonment
- SCC Supreme Court Cases
- SCW Supreme Court Weekly
- SDA Sex Determination Act
- SI Simple Imprisonment

CHAPTER I
INTRODUCTION

1.1 INTRODUCTION

Rape is not only a crime against the person (of a woman victim) it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is therefore, the most hatred crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the fundamental rights, mainly right to life and personal liberty enshrined under Article 21 of the Constitution of India and in its noble Preamble.[1]

It is a continuous offence in every society which has its presence from ancient period. Though the sex is inherent part of both male and female, it is treated as an offence against women in every community because it is a well-known fact that Indian society is male dominated and the women is expected and commanded to stay behind curtains unlike male members of that society. The word shame was only used to be followed by female strata of society and out of many form of shame the rape is placed in number one pose. Even the history says the prosecutrix is discarded, bald-headed and displaced from her society and some of them could not marry and thrown to destitute and also sometimes commit suicide. Overall in present modern and civilised society the stringent anti-rape laws have been enacted to punish the offenders and to compensate rape victims. In India the punishment amounts to either life imprisonment or upto 10 years rigorous imprisonment and/or with fine. And in cases of rape and murder, the Supreme Court of India awards death penalty treating the offence as rarest of rare cases as was held in *Dhananjay Chatterjee case*[2] in West Bengal.

Declaring that the right to life included the "finer graces of human civilisation" the Supreme Court in *P. Nulla Thompy Terah (Dr) v. Union of India*,[1] virtually rendered this fundamental right under Article 21 of the Constitution of India a repository of various human rights thus it includes right to life with human dignity

1.2 AIMS AND SCOPE

The current work examines critical issues such as the causes of rape, which kind of acts really constitute the offence of rape 'consequences and effects of rape with regard to victim, his social life as well as marital life in case of married women, and

the adequacy of legal provisions to contain them, and attempts to look at the entire possible panacea to such a societal threat, so that' the dignity is to be preserved..

1.3 HYPOTHESIS:

Keeping the above objectives in mind, the following hypothesis is formulated and sub-issues have been formulated wherever necessary:

1. The problem of rape against women is present in all the sections of the society irrespective of class, caste region or religion. Causes may be varied from one case to another, but the result is the same.

2. The protection of women from Rape is a progressive legislation and redressed mechanism under the Act needs revamping.

1.4 RESEARCH METHODOLOGY

This research was conducted using the doctrinal as well as non doctrinal approach. In order to draw inferences and conclusions, analytical descriptive, evaluative, and insightful methods were used. A large number of books, journals, papers, documents, and other sources were examined. The related matters on the topic were also culled from a thorough review of the websites..

- Doctrinal Research
- Case Studies and real time stories, books and their analysis on rape and sexual harassment.
- Analysis of real time factual stories of rape and concerned offences.
- enactments relating to sexual offences and authentic commentaries there upon.
- judicial pronouncements and legal articles relating to the topic.

1.5 SCHEME OF CHAPTERS

The present research work/study has been systematically arranged into seven chapters.

The **first chapter** i.e., **Introduction**, introduces the study and the research methodology adopted by the researcher for conducting the present study. The research methodology includes the significance of the study, statement of problem, need of

research, aims and objectives of the present research, the research hypothesis, type of research, research methodology including doctrinal method used in the research.

The **second chapter** of the dissertation is title **Rape: Introduction** the chapter is starts by giving a definition of rape along with rape sexual assault, rape of a minor child of 7 years ,sexual intercourse with young lady rape on promise to marry rape and murder of 14 year minor girl attempt to rape and murder of 9 year old girl father raped on his four year old child daughter and reduction of sentence these topics are discussed in this chapter and the very end the conclusion is also given in the end of the chapter. Rape is not only a crime against the person (of a woman victim) it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is therefore, the most hatred crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the fundamental rights, mainly right to life and personal liberty enshrined under Article 21 of the Constitution of India and in its noble Preamble

The **third chapter** is titled, **RAPE: LEGISLATIVE DEVELOPMENTS IN INDIA.** The chapter starts by introducing the legislative development. With what the present Report was precisely concerned, was the need to review the rape laws in the light of increasing incidents of custodial rape and crime of sexual assault on a child causes lasting psychic damage to the child crime of sexual abuse against youngsters. As noted by the Commission, the and, as such, it becomes essential to prevent sexual abuse of children through stringent deterrent provisions.

The genesis of the present Report was in a Writ Petition filed in the Supreme Court, in 1997, by an organisation known as "Sakshi", which had interest in issues concerning women. The petitioner had urged the court for directions concerning the definition of the expression "sexual intercourse" as contained in section 375 of the Indian Penal Code. Although the Commission was not made a party to the proceedings, the Supreme Court , however, directed it by an order to indicate its response with respect to the issues raised in the said Writ Petition. Thus, the subject was taken up by the Commission for study and examination.

The **fourth chapter** is titled, **"JUSTICE VERMA COMMITTEE REPORT SUMMARY"**. The chapter starts by introducing the scheme and objectives of the said chapter. when the Delhi gangrape case happened it was very different from the other gangrape cases which happened in India it was very brutal and heinous and the humanity was in shame .There was protest at a very large level parents were scared to send the girls out as there was no safe or secure environment atmosphere in India. India needed reformation in Indian criminal law basically in three respect first, the existing law must be reviewed for punishing the accused of sexual assault and rapist secondly, there should be the formation of separate committee for dealing with the same thidly, review the role of Police in providing secure atmosphere to the women as the result of separate committee was frame in January 2013 with the above line objects the committee was presided by justice Verma and presented the Verma Committee report in early February 2013

The **fifth chapter** is titled, "**Rape and murder – judicial activism**". The chapter starts by introducing the scheme and objectives of the said chapter. This chapter studies this gives a brief analysis of the recently held judgement regarding the rape and the judicial activism In this chapter we have covered the rape and murder 10 sentences rarest of the rare cases i.e rape and murder of a 2 year child and a sentence for sentence in that case Supreme Court on the cases on the rape cases to in this study we have discussed in the murder of 11 year old girl rape on mentally challenged girl of 11 year of old then some of the recent high court cases have been all we also discuss regarding the rape for an example rape of a girl of 5 year old rape of 15 year old girl with consent Party separately married imprisonment and compensation rape and the case of deaf and dumb victim of 17 year old.

The **sixth chapter** which is the last chapter is titled, "**Conclusion and Suggestions**". Herein the researcher has given all pervading and wholesome conclusion of the main study. This is followed by various suggestions and proposed amendments in the existing law with a view to improve the working of it and making it functionally effective.

CHAPTER II

RAPE :INTRODUCTION

INTRODUCTION

2.1 DEFINITIONS OF RAPE

The Halsbury's Laws of England, [1]defines rape as "It is an offence for a man to rape a woman. For the purposes, a man commits rape viz. (1) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it; and (2) at the time he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it".

Further para 514 states that in a trial for a rape offence the jury has to consider whether a man believed that a woman was consenting to sexual intercourse. The presence or absence of reasonable grounds for such a belief is a matter to which the jury is have regard in conjunction with any other relevant matter in considering whether he believed.[2]

The offence of rape means any of the following namely rape, attempted rape, aiding, abetting, counselling and procuring rape or attempted rape, incitement to rape, conspiracy to rape and burglary with intent to rape. [3]

A man who induces a married woman to have sexual intercourse with him by impersonating her, the husband commits rape.

Further a person guilty of rape or attempted rape is liable to conviction on indictment to imprisonment for life or for any other shorter term.[4]

The corroboration of evidence of the complainant, although not essential in law, is in practice always looked for.[5]

The Black's Law Dictionary[6], defines the term "rape" as "Unlawful sexual intercourse with a person under the age of consent (as defined by statute), regardless of whether it is ag person's will. Generally only an adult may be convicted of this crime. A person under the age of consent cannot be convicted". Further the rape is "carnal knowledge of a child is frequently declared to be rape by statute and where this is true the offence is known as "statutory "rape, although not so designed in the statute.[7]

Most modern country statutes have broadened the definition along these lines. Also it is termed in some statutes as "unlawful sexual intercourse", "sexual assault", "battery" and "sexual abuse".

---

1. A.I.R 1985 SC 1133.1985 supp SCC 199
2. See UK Sexual Offcences Act, 1956 and UK Sexual Offcence (Amendment) Act, 1976. See also DPP v. Morgan, 1976 AC 182: 61 Cr App Rep 136 (HL); R. v. Khan, R.v. Dhokia, R. v. Bomga, R. v. Faiz, (1990) Times 3 (CA); R. v. Kehal, (1983) 78 Cr App Rep 149.
3. See UK Sexual Offences (Amendment) Act, 1976, section 1(2) and R. v. Woods, (1981) 74 Cr App Rep 312 (CA); R. v. Fotheringham, (1989) 88 Cr App Rep 206 (CA); R. v. Woods, (1981) 74 Cr App Rep 312 (CA); R. v. Fotheringham, (1989) 88 Cr App Rep 206 (CA).
4. UK Sexual Offences (Amendment) Act, 1985, section 3(2).
5. R. v. Billam, (1986) 1 All ER 985; R. v. Roberts, (1982) 1 All ER 609: 79 Cr App Rep 242 (CA).
6. 7th Edn p. 1267
7. Rollin M. Perkins & Ronald N. Boyce, Criminal Law, p. 198, 3rd Edn., 1982.

2.2 SEXUAL ASSAULT

It is if there occurs that the threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact and also the act of putting another person in reasonable fear or apprehension of an immediate battery by means of an act assaulting to an attempt or threat to commit a battery, requiring the specific intent to cause physical injury.

Particularly the words "sexual assault" means sexual intercourse with another person without that person's consent. Several countries have repealed the offence of rape and replaced it with the "offence of sexual assault". An assault carried out with the additional criminal purpose of intending to rape the victim is otherwise called "the assault with intent to commit rape".[1]

2.3 RAPE OF A MINOR GIRL OF SEVEN YEAR

The 19 year accused committed the crime of rape with a seven year old girl. He was convicted and sentenced to life imprisonment and to pay 20,000 - as an amount of fine. The sentence was modified to 10 years rigorous imprisonment as the accused was poor agricultural labour. The amount of fine was also reduced to Rs 1000 only.[2]

2.4 SEXUAL INTERCOURSE WITH YOUNG LADY

The victim did not resist initially but escalated the matter after the incident, It was held that the sexual intercourse was not consensual. The accused convicted under section 376 of IPC and sentenced to 10 years of rigorous imprisonment.[3]

2.5 RAPE ON PROMISE TO MARRY

The accused committed sexual intercourse on promise to marry, Prosecutrix eloped with the accused. On complaint of father of prosecutrix, the accused was arrested and marriage was not solemnized. It was held that the accused was not guilty of rape.[4]

2.6 ATTEMPT TO RAPE AND MURDER OF NINE YEAR OLD GIRL

The accused made an attempt to rape on a nine year old girl and strangulated her to death when failed. Two of the witnesses stated in cross-examination that they had seen the blood on the spot, but the medical report showed that there was no oozing of blood from any part of the body of the deceased and further that there was no injury on private parts of the girl. It was held that it would not destroy the prosecution when other cogent evidence was

1. Black's Law Dictionary, 7th Edn., p. 110.
2. Bavo v. State of Gujarat, 2012 (1) SCC (Cri) 983: (2012) 1 MWN (Cri) 430: 2012 (2) Law Herald (SC) 1237: 2012 (1) RAJ 233: 2012 (1) Crimes 230; State v. Harkesh, 2016 (2) RAJ 111: 2016 (2) RCR (Cri) 273: 2016 (2) Law Herald (SC) 1151.
3. State of Assam v. Ramesh Dowarah, 2016 (158) AIC 11: 2016 (1) RCR (Cri) 799: 2016 (1) RAJ 342: JT 2016 (1) SC 195: 2016 (1) SCALE 258: 2016 Cr LJ 1125: AIR 2016 SC 341: 2016 (1) ACJ 326: 2016 (2) PLJR 85.
4. Deepak Gulati v. State of Haryana, 2013 (4) E C C 2010: 2013 (3) RCR (Cri) 96: 2013 (3) RAJ 558: 2013 (2) CCR 482: 2013 (2) KLT 762: 2013 (2) Ker LJ 810.

available.[1]

2.7 RAPE AND MURDER OF 14 YEAR MINOR GIRL

Rape and murder committed by the accused on a 14 year minor girl by her neighbour. The accused was convicted for a minimum of 35 years in jail without remission.[2]

2.8 FATHER RAPED ON HIS 4 YEAR OLD DAUGHTER

The father committed rape on his four year old daughter and strangulated her to death when nobody was in house. The accused did not explain the reason of her death which was in his special knowledge. This was a strong incriminating circumstance against the accused. The accused was convicted on these similar grounds and was sentenced to life imprisonment in jail for 30 years without remissions.[3]

2.9 REDUCTION OF SENTENCE NOT POSSIBLE IN OFFENCE OF RAPE

The offence of rape is the offence against the society. The sentence not to be reduced on basis of compromise. The offence of rape is non-compoundable.[4]

2.10 PLIGHT OF VICTIMS OF RAPE

The social stigma has a devastating effect on rape victim. The victims need physical, mental, psychological and social rehabilitation. Physically she must feel safe in society, mentally she needs help to restore her of loss of self-esteem. She needs to be accepted back in the social fold.[5]

2.11 REDUCTION OF SENTENCE IN RAPE CASE

The punishment of accused in rape case, has to be decided after considering all aggravating and mitigating factors and the circumstances in which the crime has been committed. The conduct and state of mind of the accused and the age of sexually assaulted victim and the gravity of the criminal act, are the factors of paramount importance.[6]

_____

1.Jugender Singh v. State of Uttar Pradesh, 2013 (3) SCC (Cri) 129: 2012 (6) SCC 297: 2012 AIR SCW 3170: 2012 (4) RAJ 1: 2012 (115) AIC 25: AIR 2012 SC 1013 (Cri): 2012 Cr LJ 3005: JT 2012 (5) SC 374.

2. Rajkumar v. State of Madhya Pradesh, 2014 (2) RCR (Cri) 45: 2014 (3) SCALE 42: 2014 (1) CCR 540: 2014 (3) SCR 212: 2014 RAJ 290: 2014 (1) MLJ (Cri) 699.

3. Neel Kumar v. State of Haryana, 2012 (3) Cal LJ 58: 2013 (122) AIC 224: 2012 (2) RCR (CH) 941: 2012 (3) RAJ 17: 2012 (3) RLW 2009; see also Prithipal Singh v. State of Punjab, 2011 (4) RCR (Cri) 791: 2011 (6) RAJ 61: (2012) 1 SCC 10.

4. Shimbhu v. State of Haryana, 2013 (5) RAJ 110: 2013 (3) CCR 547: 2014 Cr LJ 308: (2013) 10 SCALE 595: AIR 2014 SC 739; Baldev Singh v. State of Punjab, (2011) 13 SCC 705: 2012 (2) RAJ 59: 2011 (2) RCR 127; Mohd. Imran Khan v. State (NCT of Delhi), (2011) 10 SCC 192; State of Madhya Pradesh v. Madanlal, 2015 (3) ILR (Ker) 485: 2015 (3) PLJR 481; State of Rajasthan v. Vinod Kumar, 2012 (4) RCR 305: 2012 (4) RAJ 431: (2012) 6 SCC 770.

5. Md. Iqbal v. State of Rajasthan, JT 2013 (10) SC 53: (2013) 14 SCC 481: (2013) 3 CCR 555: 2014 (4) SCC (Cri) 271; Narender Kumar v. State (NCT of Delhi), 2012 (3) RCR (Cri) 66: 2012 (3) RAJ 138; Vijay v. State of Madhya Pradesh, 2010 (3) RCR (Cri) 794: (2010) 8 SCC 191.

6. State of Rajasthan v. Heera Lal, 2012 AIR SCW 3237: 2012 (78) A Cr C 167: 2012 (115) AIC 114: 2012 (3) Cr CC 422: 2012 (3) PLJR 121: (2012) 6 SCC 770.

2.12 RAPE ON 15 YEAR OLD GIRL

The accused and his three accomplices took away the prosecutrix and brought her to Haridwar, where they were staying in a house. The accused and his three accomplices committed the rape with her. Defence version was that it was prosecutrix who allured the accused to marry her and elop with him to Haridwar and had consensual sex with accused and his accomplices. This defence version was not convincing.[1]

2.13 NO CONSENT OF PROSECUTRIX

The prosecutrix stated in her sworn testimony that she did not given consent for commission of rape. The accused failed to give satisfactory evidence to rebut the presumption under section 114A of Evidence Act. It was held that the sexual intercourse was without consent of prosecutrix. The accused was sentenced to 7 years rigorous imprisonment.[2]

2.14 MEDICAL AND OCULAR EVIDENCE IN OFFENCE OF RAPE

The accused convicted and sentenced to life imprisonment. It was prayed that the conviction should be quashed on the ground that as per medical evidence there was no mark of sexual violence on the genital organs of the victim. It was not accepted by the Court on the ground that there was no reason to disbelieve the version of eye-witnesses which was corroborated by the witnesses.

2.15 REFUSAL OF REDUCTION OF SENTENCE IN RAPE CASE

The sexual offence is not only an unlawful invasion of the right of privacy and sanctity of a woman but also a serious blow to her honour. It also indelibly leaves a scar on the most cherished possessions of a woman i.e., her dignity, honour, reputation and last but not the least her chastity. And also the entire psychology of a woman and pushes her into deep emotional crisis.

2.16 ATTEMPT TO RAPE

The statement of prosecutrix was that the accused undressed her and also undressed himself and tried to commit bad work with her. The prosecutrix resisted and suffered injuries on her breast but same was not corroborated by the medical evidence. Hence there was absence of attempt to rape and the accused was convicted under section 354 of Indian Penal Code.

---

7. Jarnail Singh v. State of Haryana, 2013 (2) NCC 431: 2013 (3) CCR 194: 2013 (4) RAJ 226: JT 2013 (9) SC 374; Sunil v. State of Haryana, 2010 (1) RCR (Cri) 166: 2009 (6) RAJ 594.

2. Deepak v. State of Haryana, 2015 (1) CCR 523: 2015 (2) RCR (Cri) 246: 2015 (2) RAJ 210: JT 2015 (3) SC 28: 2015 (2) Bom CR (Cri) 1: 2015 All SCR 1236.

2.17. SEXUAL RELATIONS V. SEXUAL ACTIVITY

Sexual Relations and Sexual Activity relates to:

- sexual intercourse.
- physical sexual activity that does not necessarily culminate in intercourse.
- sexual relations usually involve the touching of another's breast, vagina, penis, or arms.
- both persons (toucher and the person touched) engage in sexual relations or sexual activity.

2.18 ANALYSIS OF INDIAN POSITION ON ANTI-RAPE LAWS

In India, at present days in comparison to whole of world, the occurrence of rape is so and so worse that it creates negative attitude towards our present system of democratic governance and hatred heart towards executive set up. In the year 2001, the Decan Herald posed that out of 68 rapes only 1 case is reported (i.e. 1:68) and the sexual harassment case the ratio is 1:10,000. The National Family Survey reports that one to five women face domestic violence from their husbands. The Global statistic says between 20% to 50%.[1]

It is a shame for our whole society irrespective of caste and creed to mention that in upper part of 2012 and early first quarter of 2013 and particularly after *Delhi Vasant Vihar gang rape case* on 16 December, 2012. Even if after such incidents Delhi and its NCT witnessed seven rape and gang rape within 24 hours. Many incidents of rape is noted in North India in respect to other part of India. But India does not sleep in a deep sleeps. Every spectrum of society, NGOs, social activities, judicial activism shouted against the increased trend of such herons crime of rape so that the government of India passed the Criminal Law (Amendment) Act, 2013 on 21 March, 2013 which followed and repealed the ordinance proclaim by the President of India on a new law and a new approach to the rape law. This new rape law is based on western approach of Sexual Offence Act particularly the new Sexual Offences Act of 2003 in England.

The Indian Penal Code, sections 375, 376 and 376A to 376D (old law, before Criminal Law (Amendment) Act, 2013 (13 of 2013) with effect from 3rd February, 2013) dealt with the offence of rape.

---

1. Naina Kapoor, Criminal Justice Reform: What is in it for women? Vol. 30. See also the Indian Advocate (2001-2002), p. 123.The offence of rape is an "unlawful sexual intercourse between a man and a woman without the woman's consent and against her will. The offence of rape requires both mens rea (motive of offender) and actus reus (act of offender). The offence of rape

requires both these two elements. It furthers needs that the man intends to have sexual intercourse knowing that the woman does not consent to such intercourse. The actus reus refers to the penetration per vaginam to constitute the offence of rape.

The case of *Phul Singh v. State of Haryana* it was held that the offence of rape signifies in common terminology as the ravishment of a woman without her consent, by force, fear or fraud or the carnal knowledge of a woman by force against her will. In other words rape is a violation with violence of the private person of a woman, an outrage by all means.

Section 375 of Indian Penal Code defines rape and section 376 prescribes its punishment. Section 376A makes husband punishable for intercourse with his wife during judicial separation and sections 376B to 376D provides punishment for custodial rape (old law before 2013 Amendment).

But in considering the inadequacy of rape law the Supreme Court of India concerned its view in the cases[1] for which the Parliament of India amended extensively in 1983 the rape law provisions by incorporating more stringent penal provisions.

The Supreme Court in case of *State of Punjab v. Gurmit Singh* refused to question about the character of prosecutrix (victim of rape) in cross examination.

This court in a case confirmed the admissibility of evidence by way of video-conferencing.

In another case the Supreme Court observed that in the judgments, be it of High Court or a Lower Court, the name of the victim should not be mentioned and the name should be replaced by "victim".

The Supreme Court in case of State of Karnataka v. Krishnappa held that in addition to strengthening the rape law, it was necessary to have a co-operative victim, professional investigation, diligent prosecution, expeditious trial and sensititive judges to ensure proper investigations, trial and conviction in sexual crimes. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing courts are expected to consider all relevant facts and

---

1. Tukaram v. State of Maharashtra, AIR 1979 SC 185: (1979) 2 SCC 143: (1979) 1 SCR 810: 1978 CAR 413: 1978 Cr LJ 1864; Shideswari Gangul v. State of West Bengal, AIR 1958 SC 143: 1958 SCR 749: 1958 SCJ 349: 1958 Cr LJ 273; Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, AIR 1983 SC 753: (1983) 3 SCC 217: (1983) 3 SCR 280: 1983 Cr LJ 1096: 1983 CAR 343

circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must here the loud cry for justice by

the society in cases of such heinous crime of rape on innocent helpless girl of tender years, and respond by imposition of proper sentence; public abhorrence of the crime needs retention through imposition of appropriate sentence by the court.

The Supreme Court in a case[1] where three accused after abducting the victim, subjected her to sexual intercourse forcibly, held that the act was against her will and it amounted to rape within the meaning of section 375 of Indian Penal Code punishable with its section 376.

The word "consent" can change a shape of offence in case of rape or sexual assault.

In Rao case it was observed that:

"Consent is an act of reason accompanied by deliberation, a mere act of helpless resignation in the face of inevitable complaint in quiescence non-resistance and passive giving it cannot be deemed to be consent to exempt a man of the charge of rape".

In Mango Ram's case the court held that:

“Submission of body under the fear or terror cannot be construed as a consented sexual act, consent for the purpose of section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and ascent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances."

Most importantly the Supreme Court in a case held that:

1. Consent given by a woman believing the man's promise to marry her would fall within the expression without her consent" vide clause (iii) to section 375 of Indian Penal Code, only if it is established that from the very and inception the man never really intended to marry her and the promise was mere hoax;
2. When prosecutrix had taken a conscious decision to participate in the sexual act only on being impressed by the accused's promise to marry her and the accused's promise was not false from its inception with the intention to seduce her to sexual act, clause

---

1.State of Punjab v. Gurmit Singh, AIR 1996 SC 1393: (1996) 2 SCC 384: 1996 Cr LJ 1728: 1996 AIR SCW 998: (1996) 1 SCJ 566: (1996) 1 Crimes 37.

2.Deelip Singh @ Dilip Kumar v. State of Bihar, (2005) 1 SCC 88: AIR 2005 SC 203: 2004 AIR SCW 6479: 2004 (8) Supreme 266; In Re N. Jaladu, ILR (1913) 36 Mad 453; Jayanti Rani Pande v. State of West Bengal, 1984 Cr LJ 1535; Purshottam Mahadev v. State, AIR 1963 Bom 74.

(ii) to section 375 of this Code is not attracted and established. In such a situation the accused would be liable for breach of promise to marry for which he will be liable for damages under civil law;

3. False promise to marry will not ipso facto make a person liable for rape if the prosecutrix is above 16 years of age and impliedly consented to the act.

In case of *Uday v. State of Karnataka*[2] it was observed that the consent given by prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact.

The consent procured by putting the woman under fear of death or hurt is
no consent in law.

Consent of a woman of unsound mind or under the influence of intoxication is no consent.

The consent of mentally retarded woman is no consent.

A woman under 16 is considered incapable of giving consent for sexual intercourse.

2.19 CONCLUSION

An overview of the crimes clearly indicates that most of the crimes against women cut across all barriers of religion, caste or social strata. Education and economic independence rarely increases the moral courage of the victim to fight against the crimes especially those crimes which have a social stigma attached to them. The gender biasness, the patriarchal society, poorly developed shelter, lack of space, lack of awareness, lack of time by the loved ones, defective government policies, capitalist kind of society etc. are factors which contribute to the crimes against women. This is indicative of society's weakness to protect those who for various inherent reasons are not able to protect themselves fully and also the fact that we have males among us who are worse than beasts. It is slur on the noble values and institutions, which the society so loudly extols. The sexual offences particularly rape is a standing insult not only to sacred institutions of marriage, sisterhood and motherhood but also to the whole humanity. In rape, the victim is destroyed and left alive to face the consequences of the destruction every single day. She has to live her death every single hour, single minute and single second of her life. The process of law is lengthy, cumbersome and expensive. Delayed trials due to the heavy back-log of cases and the other

1. (2003) 2 SCALE 329: (2003) 4 SCC 46: 2003 Cr LJ 1539 (SC).

delaying tactics of the offender dilute the case, proofs disappear, and it reduces the chances of victim getting justice. Rape is a very complex phenomenon which itself has multiple factors involved in the justice delivery process. For the prevention and control of this evil a

combined, coordinated and concerted efforts are required on the part of police, judiciary, NGOs and common people at large.

CHAPTER III

RAPE: LEGISLATIVE DEVELOPMENTS IN INDIA

84th Report, 1980 on rape and Allied Offence - Some Question of Substantive Law, Procedure and Evidence

INTRODUCTORY

3.1.1. The criminal justice system and the offence of rape.-During recent years, the impact of the criminal justice system on victims of rape and other sexual organizations and individuals connected with the welfare of women. In the field of criminology, an increasing interest is being shown in the victim and his or her position in the criminal justice system. In consequence, greater attention is now being paid to the female victim of a sexual offence. Psychologists have, for some time past, been studying the effects of rape and other sexual offences upon women or girls and their personality.

3.1.2. The crisis of rape- It is often stated that a woman who is raped undergoes two crisis-the rape and the subsequent trial. While the first seriously wounds her dignity, curbs her individual, destroys her sense of security and may often ruin her physically, the second is no less potent of mischief, inasmuch as it not only forces her to re-live through the traumatic experience, but also does so in the glare of publicity in a totally alien atmosphere, with the whole apparatus and paraphernalia of the criminal justice system focused upon her.

In particular, it is now well established that sexual activities with young girls of immature age have a traumatic effect which often persists through life, leading subsequently to disorders, unless there are counter-balancing factors in family life and in social attitudes which could act as a cushion against such traumatic effects.

Rape is the 'ultimate violation of the self. It is a humiliating event in a woman's life which leads to fear for existence and a sense of powerlessness. The victim needs empathy and safety and a sense of re-assurance. In the absence of public sensitivity to these needs, the experience of figuring in a report of the offense may itself become another assault.

Forcible rape is unique among crimes, in the manner in which its victims are dealt with by the criminal justice system. Raped women have to undergo certain tribulations. These begin with their treatment by the police and continue through a male-dominated criminal justice system. Acquittal of many de facto guilty rapists adds to the sense of injustice.

In effect, the focus of the law upon corroboration, consent and character of the prosecutrix and a standard of proof of guilt going beyond reasonable doubt have resulted in an increasing alienation of the general public from the legal system, who find the law and legal language difficult to understand and who think that the courts are not run so well as one would expect.

3.1.3. Reference by Government.- In view of the recent discussions that have taken place in the press and in other forums regarding the inadequacy of the law to protect women who have been victims of rape or assaults on their modesty, Government has asked the Law Commission[1] to make a special study of the law relating to rape. Government has also requested the Commission to consider certain material[2] relevant to the subject, which was referred to in the letter of reference, and forwarded to the Commission by a supplementary letter. The material so forwarded includes a letter addressed by a lady Member of Parliament, a newspaper cutting containing report of a meeting at which some suggestions administrative instructions issued by the Government of India in the Ministry for reform were made, extract from the LP.C. Amendment Bill, as also certain of Home Affairs on the subject of arrest and interrogation of women.

It has been suggested in the letter of reference that the study should cover not only the substantive law relating to rape, but also the rules of evidence and procedure and other related matters. The Commission has been requested to forward its Report within as short a period as possible.

Later, on 15th April, 1980, certain other materials, namely, copy of a petition addressed to the Lok Sabha by Smt. Lata Mani and a copy of the uncorrected record of the discussion in the Lok Sabha on the 27th and 28th March, 1980 on a motion (relating to rape on women) moved in the Lok Sabha by Smt. Geeta Mukherjee were forwarded to us. We have carefully considered the points made in the petition and in the Lok Sabha Debates.

3.1.4. Suggestions for amendment.—Besides the reference made by the Government, the Commission has also received a suggestion for considering certain changes in the

---

1. D.O. letter No. PS/LS/LA/80, dated 27th March, 1980, from the Secretary, Department of Legal Affairs, Ministry of Law to the Member-Secretary, Law Commission of India (Letter of reference).

2. D.O. letter No. 1482/80A, dated 31st March, 1980 from Joint Secretary & Legal Adviser, Department of Legal Affairs to the Member-Secretary, Law Commission of India (Supplementary letter)

law of rape. The points made in the suggestion have been duly considered by the Commission.

The Commission has also made an attempt to ascertain the views of organizations interested in the subject, as also of one of the Members of Parliament who had in a letter[1] addressed to the Government suggested, reforms on certain points which we have carefully considered. The Commission is grateful to them for their co-operation.

3.1.5. Role of the criminal law- It is elementary that the criminal law is the chief legal instrument for preventing anti-social acts of a serious character. This object is sought to be achieved, in the first instance, by the legislative command embodying that aspect of punishment which is called "general deterrence". Once a crime—whether sexual or of any other category-has been committed, this aspect is, at least for the lime being, exhausted in regard to that particular criminal act. The fact that the particular crime has been committed shows that the object of deterrence has failed to prevent the particular criminal act.

However, one can still expect of the legal system that it should make reasonable provisions to ensure that the criminal act already committed is dealt with adequately-consistently, of course, with the general norms of the judicial process, so that the legislative command is enforced, the object of deterrence is realized and (if the accused is found guilty) the punishment to be imposed is such as to deter others also—thus bringing the aspect of "general deterrence" again in play.

In this field, thus, the main objective of legal reform would be to promote justice after the offence is committed.

It is in this background that reforms in the law have been considered in this Report.

3.1.6. Earlier reports of the Law commission.-At this stage, it is proper to mention that some of the matters that now fall for consideration have been dealt with by the Law Commission in its Report on the Penal Code and in its Report on the Indian Evidence Act, wherein certain recommendations were made for reform of the law. We shall at the proper place, make a reference in detail to those recommendations,

---

1. Endorsement No. 1807/80-Adv. A, dated 16th April, 1980 from Shri P.K. Kartha, Joint Secretary & Legal Adviser, Department of Legal Affairs forwarding a copy of letter dated 7th April, 1980 addressed by the Bhagini Samaj, Bombay to the Minister for Law.

and also indicate our views as to whether any further changes in the law are needed.

However, it would be appropriate to mention here a very important recommendation made by the Commission in regard to the Penal Code In order to deal with cases where the circumstances are such that a male may be able to take undue advantage of the situation and seduce the woman to Illicit intercourse, Commission recommended the Insertion in the Code of three specific sections, intended respectively to deal with illicit intercourse-

(i) by a person having custody of a woman, with that woman,

(ii) by superintendent of an institution, with an inmate of the institution, and

(iii) by a person charge of a hospital, with a mentally disordered patient.

These recommendations, made after careful consideration and intended to deal with social problems of some seriousness that were anticipated by the Law Commission, have assumed still greater importance during the period of nine years that has, elapsed since the Commission forwarded its recommendations.

3.1.7. Method adopted. -Reverting to the matters that fall to be considered in the present Report, we may state that the reference made by the Government to the Law Commission and also the suggestions that the Commission has received-raise a variety of questions. It will be convenient to deal with the various questions separately under appropriate headings, so that aspects of the substantive law, of procedure and of the law of evidence, may all be dealt with.

3.1.8. Desultory implementation.-It should, however, be pointed out that on several matters the present statutory law is adequate, in so far as the matter could be dealt with by legislation and the need is for effective implementation. Hardship and injustice arise because implementation of the law is desultory.

3.1.9. Steps to be taken to avoid suspicion of harassment- In the views expressed by the representatives of several women's organizations with whom we were able to hold discussions, great emphasis has been placed on the need to take adequate precautions for the protection of women who, being the victims of rape, are required to make their statements to the police for the purposes of investigation. There seems to be a strong feeling that the present arrangements are not adequate and do not ensure that no opportunities arise for complaints against male police officers of harassment or molestation of such women. This feeling is universal and intense. We are aware that the matter is primarily one which should be, and can effectively be, dealt with by

appropriate executive steps, and it may not be practicable to hedge in the functioning of the police with too many restrictions. Nevertheless, we consider it proper to make certain recommendations for an amendment of the law in order to safeguard the legitimate interest of such women-being amendments which, we hope, will not unduly hamper the efficient functioning of the police force

2. PRESENT LAW AS TO RAPE

3.2.1. Scope- We propose to consider in this Chapter the substantive law relating to rape and indecent assault.

3.2.2. Section 375, Indian Penal Code.-Section 375 of the Indian Penal Code defines rape as under:

"375. A man is said to commit 'rape' who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:

First.-Against her will.

Secondly.-Without her consent.

Thirdly- With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.-With or without her consent, when she is under sixteen years of age.

Explanation.-Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.-Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape."

II. RECOMMENDATION IN 42ND REPORT

3.2.3. Earlier Report.-Here, it would be appropriate to reproduce the re-draft of the relevant sections as recommended in the 42nd Report of the Commission: Re-draft of sections 375 to 376E as recommended in 42nd Report:

"375. Rape.- A man is said to commit rape who has sexual intercourse with a woman, other than his wife

(a) against her will: or

(b) without her consent; or

(c) with her consent when it has been obtained by putting her in fear of death or of hurt, either to herself or to anyone else present at the place or

(d) with her consent, knowing that it is given in the belief that he is her husband

Explanation I -Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Explanation II - A woman living separately from her husband under a decree or judicial separation or by mutual agreement shall be deemed not to be his wife for the purpose of this section.

"376. Punishment for rape-Whoever commits rape shall be punished with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine.

"376A. Sexual intercourse with child wife. --Whoever has sexual intercourse with his wife, the wife being under fifteen years of age, shall be punished

(a) if she is under twelve years of age, with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine; and

(b) in any other case, with imprisonment of either description for a ferm which may extend to two years or with fine, or with both."

"376B. Illicit intercourse with a girl between twelve and sixteen. --Whoever hay illicit intercourse with a girl under sixteen years, but not under twelve years of age, with her consent, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine

It shall be a defence to a charge under this section for the accused to prove that he, in good faith, believed the girl to be above sixteen years of age."

"376C. Illicit intercourse of public servant with woman in his custody – Whoever, being a public servant, compels or seduces to illicit intercourse any woman who is in his custody as such public servant shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

"376D. Illicit intercourse of superintendent etc. with inmate of women's or children's institution.-Whoever, being the superintendent or manager of a women's or children's institution or holding any other office in such institution by virtue of which he can exercise any authority or control over its inmates, compels or seduces to illicit sexual intercourse any female shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation- In this section 'women's or children's institution' means an institution whether called an orphanage, home for neglected women or children, widow's home or by any other name, which is established and maintained for the reception and care of women or children, but does not include

(a) any hostel or boarding house attached to, or controlled or recognized by, an educational institution, or

(b) any reformatory, certified or other school, or any home or workhouse, governed by any enactment for the time being in force."

"376E. Illicit intercourse of manager etc. of a hospital with mentally disordered patient.—Whoever, being concerned with the management of a hospital or being on the staff of a hospital, has illicit sexual intercourse with a woman who is receiving treatment for a mental disorder in that hospital, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.-It shall be a defence to a charge under this section for the accused to prove that he did not know, and had no reason to believe, that the woman was a mentally disordered patient."

3.2.4. Recommendation in earlier Report as dealing with force and fraud.-It would be noted that these recommendations of the Law Commission in the earlier Report deal with forcible and fraudulent sexual intercourse as well as with illicit sexual intercourse by way of seduction, in all their ramifications. We are, however, for reasons to be stated later, adopting a different and wider scheme.

3.2.5. Absence of consent.—The statutory definition of rape in India emphasizes the element of absence of consent. In fact, absence of consent is an important aspect of the actus reus of the offence. Barring cases where consent is irrelevant and the age of the girl is the only crucial factor (because of the statutory requirement of minimum age), want of consent becomes, in practice, a determining factor in most prosecutions for rape. It is also the factor to which the law has devoted the most detailed attention—as is manifest from the elaborate rules and refinements that are to be met with in various clauses of the statutory definition of rape, and from the richness of material to be found in case law and lengthy discussion on the subject to be found in academic writings.

3.2.6. Consent is the antithesis of rape-Even if some may find any discussion on consent as too complicated, the matter cannot, consistently with the needs of the subject, be put in simple one-phrase formulation. When circumstances in life present an infinite variety, the law must be well-equipped to deal with them. Nuances of consent are therefore, unavoidable.

3.2.7. The concept of free consent-section 375, 3rd clause and section 90.- The most important question of substantive law relates, then, to the concept of consent in the context of the offence of rape. Consent must be real. Often, it is vitiated by circumstances that take away the freedom of choice. Taking note of this aspect, the third clause of section 375 (definition of "rape") provides that sexual intercourse with a woman amounts to rape if it is "with her consent, when her consent has been obtained by putting her in fear of death or of hurt". The vitiating factor here is duress or coercion, but only one specific aspect of it is dealt with. In contrast, the matter is dealt with more comprehensively in section 90, which is too often overlooked by courts. The section reads as under:-

"90. Consent known to be given under fear or misconception. -A consent is not such a consent as is intended by any section of this Code, if the consent given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person- If the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child. -Unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.[1]

3.2.8. Effect of recommended amendment. -We shall indicate later the changes that we are recommending to section 375, particularly those on the issue of consent. It will be seen that the amendments recommended by us in the second and third circumstances enumerated in section 375 considerably widen their scope. The substitution of the expression "free and voluntary consent" for the word "consent" in the second clause makes it clear that the consent should be active consent, as distinguished from that consent which is said to be implied by silence.

Under the amendment as recommended, it would not be open to the Court to draw an inference of consent on the part of the woman from her silence due to timidity or meekness or from such circumstances without any more-as that the girl meekly followed the offender when he pulled her, catching hold of her hand, or that the woman kept silent and did not shout or protest or cry out for help

3.2.9. Effect of modifications recommended as to fear of injury and criminal intimidation- The modifications recommended by us in the third clause vitiate consent not only when a woman is put in fear of death or hurt, but also when she is put in fear of any "injury" being caused to any person (including herself) in body, mind, reputation or property and also when her consent is obtained by criminal intimidation, that is to say, by any words or acts intended or calculated to put her in fear of any injury or danger to herself or to any person in whom she is interested or when she is threatened with any injury to her reputation or property or to the reputation of any one in whom she is interested. Thus, if the consent is obtained after giving the woman a threat of spreading false and scandalous rumors about her character or destruction of her property or injury to her children or parents or by holding out other threats of injury to her person, reputation or property, that consent will also not be consent under the third clause as recommended to be amended.

3.2.10. Drugs, intoxicants and anesthetics.-We may now mention one situation which should also, in our view, be dealt with in section 375. Medico-legal literature furnishes cases of intercourse being attempted or consummated not only with the help of intoxicants a situation covered by section 90, though not expressly by section 375, Indian Penal Code—but also by the use of stupefying substances. It is obvious that consent to intercourse given in such cases is not real consent Such intercourse would possibly constitute rape if the requirement of "free and voluntary" consent is introduced—as is going to be our recommendation However, it may be desirable to cover it specifically in section 375.

3.2.11. Overt violence, if necessary-While these are the main amendments on the point of consent, we may also mention a few points that have been raised during the suggestions made to us, concerning the concept of consent. There is a suggestion that the definition of “rape" should make it clear that the crime can take place without overt violence. We have given careful thought to this aspect, but we do not think that the law needs any clarification in this regard. Overt violence, or, for that matter,

violence of any particular category, is not a necessary element of rape as defined in section 375. The cardinal fact is absence of consent on the part of the woman.

There can be cases of consent even when there is no violence. Violence-or, for that matter, marks of resistance-are not conclusive of consent. In any case, after a clarification is made in section 375 on the lines recommended by us, this point would lose much of its practical importance.

3.2.12. The proof Violence- It of course, be realistic to state that most women in our society are not equipped to repel an attempt at rape, even in, self-defence. When attached, they might submit in terror and are unable to muster enough physical strength for offering effective resistance. We have no doubt that courts will continue to attach due weight to this consideration and we hope that the amendment recommended by us in section 375 will be a reminder to all concerned of the true position.

3.2.13. Submission and consent :- It has been represented to us during our oral discussions with women's organizations that the law should enact that submission does not amount to consent, in the context of offence of rape. We are recommending changes in section 375, particularly in relation to the requirement of "free and voluntary" consent. In view of these changes which define the legal quantity of consent, we do not propose to make any such clarification as has been suggested.

3.2.14. Cases of helpless resignation- In the course of the oral discussions which we held with the representatives of the women's organizations, it has been suggested that in order to cover cases of submission to intercourse, there should be added below section 375 of the Indian Penal Code a suitable Explanation on the following lines:-

“A mere act of helpless resignation in the face of inevitable compulsion, acquiescence, non-resistance and passive giving in when volitional faculty is either clouded by fear or vitiated by duress cannot be deemed to be consent."

One can have no objection to the principle underlying the suggestion. However, two observations may be made on the subject. In the first place, the requirement of "free and voluntary" consent which we are going to add in section 375 implies an active mental participation of the woman in the transaction and a qualification of the nature suggested would not be required.

3.2.15. Recklessness- It has further been suggested that it should be provided in section 375 that rape can take place when the man does not care whether the woman

consented or not. It is difficult to see how the incorporation of this suggestion in section 375 will improve the present legal position. It must be remembered that a person out to commit rape is motivated by a strong uncontrollable passion or the lust of a savage. He will have his desire satisfied at any cost, no matter whether the woman consents or not, or whether or not he is being reckless in committing the act or in assuming consent. His approach to the act of rape is mechanical, non-emotional one. A rapist cannot be likened to a person wooing a lady with boastful phrases like "I came, I saw and I conquered" or by saying "you may strive, you may struggle for a while, but you too will ultimately fall like the lady in Don Juan". The crucial question is of consent; and on this question, the feelings of recklessness of a person about to commit rape have no bearing whatsoever.

3.2.16. Suggestion to add cases of reprisal by person in authority. -It has been suggested that the following amendment should be made to clause thirdly of section 375 of the Indian Penal Code:-

Add after "or of hurt", the words "or of any reprisal by any authority or person who may have authority over her".

A second Explanation to section 375, which would read thus, has also been suggested-

'authority' here would mean and include any police official, village

kotwal, village panch, or landlord or employer."

In view of the wider amendment that we are recommending in section 375—in particular, the amendment covering fear of any "injury"—this point is

substantially met

3.2.17. Fear of agony.-With reference to section 375, third clause of the Indian Penal Code, a suggestion has been made to add the following words:-

"or of physical or mental agony to herself or to her nearest blood relations, including her husband if she is married."

We are of the view that the expansion of the third clause which we contemplate, namely, its extension to cover any "injury", amply takes care of the type of cases for which this suggestion is intended. "Injury" as defined in section 44 includes, over alia, harm illegally cause in body or mind.

3.2.18. Section 375, fifth clause. --The discussion in the few preceding paragraphs was concerned with rape constituted by sexual intercourse without consent. The

intercourse with a woman under 16 years of age. Such sexual intercourse is an offence irrespective of the consent of the woman.

3.2.19. History- The age of consent has been subjected to increase more than once in India. The historical development may, for convenience, be indicated in the form of a chart as follows[1]-

Chart			
Year	**Age of consent under Sec. 375 5th Clause, IPC**	**Age mentioned in the Exception to sec 375 IPC**	**Minimum age of marriage under the Child Marriage Restraint Act, 1929**
1860 ……...	10 Years	10 Years	-
1891 (Act 10 of 1891) (after the amendment of IPC[2]	12 Years	12 Years	-
1925 (after the amendment of IPC)	14 Years	13 Years	-
1929 (after the passing to the Child Marriage Act)	14 Years	13 Years	14 Years
1940 (after the amendment of the Penal Code and the Child Marriage Act)	16 Years	15 Years	15 Years
1978……..	16 Years	12 Years	18 Years

1. Position as on 31st March, 1980.

2. Amendment Act 10 of 1891 amending the I.P.C. was the result of the Calcutta case of Queen Empress v. Hurree Mohan Mythee, 1890 ILR Cal 49, in which the accused caused the death of his child wife, aged about 11 years and 3 months, by having sexual intercourse with her. The accused was convicted under section 338, I.P.C. (causing grievous hurt by act endangering life etc.), since the law of rape as it stood then was inapplicable to intercourse with a girl above the age of 10 years.

3.2.20. Increase in minimum age -The question to be considered is whether the age should be increased to 18 years. The minimum age of marriage now laid down by law (after 1978) is 18 years in the case of females and the relevant clause of section 375 should reflect this changed attitude. Since marriage with a girl below 18 years is prohibited (though it is not void as a matter of personal law), sexual intercourse with a girl below 18 years should also be prohibited.

RECOMMENDATION

224. Recommendation as to section 375.—In the light of the above discussion, we recommend that section 375 of the Penal Code should be revised as under-

[Revised section 375, Indian Penal Code]

"375, Rape-A man is said to commit 'rape' who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions

First-Against her will

[Ex. section 375, first clause]

Secondly-Without her free and voluntary consent

[EX section 375, second cause amplified]

Thirdly. - With her consent, when her consent has been obtained by putting her in fear of death or of hurt or of any injury either to herself or to any other person or by criminal intimidation defined in section 503.

[Ex. section 375, third clause amplified]

Fourthly. -With her consent,

(a) when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married, or

(b) when her consent is given under a misconception of fact, when the man knows or has reason to believe that the consent was given in consequence of such misconception.

[Ex. section 375, fourth clause amplified]

Fifthly-With her consent, if the consent is given by a woman who, from unsoundness of mind or intoxication or by reason of the consumption or administration of any stupefying[1] or wholesome substance, in unable to understand the nature and

consequences of that to which she gives consent, or is unable to offer effective resistance.

[New]

Sixthly.--With or without her consent, when she is under eighteen years of age

[EX. section 375, fifth clause modified]

Exception.-Sexual intercourse by a man with his own wife, the wife not being under eighteen years of age, is not rape.

[Ex. section 375, exception modified]

Explanation 1.--Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape

[Ex. section 375, Explanation]

Explanation 2.--A woman living separately from her husband under a decree of judicial separation or by mutual agreement shall be deemed not to be his wife for the purposes of this section."

[New]

[As to the second Explanation, see the earlier Report].

PUNISHMENT FOR RAPE

3.2.25. Section 376—Minimum punishment for rape by more than one person- Suggestion not accepted- It has been suggested that in section 376of the Penal Code, which deals with the punishment for rape, the situation where more than one person join in the act should be dealt with by stringent provisions, by providing, say, a minimum punishment of 10 years rigorous imprisonment.

3.2.26. Aspect of group liability considered. - The offence of rape is, in law, a single act of sexual intercourse. That being so, if more than one person rape a woman one after another, each one of them would be punishable under section 376, I.P.C. When one person commits rape and others abet the Act by instigation or aid, the principal would be guilty of rape, and others would be punishable for abetment under section 109, Indian Penal Code. It is, however, doubtful whether, when the members of an unlawful assembly attacking a village or a section of people rape several women during the course of the raid or attack, they can be punished under section 376 with the aid of section 149, Indian Penal Code.

3.2.27. Minimum punishment not favoured. -Be that as it may, it should be noted that a rule prescribing a certain minimum punishment would not be in consonance

with the "modern penology" which has been of late expounded many cases by the Supreme Court. The circumstances in which the offence of rape is committed differ from case to case. Section 376, Indian Penal Code permits the Court to award life imprisonment or imprisonment upto ten years. The discretion of the Court in the matter of punishment should not be fettered by prescribing a certain minimum sentence. If the sentence awarded is heavy or light, it can always be corrected by the appellate or revisional court.

ASSAULTS, OUTRAGING MODESTY OF WOMEN AND INDECENT ASSAULTS

3.2.28. Section 354 and proposed section 354A.-We have so far discussed the offence of rape. We now deal with a few allied but less heinous offences. What is generally known as the offence of indecent assault is dealt with in section 354 of the Penal Code. This section punishes a person who assaults or uses criminal force to a woman with intent to outrage her "modesty". The Law Commission,[1] in its Report on the Penal Code, had occasion to refer to a judgment of the Supreme Court[2] in which it was held that even a baby of seven and a half months old has "modesty" that can be "outraged" by the use of criminal force within the meaning of this section.

The Commission was of the opinion that (apart from assault to outrage “modesty"), acts of indecency with children should be made specifically punishable by a new section, reading as follows:-

“354A. Indecent assault on a minor.—Whoever assaults any minor under sixteen years of age in an indecent, lascivious or obscene manner, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

We agree with the recommendation quoted above from the earlier Report, in so far as it goes.

3.2.29. Consent not to be a defence-However, we would like to make one addition. An indecent assault otherwise punishable under section 354 would presumably escape

---

1. Law Commission of India, 42nd Report (Indian Penal Code), paras. 16.85 to 16.87.

2. State of Punjab v. Major Singh, AIR 1967 SC 63 (65, 67): 1967 Cr LJ 1: 1966 (Suppl) SCR 286.

punishment if the assault is committed on the girl with her consent. The reason is that if a girl consents, her “modesty" cannot be outraged, and one of the essential requirements of the section would not then be satisfied. This, at least, has been the judicial construction[1] of the section.

Moreover, an act done with consent may not fall within "assault", unless the law, in a particular case, provides expressly to the contrary.

3.2.30. Need for change.-We are of the opinion that the law should expressly so provide in the case of indecent conduct with girls below 16 years. Having regard to the current thinking on the subject, it appears to be desirable to deal specifically with such indecency (with girls below 16, even with their consent).

In our opinion, besides incorporating section 354A in the Indian Penal Code, it is also necessary to further ensure by an express provision that the section will apply even where there is consent. In other words, consent of the woman should not prevent an act from being an assault for the purposes of this section and should not be a defence to a charge under this section.

3.2.31. Recommendation as to section 354A, Indian Penal Code.-Accordingly, we would recommend that, while incorporating section 354A in the Indian Penal Code, after the words "obscene manner", the words "with or without the consent of the minor" should also be added.

INDECENT GESTURES

3.2.32. Section 509, I.P.C.-We may mention here that acts which do not amount to an "assault"-acts such as indecent gestures and acts that have come to be known as "eve teasing"--are amply covered by section 509 of the Indian Penal Code.[2] The matter strictly does not Fall within the purview of rape or assault, but we refer to it because one of the women's organisations with whom we held discussions was anxious that the law should penalise such behaviour in public places or on public transport vehicles particularly.

Where there is physical contact or threat of physical contact, the offender can be charged under section 354 of the same Code, punishing a person who “assaults or

---

1. Sadananda Borgohin v. State, 1972 Cr LJ 658 (Assam).

2 Section 509, Indian Penal Code.

uses criminal force to any woman, intending to outrage or knowing Cute 1972 Sr LI 658 (Assam).

it to be likely that he will thereby outrage her modesty". The punishment is imprisonment of either description upto two years or fine or both. Both the offences are, as the law now stands, cognizable.

3.2.33. Eve teasing in Delhi and charges under the Police Act.-We should now deal with one point concerning the mischief of what has popularly come to be known as "eve teasing". We have been given to understand that practice of the Delhi Police is to take or suggest action under sections 91 and 92, read with section 97 of the Delhi Police Act for such mischief. These provisions, so far as they are material to the point under discussion, punish indecent exposure, indecent and obscene conduct and the like in a public place.

3.2.34. Recommendation as to police practice-Unfortunately, the provisions, of section 509, Indian Penal Code have been lost sight of by the police in almost all the States. The attention of the police should be drawn to that section and they should be asked to proceed under section 509 or section 354, Indian Penal Code, as the case may be, whenever an incident of "eve teasing" is reported or takes place.

The offences under sections 509 and 354, Indian Penal Code an cognizable, as already stated above.

OBSCENE TELEPHONE CALLS

3.2.35. Section 294, I.P.C.-Obscene telephone calls.-- In the context of offences against the modesty of women, a suggestion has been made that the making of obscene telephone calls should be made an offence. We have examined the relevant statutory provisions (including the Indian Penal Code and the Indian Telegraphs Act) in this connection.

Although section 509 may cover it, it is desirable to make an express provision. We find that section 20 of the Indian Post-office Act, 1898 punishes the sending of postal communications bearing on the cover indecent, obscene, seditious scurrilous, threatening or offensive matter. There is no corresponding provision in the Indian Telegraphs Act with reference to the sending of such messages on telephone. It is for this reason that a specific provision on the subject appears to be needed.

3.2.36. Recommendation to amend section 294.-We would, therefore, recommend the insertion of the following clause in the Indian Penal Code under section 294 to

deal with the mischief of obscene telephone calls:- "(c) sings, recites or utters on the telephone any obscene song, ballad or words or any abusive words."

3.ARREST AND INVESTIGATION

I.INTRODUCTORY

3.3.1. Scope.—We propose to deal in this Chapter with the provisions as to arrest of women and certain aspects of investigation into offences. We also propose to consider the question how far workers of social organisations should be associated with the process of investigation.

As to arrest, our discussion will cover certain matters concerning the arrest of women and their detention—these would apply to arrest and detention for any offence.

As regards investigation, some of the matters to be discussed in this Chapter are confined to rape and allied offences.

Some of them would, however, be applicable to the interrogation of women in general.

Some have a still wider application, concerned as they are with the duties of police officers concerning the recording of information relating to offences in general or charges against police officers.

3.3.2. Instructions issued by Ministry of Home Affairs. The letter of reference requests us to go through the instructions issued by the Government of India in the Ministry of Home Affairs on the subject of arrest and interrogation of women and to consider the question whether any of them could be placed on a statutory footing.

We have carefully gone through all the instructions, and we feel that while some of them can appropriately and conveniently be in the form of executive and administrative directions, the others should be placed on a statutory footing as rules and regulations under the Police Act.

3.3.3. Feeling of insecurity-It has been strongly impressed upon us by all the women's organisations, and also by those who sent us suggestions in writing, that whenever a woman is called to a police station for interrogation or when she is arrested or detained in a police station, she feels insecure and always apprehends that the police

will subject her to bodily pain, suffering and harassment and may even rape her.

1.E.g. paras 3.5 to 3.10

The feeling is held too strongly not to have some basis of fact. In any case, the very fact that such a feeling exists is, in itself, a sad commentary on the uprightness and credit of the police. It is not one born of the events in the comparatively recent past, but is one which has grown up over the year son account of the conduct and attitude of the police towards the women with whom they come in contact during the course or investigation of offences.

In our view, as criminal activities involving women grow, the need for an against police misdeeds to women, whenever they are called to police stations, elimination of this feeling of apprehension and of giving adequate protection becomes far more insistent.

3.3.4. Need for change in attitudes of the police.- Elimination, of this on the police that their attitude and outlook towards women at the time of and legal. Under the former, we recommend that it should be strongly impressed apprehension, so far as possible, may be achieved by remedies both administrative interrogation and investigation is entirely wrong and contrary to the tradition of the service. It should be impressed upon them that their behaviour towards women should be one of civility and courtesy and not one of harassment; with every desire to help in the detection of crime. The necessity for cultivating such an attitude should form part of their training.

So far as the law and legal processes are concerned, certain amendments, to be stated presently, should be carried out in the Code of Criminal Procedure

II. ARREST OF WOMEN

3.3.5. Arrest—Section 40, Code of Criminal Procedure-Taking, first, the subject of arrest, the material provision of the Code of Criminal Procedure is contained in section 46, which reads as under:-

"46. (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If such person forcibly resists the endeavor to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life."

The section requires a police officer making an arrest to actually touch or confine the body of the person to be arrested, unless there be a submission to custody by word or action. We are of the view that a provision should be added to the effect that in the case of women, their submission to custody shall be presumed unless proved otherwise, and that unless the circumstances otherwise require or unless the officer arresting is a female, the police officer should not actually touch the person of the woman for making an arrest.

3.3.6. Recommendation as to section 46(1), Cr. P.C., 1973.—Accordingly, were commend that the following proviso should be added to section 46(1) of the Code of Criminal Procedure, 1973:

"Provided that where a woman is to be arrested, then, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed, and unless the circumstances otherwise require or unless the police officer arresting is a female, the police officer shall not actually touch the person of the woman for making her arrest."

3.3.7. Section 46-Time of arrest.-With reference to this provision[section 46(1)] of the Code of Criminal Procedure, 1973, we are further of the view that a provision should be inserted to the effect that, except in unavoidable circumstances, no woman should be arrested after sunset and before sunrise. Where such unavoidable circumstances exist, the police officer must, by making a written report, obtain the prior permission of his superior officer, or, if the case is one of urgency, he must, after making the arrest, report the matter in writing to his immediate superior officer without delay with the reasons for arrest and reasons for not taking prior permission.

3.3.8. Recommendation to amend section 46.--Accordingly, we recommend that the following new sub-section should be inserted in section 46 of the Code of Criminal Procedure, 1973:-

"(4) Except in unavoidable circumstances, no woman shall be arrested after sunset and before Sunrise, and where such a voidable circumstances exist, the police officer shall by making a written report, obtain the prior permission of his immediate superior officer for effecting such arrest or, if the case is one of extreme urgency, he shall, after making the arrest, forthwith report the matter in writing to his immediate superior officer with the reasons for arrest and the reasons for not taking prior permission as aforesaid."

III. DETENTION OF WOMEN

3.3.9. Section 417A, Cr. P.C. (Proposed)-Detention in women's institutions. There are certain matters concerned with detention of women which require discussion. Where a woman is arrested and there are no suitable arrangements in the locality for keeping her in custody in a place of detention exclusively meant for women, it is, in our view desirable to send her to an institution established and maintained for the reception, care, protection and welfare of women or children, licensed under the Women's and Children's Institutions (Licensing)Act, 1956 or an institution recognized by the State Government. In cases where any special Act (such as the Suppression of Immoral Traffic in Women and Girls Act, 1956) requires that she should be sent to a protective home or other place of detention authorized for the purposes of such special Act, this will not apply. Itis desirable that the law should be amended for the purpose by inserting a new section-say, section 4174--in the Code of Criminal Procedure. The following is a very rough draft:-

"417A. Where a woman is arrested and there are no suitable arrangements in the locality for keeping her in custody in a place of detention exclusively meant for women, she shall be sent to an institution established and maintained for the reception, care, protection and welfare of women or children, licensed under the Women's and Children's Institutions (Licensing) Act, 1956 or an institution recognised by the State Government, except in cases where any special law requires that she should he sent to a protective home or other place of detention authorized for the purposes of such special law."

3.3.10. Suggestions regarding presence of male relative near the lock up-During our oral discussions with various women's organisations, it has been suggested that when women are detained in police custody or in judicial up, a male relative of the woman should be allowed to remain at a place to the lock up, so that he may be able to keep vigilance over what is happening in the lock up to the female inmate.

While we do not consider it practicable to make it a mandatory statutory requirement, we do recommend that it should be included in the executive instructions on the subject. The reason why we do not at the moment, feel in can be made at every police station. The shape and size of a police station and to suggest a statutory provision is that we are not sure if such arrangement its precincts would vary from area to area; so would the facilities that could be provided for the purpose.

IV. INTERROGATION OF FEMALE VICTIMS OF SEXUAL OFFENCES

3.3.11. Reporting and investigation --These matters concern the arrest and detention of women in general. We now deal with certain matters peculiar women who are victims of sexual offences. Women who have been raped reluctant to report it partly because of the embarrassment of discussing details with male policemen, and partly because of the very fear of the even more painful humiliation of being a witness in Court.

They get scared and become confused when, in the strange environment of the Courtroom, they have to conduct themselves in a manner foreign to their custom and under a restraint not conducive to clear coherent thought or to fine expression

3.3.12. Investigation by female police-No statutory change recommended. Woman is often discouraged from pressing a charge of rape or other sexual offence by the fact that she usually encounters only male police and prosecution office. It is presumably for this reason that it has been suggested that the investigation of such offences should be done by women police officers only.

We would be happy if the questioning of female victims of sexual offences would be done by women police officers only. We are not, however, inclined to recommend a statutory provision in this regard. A mandatory provision to that effect may prove to be unworkable. The number of women police officers in rural areas is very small. Even in urban areas, unless a centralized cell (with the status of a police station) is created for investigation into sexual offence against women, such a provision may not be practicable.

We regard this difficulty as a transient one. An all-on effort for the recruitment of sufficient number of women police officers, who could be drafted for the police duties of interrogation and investigation, should be made.

3.3.13. Practice to be adopted in metropolitan cities.— Till then, in metropolitan cities or big cities where there are sufficient number of women police officers

a practice should be established that women police officers alone investigate sexual offences and interrogate the victim.

We are, therefore, not in favour of any statutory provision being made in this respect, subject to what we are recommending in the next paragraph.

3.3.14. Interrogation of child victim of rape-Statutory provision recommended. -The practice as suggested above[1] could be adopted in metropolitan areas and big

cities. But there is one matter which is of importance for the whole country. Itis necessary that in the case of girls below a certain age—say, below twelve years who are victims of rape, there should be a statutory provision to ensure that the girl must be interrogated only by a woman. A woman police officer would be preferable. But, if a woman police officer is not available, an alternate procedure as detailed below should be followed.

The alternate procedure that we contemplate is this. Where a woman police officer is not available, the officer in charge of the police station should forward a list of questions to a qualified female (we shall suggest details later) who would, after recording the information as ascertained from the child victim, return the papers to the officer in charge of the police station. If necessary, further questions to be put to the child may be sent by the police to the interrogator.

For the present, this procedure may be applied to female victims of offences below 12 years. It could later be utilised for child witnesses in general, if found practicable.

The "qualified female" whom we have in mind should be one who is a social worker belonging to a recognized social organization. If she possesses some knowledge of law and procedure, it would be all the more useful, but that need not be a statutory requirement.

3.3.15. Amendment of section 160 recommended by insertion of sub- sections (3) to (7).-In view of what is stated above, we would recommend the addition of the following provision say, as new sub-sections—in section 160of the Code of Criminal Procedure, 1973:-

"(3) Where, under this Chapter, the statement of a girl under the age of twelve years is to be recorded, either as first information of an offence or in the course of an investigation into an offence, and the girl is a person against whom an offence under sections 354, 354A or 375 of the Indian Penal Code[2] is alleged to have been committed or attempted, the statement shall be recorded either by a female police officer or by a person authorised by such organisation interested in the welfare of women or children as is recognised in this behalf by the State Government by notification in the official gazette.

(4) Where the case is one to which the provisions of sub-section (3) apply, and a female police officer is not available, the officer in charge of the police station shall, in order to facilitate the recording of the statement, forward to the person referred to

in that sub-section a written request setting out the points on which information is required to be elicited from the girl.

(5) The person to whom such a written request is forwarded shall, after recording the statement of the girl, transmit the record to the officer in charge of the police station.

(6) Where the statement recorded by such person as forwarded under sub. section (5) appears in any respect to require clarification or amplification, the officer forwarded, with a request for clarification or amplification on specified matters ; and such person shall thereupon record the further statement of the girl in conformity with the request end return the papers to the officer in charge of the police station.

(7) The statement of the girl recorded and forwarded under sub-sections (3) to (6) shall , for the purpose of the law relating to the admissibility in evidence of statements made by any person, be deemed to be a statement recorded by a police officer."

V. INTERROGATION OF WOMEN AT THE PLACE OF RESIDENCE

3.3.16. Section 160(1), Proviso, Cr. P.C-. There is another aspect of investigation which is in need of reform. Under section 160(1) of the Code of Criminal Procedure, 1973 a police officer making an investigation under Chapter 14 of the Code may, by order in writing, require, the attendance before himself of any person "being within the limits of his own or any adjoining station" (for the purposes of investigation). The proviso to this sub-section provides that "no male person under the age of fifteen or woman shall be required to attend of

any place other than the place in which such male person or woman resides".

The proviso has been taken over by the present Code from the earlier Code of 1898. In that Code, it was inserted by an amending Act of 1955 in response to the observations made in a number of earlier judicial decisions, suggesting that women should not ordinarily be called to the police station.[2]

3.3.17. Defect in drafting.—Though it is clearly the policy of the law to ensure that the interrogation of the persons in question (women and young boys)should be done at their residence, the object is not, at present, fully reflected in the words employed for the purpose in section 160(1), proviso. The expression “place" is a wide one. Its definition in the Code is also an inclusive one, and in any case, does not indicate very clearly that in the context of section 160(1),proviso, "place" means a place where the person resides.

It is a mistake to think that section 160(1), proviso enjoins the police officer to interrogate a woman at the place where the woman resides. This is not so."Place" means the locality in which the woman resides and ever which the police officer has jurisdiction.

In order to reflect the legislative policy more fully and to fortify the protection sought to be enacted in the proviso, the phraseology, in our opinion, requires a slight alteration.

3.3.18. Recommendation to revise section 160(1), proviso, Cr. P.C.-Accordingly, we recommend that section 160(1), proviso of the Code of Criminal Procedure, should be revised as under:-

To be substituted for section 160(1), proviso, Code of Criminal Procedure:

"Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than his or her dwelling place.

3.3.19. Punishment for violation of section 160(1) not adequate.-Another point arising out of section 160(1), proviso of the Code of Criminal Procedure may now be discussed, namely, penalty for violation thereof. The position in this regard is not satisfactory. At present, the mere summoning of a person in violation of the statutory mandate[1] would presumably be punishable as wrongful restraint under section 341, Indian Penal Code (imprisonment upto one month or fine upto five hundred rupees).

In our view, the punishment under section 341, I.P.C. is, inadequate for an offence of this nature. Perhaps, a charge of an offence under section 166, Indian Penal Code (public servant disobeying direction of law with intent to cause injury to any person) could be made for the violation of the prohibition in question. But, in our opinion, it would be better to have a specific provision-say, as section 166A-in the Indian Penal Code to cover such violations. The provision could be appropriately placed in the Chapter on "Offences by or against public

servants". The proposed offence should be cognizable, bailable and triable by any Magistrate.

---

1. Compare the observations made in Haldar v. Sub- Inspector of Police , 9 CWN 199 (201)

3.3.20. Section 166A, I.P.C. recommended.—The following is a rough draft of the provision that we would recommend to be inserted in the Indian Penal Code on the subject mentioned above:-

(To be inserted in the Indian Penal Code)

"166A. Whoever, being a public servant-

(a) knowingly disobeys any direction of the law prohibiting him from requiring the attendance at any place of any person for the purpose of investigation into an offence or other matter, or

(b) knowingly disobeys any other direction[1] of the law regulating the manner in which he shall conduct such investigation, to the prejudice of any person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both."

VI. INTERROGATION OF WOMEN-TIME OF INTERROGATION

3.3.21. Interrogation of women after sunset and before sunrise.—The last few paragraphs were concerned with the place of interrogation of women. We should now deal with the time of interrogation. In the views expressed before us by a representative of one of the women's organizations, it was suggested that women, even when they are not the persons accused or victims of the offence and are merely witnesses to the crime, should not be interrogated by the police after sunset and before sunrise. It seems to us that if the statutory provision for interrogating women at their residence,[2] as proposed to be clarified by us,[3] properly and adequately implemented, there should be no need for a further and additional provision totally barring the interrogation of women after sunset and before sunrise.

After all, the principal object sought to be achieved by such restrictions is to ensure that no opportunity arises for the molestation of women[4]. That object is, in a large measure, achieved by the statutory provision referred to above.

---

1. Section 160(1), Proviso, Code of Criminal Procedure, 1973.

2. Raja Ram v. State of Haryana, (1971) 3 SCC 945 (949).

3. Cf. sections 162(1), 163, 171, Code of Criminal Procedure, 1973.

4. Consequential amendment to be made in the Schedule to the Code of Criminal Procedure 1973, so as to provide that the proposed offence shall be cognisable, bailable and triable by any Magistrate.

VII. SOCIAL WORKERS

3.3.22. Association of women social workers with investigation- Another aspect of investigation on which emphasis has been placed by one of the women's organisations during our oral discussions with them is the need to associate women social workers with investigation into cases relating to rape and allied offences. After giving the matter deep thought, we find it difficult to accede to the suggestion

Under our system of procedure, investigation is primarily in the hands of the police officer. Cognizance of offences can, no doubt, be taken by the competent Magistrate directly on a complaint[1] made by any person (generally speaking, that person need not even be the victim of the offence). But even the Magistrate to whom such a complaint is made would not have adequate investigative machinery at his disposal. He will also have to depend generally[2] on the police for the purpose, the only difference being that an investigation so directed by

the Magistrate who has taken cognizance on a complaint remains—in certain respects-subject to the orders of that Magistrate.

3.3.23. Investigation an arduous task.-That apart, investigation of an offence is not a light duty. We have the highest opinion and respect for women's intelligence, ability and competence, yet we feel that they may not be able to cope with the arduous duties which an investigating police officer is required to discharge. There is also the danger of a male police officer completely abdicating his duties if asocial worker is associated on an equal footing with him for investigation of an offence. If the investigation is successful and fruitful, then the male police officer will take all the credit for it, but if it fails, he will try to escape the liability for the failure by throwing the entire blame on the female associate.

This being the position, it may not he practicable to confer on women social workers any specific legal status.[3]

---

1. For sub-sections (3) to (7) to be inserted in section 160, see para. 3.15, supra.

2. For other points concerned with medical reports, see Chapter 4, infra.

3. Chapter 4, infra, paras. 4.7 and 4.10.

3.3.24. Recommendation to amend section 160, Cr. P.C.-However, in our view, it would be useful to provide that a female social worker should be allowed to be present whenever the victim of rape is interrogated by the police. We recommend that in section 160 of the Code of Criminal Procedure, 1973, a suitable amendment should be made for the purpose. The social worker must belong to an organisation recognised by the State Government.

3.3.25. Amendment of section 160 recommended by insertion of Sub-section (8)- In view of what is stated above, we would recommend the insertion of the following provision-say as a new sub-section—in section 160 of the Code of Criminal Procedure, 1973:_

"(8) Where, under this chapter, the statement of a male person under the age of fifteen years or of a woman is recorded by a male police officer, either as first information of an offence or in the course of an investigation into an offence, a relative or friend of such male person or woman, and also a person authorised by such organisation interested in the welfare of women or children as is recognized in this behalf by the State Government by notification in the official gazette, shall be allowed to remain present throughout the period during which the statement is being recorded."

VIII. POLICE REPORT TO BE ACCOMPANIED BY MEDICAL REPORTS

3.3.26. Section 173(5), Cr. P.C.-Report of a police officer to be accompanied with certain documents- The process of investigation generally culminates in the report of a police officer. The report of a police officer on which a Magistrate usually takes cognizance is the subject-matter of section 173 of the Code of Criminal Procedure. Along with such report, certain documents are to be forwarded as provided in sub-section (5) of that section, quoted below:-

"173. (5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses."

3.3.27. Section 173(5), Cr. P.C.-Amendment recommended as to medical reports- Our recommendations relating to medical reports to be made in a later Chapter[3]

contemplate the forwarding of the medical reports to the police officer investigating the offence. As a consequence of those amendments, it is necessary to amplify sub-section (5) of section 173.

Accordingly, we recommend that in section 173(5) of the Code of Criminal Procedure, 1973, after the words "on which the prosecution proposes to rely", the following words, figures and marks should be inserted:-

"including the report of medical examination of the arrested person accused of rape or attempt to commit rape forwarded to the police officer under section 53,and the report of medical examination of the victim of such an offence forwarded to the police officer under section 164A.

IX. INVESTIGATION WHERE POLICE OFFICER IS THE ACCUSED

3.3.28. Investigation into cases where a police officer is an accused.—We may note that during the debates on a motion in the Lok Sabha on the subject of rape of women,[1] it was suggested that where a police officer is the accused, the investigation into the offence alleged to have been committed by the police officer should be by some other agency, as otherwise it would be well impossible to convict the accused,

It is not clear what is meant by 'some other agency'. Perhaps the idea is that where a police officer is involved in rape, then the investigation should be by a police officer of the district or area other than the district or area where the culprit officer was posted at the time of the crime. We commend the suggestion for the consideration of Government.

X. NON-RECORDING OF INFORMATION RELATING TO COGNISABLE OFFENCES

3.3.29. Section 167A, I.P.C.-Refusal to register case of rape.-We now come to another matter concerning the stage of investigation. During our oral discussions with the representatives of women's organisations, it was stated that in some cases the police fail to register a case of rape reported to them even when the full facts are communicated to them.

1.Lok Sabha Debates , 27th March ,1980 , Column 8349

We have not been able to gather statistics of the number of such cases, as the collection of the relevant figures would take considerable time and the present Report[2] deals with a matter of urgency. We hope that the percentage of such cases would not be high. Nevertheless, we do take the view that in principle, the law should contain a specific provision dealing with refusal (or failure without sufficient cause) to register such cases. The offence of rape is a cognizable offence and if the police fail to register it, itis a clear violation of the provisions of the Code of Criminal Procedure, 1973 in this regard.[3] Cognizable offences reported to the police are "registered"-as the popular usage goes-under section 154(1) of the Code of Criminal Procedure. If the officer in charge of a police station refuses to record the information reported relating to a cognizable offence, there is a remedy already provided[1] in the Code of Criminal Procedure, the relevant provision being in the following terms:-

"(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) [of section 154] may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."

3.3.30. Penal sanctions needed- The provision of the Code of Criminal Procedure quoted above, however, is not of a penal character, though, no doubt, when the matter is reported to the Superintendent of Police thereunder, a departmental action can be taken. We have, therefore, examined the question whether there is need for any penal sanction and, if so, whether the present law is adequate in this regard. In our opinion, and having particular regard to the fact that we have been given to understand during our oral discussions that administrative action does not prove very effective, prima facie there is need for a suitable penalty.

1.Section 154(3), Code of Criminal Procedure , 1973

3.3.31. Insertion of section 167A, Indian Penal Code recommended.—Having regard to what we have stated above, we would recommend the insertion of a specific penal provision, say, as section 167A, in the Indian Penal Code on the subject. In view of the general scheme adopted in that Code, the proposed provision would not be confined to refusal to register the offence of rape and would cover other cognizable offences as well. The following is a rough draft of the provision that we recommend:-

"167A.—*Whoever, being an officer-in-charge of a police station and required by law to record any information relating to the commission of a cognizable offence reported to him, refuses or without reasonable cause fails to record such information shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."*[2]

XI. OTHER POINTS CONCERNING INVESTIGATION

3.3.33. Other points made in suggestions.-At this stage, we may also note a few other points concerned with investigation on which improvements have been suggested in the views expressed orally before us or in written points handed over to us. These may be enumerated briefly-

First, offences of rape etc. should be promptly registered.

Secondly, in such cases the officer-in-charge of a Police Station must proceed to investigate the offence in person and shall not depute any subordinate of his to make the investigation.

Thirdly, a copy of the information lodged must forthwith be forwarded to the nearest Magistrate whether such Magistrate is empowered to take cognizance or not.

Fourthly, such Magistrate on receiving the information should been powered to issue directions regarding investigation of the case until cognizance is taken by a Magistrate who is empowered to take cognizance of the offence.

---

1. Compare section 122(1)(iv), Delhi Police Act, 1978.

2. The proposed offence should be cognisable, bailable and triable by any Magistrate. Complaint of any particular police officer should not be required for taking cognisance.

Fifthly, in Presidency towns and district towns or Sub-Divisions, investigation should be made by an officer not below the rank of a Deputy Superintendent of Police.

Some of these points have been already dealt with.[1] The rest seem to be concerned with matters proper for administrative action, rather than for legal amendment

3.34. Conferment of Magisterial and Police powers on women.—It has also been suggested that certain Magisterial powers and limited police powers maybe conferred on educated and respected ladies in villages nearby, like social workers or school teachers. It has been suggested[2] that suitable amendments maybe made in the Code of Criminal Procedure in this behalf.

We would leave this matter for appropriate action by the authorities competent to appoint Magistrates. Conferment of police powers on ladies, however, does not appear to be practicable.

The question of associating social workers with investigation has already been dealt with.[3]

3.3.35. Questions relating to medical examination.-An important part of investigation into cases of rape is in the shape of physical examination of the accused and the victim by medical experts. This topic deserves separate treatment, and will accordingly be discussed later.[4] We may, however, mention that one of the amendments that we have recommended in the present Chapter (documents to be forwarded with a police report) is concerned with medical reports.[5]

4.MEDICAL EXAMINATION OF THE ACCUSED AND THE VICTIM

I. IMPORTANCE OF MEDICAL EXAMINATION

3.4.1. Scope.-We propose to deal in this Chapter with the medical examination(of the accused and the victim) in cases relating to rape. The medical report in such cases is a document of vital importance. The matter has both medical and legal aspects, deserving of attention.

3.4.2. Position of examining doctor.- An eminent writer on legal medicine[1] has observed that the situations in which the practising clinician may find himself involved in the

---

1. David M. Paul, Department of Forensic Medicine, Guy's Hospital, London, The Medical Examination in Sexual Offences, (1978 July), Vol. 15, No. 3, Medicine, Science and the Law, pp. 154-162.

examination of either the alleged victim or the alleged assailant in sexual offences are unique in regard to the degree of emotional tension that may be generated in all the persons involved in the situation. "Here, possibly more than in any other medico-legal situation, it behaves a clinician to remember the general principles of detail, suspicion, impartiality and observation".He has pointed out that many of the examinations required in such cases will take place late at night, or in the early hours of the morning when the doctor himself is likely to be tired, and the value and importance of a set routine becomes very important indeed.

3.4.3. Importance from the legal point of view.- From the legal point of view also, it is well recognised that the medical examination report of the accused in a case of rape or attempt to commit rape is a very important document. Of that of the actus reus of the offence which consists of sexual intercourse by the accused, there cannot ordinarily be a better evidence than the medical report, so far as the male party is concerned.

3.4.4. Proper examination-conditions for- It has been pointed out that the proper and thorough investigation of an alleged rape depends on:[2]

Early notification to the police;

Full co-operation between the victim and the various investigating agencies;

An experienced and understanding police officer in charge.

Any delay in reporting an alleged rape will result in delay in the commencement of the investigation, with the loss of trace evidence on the victim, the accused and the scene. It is for these reasons that the victim must be interviewed at some length as soon after the offence has taken place as is possible, and before she has had a chance to wash, clean or repair her clothing, or change her clothing.The medical examination must be a complete one, and must include the complete medical history of the victim, a detailed history of the alleged assault, a complete body examination and the taking of all relevant biological samples.

II EXAMINATION OF THE ACCUSED

3.4.5. Provision in the Code Need for timely examination- The Code of Criminal Procedure has, in section 53, a general provision on the subject of medical examination of the accused in all cases where such examination would afford evidence of commission of offence.[1]

1. Section 53 ,Cr.P.C,1973

It is, however, seen that the report of the medical examination is often cursory, or is not sent in time, in cases of rape or attempt to commit rape.

In a recent Calcutta case,[1] the High Court was constrained to observe

"It is also striking that the appellant, though arrested on that very night (9th May) was not produced before Dr. Pal (P.W. 11) who examined P. Ws. 1 and 10 on 10-5-1970."

3.4.6. Particulars to be entered and reasons to be given- It is also desirable that the report should (besides containing the usual formal particulars) deal specifically with- (i) the age of the accused, (ii) injuries to the body of the accused, and (ii)other material particulars in reasonable detail. It should also note the precise time of examination. It should be sent without delay by the registered medical practitioner to the investigating officer and the latter should file it before the Magistrate empowered to take cognizance along with the documents sent with the challan under section 173(5) of the Code.[2]

3.4.7. Recommendation as to section 53, Cr. P.C.-It is very important that reasons should be given for the opinion expressed in the report. Accordingly, we recommend the insertion in section 53 of the Code of Criminal Procedure, of the following sub-sections:

"Sections 53(1A), (1B), (1C) and (1D), Code of Criminal Procedure, 1973 to be inserted.

(1A) When a person accused of rape or an attempt to commit rape is arrested and an examination of his person is to be made under this section, he shall be forwarded without delay to the registered medical practitioner by whom he is to be examined.

(1B) The registered medical practitioner conducting such examination shall without delay examine such person and prepare a report specifically recording the result of his examination and giving the following particulars:

(i) the name and address of the accused and of the person by whom he was brought,

(ii) the age of the accused,

(ii) marks of injury, if any, on the person of the accused, and

(iv) other material particulars in reasonable detail.

(1C) The report shall state precisely the reasons for each conclusion arrived at.

1.Narayan Dutta v. State ,1980 Cr Lj 264, paras. 1-2 (March 1980) (cal)

(1D) The exact time of commencement and completion of the examination shall also be noted in the report, and the registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 1973 as part of the documents referred to in clause (a) of sub-section (5) of that section."

III. EXAMINATION OF THE VICTIM

3.4.8. Section 164A, Cr. P.C. (To be added).—We next deal with the victim. In many cases, the report of the medical examiner as to the examination of the female victim is also found to be somewhat cursory and does not give adequate information about the material particulars which are necessary for an adjudication as to the various ingredients of section 375. Further, it is sometimes noticed that the medical examination report is not sent promptly, to the investigating officer. As a result, the possibility of tampering with the report remains.

In our opinion, the report of the examination of the victim in a case of rape should (besides containing the usual formal particulars) deal specifically with-

(i) the age of the victim,

(ii) the question whether the victim was previously used to sexual intercourse,

(ii) injuries to the body of the victim,

(iv) general mental condition of the victim, and

(v) other material particulars in reasonable detail.

It is also necessary that the report should note the time of examination and be sent without delay to the investigating officer. It is very important that the report should state reasons for the conclusions recorded.

3.4.9. Need for legislative provisions. - Ordinarily, such matters are left to be dealt with by executive instructions. However, having regard to the importance of the subject, it would be proper to insert in the Code of Criminal Procedure, at an appropriate place, a provision incorporating the guidelines that we have suggested above. In the light of practical working of the provision, further improvements could be made in the relevant provisions.

3.4.10. Section 164A, Cr. P.C. recommended.—Accordingly, we recommend that the following new section should be inserted in the Code of criminal Procedure, 1973

"164A. (1) Where, during the stage when an offence of rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner, with the consent of the woman or some person competent to give such consent on her behalf

and the woman shall he forwarded to the registered medical practitioner without delay.

(2) The registered medical practitioner to whom such woman is forwarded shall without delay examine her person and prepare a report specifically recording the result of his examination and giving the following detail:

(i) the name and address of the woman and of the person by whom she was brought,

(ii) the age of the woman,

(iii) whether the victim was previously used to sexual intercourse,

(iv) marks of injuries, if any, on the person of the woman,

(v) general mental condition of the woman, and

(vi) other material particulars, in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of some person competent to give such consent on her behalf to such examination had been obtained

(5) The exact time of commencement and completion of the examination shall also be noted in the report, and the registered medical practitioner shall without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section

(6) Nothing in this section shall be construed as rendering lawful any examination without the consent of the victim or of any person competent to give such consent on her behalf."

3.4.11. Medical examination of the victim of rape.-In regard to the examination of the person of the accused, section 53(2) of the Code of Criminal Procedure provides that whenever the person of a female is to be examined under that section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

The question whether a provision should be inserted to the effect that where a female victim of a sexual offence is to be examined, the medical examination shall be conducted only by a female medical practitioner has been carefully considered by us. We think that a statutory provision is not necessary, for two reasons. In the first place, this is almost the invariable practice in India and a statutory mandate is not needed. In

the second place, if a female victim does not wish to submit to examination by a male doctor, there is no legal obligation on her part to do so. For that reason also, a statutory provision is not necessary. It may be mentioned that such medical examination cannot be lawfully made without the consent of the woman or of some person competent to give consent.[1]

IV. CHRONOLOGY AND MODES

3.4.12. Chronology and modes of examination.-We have so far dealt with matters on which legislative provisions have been suggested by others or recommended by us, on the subject of medical examination. It would be useful now to refer to certain other aspects.

As to the chronological stages of the examination and the mode of conducting it, there is interesting material available.

A distinguished writer suggests[2] that date, time and place of examination should be noted at the commencement of the examination and the time at which the examination terminated should also be noted.

Further, he adds, history of the person examined is important. Full general history must be taken and this must include all previous illness, operation and accident. It should also include the time and nature of the last meal eaten, the amount and nature of the alcoholic drink consumed and the time it was consumed and the amount, nature and time of any medication taken.

Specific history should be taken, preferably from the complainant and before any account is heard from the police authority, instructing solicitor or parent. This history is an essential part of the clinical examination and full notes must be made of it because one of the essentials of physical examination is to decide it the physical findings are compatible with the history taken.

3.4.13. Examination of various body sheets.-Each system of body should be examined and all the examination findings should be noted even if they are normal findings". Skeletal deformity or injury, he points out, may reduce the effectiveness of any resistance; intoxication may reduce the power to resistor the ability to form an intention.

1.Para. 4.10, supra.

2.David M. Paul The Medical Examination in Sexual Offences, (1975 July), Vol. 15, No. 3 Medicine, Science Law, PP. 154, 162.

Natural disease may affect the behaviour. The general examination must, therefore, include the skin, teeth, finger, nails, cardio-vascular system, respiratory system, abdomen, skeletal system and central nervous system, for only in this way can the examining doctor be sure that he has not missed any relevant feature.

3.4.14. Injuries.-As to injuries, the description must include an accurate description of the site of the injury with special reference to fixed body points, a measurement of the size of the injury, a general description of the type of the injury, a detailed description of its shape; and a description of the color of any bruising or exudate present.

V. RAPID REFERENCE SHEETS

3.4.15. Rapid reference sheets. —The distinguished expert in legal medicine[1](to whose writing we have already referred) has prepared the following "rapid reference sheet" for the examination, of the person accused and the victim of rape:

Accused

(1) Consent to examination.[1]

(2) Detailed general history: past illness, surgery, accident, food, drink and drugs.

(3) Observe: manner, clothing.

(4) Examine all clothing: remove in presence of doctor; inspect each item separately, retain each item in a clean bag; ultra-violet light on trouser-shirt, vest, under pants.

(5) Full general clinical examination: examine the whole body; record all findings; record all injuries, old, new, location, size and description.

(6) Examine the affected portions: injury to various parts (details are given)

(7) Specimens of substances from the body: Blood; urine; saliva; avulsed hair; loose hairs, avulsed pubic hair; matted pubic hair; finger kneecappings; clippings, areas of soiling; pubic hair combings, swabs from urethral orifice; prepuce etc.

(8) Equipment: sterile swabs; sellotape; glass slides; syringe; large bore needles, tape measures; clean paper bags; labels.Victim

(1) Consent to examination
(2) Detailed general history: past illness, accident, operation, food, drink and drugs
(3) Detailed specific history: obstetric; menstrual etc.; past sexual experience; details of present incident.
(4) Observe: manner, dress; make-up.

1.In India, this is governed by a statutory provision in section 53, Code of Criminal Procedure, 1973.

(5) Examination of clothing: remove in presence of doctor; inspect each item separately; retain each item in a clean bag; ultra-violet light on trouser-shirt, vest, under pants.

(6) Full general clinical examination: examine the whole body; record all findings; record all injuries old, new, location, size, description.

(7) Examine the affected parts .

(8) Specimens

(9) Equipment: sterile swabs; hypodermic syringe; needles, gloves, slides; labels, speculum; tape measure, cello tape; clean paper bags.

VI. CONDITIONS IN WHICH EXAMINATION IS CONDUCTED

3.4.16. Conditions for physical examination.—We have so far discussed the contents of medical reports. Certain matters concerning the conditions for physical examination are also of interest. Justice cannot be done to either parties (the prosecution or the defence) or to the doctor, if adequate conditions for examination of the victim are not available. It is, therefore, necessary that the equipment and environment of the examination should be adequate; in particular, the premises should be well-lit.In order to put the victim at ease, it would be desirable (unless the victim is an adult woman of mature years), to examine orally first the mother or other older relative by whom she is accompanied. The circumstances in which the offence is alleged to have been committed should be first ascertained from such relative.

3.4.17. Order of examination.- As regards the actual examination of the victim, the general physical examination should be first commenced, in order to induce a feeling of relaxation in the victim. The parts of the body more directly affected could be examined later on.

3.4.18. Conditions and equipment. There have been many learned discussions as to the conditions in which such examination should be made and as to the equipment that may be used. For example, one expert in legal medicine has stated his experience thus[1.]"Examination with an ultra-violet lamp I consider to be very useful and the police put a mains' model at my disposal whenever I need it—that is, in every reasonably recent case. Details depend on the history of baths and ablutions since the incident, but I would rather err on the side of using it too often than too rarely."

1.K.F.M. Pole, Leer. Nav 1970) Medicine, Science and the Law, p. 73.

VII. COLOUR PHOTOGRAPHS

3.4.19. Colour photographs.-It is also desirable to take colour photographs of injuries, for these are the only photographs that give a true picture of the and extent of many significant injuries, such as bruises and abrasions. It is these comparatively minor injuries that are often of the greatest importance in reaching a medical diagnosis in a case of alleged rape.[1]

5.PROCEDURE FOR TRIAL, TRIAL IN CAMERA ANDPUBLICATION OF PROCEEDINGS

I. COGNIZANCE OF OFFENCES

3.5.1. Scope of Chapter.-We propose to deal in this Chapter with certain aspects of procedure relating to the trial of rape and allied offences.

3.5.2. Section 198(6), Cr. P.C., 1973-Amendment recommended. We first deal with the cognizance of offences. Section 198(6) of the Code of criminal Procedure, 1973 requires a complaint to be filed within one year in case of rape constituted by sexual intercourse by husband with a wife under 15 years. The portion referring to "wife under 15 years" should be deleted from this sub-section. The reason is that under the amendments recommended in the42nd Report to the Indian Penal Code, the scope of section 375, I.P.C. would-be expanded, so as to cover not only intercourse with a child wife, but also, in certain circumstances, intercourse with the wife (irrespective of her age) if the wife is living separately.

Accordingly, we recommend that section 198(6) of the Code of criminal Procedure, 1973 should be revised as under[2]

Revised section 198(6), Code of Criminal Procedure, 1973

"(6) No Court shall take cognizance of an offence under section 376 of the Indian Penal Code, where such offence consists of sexual intercourse by a man with his own wife, ... if more than one year has elapsed from the date of the commission of the offence."

3.5.3. Court competent to try.-The offence of rape can be tried only by the Court of Session. The position in this regard needs no change.

II. STAGES OF TRIAL

1.British Academy of Forensic Sciences Memorandum on Law Regarding Rape, (July 1976) Medicine, Science and the Law, pp. 154, 158.

3.5.4. Procedure for trial—the chronology.-Under the Code of criminal Procedure, 1973, the procedure for trial in Courts of Session is governed by provisions contained in a separate Chapter devoted to such trials, which does not seem to need any change so far as the various stages of trial in regard to the offences dealt with in this Report are concerned.

III. TRIAL IN CAMERA

3.5.5. Trial in camera-Section 327, Cr. P.C.-There is, however, one matter of procedure in regard to which there is scope for reform. A trial for rape, like other criminal trials, is, in general, conducted in public. This is in accordance with the statutory provision in the Code of Criminal Procedure on the subject.[1]

The reasons why trials are held in public (subject to specific statutory exceptions)have been discussed judicially[2] and otherwise, more than once, and we need not set them out. However, in the case of sexual offences, there is an overriding consideration which justifies an exception being made to the general rule of public trial. Certain details of an intimate character may have to be narrated in court in such trials. It is not only embarrassing for the victim to narrate them in the full glare of publicity. Often, by reason of such embarrassment, she may not be able to give all the factual details, and the cause of justice may ultimately suffer. It is, therefore, on the wider ground of interests of justice, that we would recommend that in the absence of special reasons to be recorded by the Court, a trial for rape or allied offences must be held in camera.

3.5.6. Need to modify general rule.-We may state that the broad principle of publicity can be modified where the Court thinks that justice could not be done at all if it had to be done in public.[3]The proposition that 'where secrecy begins justice ends' is one held by most lawyers as sacred. However, in the area of rape, and indeed of all the serious sexual offences, there is a particular burden on the complainant and on the accused with the real risk of courtroom defamation repeated in the press, which may subsequently be found by the Court to be totally unjustifiable.[4]

It is for this reason that in England, the National Council for Civil Liberties[5]in

---

1.Section 327, Cr. P.C., 1973.

2.Naresh v. State of Maharashtra, AIR 1967 SC1.

3.Scott v. Scott, 1913 AC 417 (437)

their pamphlet on The Rape Controversy, said-

"The law should recognise the fact that there is still a stigma attached to rape from which the victims may suffer for years afterwards."

We would wish to extend this view to include the stigma that may attach itself to the accused for years afterwards even following an acquittal. In this context, it should be remembered that the making of an allegation of rape against any man imposes upon him an equally unpleasant, humiliating and embarrassing experience in respect of which he should be entitled to the same protection as may be accorded to the alleged victim.

3.5.7. Recommendation to amend section 327, Cr. P.C.-—In the light of the above discussion, a specific proviso should be added to section 327 of the code of Criminal Procedure, as under-

Proviso to be added to section 327 of the Code of Criminal Procedure, 1973;[1]

"Provided further that unless the presiding judge or magistrate, for reasons to be recorded, directs otherwise, the inquiry into and trial of rape or allied offence shall be conducted in camera.

Explanation.—In this sub-section, the expression 'rape or allied offence' applies to-

(a) an offence punishable under section 354 or section 354A of the Indian Penal Code[2]

(b) an offence punishable under section 376, section 376A, section 376B or section 376C of that Code;[3]

(c) an attempt to commit, abetment of or conspiracy to commit any such offence as is mentioned in clause (a) or (b) of this Explanation."

Further, the following sub-section should be added to section 327:-

Sub-section to be added to section 327, Code of Criminal Procedure, 1973after re-numbering present section as sub-section (1).

"(2) Where any proceedings are held in camera, it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except with the previous permission of the Court."[4-5]

1.Section 327, Code of Criminal Procedure, 1973.

2.Section 354A was recommended to be inserted by the Law Commission in the 42nd (Indian Penal Code).

3.The section references are according to the proposals made in this Report.

4.Violation, penalty may be introduced as section 228A, I.PC. (fine upto Rs. 1000),1. 5.13. infra. A. 5.13, infra.

IV. PUBLICATION OF PROCEEDINGS

3.5.8. Publication of names of parties.-Connected with the question of holding the proceedings in camera is that of publication of the names of the victim and the accused in cases of charges of rape.

As the law stands at present, the names and details of the victim as well as the accused as disclosed at a trial for a sexual offence can be legally published in the press, unless the proceedings were held in camera.[1] This is in view of the general rule about the reporting of judicial proceedings. What takes place in the Court is public, and the publication of proceedings merely enlarges the area of the Court and gives to the trial that added publicity which is favoured by the rule that the trial should be open and public. It is only when the Public is excluded from audience that the privilege of publication also goes, "because then the public would have no right to obtain at the second hand what it cannot obtain at first hand".

3.5.9. Special provisions- This general rule, however, sometimes causes embarrassment. Realizing the need for modification of the general position, the legislature has enacted, in regard to proceedings of a special nature, special rules on the subject. We need not enumerate here Central Acts and a few State Acts that contain such provisions.

3.5.10. Preserving anonymity of complainant and accused in sexual offences-On a careful consideration, we are of the opinion that there is need for legislation to preserve the anonymity of the complainant and the accused in the case of rape and allied offences (subject to exceptions in regard to certain specified cases).

The principal object of the amendment would be to save avoidable embarrassment to the victim and to the accused. The justification for such a provision need not be spelt out. Restrictions on the reporting of judicial proceedings are not unknown to our law,[2] though such restrictions should be imposed only for the weightiest reasons. The present seems to be such a case.

3.5.11. Anonymity at the stage of investigation.-We have considered the question of anonymity under two heads-

---

1.Naresh v. State of Maharashtra, AIR 1967 SC 1.

2.See para. 5.9, supra.

(i) anonymity of the victim and the accused at the stage of investigation and before the trial commences;

(ii) anonymity of the victim and the accused as regards proceedings in Court at the trial stage.

As regards the stage of investigation, we do not propose to make any recommendations for statutory amendment or for the enactment of separate legislation. Though we do appreciate that the victim and the members of her family find it embarrassing that the name of the victim is given publicity, we would leave the matter to the good sense of the journalistic profession—and to such provisions of the existing law as may be applicable.

3.5.12. Publicity at the stage of trial—Trial in camera and penalty for illegal publicity to court proceedings.-As regards anonymity at the stage of trial, some special provisions are, in our view, called for. Here again, we do not propose the enactment of separate legislation. We have recommended that the trial of cases relating to rape (and allied offences) should be held in camera. On the enactment of such a provision, the publication (without permission of the Court) of proceedings so held in camera would be a contempt of Court,[4] for which the High Court can take appropriate action.

3.5.13. Section 228A, I.P.C. (New)—Recommended.—However, to fortify the present law, we recommend that there should be inserted, in the Indian Penal Code, a new section[5]—say, as section 228A-in the following terms:-

Section 228A, I.P.C.

(To be inserted)

"228A. Where, by any enactment for the time being in force, the printing or publication of any matter in relation to a proceeding held in a Court in camera is declared to be unlawful, any person who prints or publishes any matter in violation of such prohibition shall be punished with fine which may extend to rupees one thousand."[1]

3.5.14. Consequential amendment of other laws- The proposed provision will cover every case of violation of any statutory provision which declares unlawful the printing or publication of such matter. If our recommendation is accepted, it will be possible to delete, at a convenient time, similar provisions in specialenactments so as to prevent duplication.

3.5.15. Publication after conviction. —We may make it clear that publication of the name of the convict as a punishment is a matter which will be dealt with later.

V. EXAMINATION ON COMMISSION

3.5.16. Examination on commission. —A suggestion was made by some of the representatives of women's organisations (during our oral discussions with them) that women should be examined on commission and should not be made to come to Court (in criminal cases). We have carefully considered the matter, but we do not consider any such statutory provision to be practicable.

In important cases, so many persons (and not merely the Judge) have to take part in the trial. Moreover, the accused may have to be identified, or the property in dispute may have to be shown to the witness. All these arrangements cannot, in many cases, be made when the examination is on commission.

3.5.17. The issue of a commission is generally a time-consuming process. Save in exceptional cases of hardship and the like, the procedure of examination on commission may, if made mandatory by law, be productive of injustice in most cases.

If the object is to save embarrassment, that object would amply be secured by holding the trial in camera, as recommended by us.[1]

We are not, therefore, in a position to accept the suggestion.

VI. PARTICIPATION IN TRIAL

3.5.18. Participation by organisations & suggestion considered- It has been suggested by one of the women's organisations with whom we had oral discussions that there should be a provision entitling an organisation interested in criminal matters to intervene in a criminal trial, so as to enable it to put forth its point of view. The suggestion was made without elaborating the value, object and purpose of the intervention of 'interested parties in the trial of the person alleged to be the offender. On the face of it, the suggestion appears to us as one having dangerous potentialities and implications.

3.5.19. Risks attendant on acceptance of the suggestion.-It may be that the idea behind the suggestion is to keep a watch on the working of the courts, the judges and the lawyers and to prevent them from straying away from the path of justice. If that be so, the suggestion is one down-grading the present judicial system, the judges and lawyers

---

1. See para. 57, supra.

and expressing a lack of faith and confidence in them. It is not known whether the suggestion has been made with the ideology of a judiciary under 'popular control. It is all right to say that the intervention of third parties is necessary in the public interest. This sounds good so far as the words go.

The interests of the prosecution and the accused in a criminal case are well protected by their relations, lawyers and the court. But an utter stranger seeking intervention in a criminal trial cannot have any joint or common interest with the accused or the person aggrieved in a criminal case. A body of persons cannot claim to have this joint or common interest merely because it is an organized body interested in criminal matters.

3.5.20. Peculiar features of a case relating to rape.-It must be remembered that in cases relating to rape, where the raped woman belongs to one caste or community or group and the accused belongs to any other caste or community, the feelings between the two parties run high. It is easy to see that if, in such cases third parties claiming to be interested in the woman raped or in the accused are allowed to intervene, the proceedings in the Court will be reduced to a trial of the accused by the public and the Court will be turned into a forum for a class or caste or communal warfare. The trial will thus become a farcical one, prejudicing one party or the other. We have, therefore, no hesitation in refusing to accept the suggestion.

6.PUBLICITY ON CONVICTION

3.6.1. Suggestion to give publicity.-In the course of our oral discussions, a suggestion has been made that in cases of conviction of murder and other serious offences, suitable publicity in newspapers and other media should begiven, so that the public may come to know of the state of crime in the country and it might also act as a deterrent. While we appreciate the object underlying the suggestion, we should point out that there are certain other countervailing considerations that might require to be taken note of. It is true that the object of deterrence may, to some extent, be achieved by such publicity; but, as against that, it should not be overlooked that modern penological theory places emphasis on the rehabilitation of the criminal as well. Where there is no possibility of are petition of the offence by the convicted person, such publicity might have no utility from the point of view of deterrence of that particular individual, and might come in the way of full rehabilitation being achieved.

3.6.2. Discussion in earlier Report.-In this context, we may also note that the question of giving publicity to convictions was considered at some length when dealt

with the Indian Penal Code.[1] After an examination of the pros and cons of the matter the Commission recommended the introduction of publicity as a type of punishment in certain cases-mainly those were cases of anti-social offences which are indulged in persistently by "white-collar criminals". And in regard to which publicity might act as a real deterrent. Likelihood of repetition of such offences is very high, having regard to the nature of the activity. The same may not necessarily be true of rape.

3.6.3. Suggestion not accepted. -We are not, therefore, inclined to accept the suggestion which, in any care, is concerned with serious offences in general and is not confined to sexual offences.

7.EVIDENCE

I. INTRODUCTORY

3.7.1. Scope. -We propose to consider in this Chapter certain matters pertaining to the law of evidence in so far as its provisions or rules are relevant to the offences with which this Report is concerned. Although, in general, rules of evidence occupy a subordinate position in legal literature, in this particular case, they seem to have a very important bearing on the subject of this Report

3.7.2. Disadvantageous position of the victim.-When one views the matter exclusively from the point of view of the victim, the difficulties which confront a woman who alleges she has been raped, become apparent. First, she must convince the police, then be subjected to a medical examination and finally undergo an embarrassing and humiliating cross-examination in Court. In rape cases, evidence about the victim's past sexual or gynecological experiences is presumed to have a bearing on the outcome of the trial.

3.7.3. Issues in the field of evidence.--In the field of evidence as relevant to the offence of rape, the main issues that are usually discussed are complaint,[2]proof of want of consent,[3] the need for corroboration of the testimony of thevictim,[4] and evidence of character of the victim,[5] and other improper questions[6]Besides these, we shall also deal with one suggestion as to evidence of character of the accused[7] .

1.Law Commission of India, 42nd Report (Indian Penal Code), paras. 3.21 to 3.25

2.Paras. 7.5 and 7.6, infra.

3.Paras. 7.7 to 7.13, infra

4.Pana. 7.14,infra.

5.Paras. 7.15 to 7.28, infra.

6.Para. 7.29, infra.

7.Pan. 7.30, infra.

3.7.4. Earlier Report on Evidence Act. -The Law Commission, when it examined the Indian Evidence Act some time ago, had occasion to consider the difficulties faced by a witness who has to undergo cross-examination as to character, and made certain recommendations on the subject.[1]

However, these recommendations were concerned with witnesses in general. As regards a woman who is a victim of a sexual offence, no change of substance was considered. In section 155(4) of the Evidence Act--which permits evidence of 'general immoral character of the prosecutrix-a verbal change was recommended.

This being the position, a few aspects relevant to evidence of character of the victim which did not then come up before the Commission[2] will have to begone into, in the present Report.

II. COMPLAINTS

3.7.5. Complaint (section 8) and the doctrine of "hue and cry" —On the subject of evidence, we may first mention a rule which is of special relevance to the offence of rape-the rule governing the admissibility of a complaint made by the female soon after an alleged sexual offence. This is based on the principle that the complaint is a part of the same transaction, and also on the reasoning that the law considers a complaint as a natural expression of the feelings of the victim, thereby lending credibility. While, on the one hand, long delay or failure in making the complaint is regarded as a suspicious circumstance, on the other hand, a prompt complaint is regarded as evidence confirming or corroborating the allegation of the victim, and repels any possible doubt that the story was a mere fabrication.

It may be that the rule permitting evidence of complaint is a survival of the ancient requirement that the injured woman should make a "hue and cry"[3] as a preliminary to her "appeal of felony".[3] But the rule, in its present form, does not operate to the detriment of the female. The rule enables evidence to be given to confirm her credibility, and operates as an exception to the rule against hearsay as incorporated in section 60 of the Evidence Act.

3.7.6. Matter needing change.-There are, however, certain other matters in regard to which there is need for change in the law of evidence. We shall address ourselves, in

---

1.Law Commission of India, 69th Report (Indian Evidence Act, 1872) (May 1977), Chapter 87.

2.Law Commission of India, 69th Report (Indian Evidence Act, 1872), paras. 87.18 to 7 94 87.24.

particular, to certain questions concerning the past character of the woman. The law on the subject is unduly harsh against women who are victims of sexual offences.

III. WANT OF CONSENT-HOW PROVED

3.7.7. Burden of proof of want of consent.-Want of consent being a cardinal element of rape under section 375, second clause of the Indian Penal Code, itis for the prosecution to prove it. Now, it is common experience that many prosecutions for rape tail for want of such proof. There often arise situations where the probability is that the woman did not consent, but sufficient legal proof of want of consent is not forthcoming.

For example, the woman may be physically too weak or mentally too dazed to resist (so that no marks of violence could come into existence). Or, the venue of the offence-e.g. the secluded place in which rape is committed-may totally take away the inclination to resist, even if there is a physical capacity to do so, because resistance in such circumstances would be futile, same would be the case where the woman about to be attacked knows that the offender is well armed, or where what has come to be known as "gang rape" is committed. In such cases also, resistance would be futile, and may even cause more harm than passive submission. In such situations, marks of resistance or other visible signs of "no consent" cannot be insisted uponIn our opinion, it should be obligatory for the Court to draw prima facie inference of want of consent, once the woman who is alleged to be the victim states in the witness box before the Court in her evidence that she did not consent.[1]

3.7.8. Section 114, Evidence Act. --Even now, if due regard be had to the provisions of section 114 of the Indian Evidence Act, the Court is competent to presume want of consent in such special circumstances as are mentioned above[2]-provided, of course, the other circumstances are consistent with want of consent.The extent to which the victim may resist is for her to determine, and there are naturally no minima or maxima in this regard. The woman is required to go no further than is necessary to make manifest her unwillingness to yield to the attack. The amount of visible resistance, if any, must depend on the facts. Resistance is important only as evidence of non-consent. The crime does nothing upon the woman's exertion.[3]

1.For draft see para. 7.11,infra.

2.Para. 7.7, supra.

3.See also para. 2.11, supra.

3.7.9. Signs of violence-It is a peculiarity of the offence of rape that usually there are no witnesses excepting the victim herself. Proof of the offence, therefore, primarily depends on the credibility of the allegations of the victim. It is mainly for this reason that a statement of the woman that there was intercourse without her consent is often not accepted unless there is some overt evidence of want of consent. Bruises, scratches or other marks of struggle may constitute such evidence, but that would, at best, be a feeble evidence of want of consent.

Unfortunately, such marks of struggle are sometimes regarded as constituting the only evidence of want of consent. Such an attitude, though deeply regrettable, has no basis in the statutory provisions constituting the law of evidence in India. In fact, the Indian law of evidence does not, in general, lay down that a particular species of evidence should be insisted upon in proof or disproof of a particular fact. The Evidence Act lays down certain general rules which indicate the nature of facts that can be proved. If a fact to be proved is a fact in issue, its consequences (effects) are, no doubt, relevant. But proof of those

consequences or effects is not limited to particular species of evidence. Thus, if want of consent is the fact in issue, its consequence the physical resistance or struggle is, no doubt, relevant; and so is the consequence of that physical struggle, namely, marks on the body. But the law does not lay down that only that piece of evidence can be given. The point, in fact, need not be laboured further.

3.7.10. Need to change the law.–We would have left the matter at that, However, having regard to the modus operandi of committing rape that has become more frequent during recent years, it would be useful if, by a specific statutory provision, the statement made in evidence by the prosecutrix is regarded raising a presumption of want of consent. As life becomes more complex and the ways of criminals more sophisticated, situations of the nature that we have mentioned above might become more frequent, and the necessity of invoking some such presumption as is suggested above may become more apparent. We are, therefore, of the view that where rape is alleged to have been constituted by sexual intercourse without the consent of the woman , in the case contemplated by section 375, second clause--the court shall presume that there was want of consent, provided the prosecutrix has stated so in her evidence.

It may be mentioned that under the Evidence Act, the use of the expression “shall presume" does not bar rebutting evidence in regard to the fact about which a presumption is made.

3.7.11. Recommendation to add section 111A in the Evidence Act.-In the light of the above discussion, we recommend the insertion of the following new section in the Indian Evidence Act, 1872:

"111A. In a prosecution for rape or attempt to commit rape, where sexual intercourse is proved and the question is whether if was without the consent of the woman and the woman with whom rape is alleged to have been committed or attempted states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent."

3.7.12. Presumption of want of consent.–One of the points made in the Debate son the motion in the Lok Sabha[1] on the subject of rape of women was that if intercourse is proved, it should be presumed that it was an act of rape against the consent of the girl.

7.13. Burden of proof in case of a person in authority.-In the course of our oral discussions[2] with women's organisations, it was stated that in the case of a person in authority who has sexual intercourse with a woman under his authority, the burden of proof of consent should be placed on the accused.

The amendment just now recommended by us[3] would, in substance, achieve the object underlying these suggestions.

IV. CORROBORATION

3.7.14. Corroboration.-During the debates on the motion in the Lok Sabha on the subject of rape, it was also pointed out that for a crime committed sometime in the dark hours of night or in the dark corner of a house, it was impossible to get corroboration. It was also suggested that it was time to change the practice in this regard. We have taken note of this aspect, and hope that the amendments recommended by us in the law of evidence, together with the law as expounded by the Supreme Court on the subject of corroboration in two important judgments,[1-2]

1.Para. 7.11, supra.

2.Rameshwar v. State of Rajasthan, AIR 1952 SC 54: 1952 SCR 377: 1952Cr LJ 547.

3.Sidheswar Gangly v. state of West Bengal, AIR 1958 SC 143: 1958 SCR 749:. 1958 Cr Lj273

will serve the purpose and advance the cause of justice. The judgments were pronounced in 1952 and 1958, and were followed in later judgments[1-2] of 1972 and 1973.

V. PAST SEXUAL HISTORY

3.7.15. Past character as a relevant fact—Sections 8, 9, 11 and 14, Evidence Act-- We now deal with a very vital question of evidence related to prosecutions for rape. The question is this-how far should the past sexual history of the victim of rape be allowed to be given in evidence in Court on behalf of the accused? More than any other point of evidence, this has been the source of the very grave dissatisfaction with the legal system and of the feeling of alienation of the general public from the law and its processes, to which we have made a reference in the introductory[5] Chapter.

In the first place, where the issue is one of consent, evidence of past intercourse with the accused may become relevant under the omnibus provision in section 11of the Evidence Act, under which a fact is relevant if it renders highly probable or improbable the existence of another fact in issue or relevant fact.

Secondly, evidence of past acts of intercourse with the accused may become admissible as showing passion (a "state of mind"-section 14).

Thirdly, sections 8 and 9 of the Evidence Act could arguably be invoked to render past acts of sexual intercourse relevant as showing conduct influenced by a fact in issue or a relevant fact.

3.7.16. Of course, the sections[3] of the Evidence Act referred to above[4] would be material only on the issue of consent, and the evidence that can be permitted thereunder must also relate to specific acts of sexual intercourse with the accused(or undue sexual familiarity with the accused).

7.17. Section 155(4), Evidence Act.-Besides these sections, however, there is amore specific provision in section 155(4) of the Evidence Act, under which, in a prosecution for rape or attempt to lavish, evidence can be given of the general immoral character" of the "prosecutrix". This provision, it will be noticed, is not confined to past sexual familiarity only with the accused. It is wide enough to cover sexual immorality in

---

1.Madho Ram v. State of Uttar Pradesh, AIR 1973 SC 469.

2.Chapter 1, supra.

3.Sections 8, 9,11 and 14, Evidence Act.

4.Para. 7.15, supra

relation to others. We need not, at the moment, concern ourselves with the question whether particular sexual episodes can be given in evidence under this provision. What needs to be emphasised is that matters in which the accused is not at all concerned can also be brought on the record under the head of "general immoral character" by virtue of section 155(4). This means that even if the charge is one of sexual intercourse with a girl below the age of sixteen years-section 375, clause fifthly, Indian Penal Code which is punishable irrespective of the girl's consent, evidence can be given of her “general immoral character.

7.18. Section 146, Evidence Act-Finally, there is the general provision as to impeaching the credit of witnesses by "injuring their character", and other modes of impeaching credit mentioned in section 146 of the Evidence Act. Of course, this section is not confined to sexual offences or to the "prosecutrix". Itis a general provision applicable to all trials. But, since this Report is concerned with sexual offences and since the present discussion is concerned with the position of women who are the victims of such offences, it is proper to mention that under this section, questions are, in practice, often put relating to the past character of the prosecutrix in sexual offences.

3.7.19. General approach adopted.—We shall indicate, in due course,[1] our precise recommendations on the relevant provisions mentioned above.

But it would be appropriate to mention at this stage that these recommendations are all connected by a common thread. The connecting guideline is this-in a case of rape or attempted rape, even if past immoral character of the "prosecutrix “is technically permissible as substantive evidence or in cross-examination under the present law, that position needs to be modified and such evidence or cross-examination should be prohibited except as regards sexual relations with the accused.

The reasons for such an approach may be thus stated:

(a) in so far as such evidence relates to the issue of consent, there are social evils resulting from the tendering of such evidence and those evils counter-balance the possible probative value of the evidence,

(b) in so far as such evidence does not relate to the issue of consent and is offered merely to injure the character or shake the credit of the woman, it is not proper for the law to countenance it-when such evidence cannot be given against men who are victims of sexual offences.We are happy to mention here that the

general approach that we have adopted in regard to the purposes for which, and the extent to which, the past sexual history of the "prosecutrix" may be permitted to be raised as substantive evidence (or in cross-examination) is in broad and substantial harmony with the views expressed during our oral discussions by some social organisations, including an organisation of women lawyers.

3.7.20. Sections 155(4), 146 and 53A (proposed), Evidence Act-Recommendation -Having indicated the connecting guideline that constitutes the common thread underlying our approach to various provisions under which the question of the sexual history of the prosecutrix may be raised, we now proceed to indicate more concretely, and in regard to each section of the Evidence Act, the amendment that we have in mind so as to carry out the general approach mentioned above.

With reference to section 155(4) of the Evidence Act, it is pertinent to point out that the rule which permits evidence of previous sexual history of the complainant should be considered under two headings, namely, previous sexual relations with the accused, and (ü) such relations with other persons.

So far as sexual relations with the accused are concerned, the assumption underlying the admissibility of such evidence would appear to be that once a woman has consented to a sexual relationship with a particular man, she is unlikely to dissent at a later stage. Though such an assumption may not be necessarily realistic in every case, it could occasionally be true. There is, therefore, justification for retaining it.

3.7.21. Section 155(4) and sexual relations with other persons. —So far as previous sexual relations with other persons are concerned, there is, in our opinion, strong justification for change in section 155(4). The case for admitting such evidence is totally weak, if not completely without foundation. Such an evidence is not permissible as regards male victims,[1] or even in the generality of cases not involving sexual offences. It seems, therefore, hardly defensible, at least at the present day, to continue a legal provision whereunder the character

of a female witness can be impeached merely because she happens to be a “prosecutrix" in an offence of rape or attempt to commit rape.

Evidence of acts of intercourse with persons other than the accused indicates remote or faint likelihood of the woman having consented to the particular act. Even when a

harlot or a prostitute is raped, her consent at the time of the commission of the crime must be proved by evidence aliunde.

For all these reasons, section 155(4) requires modification so as to exclude evidence of sexual relations with persons other than the accused.

3.7.22. Section 155(4)—another point for amendment.-We find that another aspect of section 155(4) also requires to be looked into. Section 155(4) is, at present, applicable even where consent is not material. The section is wide enough to apply not only where rape is charged under the category of "want of consent", but also where it is charged under some other head-for example—where the offence is committed in respect of a girl below the statutory age. The fact that the prosecutrix is a person of "general immoral character" cannot have significance whatsoever where the prosecution is not based on the want of consent. As regards the credibility of the girl as a witness, that is to say, leaving aside the issue of consent, there does not seem to be any reason why the law should contain a rule discriminating against women. If "general immoral character" is regarded as shaking the credit of the female, it can as well be regarded as shaking the character of a male witness. But there is no corresponding provision applicable to a male "prosecutor".

It is wrong to assume that a female witness is less likely to tell the truth when she has a generally immoral character. Evidence of sexual immorality cannot be admitted in other cases as substantive evidence.

7.23. Difficulties caused by section 155(4). —These are not merely theoretical arguments. The provision in section 155(4) sometimes causes serious hardship The victim of rape, questioned at length, very often feels humiliated, particularly at home or amongst neighbours or at work or at school. Self-consciousness and shame, resulting from queries and adverse comments, might even result in a permanent scar on her peace of mind and psychic well-being. In this respect, the provision in section 155(4) may be regarded as deserving of serious re-consideration.

3.7.24. Harm to reputation-danger of.-There can hardly be any doubt that an unrestrained questioning on such matters can amount to a destruction of the reputation and self-respect of the woman. There must be struck a balance between the demands of fair trial and the dignity of the woman. The law should reflect an approach which protects her interests, without compromising those of fair trial.

3.7.25. Amendment of section 155(4)-recommendation- On a careful consideration of the matter, we have come to the conclusion that section 155(4) of the Evidence Act should be amended as suggested above.In brief, it should be confined to sexual relations with the accused and that too only where consent is in issue.

3.7.26. Section 146, Evidence Act.-But this amendment of section 155(4) of the Evidence Act would not be an adequate measure for reforming the law. Theoretically, it would still continue to be permissible to give evidence about the "character" of the female prosecutrix under the general provision in section 146 of the Evidence Act. The possibility of such an alternative being open to the accused in cross-examination of the female prosecutrix in a prosecution of rape or attempt to commit rape ought, in our view, to be totally eliminated, for the reasons stated above.

One effective method of doing so would be to insert a provision in the Act by way of addition to section 146, to the effect that in a prosecution for rape or attempt to commit rape, where the question at issue is the consent of the woman, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the prosecutrix as to her general immoral character, or as to her prior sexual experience with any person other than the accused.

3.7.27. Amendment of section 146.-Accordingly, we recommend that the following sub-section should be added to section 146 of the Evidence Act:-

"(4) In a prosecution for rape or attempt to commit rape, where the question of consent to sexual intercourse or attempted sexual intercourse is at issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the prosecutrixes to her general immoral character, or as to her previous sexual experience with any person other than the accused for proving such consent or the quality of consent."

3.7.28. Section 53A (proposed) to exclude evidence as to character.-Even this amendment of the law, however, would not be enough. In our opinion, it is also necessary to exclude the possibility of evidence of general immoral character being tendered under the sections[1] of the Act which relate to substantive evidence.[2]

Accordingly, we recommend that the following new section should be inserted, in the Evidence Act, say—as section 53A:-

"53A. In a prosecution for rape or attempt to commit rape, where the question of consent to sexual intercourse or attempted sexual intercourse is at issue, evidence of

the character of the prosecutrix or of her previous sexual experience with any person other than the accused shall not be relevant on the issue of such consent or the quality of content."

VI. IMPROPER QUESTIONS

3.7.29. Section 150, Evidence Act-Amendment recommended- So much as regards evidence of sexual history. We now deal with the position as to improper questions in general. The Evidence Act has a catena of provisions whose object is to ensure that questions intended to shake the credit of witnesses by injuring their character are kept within legitimate bounds. Nevertheless, it is sometimes seen that such questions are put indiscriminately in the lower courts. It then becomes the duty, though unpleasant, of the presiding officer of the court to report the matter to the appropriate authority for action, if the question is put by a legal practitioner. The Evidence Act has a specific provision in this regard, to be found in section 150. The object of the provision is that the authority to which the matter is reported may take suitable action. With this end in view, the section provides that "if the court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession".

3.7.30. Various amendments suggested in section 150.—So far as the words referring to the various categories of "legal practitioners" are concerned, they should now be replaced by the word "advocate", and such a recommendation was, in fact, made by the Law Commission, in its Report on the Evidence Act.[1] The Law Commission, in its Report on the Act, also recommended deletion of the words "or other authority" from this section. This would mean that the matter would be reported to the High Court. We would, however, recommend that instead of the matter being reported to the High Court, it should be reported to the State Bar Council, which (under the present statutory set up) is empowered to take appropriate disciplinary action in such cases. We, therefore, recommend that section 150 of the Evidence Act should be revised so as to read as under:-

Revised section 150, Evidence Act

"150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any advocate, report the circumstances

---

1.Law Commission of India, 69th Report (Indian Evidence Act, 1872), para. 84.33.

of the case to the State Bar Council."

VII. CHARACTER OF THE ACCUSED

3.7.31. Character of the accused-One of the women's organisations with whom we have held oral discussions has suggested that the Evidence Act should be amended suitably by providing that evidence of character of the accused shall be relevant in all cases of rape and molestation of women. Since we are recommending[1] amendment of the provision in section 155(4) of the Evidence Act which at present permits evidence of the "general immoral character" of the prosecutrix, we do not propose to recommend the change contemplated in the suggestion.

8.CONCLUSION

3.8.1. Effect of our proposals.—We have come to the end of the task committed to us. We believe that we have made proposals to secure that no person who has committed rape escapes punishment, that women who become victims of rape are not harassed during the course of investigation and trial in the Court and that the trial of persons charged with rape is speeded up, to ensure that the police discharge efficiently and promptly the manifold and complex problems that confront them in rape cases, and to assure the free movement of women by giving them protection when they move cut, as also to the inmates of women's lodgings and hostels.

3.8.2. Changes whether going for enough or too far.-There may be some who feel that the changes recommended by us are likely to be for the worse. Such persons are too complacent for our taste. There may be still others, who may regard our recommendations as nothing more than an attempt to patch-up the system of criminal justice, which, according to them, is so defective as to be beyond redemption. We do not delude ourselves into thinking that our proposals will bring into the investigation and trial of cases of rape a state of perfection. Sometimes one's best endeavours go away. What we have attempted is to strike a balance between the interests of the accused and those of the victim in a case relating to rape, and thus to protect the interests of the society.

3.8.3. Effect of films and the real challenge.- During the course of discussion with us, a lady Member of Parliament[2] pointed out the pernicious influence of Indian films

_____

1.Mrs. Sushila Adivarekar, M.P. (Rajya Sabha).

highlighting rape and its attendant violence. The real challenge, therefore, in dealing with the problems of rape and its horrors lies in rousing public consciousness against it, and in preventing the publication and exhibition in any form of that trash material, which only corrupts the minds of the youth and of the depraved. To this problem we commend Governments earnest and immediate attention.

CHAPTER IV

JUSTICE VERMA COMMITTEE REPORT SUMMARY

Rape and sexual assault

1. The statutory definition of the offence of "rape" is found underneath segment 375. It reads accordingly:

“375. Rape.- a person is stated to dedicate "rape" who, besides in the case hereinafter excepted, has sexual sex with a girl underneath circumstances falling under any of the six following descriptions: -

First.-against her will.

Secondly.--with out her consent.

Thirdly.--along with her consent, while her consent has been obtained by means of putting her or any character in whom she is interested in fear of dying or of hurt. Fourthly.--with her consent, whilst the man knows that he is not her husband, and that her consent is given because she believes that he's some other man to whom she is or believes herself to be lawfully married.

Fifthly. Together with her consent, while, on the time of giving such consent, via motive of unsoundness of thoughts or intoxication or the administration by means of him in my view or through another of any stupefying or unwholesome substance, she is not able to recognize the nature and consequences of that to which she gives consent.

Sixthly.--without or with her consent, while she is underneath sixteen years of age.

Explanation.--penetration is sufficient to represent the sexual sex essential to the offence of rape.

Exception.--sexual intercourse through a man together with his very own spouse, the wife no longer being underneath fifteen years of age, isn't rape."

2. Absolutely put, the offence of rape is "ravishment of a girl" without her consent or against her will by using pressure, worry or fraud and additionally consists of the "carnal knowledge of a woman1.

Three. "carnal information" way penetration to any slightest diploma. This ingredient of rape has been statutory integrated beneath the reason to section 375._____

1.Bhupendra Sharma v. State Of Himachal Pradesh, (2003) 8 SCC 551 [para 1011].

Ingredients of the offence

Consent

Four. So that you can carry domestic the rate of rape in opposition to a man, it's far essential to establish that the "sexual intercourse" complained of turned into both against the will or with out her consent. Wherein the consent is received below the occasions enumerated below clauses first off to sixthly, the equal might also amount to rape.

5. In dileep singh v. Kingdom of bihar1 the supreme court docket observed that "although will and consent regularly interlace and an act done against the desire of the individual can be said to be an act done with out consent, the indian penal code categorizes those two expressions under separate heads if you want to as comprehensive as feasible."

6. The difference between the 2 expressions changed into introduced out with the aid of the ideally suited courtroom in nation of up v. Chottey lal 2

7. It should be stated that the courts have observed the checks laid down under section 90 of the ipc for establishing "consent". Segment ninety reads as a result:

“90. Consent recognized to receive under worry or false impression.-a consent isn't always one of these consent as is intended by using any phase of this code, if the consent is given through someone underneath worry of injury, or under a misconception of reality, and if the person doing the act knows, or has purpose to trust, that the consent became given in outcome of such fear or false impression; or (consent of insane person) if the consent is given via a person who, from unsoundness of mind, or intoxication, is not able to apprehend the nature and effect of that to which he gives his consent; or (consent of infant) until the contrary appears from the context, if the consent is given through someone who's below twelve years of age”.

Eight. On this context the choice of ideally suited court docket in nation of h.P v. Mango ram3 is noteworthy. The court docket found as follows:"thirteen .....The proof as a whole shows that there has been resistance through the prosecutrix and there was no voluntary participation via her for the sexual act. Submission of the body underneath the fear _____

1.(2005) 1 CC 88 (Para 14)

2.(2011) 2 SCC 550.

3.(2000) 7 SCC 224

Of terror can not be construed as a consented sexual act. Consent for the purpose of section 375 requires voluntary participation no longer most effective after the workout of intelligence based totally on the expertise of the importance and ethical first-rate of the act but after having absolutely exercised the selection among resistance and assent. Whether or not there has been consent or no longer, is to be ascertained best on a careful have a look at of all relevant circumstances. From the evidence on report, it can't be stated that the prosecutrix had given consent and thereafter she became spherical and acted against the interest of the accused. There's clean credible proof that she resisted the onslaught and made all feasible efforts to save you the accused from committing rape on her. Therefore, the finding entered by way of the learned periods decide that there has been consent on the a part of the prosecutrix is without any foundation."

9. The united nations recommends that the definition of rape should require the lifestyles of 'unequivocal and voluntary agreement as well as evidence through the accused of steps taken to ascertain whether or not the complainant was consenting.1 this has the benefit of moving the weight to the defence to show that such steps were taken. This method became recommended via the cedaw committee in its perspectives in vertido v. The philippines 2, which made it clean that such a definition would assist in minimizing secondary victimization of the complainant/survivor in lawsuits.

11. In addition, underneath canadian law, the accused can not argue that there has been notion in consent if the accused did no longer take reasonable steps to check that there was consent to the precise sexual activity. It isn't always sufficient that the accused subjectively believed there has been consent. He have to additionally exhibit that he took affordable steps to envision it. 3 Deliberately deceived the complainant as to the nature reason of the relevant act, or prompted consent with the aid of impersonating someone activity 'requires a conscious, running thoughts, capable of granting, revoking own to the complainant. The underlying precept is that consent to sexual withholding consent to each and each sexual act.1 there are some similar resumptions inside the indian statute. We have described consent preserving the above in mind

Penetration

13. The section further clarifies that mere penetration is enough to constitute the offence of rape.

14. In koppula venkatrao v. Nation of ap2 the preferrred courtroom held as follows:

"12. The sine qua non of the offence of rape is penetration, and now not ejaculation, ejaculation without penetration constitutes an try and commit rape and now not actual rape. Definition of "rape" as contained in phase 375 ipc refers to "sexual intercourse" and the rationale appended to the segment provides that penetration is enough to represent the sexual intercourse essential to the offence of rape. Intercourse approach sexual connection."

15. Pursuant to the aforesaid remark the offence of 'try to dedicate rape' additionally want elaboration. Section 376 read with segment 511 of ipc penalizes the offence of 'try to rape'.

Try to commit rape

16. In koppula venkatrao (supra) the supreme court, with respect to the applicability of segment 511 to the offence of rape.

9. A offender first intends to dedicate the offence, then makes education for committing it and thereafter attempts to dedicate the offence. If the attempt succeeds, he has committed the offence; if it fails due to motives past his manage, he's said to have attempted to devote the offence. Try to devote an offence may be said to start while the preparations are entire and the wrongdoer which is a step closer to the commission of the offence. The instant he commences to do an act with the necessary intention, he commences his attempt to dedicate the offence. The phrase "try" is not itself defined, and need to, consequently, be require. An attempt

_____

1.R v.J.A. (n 91).

2.(2004) 3 SCC 602.

To dedicate a criminal offense is to be prominent from an aim taken in its normal which means. That is exactly what the provisions of segment 511 to commit it, and from preparation made for its fee. Mere intention to devote an offence, not followed through any act, cannot represent an will isn't to be taken for the deed unless there be some external act which indicates that development has been made within the route of it, or towards maturing and effecting it. Purpose is the course of behavior towards the item selected upon thinking about the reasons which advise the selection. Training consists in devising or arranging the manner or measures vital for the fee of the offence. It differs extensively from attempt that is the direct motion in the direction of the fee after arrangements are made. Practise to commit an offence is punishable handiest while the preparation is to devote offences beneath phase 122 (waging warfare in opposition to the government of india) and segment 399 (practise to dedicate dacoity). The dividing line among an insignificant instruction and an attempt is every now and then thin and needs to be determined at the statistics of every case. There is a greater degree of dedication in strive as compared with preparation.

Evidence and proof

10. It's far nicely settled that the proof of the sufferer of rape is on the identical footing as the evidence of an injured complainant or witness. Her testimony on my own is sufficient for conviction. In prosecutions of rape, the regulation does now not require corroboration. It's far only by using way of considerable caution that the court may look for some corroboration with the intention to satisfy its moral sense and rule out any false accusation.

11. However, the above precept of presumption whilst prosecuting rape instances emerged within the aforesaid history.

12. In tukaram v. Nation of maharashtra 1 the splendid courtroom had disbelieved the declaration of the victim of rape, at the ground that the circumstantial evidence did now not cause the inference of guilt and "in reality derogates in no uncertain degree from the inference drawn through it."2

13. The records have been these - mathura changed into a young girl labourer of 14-sixteen her hassle and he or she were brought to their local police station to file their statements in admire of a criticism lodged via her brother. Even as on the police station, mathura turned into raped through

Head constable tukaram and constable ganpat , a reality which she suggested to a crowd that had collected outside the police station mathura come to be then tested by using the usage of a medical doctor, who advised her to report a police grievance, which grievance became registered with the resource of the police after some hesitation and protests from the gang.

14. Mathura's scientific examination determined no accidents and evidence of earlier sex. Presence of semen changed into detected on her garments and the pyjama of ganpat. The trial courtroom, however, refused to convict the accused. The immoderate court docket reversed the locating and sentenced tukaram to rigorous imprisonment for 12 months and ganpat for 5 years. The high court held that every the ones 'gents' were first-class strangers to mathura and that it became not going that ‘she could make any overtures and invite the accused to fulfill her sexual goals’. The high court docket came to the conclusion that mathura did not consent to intercourse. The ideally suited court docket reversed the high court docket verdict and held that as there were no accidents shown by means of manner of the scientific record, the story of 'stiff resistance having been positioned up with the aid of the use of the female is all false' and the alleged intercourse have become a non violent affair. The court docket in addition held that crimes and alarms had been a concoction on her detail the court docket docket similarly held that underneath segment 375 handiest the "worry of loss of life or hurt" should vitiate consent for sexual sex.

¬the superb court docket's judgment have become criticised via four eminent law teachers - upendra baxi, vasudha dhagamdar, raghunath kelkar, and lotika sarkar who posed the following questions in an open letter to the ideally suited court docket.-

(a) modified into this no longer a diffusion which violated human rights of ladies below the regulation and the constitution ?

(b) the judgment provided no cogent evaluation as to why the factors which weighed with the excessive court had been insufficient to justify conviction for rape?

(c) the fact stays that mathura became requested to stay within the police station even after her declaration grow to be recorded and her buddies and relations were requested to depart. Why?

(d) why were the lighting put off and the doors close?

15. The decision of tukaram v. Kingdom of maharashtra1, is a applicable case to reveal how public opinion and diverse organizations have espoused the rights of women protected state of affairs of "annoyed rape" below segment 376a to e.

16. For that reason the crook regulation modification act, 1983 became handed which indian proof act, 1872 turned into also amended by means of the crook regulation change act, 1983 and section 114a turned into included which imposed the load of proving “consent” upon the accused inside the aforesaid cases of annoyed rape. This turned into an exception of the overall rule of presumption of innocence of the accused.

17.But, even before the above amendments came in to pressure in the case of bharvada gohinbhai hirjibhai v. Kingdom of gujarat2 , the supreme court docket reversed fashion and came to a end that it become open to the court docket to rely on the evidence of a complainant even with out seeking corroboration if corroboration by using scientific proof is to be had.

18. As a list of these traits, we regret that there may be a an indian woman which has taken region which is an over generalisation and it'd neither be correct nor

_____

1.(1979) 2 sec 143

2.Ibid (para 17).

Medical to check the testimony of an indian girls connection with the standards which can be referred to in paragraph 10 above. However what is essential is that the judgment, in a positive experience, discloses how a lady is regarded in india.

19. We feel that it's miles the obligation of the kingdom as well as civil society to deconstruct of sexual assault similar to every other crime against the human body underneath the paradigm of shame-honour in connection with a rape sufferer. Rape is a shape ipc. While we agree that it has its distinguishing characteristics, we do not think that there's any foundation for society or the state and lots much less the police/medical doctors to treat a rape victim as a victim of every other crime. In different words, we're the opinion that while the said paragraph quoted illustrates the out of place juxtaposition of shame and honour with the crime of rape, the juxtaposition is dearly a be counted of fact and at the equal time we think that it is vital for this to be deconstructed. It additionally shows that girls were looped right into a vicious cycle of shame and honour as a consequence of which they were attended with an inherent disability to report crimes of sexual offences against them.

20. In different phrases, a girl appears to be risking her recognition and honour by way of reporting a crime of sexual assault against herself . This view must change and whilst the above passage shows the fundamental misconceptions which can be built in in society managing ladies, we are greater worried with the observations in up to now as they describe the location of ladies in indian society, not in as a lot as women in the context of rape. In fact, we trust that equality before regulation, that's guaranteed under the charter, always method the eschewing of inappropriate concerns and we do agree with that many of those concerns have to be viewed as inappropriate in a converting society. But, we do notice that the above characteristics are completely inconsistent with essential rights which might be assured to a woman beneath the constitution. We in addition accept as true with that those cannot be the idea for the reason of defining the rights of ladies below the regulation.

21. At this level, we word in rafique v. State of up1, where krishna iyer, j. Made the following observations:-

"there are several "sacred cows" of the criminal law in indo-anglian jurisprudence which might be superstitious survivals and want to be re-tested. While rapists are revelling in their promiscuous interests and half of humankind- womankind-is

Protesting towards its hapless lot, while no female of honour will accuse every other of rape considering she sacrifices thereby what's dearest to her, we can't hang to a fossil system and insist on corroborative testimony, despite the fact that taken as an entire, the case spoken to by the sufferer strikes a judicial thoughts as probably. In this example, the testimony has commanded acceptance from two courts. While a female is ravished what is inflicted is not merely physical harm, however "the deep sense of some deathless shame".

A rape ! A rape!...

Sure, you've got ravish'd justice;

Compelled her to do your delight."

"rarely a sensitized judge who sees the conspectus of circumstances in its totality and rejects the testimony of a rape victim except there are very strong occasions militating in opposition to is veracity. None we see in his case, and confirmation of the conviction via the courts underneath have to, consequently, be a rely of course. Judicial response to human rights can't be blunted through legal bigotry.

22. Similarly in nation of maharashtra v. Chandraprakash kewalchand jain the courtroom determined:2

"15. It's miles important on the outset to nation what the technique of the court docket must be at the same time as evaluating the prosecution evidence, in particular the proof of the prosecutrix, in sex offences. Is it vital that the proof of the prosecutrix need to be corroborated in cloth particulars earlier than the courtroom bases a conviction on her testimony? Does the guideline of prudence call for that in all cases store the rarest of rare the courtroom have to search for corroboration earlier than performing at the evidence of the prosecutrix?

---

1. (1981)1SCR 402
2. (1990)1SCC 550

23. There may be a few diploma of substance in the complaint which we've heard from girls's organizations that ladies do not need sympathy, empathy or charity. They are equal per se. In different words, they declare what popular human rights and the charter ensures as their natural area to live freely and effect choices based on man or woman judgment. We are not able to discountenance this argument. At the contrary this is totally correct. The essential mind-set, primarily based on paternalism, ought to be discarded. We also assume that the judgments of courts can now and again be misconstrued as suggestive of sympathetic attention in a crook trial. We additionally suppose that the right to justice is a fundamental right under the constitution and must no longer be earned out of a sympathy having regard to the social malaise which exists in society. In other words, we endorse an method that if the juxtaposition between honour and shame on the one hand and the crime of rape is deconstructed, humans might be able to breakthrough and be heard. Such crimes must be registered right away and investigated impartially and in appreciate of which we suggest to make guidelines inside the succeeding paragraphs. If an impartial investigation brings offenders to ebook, goes to add to the confidence of no longer most effective the person victim but additionally girls in society that such crimes may be introduced to book. No girl in must experience a sense of shame or stigma within the occasion of sexual attack. She entitled to the redressal of that harm and that offence and he or she is therefore statutorily and constitutionally capable of get admission to to the rule of thumb of law.

24. We consider that there may be no risk and no shame or loss of honour a victim looking for redressal by filing complaints and ought to in reality exercise, steady with fundamental rights of women, the right to report proceedings and convey offenders to ebook. We additionally think that it's miles the obligation of the country to encourage this kind of weather and also to make to be had such resources that allow them to report such court cases.

25. If the depiction of the indian society is what's depicted by means of thakkar , j. In 1983, we have to alternate the state of affairs. We are certainly inspired by way of the of lodha, j. Who, even though depending upon the selection of thakkar, j. In bharwada bhoginbai hirjibai, has correctly elucidated the mental elements. We assume that the scientific alignment adopted by

Lodha, J. is the correct way to fashion the attitude of society towards a rape victim, which is to administer to her not only justice, but also such psychological therapeutic intervention as is necessary for rediscovery of the self and increased self-affirmation. 26. Many people who have faced accidents have overcome the disability caused by those accidents and have proceeded with life in a positive way. We must be able to teach the same rehabilitative methodology to rape victims. But in order to do that, it is necessary that they must be encouraged to report such crimes of sexual violence. In fact, it is the process of reporting such crimes which will be a forward looking step in being able to assert and demand justice. 27. We do notice that this concept of shame has somehow led the police to have an upper hand. The police have become arbiters of honour. The police, without registering even a FIR, assume that they have the moral capacity to pronounce upon the rights and wrongs of the rapist as well as the rape victim. This is simply deplorable and it is inconceivable in a modern society, which is governed by republican values. We think that it is necessary for the police officers to be completely sensitised against the honour-shame theory, and to treat every woman complainant as an individual in her own right capable of asserting her grievance. In other words, we feel that an indirect validation of police inaction in rape crimes has taken place as a result of (a) amorphous attribution of womens position in Indian society; (b) the theory of shame-honour; and (c) the policeman, being the male in a patriarchal society, ought to be the moral judge. It not only skews the justice delivery system at the stage of lodging the complaint, but it has a strongly debilitating effect resulting in direct violation of fundamental human freedoms and rights under the Constitution and the various international instruments. 28. We wish to take this point further. When a woman complains of rape, it is not the physical part of the woman which is directly the focus of attention. It is the offence and the offence against the bodily integrity of the woman as a person which is the offence in question. We therefore think that we need a woman to same time it must not be viewed that a woman, while making a complaint, is as in any way acting less honourably or in any way disturbing what is considered the repository of honour of the family, community and others.

29. An offence against a person is very different from offence against a community. We think that there has been a completely erroneous connection which is being made between a woman and a community. In other words, we feel very strongly that an assault on a woman is an assault on the person of the woman. In this regard, we would like to quote Sohaila Abdulali, a rape victim, who recounts her experience which took place 32 years ago in Mumbai:

"Rape is horrible. But it is not horrible for all the reasons that have been drilled into the heads of Indian women. It is horrible because you are violated, you are scared, someone else takes control of your body and hurts you in the most intimate way. It is not horrible because you lose your "virtue." It is not horrible because your father and your brother are dishonoured. I reject the notion that my virtue is located in my vagina, just as I reject the notion that men's brains are in their genitals."

If we take honor out of the equation, rape will still be horrible, but it will be a personal, and not a societal, horror. We will be able to give women who have been assaulted what they truly need: not a load of rubbish about how they should feel guilty or ashamed, but empathy for going through a terrible trauma."

30. We are given to understand that the Government of India had brought out a Criminal Law Amendment Bill, 2012. We notice that a detailed critique of the said Bill was submitted on behalf of women's groups and other stakeholders. We, too, have had the opportunity of examining the said Bill, which is presently pending before Parliament.

31. While we feel that the Criminal Law Amendment Bill, 2012 has provisions that are somewhat protective of the right of safety of women, we feel that the said Bill is far from complete. It needs a series of revisions, many of which we propose to recommend at a later stage in this Report

32. At this juncture, we would like to revisit the recommendations made by previous Law Commissions on various issues pertaining to crimes against women.

33. We begin with the 84th Law Commission Report. The said report was submitted on 25th April 1980 by the 42nd Law Commission presided over by Mr. Justice P.V. Dixit, former Chief Justice of the Madhya Pradesh High Court.

34. We agree with the following observations of the 84th Report of the Law Commission:

"1.2 It is often stated that a woman who is raped undergoes two crisis, the and the subsequent trial. While the first seriously moves her dignity, curbs her individual, disturbs her sense of security and may often run her physically, the second is no less potent of mixture, inasmuch as it not only forces her to relive through the traumatic experience, but also does so in the grudge of publicity in a totally alien atmosphere, with the whole apparatus and paraphernalia of the criminal justice system focused upon her."

36. We must point out that the Law Commission of India in its 42nd Report65 as well as the 69th Report66 has also made certain suggestions to the IPC and the Evidence Act. With reference to the IPC, it was suggested that where the circumstances are such that a male may be able to take undue advantage of the situation and seduce the woman to illicit intercourse, the Commission recommended the insertion in the Code of three specific sections, intended respectively to deal with illicit intercourse of a woman, with that woman; (b) by superintendent of an institution with (a) by a person having custody an inmate of an institution; and (c) by a person in-charge of a hospital, with a mentally disordered patient.

37. We are indeed shocked to note that notwithstanding the fact that these Law Commission Reports were made decades ago, very little attention has been paid to the implementation of these recommendations. We also note that the National Legal Vision Document (drafted by one of us) in fact wanted a would study the implementation of recommendations of the Law Commission office of the Attorney General and Solicitor General to be established which

---

1.Law Commission of India, 42nd Report on the Indian Penal Code, 1971. http:// lawcommissionofindia.nic.in/1-50/Report42.pdf

2.Commission of India, 69th Report on the Indian Evidence Act, 1872.1977. htt:// lawcommissionofindia.nic.in/51-100/Report6%.pdf

This, unfortunately, has also not been carried out.

38. The 42 Law Commission in the 84th Report) recommended that sections 35 to 376E be redrafted.

39. We agree with the 84th Report that-

"2.6 Consent is the anti-thesis of rape. Even if some may find any discussion on consent, it is too complicated. The matter cannot consistently with the needs of the subject be put in simple one phrase formulation. When circumstances in life present an infinite variety, the law must be well equipped to deal with them, nuances of consent are therefore unavoidable."

40. It may also be noted that the 84th Report of the Law Commission therefore dealt with the substantial law relating to the law of consent in the context of rape Consent must be real. Often, it is vitiated by circumstances which take away the freedom of choice.

41. There can be cases of consent even when there is no violence. Violence- or, for that matter, marks of resistance - are not conclusive of consent. In any case, after a clarification is made in section 375 on the lines recommended by us, this point would lose much of its practical importance.

42. The 84th Report further recommended that the minimum age should be increased to 18 years and observed as follows:

"2.20. Increase in minimum age.-The question to be considered is whether the age should be increased to 18 years. The minimum age of marriage now laid down by law (after 1978) is 18 years in the case of females and the relevant clause of section 375 should reflect this changed attitude. Since marriage with a girl below 18 years is prohibited (though it is not void as a matter of personal law), sexual intercourse with a girl below 18 years should also be prohibited."

43. On the question of section 354 relating to outraging modesty of women and indecent assaults, the 84th Report suggested that section 354A must be inserted regarding indecent assault on a minor. The 84th Report also opined

that eve teasing was amply covered under section of the IPC, and observed as follows:

2.31. Recommendation as to section 354A, Indian Penal Code. Accordingly, we would recommend that, while incorporating section 354A in the Indian Penal Code, after the words "obscene manner", the words "with or without the consent of the minor" should also be added.

XVI. Indecent gestures

44. Where there is physical contact or threat of physical contact, the offender can be charged under section 354 of the same Code, punishing a person who be likely that he will thereby outrage her modesty". The punishment is imprisonment "assaults or uses criminal force to any woman, intending to outrage or knowing it to of either description up to two years or fine or both. Both the offences are, as the law now stands, cognizable.

45. We notice that many other recommendations have been made in respect of female victims of sexual offences. In particular, we have also noticed the suggestion contained in paragraph 3.15 of the 84th Report that a new sub-section be added in section 160 of the CrPC to require the statement of female victims of sexual assault under the age of 12 to be recorded by a woman police officer.

It is unfortunate that it is only in 2012, in the Protection of Children from Sexual Offences Act, 2012, that an attempt has been made by Parliament to provide special measures for the recording of statements of children who are victims of sexual offences.

46. We also notice in the 84th Report that the medical report is a document of vital importance and deserves attention.

47. We notice that the medical examination report of the accused in a case of rape or attempt to commit rape is an important document, and we have dealt with this aspect at some length later in this Report. We also think that any delay in reporting rape will result delay in the commencement of the investigation. But at the same time, the police are duty bound to register such

cases and must not insult or harass or refuse to hear the victim or the complainant.

48. We notice that the following recommendations were made for the purpose of recording of reasons by inserting sections 53(1A), (IB), (1C) and (ID) in the CrPC:-

"4.7. Recommendation as to section 53, CrPC.-It is very important that reasons should he given for the opinion expressed in the report. Accordingly, we recommend the insertion in section 53 of the Code of Criminal Procedure, of the following sub-sections:

Sections 53(1A), (1B), (1C) and (1D) Code of Criminal Procedure, 1973 to be inserted.

49. What is most surprising is that Parliament has ignored the recommendation of the 84th Report, which calls for the punishment of a station-in-charge who fails to register information of a cognizable offence given to him.

50. Section 375 of the Indian Penal Code has traditionally defined rape in narrow terms as 'sexual intercourse' or 'penetration' in the circumstances defined in the statute. The Indian Criminal Law Amendment Bill 2012 proposes replacing the offence of 'rape with that of 'sexual assault'. However, while the new provisions widen the definition of 'penetration' beyond vaginal penetration, the new offence remains limited to that of 'penetration'. Other types of sexual assault are not subject to appropriate legal sanction.

CHAPTER V

RAPE AND MURDER - JUDICIAL ACTIVISM

RAPE AND MURDER - JUDICIAL ACTIVISM

In our country Judiciary is known as the independent wing of government. This independent Judiciary has two roles: 1) the traditional role i.e. to interpret the laws, and another is 2) Judicial activism i.e. to go beyond the statute and to exercise the discretionary power to provide justice. Our Indian judiciary can be regarded as a creative judiciary. Credibility of judicial process ultimately depends on the manner of doing administration of justice. Justice K. Subba Rao explains the function of the judiciary as thus:

- It is balancing wheel of the federation;
- It keeps equilibrium between fundamental rights and social justice; it forms all forms of authorities within the bounds;
- It controls the Administrative Tribunals.

Judiciary can promote social justice through its judgments. Another important role of judiciary is to make precedent for the public interest or welfare of the society. Law is powerless and requires a strong agency to maintain its existence. The level of implementation and the capability of the executor determine the fate of law. During the recent past, the term 'judicial activism' has assumed immense significance. It may be define as dynamic process of judicial outlook in a changing society.This chapter deals with different cases and judgements of Supreme Court and High Court.

5.1 RAPE AND MURDER OF BROTHER'S DAUGHTER

Laxman Naik v. State of Orissa, AIR 1995

JUDGMENT OF THE SUPREME COURT

The Court observed that the aforementioned circumstances found to be established against the appellant form a complete chain of evidence as not to leave any reasonable ground for a conclusion consistent with the hypothesis of the innocence of the appellant but on the contrary the same were of exclusive nature consistent only with the hypothesis of the guilt of the appellant and conclusively lead to the irresistable conclusion that it was the appellant and he alone who had committed murder of the girl Nitma after subjecting her to forcible sexual intercourse.

Regarding the question of sentence to be imposed upon the appellant, it may be pointed out that the Supreme Court in the case of *Bachan Singh v. State of Punjab,* ((1980) 2 SCC 684: 1980 SCC (Cri) 580) while discussing the sentencing policy, also laid down norms indicating the area of imposition of death penalty taking into

consideration the aggravating and mitigating circumstances of the case and affirmed the view that the sentencing discretion is to be exercised judicially on well-recognised principles, after balancing all the aggravating and mitigating circumstances of the crime guided by the legislative policy discernible from the provisions contained in sections 253(2) and 354(3) of the Code of

Criminal Procedure. In other words, the extreme penalty can be inflicted only in gravest cases of the extreme culpability and in making choice of the sentence, in addition to the circumstances of the offender also. Having regard to these principles with regard to the imposition of the extreme penalty it may be noticed that there were absolutely no mitigating circumstances in the present case. On the contrary the facts of the case disclosed only aggravating circumstances against the appellant.

The hard facts of the present case were that the appellant Laxman was the uncle of the deceased and almost occupied the status and position that of a guardian. Consequently the victim who was aged about 7 years must have reposed complete confidence in the appellant and while reposing such faith and confidence in the appellant must have believed in his bona fides and it was on account of such a faith and belief that she acted upon the command of the appellant in accompanying him under the impression that she was being taken to her village unmindful of the preplanned unholy designs of the appellant.

The victim was a totally helpless child there being no one to protect her in the place where she was taken by the appellant misusing her confidence to fulfil that object that he took the girl resorting to diabolical methods and it was wil to a lonely place to execute his dastardly act.

The evidence of Dr. Pushp Lata, PW 12, who conducted the post-mortem over the dead body of the victim went to show that she had several externa and internal injuries on her person including a serious injury in her private part is showing the brutality which she was subjected to while committing rape on her The victim of the age of Nitma could not have even ever resisted the act with which she was subjected to. The appellant seemed to have acted in a beastly manner as after satisfying his lust he thought that the victim might expose him for the commission of the offence of forcible rape on her to the family members and others, the appellant with a view to

screen the evidence of his crime also put an end to the life of innocent girl who had seen only seven summers. The evidence on record was indicative of the fact as to how diabolically the appellant had conceived of his plan and brutally executed it and such a calculated, cold-blooded and brutal murder of a girl of a very tender age after committing rape on her would undoubtedly fall in the category of rarest of the rare cases attracting no punishment other than the capital punishment and consequently the Court confirmed the sentence of death imposed upon the appellant for the offence under section 302 of the Penal Code. As regards the punishment under section 376, neither the learned trial Judge nor the High Court awarded any separate and additional substantive sentence and in view of the fact that the sentence of death awarded to the appellant was confirmed and did not impose any sentence on the appellant under section 376. In the result the appeal preferred by the appellant failed and was dismissed.

5.2 RAPE AND MURDER BY SECURITY GUARD

Dhananjoy Chatterjee alias Dhana v. State of West Bengal, (DHANANJOY CHATTERJEE CASE) (1994) 2 SCC 220

JUDGMENT OF THE SUPREME COURT

The Court observed that in recent years, the rising crime rate – particularly violent crime against women has made the criminal sentencing by the Courts a subject of concern. Today there are admitted disparities. Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility. Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences in the absence of specific legislation, Judge must consider variety of factors and after considering all those factors and taking an overall view of situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration.

The Court opined that the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the Courts respond to the society's cry for justice against the criminals. Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.

The sordid episode of the security guard, whose sacred duty was to ensure the protection and welfare of the inhabitants of the flats in the apartment, should not have subjected the deceased, a resident of one of the flats, to gratify his lust and murdered her in retaliation for his transfer on her complaint, makes the crime even more heinous. Keeping in view the medical evidence and the state in which the body of the deceased was found, it is obvious that a most heinous type of barbaric rape and murder was committed on a helpless and defenceless school-going girl of 18 years. If the security guards behave in this manner who will guard the security? The faith of the society by such a barbaric act of the guard, get totally shaken and its cry for justice becomes loud and clear. The offence was not only inhuman and barbaric but it was a totally ruthless crime of Rape followed by cold blooded murder and an affront to the human dignity of the society. The savage nature of the crime has shocked the Court's judicial conscience. There were no extenuating or mitigating circumstances whatsoever in the case. The Court agreed that a real and abiding concern for the dignity of human life is required to be kept in mind by the Courts while considering the confirmation of the sentence of death but a cold blooded preplanned brutal murder, without any provocation, after committing rape on an innocent and defenceless young girl of 18 years, by the security guard certainly made this case a "rarest of the rare" cases which calls for no punishment other than the capital punishment and the Court accordingly confirmed the sentence of death imposed upon the appellant for the offence under section 302 IPC. The order of sentence imposed on the appellant by the Courts below for offences under sections 376 and 380 of IPC were also confirmed along with the directions relating thereto as in the event of the execution of the appellant, those sentences would only remain of academic interest. The appeal was thus dismissed.

5.3 RAPE AND MURDER -DEATH SENTENCE -RAREST OF RARE CASES

KIDNAPPING, RAPE AND MURDER OF 10 YEAR OLDGIRL AND 7 YEAR BOY: DEATH SENTENCE:

RAREST OF RARE CASE

Manoharan v. State, 2014 (2) MLJ (Cri) 1: 2015 Cr. LJ 1215

Two children were kidnapped, one of them was gang raped and then both of them were given poison and pushed into canal alive. Nothing was brought on record to suggest that accused suffered from emotional or mental imbalance while committing offence. Death sentence was confirmed by High Court.

5.4 RAPE AND MURDER OF TWO YEAR OLD GIRL:

RAREST OF RARE CASE:DEATH SENTENCE

State of Maharashtra v. Ravi Ashok Ghumare, 2016 (1) AIR Bom R (Cri) 876: 2016 (2) Bom CR (Cri) 346

The victim was found in the house. She was lying under the bed in a naked and unconscious condition. Blood was oozing from her private part with multiple injuries in the body. She was taken to the hospital was declared brought dead. The clothes of accused were stained with blood. The motive of accused was proved. The accused failed his defence. The death sentence was confirmed

5.5 TWO ACCUSED PERSONS COMMITTED RAPE ON A YOUNG GIRL AND SMASHED HER HEAD

Purushottam Dashrata Borate v. State of Maharashtra, (2015)

Two accused persons committed rape on a young girl and thereafter smashed her head. The death sentence was awarded to them.

5.6 RAREST OF RARE CASE: RAPE AND MURDER OF 4 YEAR OLD CHILD: DEATH PENALTY

Vasanta Sampata Dupare v. State of Maharashtra, 2014

The offence of rape and murder was committed on a four year old child by an accused of 47 years. The offence was proved by cogent evidence. The accused was sentenced to death. It was held as rarest of rare cases.

5.8 RAPE AND MURDER: DEATH SENTENCE: RAREST OF RARE CASE

State v. Shatrughan,2015

The victim was alone in the house at night of incidence. The mobile of victim was recovered from co-accused. The co-accused admitted that the accused had given it to him. The accused after incident of rape had changed his blood-stained clothes and worn clothes of brother of victim which were available in the house.

The blood-stained clothes were recovered. Medical report was corroborated with live reports DNA report, injuries of victim and blood group of victim. On these grounds the accused was awarded death sentence on account of of rarest of rare case.

5.9 RAPE AND MURDER: DEATH SENTENCE: RAREST OF RARE CASE

Prakash Nichad v. State of Maharashtra, 2016

Motive of accused, vulnerability of victim girl, barbaric and inhuman nature of crime and execution thereof persuaded that this was the "rarest of rare case" and sentence of death was eminently desirable. Hence the death sentence has upheld by the Court.

5.10 RAPE AND MURDER OF MINOR GIRL: DEATH SENTENCE: RAREST OF RARE CASE

State of Maharashtra v. Viran Gyanlal Rajput 2015

The modus operandi to commit the crime by resorting the diabolical method exhibited depravity, degration and uncommonality of the crime. It shocked collective conscience of communists and villagers who were required to send their minor girls to another village for education. Only two mitigating circumstances that accused was 22 years old at relevant time and had family responsibilities of his wife, children and parent was pleaded. But the Court held the case as rarest of rare cases, hence awarded death sentence.

5.11 RAPE AND MURDER OF TWO YEAR OLD GIRL:DEATH SENTENCE: RAREST OF RARE CASE

State of Maharashtra v. Shatrughan Baban Meshram, 2015

The medical evidence showed that the death of prosecutrix was caused due to the forceful intercourse. The prosecution was able to establish that the child was subjected to a forceful sexual violence. The death of victim was homicidal was proved. On considering all circumstances that the accused acted in absolute pervert, inhumane and beastly manner, the death sentence awarded by the lower court was upheld by the High Court.

5.12 RAPE ON 8 YEAR OLD GIRL: MURDER OF HER: DEATH SENTENCE TO ACCUSED: RAREST OF RARE CASE

State of Rajasthan v.Manoj Pratap Singh, 2015

The victim was 8 year old child. She was having 70% permanent disability.The accused abducted her and gave her a chocolate. The accused not only committed rape but also murdered her. It was held that such cases fell as rarest of rare case. The death sentence was confirmed by High Court.

5.13 RAPE AND MURDER OF 5 YEARS OLD GIRL: DEATH SENTENCE: RAREST OF RARE CASE

State of Maharashtra v. Dattatraya,2014

The accused who was of 53 year old committed rape, sodomy and murder of a 5 year old girl. The accused had known that out of past experience that if he tried to rape a full grown woman, she would resist and he would land into trouble. Hence he chose young, innocent, defenceless, minor girl as his victim knowing that such young child of tender age would not be able to put up a Sentence Rarest of Rare Cases resistance. Looking to the evidences of such witnesses it was held that the case of accused, fell under rarest of rare cases. Death sentence was awarded.

5.14 SUPREME COURT ON RAPE CASES RAPE AND MURDER OF 11 YEAR OLD GIRL

State of Uttar Pradesh v. Munesh,AIR 2013 SC 147

Accused committed rape and then strangulated the victim girl of 11 year old to death. The First Information Report was not delayed. Two passer-by witness gave evidence and their evidence was corroborated with the medical evidence and also with the evidence of victim's father. The eye-witnesses were independent witnesses. Both these witnesses identified the accused before trial court. Though there was contradiction of statements of witnesses given to police and given in court the Supreme Court held that those contractions were not trivial and rejection of their evidence and acquittal of accused was improper.

The Supreme Court awarded rigorous life imprisonment to accused and refused the death sentence.

5.15 DEATH SENTENCE SHOULD BE GIVEN IN CASE OF RAPE AND MURDER OF MINOR GIRL

Gurvail Singh v. State of Punjab, (2013) 2 SCC 713

The rarest of rare cases test depends on the perception of the society and is not judge-centric, that is, whether the society will approve the awarding of death sentence to certain types of crime or not. While applying this test, the court has to look into a variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like rape and murder of minor girls, especially intellectually challenged minor girls, minor girls with physical disability, old and infirm women with those disabilities, etc., these examples are only illustrative and not exhaustive. Courts award death sentence, because the situation demands, due to constitutional compulsion reflected by the will of the people, and is not judge-centric.

5.16 SUPREME COURT ON RAPE CASES

5.16.1 RAPE ON A FOREIGN GIRL: VIDEO CONFERENCE

Sujoy Mitra v. State of West Bengal, 2016

It was held that the State is to install equipment for video conference for which the embassy shall nominate a responsible officer, in whose presence the statement of prosecutrix is to be recorded and the officer who shall be deputed to record statement shall be present and there will be no other person besides the witness, in the room, and the statement shall be recorded by trial court.

5.16.2 RAPE AND MURDER: DEATH SENTENCE COMMUTED TO LIFE IMPRISONMENT

Sandeep v. State of Uttar Pradesh, 2012

Awarding of death sentence is the rule, death is an exception. The application of the "rarest of rare case" principle is dependent upon and differs from case to case. In a deliberately planned crime executed meticulously in a diabetic manner touching the conscience of everyone and thereby disturb the moral fibre of the society, would call for imposition of capital punishment in order to ensure that it acts as a deterrent.

5.16.3 RAPE ON 8 YEAR OLD GIRL

Shyam Narain v. State of NCT of Delhi, 2013

The Court must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender age and response by imposition of proper sentence. The public abhorrence of the crime needs reflection through imposition of appropriate sentence by Court.

5.16.4 RAPE ON MENTALLY CHALLENGED GIRL OF 11 YEAR OF OLD

Shankar Kisanrao Khade v. State of Maharashtra, 2013

The sodomy, rape and murder of 11 year old mentally challenged girl was committed by the accused. The accused was awarded death sentence by High Court, inter alia. On the ground that some criminal cases were pending against him. The death sentence was commuted to life imprisonment. The mere pendency of few criminal cases against accused cannot be taken note of to award death sentence. The death sentence commuted to life imprisonment.

5.16.5 GANG RAPE WITH MURDER

Ramaresh v. State of Chhattisgarh, 2012

The accused who was brother-in-law of victim committed gang rape along with his friends. The High Court awarded death sentence. The Supreme Court though held that the accused committed heinous crime for satisfaction of their lust, but it cannot be held as "rarest of rare cases" but commuted the sentence to life imprisonment.

5.16.6 RAPE AND MURDER OF 5 YEARS CHILD

State of Rajasthan v. Jamil Khan,2014

Though it was a rarest of rare case, but the Court found it too hard to impose death sentence as well delay of 11 years in trial and final order. At the same time awarding of life imprisonment was too inadequate. In such a case if death sentence is altered to life imprisonment then the life imprisonment should be without commutation or remission.

5.16.7 GANG RAPE AND MURDER BY 3 ACCUSED PERSONS

State of Rajasthan v. Balveer,2013

Three accused persons committed rape on a girl and thereafter strangulated her to death. One of the accused was tender aged and made and approver. The two other accused persons were convicted on the basis of evidence of approver.

The order of acquittal by High Court was set aside. They were awarded with the punishment of life imprisonment.

5.16.8 RAPE WITH A 11 YEAR OLD VICTIM

Radhakrisha Nagesh v. State of Andhra Pradesh, 2013

Accused was convicted on basis of sole statement of victim because the Court found that statement of victim was reliable, trustworthy and by itself sufficient to convict the accused, by virtual of it being the statement of the victim herself.

5.16.9 OFFENCE OF RAPE

Bhupendra Sharma v. State of Himachal Pradesh, 2003

The offence of rape is "ravishment of a woman" without her consent or against her will by force, fear or fraud and also includes the "carnal knowledge of a woman.

5.16.10 WILL AND CONSENT FOR RAPE

Dillip Singh v. State of Bihar, 2005

Though will and consent often intertace and an act done against the will of the person can be said to be an act done without consent, the Indian Penal Code categories these two expressions under separate heads in order to be as comprehensive as possible.

5.16.11 SUBSTANTIAL EQUALITY AND WOMEN'S RIGHTS

Ashok Kumar Thakur v. Union of India, 2008

The substantive equality and women's rights as human rights have been established both in domestic and international legal regimes. The Constitution of India embraces the substantive equality approach as provided in Article 15(1) and 15(3)

5.17 HIGH COURTS ON RAPE CASES

5.17.1 RAPE ON MINOR GIRL: REDUCTION OF SENTENCE

Dashrath Aba More v. State of Maharashtra, 2016 z

The evidence of Medical Officer showed that though in injury on body parts of victim was found, her hymen was ruptured. No iota of material showed that accused was falsely implicated. The prosecution failed to prove that the victim was below 16 years old. Hence the conviction under section 376(2)(f) of IPC set aside and the offence was made out under section 376(1) of IPC. As the accused was poor labourer the imprisonment of 7 years rigorous imprisonment was held proper.

5.17.2 OFFENCE OF RAPE: IDENTIFICATION PARADE

Sham Vitthal Nimbale v. State of Maharashtra, 2016

The prosecutrix identified all the accused in identification parade. It was held that since prosecutrix identified the accused before the Court by attributing specific role

was sufficient to hold positive involvement of accused. Hence the accused was convicted and sentenced.

5.17.3 RAPE: VIDEO CONFERENCE OF EVIDENCE AND STATEMENT

Sujay Mitra v. State of West Bengal 2015,

The petitioner pleaded that the trial court did not follow the guidelines of the Supreme Court for recording evidence through video conference and summons were not issued to the victim. The plea was rejected. It was also held that there was no illegality or irregularity in the order of trial court in convicting to accused.

5.17.4 RAPE ON MINOR GIRL: CONVICTION ON TESTIMONY OF PROSECUTRIX

Sunil Kumar v. State of Himachal Pradesh, 2015

The testimony of prosecutrix was found by Court as trustworthy, reliable and inspired confidence. It was minor prosecutrix to eliminate her in case she would disclose the incident to anyone. The oral and documentary evidence on record was rightly appreciated by the Court. Hence the accused was convicted and sentenced.

5.17.5 RAPE ON MINOR GIRL OF SEVEN YEARS OLD GIRL BY 58 YEARS OLD MAN: REDUCTION OF SENTENCE

Narinder Kumar Sharma v. State of Punjab, 2015

The private parts of victim had been badly affected. The conviction of 10 years rigorous imprisonment was awarded on the bag's of testimony of prosecutrix which was trustworthy and credential.

5.17.6 GANG RAPE AND MURDER: CONVICTION OF LIFE IMPRISONMENT

Santosh Rai v. State of Uttar Pradesh, 2016

The deceased visited the house of the accused persons and thereafter all the four accused persons and deceased were found missing and then the accused persons were

seen with dead body of victim. They threw the dead body and tried to escape when seen by the witness. The evidence and the circumstances showed the common intention which led them to be punished with life imprisonment.

5.17.7 OFFENCE OF RAPE: FIR NOT TO BE QUASHED

Arjinder Singh v. State of Punjab, 2016

Accused developed physical relations with victim with a promise to marry but booked out subsequently. FIR was lodged. Later on, the compromise was arrived at between the parties and then FIR was sought to be quashed on the ground that FIR was lodged due to some misunderstanding. Hence it was held that in an offence of serious nature like rape case, quash the FIR on the basis of compromise is not justified as offence of rape is such an offence which not only castes stigma on the reputation of a girl but spoils the future prospectus of victim also.

5.17.8 OFFENCE OF RAPE: ACQUITTAL SET ASIDE

State of Gujarat v. Shailesh Javerchand Malde Mahajan, 2016

The complainant turned hostiled. The mother and brother of complainant also turned hostiled. The material witness was not examined. The prosecutor even dropped all other witness and closed the Parsley's. The trial court acquitted the accused. It was held that, the trial court erred in not examining the material witness. And it was held that the pious duty of the Court is to appreciate evidence for search of truth. The acquittal was quashed. It was remanded to trial court for retrial.

5.17.9 ESSENTIAL INGREDIENTS OF RAPE

Davshi Keshav Vara v. State of Gujarat, 2016

While considering the offence under section 375 of IPC, inserting of some object or figure into private parts of woman is covered under the definition of rape under section 375. It is not necessary that there has to be penetration of penis. The absence of injury is not sufficient to disregard the testimony of victim regarding the offence under section 376 of IPC. Hence the order of conviction and sentence was confirmed.

5.17.10 RAPE AND MURDER OF MINOR GIRL

Raju Singh v. State of Jharkhand, 2016

Rajendra Prasad Rao Wasnik v. State of Maharashtra,2002

Ramesh Bhan v. State,2009

Amit v. State, 2003

Bantu v. State, 2001

There was proof of medical evidence. The testimonies of witnesses corroborated with last seen theory. The post-mortem report and DNA report were proved. The High Court confirmed death sentence. But the Supreme Court considering the other aspects of accused like absence of criminal history of accused which commuted the death sentence to life imprisonment.

CHAPTER VI
CONCLUSION AND SUGGESTION

CONCLUSION AND SUGGESTIONS

The law can do a lot of things in bringing the right situation for the victim.

I. A case where a victim is regularly raped should not be seen as a single rape case but multiple rape cases of quantity equaling the number of time the victim is raped.

II. If a victim gets AIDS through the culprit, the case should be viewed as rape and murder.

III. Only crime woman cell should be given the charge to deal on behalf of police in rape cases.

IV. In the punishment clause of 376(1) and (2), there is a separate postulate saying Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence for a term of less than seven years.

Thus the compass of flexibility makes a full circle. However I must mention a few points

a) Punishment should have a scope for, in addition to any term of imprisonment;

i) Execution

ii) Other measures such as crime confrontation, psycho counselling, if they stand a viable chance.

iii) In a flexible punishment structure the judge should always be assisted by a jury, in the capacity of an adviser group, whose advice may wholly or partially, be dismissed or accepted. The jury must consist of: psychologists, sociologists, criminologists, psychiatrist, sexologist, representatives from national human rights commission, representatives from woman's commission etc. 498

iv) Reduction of punishment from the seven years or ten years lower limit should have a viable reason for it. Punishment reduction must involve lot of study and reasoning, as many a time punishments might be reduced because of wrong reasons.

v) Gender bias encodes can lead to wrong use of this power of flexibility, this must be kept account.

vi) Section 376 (2) while defining custodial rape does not include cases where a woman ask a lift from a police officer in uniform and he commits rape. It must be taken to be equal to custodial rape.

vii) Develop a separate incest crime package.

viii) Mobilize public opinion in regard to rape punishment.

ix) Decentralize the rape punishment clause more than at the moment. Diversify it as much as possible as different rapes have completely different parameters attached to them.

x) When adding new clauses in rape law, these should be kept in mind

(a) If a victim is imparted AIDS, which is incurable, is this equal to murder?

(b) If the victim commits suicide prompted by outside clause (culprit), is this murder?

(c) If a victim loses her mental balance, leading complete destruction of mental life, is his murder?

xi) Rape victims may give many statements to the officials, but these statements often are not recorded in the victims own words. Sometime they are not recorded at all. The victim statements are often translated into the officials language. Later, however the defense will cross examine the witness about these seemingly irrelevant details. Therefore, statements that victims give should be more accurately recorded to facilitate prosecution. Special attention should be 499 given to recording statements verbatim and also to recording all the relevant information such as bruises that the professional independently observes.

Suggestions regarding witnesses

I. Witness appearance control projects. Establishing projects that would develop, implement, and test devices for

1. reducing the number of unnecessary trips to court required of both police and civilian witnesses, and
2. assuring their timely production at court when they are required.

II. Witness liaison and support squads. Institute squads to represent the interest of the court system to the witness and more importantly, the interest of the witness to the court system. Its members would keep witnesses informed about changes in court dates, court procedures, reasons for postponements and delay, and in general, what is going on in courtroom and courthouse.

III. Witness interest as a criterion in management studies. Have court management studies sharply focus on the ways in which court operations affect witnesses and

expressly employ witness interest as one yardstick of success.

IV. Rethinking laws, practices, and customs in terms of their impact on witnesses. Suggestions focusing on entry of cases

V. Early screening. Have an experienced prosecutor carefully and critically examine each rape case at the outset of proceeding.

VI. To improve coordination in the now fragmented system. Use various techniques to coordinate; for example, monitor the entire system by the use of computer and 500 human resources and have organizational development meetings that would be attended by representative from all parts of the system.

VII. To improve communications. Use techniques such as eliminating unnecessary forms.

Studying the laws, the process ,the application of those laws, one thing is certain-the entire structure of justice needs an overhaul, otherwise the victim shall no longer be the woman, but humanity as a whole.

BIBLIOGRAPHY

STATUTES

Indian Statutes

1. The Code of Criminal Procedure , 1973.
2. The Constitution of India, 1950.
3. The Indian Evidence Act, 1872.
4. The Indian Penal Code, 1860.
5. Amnesty International Calls for Restriction of the Role of Male Guards in Female Facilities , USA (New
York State), August 2000 . AI Index : AMR 5 11124/00 at http ://www .amnesty .org.
6. Amnesty International-India- Torture, Rape and Death m Custody,
7. Amnesty International Publication s, New York (1992).
8. Breaking the Earthern Jars - Lessons from South Asia to End Violence Against Women and Girls,
UNICEF Publication , Regional Office for South Asia , Nepal , (2000) .
9. Compounding Injustice - The Government's Failure to Redress Massacres m Gujarat,(July, 2003), Hunan
Rights Watch Report at http://www .hrw.org/reports/2003/india0703/Gujarat-03 .htm .
10. Crime in India, National Crime Records Bureau , Govt. of India, Ministry of Home Affairs , (2000).
11. Crime or Custom? Violence Against Women in Pakistan , Human Rights Watch Report (1999), at http
://www .hrw .org/reports/1999/Pakistan .
111
12. Domestic and Sexual Violence Data Collection - A Report Under the Violence Against Women Act, A
Joint Publication of the National Institute of Justice and the Bureau of Justice Statistics, (July . 1996).
13. Domestic Violence and Law - Report of Colloquium on Justice for Women - Empowerment through Law,
organized in Delhi in May , 2000 . Lawyers Collective Women's Rights Initiative , Butterworths , New
Delhi, (2000).
14. Draft Plant of Action for the Advancement of Women in Asia and the Pacific , UN Economic and Social
Council Second Asian and Pacific Ministerial Conference on Women in Development , (1994). UN
Economic and Social Commission for Asia and Pacific Publication .
15. Final Report of UN Special Rapporteur Ms. Gay McDougall, on Contemporary Forms of Slavery -
Systematic Rape, Sexual Slavery and Slavery like Practice During Armed Conflict , (22 Jtme, 1998).,
(1980) .
16. Law Commission of India - I 54th Report on The Code of Criminal Procedure , 1973, Ministry "Friends"
Raping Friends -Could It Happen to You? Project Report by Jean O'Gorman Hyghes and Bernice R.

Sandler , on the Status and Education of Women, Association of American Colleges , (1987).
17. Human Development Report 2002 - Deepening Democracy In a Fragmented World , Published for UNDP
. Delhi by Oxford University Press , New Delhi . (2002).
18. Law and Sexuality : Speech on the Amendments to the Penal Code, Parliamentary Speeches (Sri Lanka) ,
(19th September,l995), at http://www.icescolombo .Neelan / ps 190995.htm .
19. Law Commission of India - 42nd Report , Govt. of India, Ministry of Law, (1971) .
20. Law Commission of India - 84th Report , Govt. of India . Ministry of Law, Justice and Company Affairs
of Law and Justice, Govt. of India, (1996) .
21. Law Commission of India - I 56th Report on the Indian Penal Code, 1860, Ministry of Law and Justice.
Govt. of India, (1996).
22. Law Commission of India - 172nd Report on Review of Rape Laws, Ministry of Law and Justice, Govt.
of India (2000).
23. Lives Together , Worlds Apart - Men and Women in a Time of Change-
24. The State of World Population , UNFPA , United Nations Population
25. Ftmd, (2000) .
112
26. Lok Sabha Debates , 7th Series. Vol.42 , (1983) . Lok Sabha Secretariat. New Delhi .
27. Memorandmn on Reform of Laws Relating to Sexual Offences, Prepared by Shomana Khanna and Ratna
Kapur - Centre for Feminist Legal Research , (1996) .
28. Nairobi Forward Looking Strategies for the Advancement of Women - Report of the World Conference
to Review and Appraise the Achievements of the United Nations Decade for Women : Equality ,
Development and Peace, Nairobi , (15-26 July, 1985).
29. NGO Shadow Report to CEDAW South Africa -Focus : Violence Against Women , Masimanyane
CEDAW Working Group, (Jtme, 1998).
30. Parliamentary Speeches - Law and Sexuality : Speech on the Amendment to the Penal Code,
(September , 1995) at http ://www.Icescolombo .org/Neelan/ps190995 . htm .
31. Platform for Action - Report of the Fourth World Conference on Women, Beijing , China, (4-15
September , 1995).
32. Preliminary Report submitted by UN Special Rapporteur on Violence Against Women, Its Causes and
Consequences , Ms . Radhika Coomaraswamy , (22 November , 1994).
33. Programme of Action -Report of the World Conference on Hmnan Rights, Vienna , (14-25 Jtme, 1993).
34. Rape - A Legal Study, National Commission For Women , (2000) .
35. Report of the Age of Consent Committee , Govt. of India, Central
36. Publication Branch , Calcutta, (1928-29).

37. Report of the Seminar on Child Rape, National Commission for Women, (Oct. 7_ 8, 1992).
38. Report of the UN Special Rapporteur on Violence Against Women, Its Causes and Consequences , Ms.
ILdhika Coomaraswamy , on Violence in the Community , (12 Febn1ary , 1997).
39. Report of the UN Special Rapporteur on Violence Against Women, Its Causes and Consequences , Ms .
Radhika Coomaraswamy , on Trafficking in Women, Women's Migration and Violence Against Women,
(29 Febn1ary , 2000) .
40. Report of the UN Special Rapporteur on Violence Against Women, Its Causes and Consequences , Ms.
Radhika Coomaraswamy , Addendum - Mission to Bangladesh , Nepal and Indian on the Issue of
Trafficking of Women and Girls, (6th Febn1ary , 2001) .
41. Report of the UN Special Rapporteur on Violence Against Women, Its Causes and Consequences , Ms.
113
Radhika Coomaraswamy , on Integration of the Human Rights of Women and the Gender Perspective -
Cultural Practices in the Family that are Violent Towards women , (31 January , 2002).
42. Human Rights of Women and the Gender Perspective - Violence Against Women , (6th January, 2003).
43. The Criminal Law (Amendment) Bill 1980 - Report of the Joint
44. Committee, Govt. of India, Rajya Sabha Secretariat, (1982).
45. The Hunan Right Watch Global Report on Women's Hunan Rights, Human Rights Watch Women's Rights
Project , (1998) , Oxford University Press, Calcutta, Chennai and Mumbai .
46. The Indian Penal Code (Amendment) Bill 1972 -Report of Joint
47. Committee, Govt. of India, Rajya Sabha Secretariat, (1976). The Progress of Nations , (1997), UNICEF ,
New York.
48. The RAHI Findings : Voices From the Silent Zone -Women's Experiences of Incest and Childhood
Abuse . Published by RAHI , New Delhi, (1998).
49. The State of World Population -The Right to Choose : Reproductive Rights and Reproductive Health,
UNFPA , United Nations Population Ftmd, (1997) .
50. Towards Equality- The Unfinished Agenda -Status of Women in India -2001, by Sarla Gopalan. The
National Commission for Women, Government of India, (2002) .
51. UNIFEM in Beijing and Beyond -Celebrating the 4th Conference on Women, UNIFEM Report (1996).
UN Development Ftmd for Women .
52. Violence Against Women - A Hidden Form of Hunan Rights Abuse , Amnesty International News Service.
AI Index :ACT 77/003/2002, (8th March 2002) at http ://www .amnesty .org.
53. Violence Against Women - A Study of Delhi, Mumbai and Bangalore by Vinita Nagar (Aug., 1999).

Centre for Policy Research, New Delhi
54. Violence Against Women - Addressing a Global Program, Ford Foundation Women's Program Forum,
(1992). Ford Foundation, New York.
55. Violence Against Women , Congressional Caucus for Women's Issues, Washington D.C., (October,
1992).
56. Violence Against Women - The Response to Rape Detours on the Road to Equal Justice, Prepared by the
Majority Staff of the Senate Judiciary Committee, (May , 1993).
114
57. Women - 2000 - Sexual Violence and Armed Conflict : United Nations Response , Published to promote
the goals of the Beijing Declaration and the Platform for Action by the Division for the Advancement of
Women Development of Economic and Social Affairs, United Nations , (April, 1998).
58. Women and Peace - Equality , Participation and Against Women , Kit No .5, issued by UN Office, Vienna
(1990).
59. Women in the Front Line -Human Rights Violations Against Women, Amnesty International Report ,
(1990) .
60. Women, Violence and Human Rights, Women's Leadership Institute Report , (1992).

BOOKS

1. Lalita Dhar, et al "Sexual Harassment at Work Place ; old Beginning New Thinking ", in Indian Socio- Legal
Journal. Vol. XXX , Jabalpur (January, 2006) Adler , Zsuzsanna , Rape on Trial, Routledge and Kegal Paul,
London (1987) .
2. Aggarwal Nomita , Women and Law in India,Women's Studies and Development Centre, University of Delhi .
New Century Publications , Delhi(2002)
3. Agnes , Flavia, Journey to Justice - Procedure to be followed in a Rape Case, Majlis , Bombay(1990) Ahmad , Ejaj,
Law ofCrimes, revised by Dr. Gurbux Singh, 5th ed., Rajasthan Law House , Jodhpur , Ahmedabad(2000)
4. Ahuja, Ram, Violence Against Women, Rawat Publications , Jaipur, Delhi(1998)
5. Basu , N .D. Indian Penal Code, ed. by Sudhir Kmnar Bose, 6th ed., Published by P .S. Basu, Nalin Sarkar Street,
Calcutta(1966)Basu Penal Code -Law of Crimes, ed. by A.N . Saba, 8th ed., Ashoka Law House, Delhi(2001)