

**" CRITICAL EVALUATION LAW RELATED WITH SEXUAL
VIOLENCE AGAINST WOMEN WITH SPECIAL REFERENCE TO
RAPE"**

**A DISSERTATION TO BE SUBMITTED IN PARTIAL FULFILMENT OF
THE REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF
LAWS**

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CHAPTER 1

INTRODUCTION

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CHAPTER - 1

INTRODUCTION

“A nation is not conquered until the hearts of its women are on the ground. Then it is done; no matter how strong their weapons or how brave its warriors.”

Cheyenne proverb

Indian society is very patriarchal in its outlook. Women and men are not considered as equals in our society and their sexual relations are scarcely ever a simple expression of mutual sexual interest in one another. A mere glimpse of Indian legal literature relating to the subject of research reveals that sexual relationships are inextricable bound up with economic relationships of dependency and ownership, and they involve some kind of trade-off, calculation or coercion. The rape victim is always looked upon as sexual object and a person of loose character. There is terrible hostility in accepting her as a normal human being. Political parties and the media highlights the issues for political advantage but rarely, pursue the case until justice is delivered. This hostile atmosphere further demoralizes the victim and her supporters. The system of inequalities has determined the formulation and application of rape laws is also one of the root causes of rape itself. Rape is an extreme manifestation of the coercive sexuality that pervades our entire culture. It is an inescapable by-product of a system in which sexual relationships are also power relationship, in which female sexuality is a commodity and where some men have the source of power except physical force. In order to eliminate rape, we must alter the underlying social structure which is solely responsible for such crimes.

State, being the guardian, has the duty to protect its citizen. If any offence of rape is committed in state territory it is due to the failure of state. For that the state is liable to protect the victim and to make them in her previous position in the society either providing her additional protection or by rehabilitation. Such victims are entitled to have the protection of the Constitutional provisions provided in the form of social justice. But today the purpose of criminal justice system appears to be confined to the simple object of ascertaining guilt or innocence and to use the victim merely as a witness.¹ A victim may be a direct victim who have received injury or may be indirect victim who are dependents on the direct victim or a legal heir who suffers loss indirectly. These victims may face primary victimization that is a harm caused due to the crime committed by the culprit and secondary victimization that is the result of crime such as torture by police, delay in trial proceedings and abandonment by the society, etc. Ultimately it has been a demand to define a victim in a broad sense. Victim is a person who is put to death or subjected to misfortune by another, one who suffers severely in body or property through cruel or oppressive treatment by offender and another who suffers being the dependent of victim. UN Declaration says that -victims means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws prescribing criminal abuse of power.²

The logical analysis of rape crime is that in order to eliminate rape, we must alter the underlying social structure which produces it. No doubt, all segments of society must make profound changes before sexual violence against women and small

¹ Dr. Justice A. S. Anand in his lecture, delivered at Hyderabad in, July. 14, 1997.

² U.N. Declaration on basic principle of justice for victims of crime and abuse and power, 1985, Arts. 1 and 2.

children that will be eliminated. But once there is violence or threat of violence, the criminal justice system is the only sector of society that has the power and authority to step in and stop the violence, to enforce the laws against such violence, to carry out a criminal investigation, to arrest and detain a perpetrator, and to provide justice to victims. It is true that criminal justice system has lot of abuses. It is also true that these abuses of power can easily endanger and re-victimize victims, but this is all the more reason for the urgent need to confront this system head on, and to remake the current justice system into a system that responds adequately, equitably and even handed to the victims of rape.

The history of mankind is known to have assigned a very important status to victims, but in the evolutionary process, the offender somehow snatched this importance. Ever since the state engrossed the right to criminal prosecution, the image of the victim has faded out from the criminal justice scenario and the criminal has become the centre of legal system. The subject of the criminology also concentrates mainly on the doers of crimes, prevention, control, and treatment of their behaviors. Whenever a rape is committed, legal system's energies and resources are mobilized to find, apprehend and punish the culprit notwithstanding the immediate physical, financial or psychological demands of the victim.

In India victims have been ignored not only by the law enforcement machinery but also by the criminologists, legal scholars, researchers, academicians and empiricists as well. The situations are so dangerous such as a twelve years old rape victim prepares for motherhood after rape with her as the cases reported recently.³ All of them spent their great energy in reforming and rehabilitating the criminal. The twentieth century has witnessed the re-emergence of the status and role of the victim

³ —A 12 year-old rape victim prepares for motherhood, *The Hindu*, July 8, 2017, Delhi.

due to the humanitarian initiatives and vigorous lobbying of victim advocates especially in the aftermath of the World War II.⁴ Since then, the developed countries have made academic as well as practical efforts at improving the lot of victims and the ultimate triumph at the international level has been the adoption of the Declaration of the Basic Principles of justice for the Victims of Crime and Abuse of Power on November 29, 1985 by the United Nations.

The sixty eight years of Constitutional democracy in India and the experience of the developed world have not been of much avail to victims of rape in the country. Despite the ethos of the fundamental rights and directive principles which are the heart and soul of our Constitution, women and children are still being oppressed and victimized. At the time of completion of research study, researcher finds reports where 92 women raped in India every day.⁵ And the state, rather than protecting people, is perpetrating a fresh sort of victimization in the garb of maintaining ‘law and order’.

There is a constant change since the emergence of the victims’ movement in the western countries and now has gain its roots in India as well. It has been advocated that victims should be involved in the criminal process beyond being a witness for the prosecution. But a welfare approach to this issue has seen broad agreement in the need for victims to be treated with compassion and respect for their dignity, to be informed and to receive appropriate services and compensation for the injury or loss sustained. More controversial is what legal rights should be accorded to a victim of rape (hereinafter referred as victims) to intervene or be separately represented in the criminal trial. Allowing the views and concern of victims to be

⁴ Benjamin Mendelsohn, -The Origin of the Doctrine of Victimology, Drapkin and Viano (ed.), *Victimology: A New Focus*, Lexington Books, Massachusetts, (1974), pp. 3-12.

⁵ -Statistical: 92 women raped in India every day, 4 in Delhi, *India Today*, Sept. 4 2014, Delhi.

presented and considered at appropriate stages of the proceeding where their personal interests are affected, without prejudice to the accused who are in consistent with the basic aims of the criminal justice system. The exact role of the victims in the criminal trial has not been made explicit in any legal enactment or by the judicial decisions to the best knowledge of the researcher. Rape victims often left court with a strong sense of injustice. The Indian courts in a criminal trial do not see their goal as a search for truth but rather as a proceeding structured by rules that are designed as well as possible to guarantee that accused persons are not deprived of their liberty without the most stringent examination.

The present research study has been initiated with this background. The victim movement has yet to gain momentum in India, though in several other countries number of efforts has been made in this direction. This research is a concentrated effort to find out the place of the victims of rape, who suffers double victimization in the legal system. The study analyses the social, legal, judicial, and political responses to the sufferings of this special class of victims. Rape is perhaps the most devastating of all acts conducted by one human on another. The announcement in this respect of new forms of victimization now has become commonplace during the last years. Some of these claims gained wide acceptance, whereas others met with considerable skepticism. But debating the merits of particular claim ignores underlying pattern, the way contemporary Indian who interprets victimizations. However, women or man, the damage to the victim is life changing. The work is initiated with a belief that research on victims of rape is important not only because there is paucity of concern for such victims, but also because without knowledge of victims, one cannot have complete knowledge of the crime of rape, solution for which everybody is looking.

Whereas in India, respect for the fear of law and the law enforcing agency are evaporating from the minds of the rapist and gradually the situation is deteriorating to a lower level. The basic principle of criminal justice is to prove all cases beyond reasonable doubt for 'conviction' works as a blessing in disguise for the rapist. In many instances, prosecution in our criminal courts ends in failure and acquittal of rapists due to a variety of reasons such as non-co-operation of the public, reluctance of witnesses, work of co-ordination between investigating agency and prosecuting agency, lengthy investigation procedures, rampant corruption at all levels, inefficiency of investigator and prosecutor, and interference of powerful people and politicians. These acquittals generate a sense of self-confidence among the perpetrator to repeat the crime. As a result, day by day rape cases are showing an increasing trend.

So far as judicial approach is concerned, -the common man's perception is that the former can do a lot to undo any damage caused to the victims by the police when police come to complaint. However, the lower judiciary has not exactly distinguished itself in this regard. Delay in taking up cases for trial and the failure to show special consideration to victims of rape are cited as major sources of discontent. One cannot, however, blame judicial officers totally for these ills if one reckons the abysmally poor infrastructure that they have had to put up with and the incredible volume of work that is heaped on them. A commendable measure is the creation of the so-called fast track courts. One will have to wait for an assessment of its impact on the speed of proceedings during trial.

Thirty six years after the Mathura rape case⁶ that triggered off the autonomous women's movement in the country, the Law Commission time to time and again had proposed concrete reforms in rape laws based upon the suggestions made by various Women's Organizations and the National Commission for Women. These proposed amendments were kept awaited. The processes of anti-rape legislation started after well-known Delhi rape case and new anti-rape law has been passed by the legislature.⁷ But after having anti-rape laws, very degrading situation has been seen. As the researcher finds that Delhi has been declared as India's rape capital with 140 rapes and over 200 molestation cases only in January 2017 and 90 cases of molestation and 9 cases of eve-teasing reported against Delhi police personnel in previous three years.⁸

In November, 2000 the Ministry of home affairs of the government of India constituted a Committee, popularly known as 'Malimath committee' on reforms of the criminal justice system' which submitted its report in April 2003. In 2005, a criminal law (Amendment) Act has been passed which incorporated some recommendations of the Report. Thereafter, amendments were made in 2008. Unfortunately, these amendments proved inadequate to rape victims. Such reforms have not and do not provide answers to the problem of rape faced by the society. The issues raised by this committee have already been raised and recommendations have been made. This spending resource on Committees and Commissions has always been considered as part of governance. But these recommendations did not prove as protective as expected during the trial of rape cases and before committing rape crimes. In 2013, J.S. Verma Committee was constituted and several recommendations were made in this direction.

⁶ *Ibid.*

⁷ See the Criminal Law (Amendment) Act, 2013.

⁸ -India's rape capital: 140 rapes, over 200 molestation cases in Delhi in January, *Hindustan Times*, March 2017, Delhi, p. 4.

The legislature has passed new Criminal Law (Amendment Act), 2013 to curb these adverse situations of rape victims by enhancing imprisonment in cases of rape crimes, by incorporating some recommendations of the committee.

Different schemes for taking care of victims of rape are in operation in almost all welfare societies in one form or in the other. The difference is only of degrees. In some places these are with some reservations and in others the course has become a prominent principle of their criminal policy. It is, however, not practicable within the limitations of this work to study each and every system; Hence few countries have been selected which often appear to influence our political thought and administrative practices. These countries are U.S.A, U.K., Australia, Denmark, Spain, Ukraine etc., and efforts made by the International Organizations have also been found highly important in this regard. The attempt made by the government to enact a law to meet out justice to the victims of sexual assault falls in short of the requirements and special needs of the victims of rape. For the purpose of reforming of rape laws effective, it has to be accompanied by a much wider range of actions to be taken by the patriarchal institutions including the judiciary.

The Supreme Court of India has later on displayed heart-warming anxiety over the need to tone up the efficiency of the Indian criminal justice system. A rising crime graph and the increasing evidence of criminalization of politics have possibly influenced it. It is observed by researcher that a criminal justice system does not function in a vacuum. The system and its actors are the police, prosecutors, judges and lawyers are all embedded in specific social, economic, political, and cultural contexts. In India class, caste, gender, religious, and sexual identity and other disabilities greatly influence the working of the criminal justice system. Thus it is critical that the purpose, sincerity and significance of proposed reforms of the

criminal justice system be judged by the extent to which the process of drawing up the reforms was participatory and inclusive, and the extent to which they address social vulnerability and disadvantage and enable the system to better protection of most discriminated rights. It is submitted that as the subject of this research is concerned with victims of the crime of rape only, the term ‘victims’ as appears in this work, will denote particularly to the victims of rape offences.

Rape is an expression of a violent culture that uses gender stereotyping, among other forms of oppression, to sanction and justify the brutalization of women and children. While the origins of sexual violence predate any statute or cultural collective, the manner by which social structures choose to intervene or ignore rape speak volumes about larger norms. Survivors of sexual violence testify again and again to the unique and devastating nature of rape. Their experiences and eloquence underscore the impact that sexual assault has on their lives.

The origin of the word rape is found in the ancient Greek that is to steal. The etymology of the word alone underscores the cultural assumptions locked within. In the Hammurabi code, -Women were seen as equally liable for acts of rape. Both the victim and perpetrator were subjected to death sentences. The appeal process was directed at husbands, only they could commute a death sentence for their wife. Early Hebrew law also sentenced victim and rapist to death equally. However, there were concessions to time and place. If the assault occurred in the city limits, the burden was placed on the woman to scream and demonstrate her lack of consent, the logic being that city residents would come and assist. Outside the city limits, where help was less likely to respond the punishment for the woman was eliminated and the perpetrator was forced to pay a bride price and marry his victim. During the Middle Ages, Jewish

women won the right to become litigants and pursue civil charges against perpetrators. In some limited circumstances, damages were even paid to victims themselves as opposed to husbands or fathers. This was the beginning of the conception of rape as damage to the person, as opposed to the family estate. During the reign of Henry II, women could file suit against their rapists, so long as they were not married to them. Women were referred to as the prosecutrix a term occasionally still in use. The standard of proof for this type of suit was blood, torn garments, and the locality of the woman's objection in the aftermath. In this model, women were responsible for the prosecution and punishment of their rapists.⁹ It was also during the reign of Henry II the rape that some of the first affirmative defenses were articulated: the woman was a concubine to the rapist, she consented, her accusations rose out of bitterness or jealousy, her family pressured her into making the accusation, or the defendant had an alibi. It was not until Edward II stated that, -the cannon of Western Law acknowledged that a non-virgin could be forcibly raped, but only by a non-spouse. Edwards's rule also had several other unique contributions to the legal construction of rape. It was under his reign that the concept of statutory rape was developed along with the differentiation of rape by degrees. However, one of the most important changes was the shift of rape as a crime against a person for which they have the responsibility to prosecute to the reality of conceiving it as a crime against the state. For the first time in the West, the larger power structures of the community were charged with the prosecution of rape. While this represented an important step forward, that women still have no significant voice in criminal proceedings is another object to the larger process of justice. The implications of the criminal process on the safety, well being and long-term health of victims have been consistently

⁹ S. Murthy. -Rejecting Unreasonable Sexual Expectations: Limits on Using a Rape Victim's Sexual History to Show the Defendant's Mistaken Belief in Consent, at p. 550.

underestimated. Victims of sexual violence often characterize the investigative process necessary for the prosecution of sex crimes as the final act in a long series of violations. The invasive nature of the physical examinations, the rigor of the interview process, and the duration of time that transpires from allegation to trial wear down the resolve and stamina of even the most tenacious victims. The criminal process represents the ultimate polarization of rape: the public disclosure and examination of an intensely personal violation. While the representatives of law enforcement and prosecutorial agencies work tirelessly to ease the process of reporting rape, the reality will always remain: some victims, for very personal and important reasons, will never report their rape.¹⁰

Statement of the Problem

Victims of Rape under Indian Penal Code, 1860 are least supported than the accused, and the victims in other crimes by the government and in the present adversarial criminal administration and justice system in their rehabilitation and protection.

In the current decade of victimological research, there is a substantial interest in the study of impact of rape crime on victim and in ways to assist them. Assistance to victims of rape crime is of great significance because victims have suffered irreparable damage and harm due to rape crime. The problems of violent bodily crime and the impact of this crime on victim is varied and complex. Therefore, the agencies of the criminal justice system expected to be receptive to the compensatory needs of the victims of rape, and address their issues sincerely and empathetically like in the United States, Europe and the other developed countries. Neither equal treatment nor

¹⁰ Statelaw.findlaw new-york-law accessed on November, 14, 2014.

access to justice shall be denied to rape victims in their rehabilitation and protection.

Objectives of Research

The following are the objectives of research that the researcher tried to achieve throughout the research:

- 1) To critically analyze laws relating to Rehabilitation and protection to victims of rape in India and at International community.
- 2) To analyze proper theories relating to the victimization and award of compensation.
- 3) To analyze the judicial interpretation on award of compensation by Supreme Court and High Courts in India.
- 4) To suggest appropriate model of rehabilitation and protection based on the form and nature of crime.
- 5) To analyze the compensation and restitution to the victims of rape crimes.
- 6) To analyze the psychological and social impact on the victims of rape.
- 7) To analyze the role of government in the protection and rehabilitation of rape victim by making new laws.
- 8) To analyze the role of Indian Judiciary in the protection of rape and sentencing policies in rape offences.
- 9) To analyze the victims assistance schemes applicable in India in the protection and rehabilitation to rape victims according to the same schemes as in other countries
- 10) To analyze laws applicable in India and its impact on rape victim in their protection and rehabilitation.

Hypothesis

Rape victims in India are least supported by the Indian Judiciary and by the legislature. Indian laws seem accused centric rather than victims. The schemes of compensation for their rehabilitation are inadequate. We have anti-rape laws applicable in India but its implementation is very poor. There is constant increment of rape offences in India. There is no proper protection of laws to rape victims in their rehabilitation and protection. Indian judiciary itself sometime hesitated in taking sexual assault as rape. The conviction rate in rape cases is very less. The protection to their relatives seems inadequate in both pre and post rape situation with rape victims.

Research questions

1. Whether victims of violent bodily crimes in general and rape victims in particular are neglected in the Indian legislative framework and Criminal Justice System and there is a need to reform legal provisions relating to the protection and rehabilitation to the victims of rape?
2. Whether there is a need of redefining responsibilities of an Individuals, State, Society, towards the victims of rape and the victims are least supported and paid attention than offenders and victims in other offences in their rehabilitation and protection?
3. Whether the payment of compensation to the victims of rape for their rehabilitation and protection is overlooked by the Indian judiciary and requires relook?
4. Whether the laws available in India are insufficient to protect women from rape crimes and not properly protective to rape victims during the trial of the

case?

5. Whether there is a need to change the attitude of public towards rape crimes and rape victims, besides implementing law?
6. Whether there is a requirement to have other rape victims assistance schemes as implemented in different developed countries?
7. Whether there is a need to correlate the rights of rape victims with Human Rights internationally recognized?

Scope of study

The research is intended to critically analyze Indian legal System including the provisions under the Constitution of India, Indian Penal Code, Criminal procedure Code and the interpretation by the High Courts and Supreme Courts of India with regard to compensatory jurisprudence. The study includes the secondary victimization that is indirect post victimization caused due to the offence. The scope of this study has been confined to the victims of rape and their status in the Indian criminal justice system, which are assuming greater dimensions in the traditional but slowly modernizing set up of Indian society. Women and young children are the softest targets of such crimes in the society. They are victimized not only due to their own follies and weaknesses (physical and emotional), but also due to various other socio-economic and political factors. The kind of injury involved is of very personal nature but its socio-economic and political implications are graver. The poor victim is treated more as a culprit or someone to be abhorred by the society as well as by the criminal justice system. No other victims face the disgrace, which comes in the lot of victims of rape. Unfortunately, a physically and psychologically wrecked and social

ostracized rape victim, who musters enough courage to knock the door of justice, is throughout the trial treated more as a guilty party, rather than as a victim. The victim has much more disadvantage and humiliation is store for her when she steps into the criminal justice system. They need more evidence to support her case against the rapist, than is required in case of murder. Having regard to the vulnerability of such victims and the contemporary socio-legal attitudes towards them, they definitely deserve special treatment. The research is also critically analyzed and compare with the foreign criminal justice system with regard to compensatory policy and process. The study is limited to the victims of violent bodily crimes with a special emphasis on the offence of Rape under Indian Penal Code, 1860.

Research methodology

The doctrinal research methodology has been used in order to critically analyze the Indian legislative framework, including the laws, policies, the role of Indian Judiciary and the social impact on victim's life to the critical study on victims of violent bodily crimes of rape. The researcher has conducted the research with the analysis of various decisions of Supreme Court of India and High Courts on rape offences. The researcher had visited many law libraries as a part of his doctrinal research for the analysis of different laws and policies of the government, made in the protection and rehabilitation of rape victim. To complete this research, researcher has used various books, Articles, Newspapers, Magazine, Law Journals, National Crime Records Bureau(hereinafter referred to as 'NCRB') reports on rape and internet websites concerning with rape victim in their protection and rehabilitation in India.

SUMMARY OF CHAPTER

Chapter 1 The chapter introduces the topic of the thesis. It lays groundwork and gives exposure to the topic of research. It covers aims and objective of the study, significance of the study, statement of the problem, scope of the study, hypothesis, methodology, literature review and plan of study.

Chapter 2 The chapter discusses the present law on sexual offences. Law on sexual offences was drastically changed by the Criminal Law (Amendment) Act 2013. This chapter discusses in detail with relevant case laws.

Chapter 3 The chapter discusses the international law on rape laws; it further discusses various international legal instruments on the issue.

Chapter 4 The chapter discusses sociological and rehabilitative and various aspects of victims of rape.

Chapter 5 Conclusion and suggestion the last draw the conclusion based on the study and discussion done in earlier chapter. Further suggestion are made on the basis of research done and conclusion are drawn.

CHAPTER 2

**RAPE AND ITS VICTIMS: NATURE, DEFINITION
AND KINDS**

CHAPTER 2

RAPE AND THE VICTIMS: NATURE, DEFINITION AND KINDS

After making proper plan of entire study in chapter 1, researcher is elaborating the broad idea about rape offences. As the researcher had raised few questions in the first chapter and now researcher discussing the second chapter to find out the solution of those questions. As per the demarcation in first chapter there is a need to discuss the legal definition of rape, rape victims and the kinds of rape. In the beginning of the chapter, researcher will examine nature of the offences of rape and few judicial decisions on the related issues. In the middle part of the chapter, researcher has explored the profile of victims and rapist. In the last part of the second chapter, researcher feels necessity to analyze statistical aspect of crime with the available present data on rape cases.

Today among the different crimes, rape is hardly a new crime and it would be difficult to stake in a conclusive way that men are now more violent than ever before. Yet in the last decade male violence towards women and small children in the form of rape has become one of the biggest socio-legal problems of Indian society. There is a prominent cultural view that rape is essentially a sexual act, as opposed to an act of violence. Although it is clear that the desire for sex is part of the rapist's motivation Offenders also use sex to fulfill their non-sexual needs, such as the need for power, the need to dominate, and the need to reaffirm their masculinity.

Rape offence reflects the degrading step of the value system in society. This worse situation of women has no solution either by the government machinery or by the society as well. According to the recent report published in Delhi, 95 per cent rape

cases are such cases where victim and accused are known to each other.¹ Whereas in a very few cases victims lodge a complaint. Therefore it is high time to look at issues concerning rape, and its victims in criminal justice system and the crisis which they are facing. The failure of Indian justice delivery system is in question. Something is seriously wrong with the judicial system. Looking at increase in rape cases, more specifically minor rape cases, one can admit that the crisis is very grim. Victimized people should feel confident that legal system will punish the offenders. The present study proceeded with the assumption that if the laws are inadequate or early enforced; there is every need to improve or to make new laws to evolve a legal system that enforces them.

Crime of rape varies in its size and shape according to the values of a particular group or society. It also varies on its ideals, beliefs, faiths, opinions, religious attitudes custom and taboos, but also according to the form of government, political and economic structure of the society and a number of other factors². However, in every society certain acts of commission or omission are forbidden by means of punishment, which may even extend to the forfeiture of life itself. Now, what acts or omission should be singled out for punishment or to be branded as crime has always been dependent upon the force, vigor, and movement of public opinion from society to society, and even in the same society from decade to decade. It is in no other field truer than in the field of criminal law that the law reflects the public opinion of that time. As a natural corollary to this, a whole criminal justice system develops a society, having its own ways and means to deal with criminals and victims.

¹ -95% offenders accused of child rape know their victims, *Indian Express*, June 11, 2017, New Delhi p.7.

² Gary Kelly, *Sexuality today: The Human Perspective*, (6th ed.), McGraw Hill Publications (2000) p. 467.

The history of the politically legal order is, in fact, so much different from the history of criminal responsibility, and the place of the victim.

Legal aspects of sexual behaviour

Law makers and law enforcers seem to belong to two major philosophical schools. Some believe that the law has a responsibility to enforce private morals publicly and to prohibit whatever the community or society deems to be morally wrong or offensive. The other philosophical school holds that the purpose of the law is to protect rather than to prohibit. They are not concerned about laws against sexual activities that involve consenting adults and believe that government should stay out of the bedrooms of private citizens. The public has a right of protection from dangerous behaviour and the individual has a right to behave in any way she or he chooses as long as the behaviour does not harm others. In some cases, it is not possible to separate public and private rights. Therefore a legal interpretation must be made of the situation and a judgment to be passed as which right has priority. Although the laws concerning sexual behavior differ from country to country. There are only two types of sexual behavior that are not potentially subject to criminal prosecution so long as they are practiced in private; solitary masturbation and intercourse between husband and wife. The legal aspects of human sexual behaviour for most of the time are in conflict with some of the personal, emotional aspects.

But among other facet of sexual behaviour, any activity that people find disturbing or worthy of moral disapproval, a law has appeared to prohibit that activity. There have been laws that have attempted to regulate the criteria of consent for sex, the nature of sexual act, the object to which it may be directed, and where the act may take place.

If we look into the wide range of human sexual behaviours, some are seen as problematic in particular social and cultural belief systems. Behaviour and feelings that are troublesome for one person may be pleasurable and enjoyable for another. On the one aspect any kind of sexual activity may become a problem if someone is feeling worried, guilty, fearful, or ashamed about it. However, the question that, 'Are the negative feelings justified in terms of present knowledge and attitudes, or do they simply stem from ignorance and misinformation? The answer is often rooted in complex social issues. According to a research report on sex, up to a degree, sexual behaviours and feelings become problem or 'offence' because of the cultural values that surround them and the social judgments that are made about them³. In this sense sexual problems are socially constructed. Clearly, any sexual activity that involves the coercion, assault, abuse or exploitation of someone else is a serious problem. Rape is perhaps the most devastating of all acts conducted by one human on another human. Women or man, the damage to the victim is life changing. The offender often uses various forms of rationalization to justify his or her coercive or abusive behaviours. Nations of forced sex and consent have been changing over recent decades. They were once rather narrowly defined as violent assault or rape by a stranger. Now there occurs a range of unwanted sexual advances and behaviours, including sexual contact coerced by a close relative, friend or lover.

Sexual coercion and forced sex as a rape

Forcing other person to have non consensual sexual activity is a behavior found in almost every culture. Usually it is male to force women into sexual activity against their will. Social norms, and types of sexual activities they regulate or

³ Grubbing, D., Sexual Offending: A cross-culture comparison, *Annual Review of Sex Research*, 3(1993), pp. 201-217.

prohibit, seem to play a major role in determining the types of forced sex that are allowed or committing within a particular culture. These same norms determine how women perceived within the context of sexuality and relationship.

Rape: Meaning and its origin

The English word 'rape' is derived from the Latin *rapere* which means to steal, seize or carry away. This was a very old means by which a man *seized* or *stole* a wife in ancient western societies. -In rape crime, carnal knowledge means a penetration to any slightest degree of the organ alleged to have been carnally known by the male organ of generations. It is violation with violence of the private person of women to outrage her by all means. By the very nature of the offence it is an obnoxious act of the highest order.⁴

Rape in general

In general usage the term rape refers to any form of sex in which one person forces another person to participate. When used as a verb it means making an individual engage in a sexual act without the individual's consent or against that individual's will. In many countries rape is legally defined as forced vaginal sexual intercourse between a man and women. However, in about one third of forced sexual encounters, penile vaginal contact never occurs, but a variety of other forms of forced sex, including oral and anal penetration by the penis or vaginal penetration by finger or object may occur.

⁴ Stephens, *Criminal Law, in Encyclopedia of Crime and Justice*, 9th ed., 1991 Vol.4, p.1356.

Legal offence of rape as in historical context

To understand the problem of rape, an analysis of the historical evolution and development of legal offence of rape is necessary. Moreover, it is not possible to do this without understanding the historical position of women. The status of women, the way they became form of private property and how did their transformation affected the development of laws against rape, have been a matter of special interest for sociologist as well as for legal philosophers. Who is she then, that women became forms of private property and how did their transformation affects the development of laws against rape?

Development of law in the middle age in India

The development of Indian modern criminal offence of rape began in the middle ages as a specific response to the problem of bride capture. Under this system, marriages were frequently accomplished by means of abduction and rape. Sexual intercourse with woman had long been regarded as establishing a primary right to possession, and ultimately to ownership through marriage with the women in question. The legal implication of an offence of rape was not meant to undermine the validity of this method of establishing a basis for marriage. Abduction and rape remained valid ways of establishing a legal and sanctified marital relationship: indeed, this practice is still followed in many communities, where marriage is often regarded as the only ‘honorable’ course to be followed once a rape has occurred. But rape laws were designed to prevent legitimate transfers of property through marriages established this way.

In order to prevent crime and acquiring rights to family property through abduction and rape, rape laws were developed. Rape did not nullify marriage, but it

did nullify the rights of the husband to his wife's property if the marriage was established by this means. Marriage and rape laws were part of mechanism that was designed to ensure that transfer of property could be accomplished only in accordance with the express wishes of a women's father, or of other male who had authority over her. The primary function of rape laws therefore was to deny rights of ownership in property to man who was not receivable to the families of the women in questions. Function of rape laws was to protect men in their ownership of daughters who were because of their virginity, which is the valuable property as their own rights. Thus the social functions of rape laws were the protection and preservations of patriotic property (real property land). But since the offence was conceived as a wrong to the man entitled to rights of ownership over women. The law did not view her as the party injured by rape. She was protected because the law sought to protect men in the ownership of such valuable women, not because she herself had any right. Rape was not perceived as violation of rights of women at all, and the present treatment of rape still reflects its historical shadows. Because of this reason dependent women live at home under the control of parents or with a husband. These women required support of law and society.

Western concept: The basis for the rape laws applicable in India

The study of Western literature⁵ relating to this issue reveals that there was not much difference so far as women status is concerned in the middle ages in Indian history and in western society by that time. From its beginning in Ancient Greece, western legal theory has rested on two main assumptions. The first assumption is that

⁵ Lorence Clark, & Debra Lewis, -Women, Property and Rapel, Susan Caffrey, & Gray Mundy (ed.), -*The Sociology of Crime and Deviance: Selected Issues*", Greenwich University Press, UK, p. 152.

individuals have a right to own private property and that inequality in the distribution of such property can be traced to natural differences between men and women. This led to the belief that private property and inequality in its distribution are justified. The second assumption is that men are naturally superior to women and this inequality can be traced to natural differences between the sexes. Thus it is a fundamental belief that legal, social and economic inequality between men and women is also justified. The first assumption laid the basis for class society characterized by inequality between individual and ultimately classes of individuals. The second assumption laid the basis for sexist society characterized by inequality between the sexes. Women were the object rather than the subject of property rights and they were the form of private property owned and controlled by individual men. Those holding such rights were considered to be stronger, more able, rational, and capable of realizing the loftier aspirations of the human spirit.

Development of rape laws during the British period in India

The Muslim system of administration of criminal justice was in vogue in India, when the Britishers took over the reins and it continued for a long time even after that. The Britishers were in favour of maintaining a *status quo* in the matter of civil and criminal justice and their administration, since being on alien soil they didn't want to hurt local sentiments in any manner. The result of this policy has become even worse and chaotic. Ultimately, after the Charter Act, 1833 came into force, the first law commission was appointed in 1834, with Lord Macaulay as its president to study the desirability of preparing a comprehensive penal code for India. The commission submitted its report in 1835, and after much discussion on the draft penal code prepared by the commission the Indian Penal Code (hereinafter referred to as IPC) was enacted in 1860.

Thus the English law philosophy was incorporated and institutionalized by the Britishers within Indian social, legal, and economic structure. The Indian legal system also further supported such unequal relationship between sexes.

Rape laws the outcome of the system of inequalities

In the society the system of inequalities which has determined the formulation and application of rape laws is also the root cause of rape itself. Women are not equally placed in their inter-relation and their sexual relations do not represent their mutual sexual interest in one another. Sexual relationships are bound up with economic relationship of dependency and ownership. Rape is an extreme manifestation of the coercive relationship that pervades our entire culture. It is an inescapable due to the system in which sexual relationship are also power-relationship in which female sexuality is a commodity, and in which some men have no source of power except physical force.⁶ -The logical conclusion of this analysis is that in order to eliminate rape, we must alter the underlying social structure which produces it and responsible for such rape offences. State being the guardian, has the duty to protect its citizen. If any offence of rape is committed in state territory it is due to the failure of state for that the state is liable to protect the victim and to make them in her previous position in the society either providing her additional protection or by rehabilitation. Such victims are entitled to have the protection of the Constitutional provisions provided in form of social justice.⁷

⁶ Megarry, R.E., -*A Manual of the Law of Real Property*" 2nd ed., London: Stevens and Sons Ltd. (1955), p. 538

⁷ Eakramuddin, -*A Critical Study of Rape Victim.... in their Rehabilitation and Protection in India*‘. in *International Journal _Researcher*" 2014, 6(6), pp. 54-59.

Rape: In Contemporary vision

Definition of rape under Indian Penal Code

The substantive law relating to rape is contained from section 375 to 376 D of the IPC, under the heading –Sexual Offences‖ as before the amendment in IPC⁸.

Statutory rape

Statutory rape is a legal term used to indicate sexual activity when one partner is under the age of consent. In most states that age of consent is 18. In other words, sexual intercourse with a female who is below consenting age is termed ‘statutory rape’ and consent is no longer relevant. If specifically refers to the legal prescription, existing in most countries, a man having sexual intercourse with a child or any other person presumed to lack comprehension of the physical and other consequences of that act. Men and children can be subjected to the forced sex as well as adult woman.

⁸ –The Criminal Law (Amendment) Act, 1983 substitute –Sexual offences‖ for the heading of Rape' for sections 375 and 376 of the Code, Principally on the basis of the recommendation of the law Commission of India 84th Report on Rape and Allied Offences, 1980.‖

—Rape defined after 1983 amendment reads as under: Section 375: Rape : A man is said to commit 'rape' who except in the case hereinafter accepted, has sexual intercourse with a women under circumstances falling under any of the six following descriptions.‖

–Firstly – Against her will

Secondly – Without her consent

Thirdly – With her consent, when her consent has been obtained by putting her or any person in whom she is interested 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 her consent, when at the time of giving such consent by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or un wholesome Substances, she is unable to understand the nature and consequences of that to which she gives consent

Sixthly – 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 offensive of rape.

The concept of age of sex in India

In Indian legal system the age of consent has been set as high as twenty-one and as low as 16 years under various legislations. After Delhi gang rape case there was a constant demand to enhance the age of consent of women that is now eighteen years. The Supreme Court in *Tilak Raj v. State of Himachal Pradesh*⁹ has observed if no deliberation about marriage between the victim and accused took place before sexual contact on consent that is not the consent under misconception of marriage. As under Child Marriage Restraint Act, 1929¹⁰. If female has not completed eighteen years of age; she is not eligible for the marriage. The law here distinguishes between the age of consent for sexual intercourse and the age of marriage in case of girl. The law further distinguishes between the age of consent in case of married and unmarried girls under section 376 IPC. The age of consent in case of married woman is fifteen years while that for unmarried girls is sixteen years. This is also an issue to be taken into consideration in respect of the rape offences.

The existing legislations in India contain serious contradictions. The consenting age is 16 years. In general Indian Penal Code laid down the provisions of marital rape and in specific, are clearly inconsistent with the Child Marriage Act, 1929 which has raised the age for marriage of girls to eighteen years. It is because of a girl below that age is considered not mature enough for consummation. Another contradiction is with POCSO Act also violating the provisions of IPC in respect of rape crimes that is the matter of serious concern.

⁹ Criminal appeal no. 4896, 2015.

¹⁰ -The government has drawn up the prevention of child Marriage Bill 2004, which replaces the Child Marriage Restraint Act 1929 Unfortunately, the bill has too many loopholes for one's liking: Juvenile justice- Bill against child Marriage – full of Loopholes; *The Times of India*, May 6, 2005, p. 14.

Whereas the age of consent in India originally stood at ten years and it has been raised by stage to sixteen years. A woman of less than a certain age, which varies in different states of the U.S. from 13 to 18 years and in England it is 13 years as considered incapable of giving her consent, and intercourse with such a woman, with or without her actual consent, is termed as statutory rape.¹¹

In *State of H.P. v. Shree Kant Shekari*,¹² the apex court of India held that question of consent is really a matter of defense by the accused and it is for him to place materials to show that there was consent. High court erred in putting burden on the victim to show that there was no consent.

Narrow and restrictive definition of rape

Before The Criminal Law Amendments Act, 2013, the essential elements of this definition under section 375 of IPC are –sexual intercourse with a woman and were the absence of consent. This definition therefore did not include acts of forced oral sex, or sodomy, or penetration by foreign objects, and other means apart from those actions are criminalized under section 354 of the IPC, which deals with criminal assault on a woman with intent to outrage her modesty and under section 377 IPC, covering carnal intercourse against the order of God. For instance, as few reports appeared in national daily newspapers which highlights the various forms of sexual abuse. These reports were refused to acknowledge the definition of rape.

On June 16, 1994, a little girl, 2 years was referred to AIIMS, a hospital in New Delhi, her 30 years old downstairs neighbor had poked a finger into her vagina. The neighbor was booked but realized as the assault did not fall within the criminal

¹¹ Referred from McNamara, Donald E. and Edward Sagain Ch. 3 Sex between Adults and Minor Sex, *Crime and the Law*. The Free Press McMillan Pub. New York (1977), p. 165.

¹² (2004) 8 SCC 153.

act of 'rape' as defined 'rape is penetration by a penis.'¹³ Two years after this case in 2004, the Supreme Court in case of *Sakshi v. Union of India*¹⁴ refused to address such kind of incidents within the ambit of section 375 of IPC, the court held.

-Dictionary meaning of the words sexual intercourse is hetero sexual intercourse involving penetration of vagina by the penis. If the hymen is ruptured by inserting a finger, it would not amount to rape.¹⁵

In *Aman Kumar v. State of Haryana*¹⁶ the Supreme Court held that 'rape is the carnal knowledge of any woman, above the age of particular years, against her will or of a woman child under that age with or without her will. In the crime of rape carnal knowledge means the penetration to any organ alleged to have been carnally known by the male organ of generation. It is violation with violence, of the private person of a woman-an outrage by all means.'

Karun Chand Thaku, secretary of the union government and four others were accused of raping his eight years old daughter repeatedly for over years. The child complaints to her two elder sisters that her father and friends had been taking her often to a restaurant and forcing her to indulge in sexual act, even compelling her having alcohol. The child's mother wrote a letter to the Ministry and the Crimes against Women Cell. When the ministry did not take it seriously and treated it as a family problem, the cell prepared a statement leading to the filling of charge sheet and arrest. An appeal filed in the Supreme Court challenge the ruling of the Delhi High Court, was rejected. The accused was tried only under section 377, 354 and 506 of IPC. Rape charges stated could not be substantiated because penetration of the vagina

¹³ -That Somali's cry will be heard, *The Hindustan Times: August 25, 1994, New Delhi, p.7.*

¹⁴ AIR 2004 SC 3566.

¹⁵ *Ibid.*

¹⁶ AIR 2004 SC 1497.

by the penis had not occurred, and strict interpretation of section 376, which does not include forced oral sex or the insertion of fingers into vagina as forms of rape, nor could the father be accused of kidnapping his daughter for immoral or other purpose under section 361, as he was her natural guardian.¹⁷

The list of such terrific incidents is increasing day by day,¹⁸ not a single day is left when we do not read such incidents in newspaper. The prior existing law did not recognize the criminal gravity of such cases of sexual assaults and has been continued to function in spite of suggestions by various women organizations and recommendations by the law Commission of India.

-The announcement of new forms of victimization has become common place during the last few years. Journalists, activists, academician and talk show hosts have called attention to the neglected or unnoticed victims of incest made sexual abuse, material rape acquaintance rape, and date rape some of these claims gained wide acceptance whereas others met with considerable criticism. But debating the merits of particulars claims ignores underlying patterns in one way contemporary. In India victimization claim is common. That often depends upon broad definition that is resulted in new criminal law amendment Act.¶¹⁹

¹⁷ —Child Sexual abuse: A Macabre menace, cover story¶, *The Lawyers Collective* (Vol. 11, December 12, (1996) Bombay, pp. 10-12.

¹⁸ —Rama, Surekha, Child Sexual Abuse and Law¶, *The Lawyers, Collective* (Vol. 10 No. 10 & 11) October-November 1995] Bombay.

¹⁹ Agnes, Flavia -Fighting Rape – has amending law helped cover story¶, *The lawyers Collective* (February 1990), Bombay, pp. 4-11.

Legal development of rape cases

Mathura : the watershed

In March 1972, Mathura, -a 16 years old tribal girl from Chandrapur District, Maharashtra, was taken to the police station by her brother and other relatives as they were concerned that she was under age and yet was attempting to elope with her lover. The two policemen on duty said they wanted to record Mathura's statement when she was alone. They raped her, while her relatives waited outside. The session judge held that since she had earlier eloped with her boyfriend, she must have been habituated to sex, and, hence could not be raped. The high court reversed the judgment, sentencing the policemen to six years imprisonment. In 1979, the Supreme Court again reversed the order, the judges felt that since Mathura had not raised any alarm, and since there were no visible injuries marks on her body, she must have given her consent.²⁰

Aftermath of Mathura instance

After the incident of Mathura rape case in India various women's movement agitated for reforms of the criminal law on rape. In 1983, -the government passed the criminal law amendment Act. These amendments were not proper to reduce the rise in the number of cases of sexual violence on women. One crucial defect in the law was the definition of rape under section 375 of the Indian Penal Code (IPC), which took into account only penile-vaginal penetration. Other physical injuries were left to be dealt with under sections 354 and 509 of the IPC. So that again there has been the

²⁰ *Tuka Ram And Anr v. State of Maharastra, 1979 AIR 185*

demand for consideration that any other act with women's organs as a rape without penile-vaginal penetration.²¹

172nd report of Law Commission and its recommendations

In 1997, *Sakshi*, –an organization working on issues related to women and children, approached the Supreme Court through a writ petition asking for directions concerning the definition of rape in IPC. The Supreme Court then directed the Law Commission of India in response to the issue raised in the petition. The Law Commission under the chairmanship of Justice P. Jeevan Reddy responded that the 156th Law Commission report had dealt with these issues. The Supreme Court, however, agreed with *Sakshi* that the 106th report did not deal with the precise issues raised in the writ petition. In August 1999, it directed the Law Commission to look into these issues afresh.²²

The Law Commission then prepared a draft of its comments and invited *Sakshi* to give her views on changes in the criminal law. Law awareness organization and the All India Democratic Women's Association (hereinafter referred to as AIDWA), and the National Commission for Women (hereinafter referred to as NCW) also presented their views on the matter. The Law Commission after detail consultation with these organizations released its 172nd report to the review of rape laws, in 2000 (hereinafter referred to as the 172nd report).

Recommendation of substitution of new definition of rape

In its 172nd report, –the Law Commission recommended the changing of the focus from rape to 'sexual assault'. The definition of rape should go beyond penile

²¹ *Ibid.*

²² *Sakshi v. Union of India*, 1999 6 SCC 591.

penetration to include penetration by any part of the body and objects, taking into account *cunnilingus and fellatio*, (that is oral sex) for widening the scope of the offence under section 375 and to make it gender neutral. Various other changes have been recommended in sections 376, 376A to 376D. Insertion of a new section 376F dealing with unlawful sexual contact, deletion of section 377 of the IPC and enhancement of punishment in section were also recommended.¶

Recommendation in 172nd report on rape

According to the report, the existing section 375 is substituted by the following:

-375. Sexual Assault: Sexual assault means-

- (a) Penetrating the vagina (which term shall include the labia, majora), the anus or urethra of any person with
 - (i) Any part of the body of another person or*
 - (ii) An object manipulated by another person except where such penetration is carried out for proper hygienic or medical purpose;**
- (b) Manipulating any part of the body of another person so as to cause penetration of the vagina (which term shall include the labia majora), the anus or the urethra of the offender by any part of the other person's body;*
- (c) Introducing any part of the penis of a person into the mouth of another person;*
- (d) Engaging in cunnilingus or fellatio; or*
- (e) Continuing sexual assault as defined in clauses (a) to (d) above*

In circumstances falling under any of the six following descriptions:

Firstly, Against the other person's will

Secondly, Without the other person's consent.

Thirdly, With the other person's consent when such consent has been obtained by putting such other person or any person in whom such other person is interested, in fear of death or hurt.

Fourthly, where the other person is a female, with her consent, when the man knows that he is not the husband of such other person and that her consent is given because she believes that the offender is another man to whom she is or believes herself to be lawfully married.

Fifthly, With the consent of the other person, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by the offender personally or through another of any stupefying or unwholesome substance, the other person is unable to understand the nature and consequences of that to which such other person gives consent.

Sixthly, with or without the other person's consent, when such other person is under sixteen years of age.

Explanation: Penetration to any extent is penetration for the purpose of this section.

Exception: Sexual intercourse by a man with his own wife, wife not being under sixteen years of age, is not sexual assault.¶

The commission recommended that the law relating to the sexual assault should be made gender neutral. Men and women can be charged the rape of men, women and children. It asked for section 377 of IPC should be struck down.

However, the recommendations did not take into account marital rape. It rose the age of consent of the wife from 15 to 16 years, after which the woman is not protected from rape by the husband.

Consideration by women and children's group

When the report was submitted, many women's rights, child rights and sexual minority groups were unhappy with the 172nd report and met in Mumbai in 2001. Though they welcomed the expansion of the definition of sexual assault, –the recognition of child sexual abuse, and the modification to the Indian Evidence Act, they felt that the process involved was not consultative enough and that making rape laws gender neutral would lead to the misuse of the law, as rape was a gender-based crime. They also disapproved the fact that the recommendations did not take into account marital rape. Various women group in Delhi then began extensive discussions with AIDWA. Based on these discussions, AIDWA drafted an alternative bill, which was then circulated. Meanwhile, the Women and Child Department (hereinafter referred to as 'WCD') of the central government, based on the recommendations of the 172nd report, began drafting a criminal law amendment bill or the sexual assault bill. It held a meeting with a few women's groups in Delhi and representatives from some state governments, to discuss the draft bill. The WCD has called upon organizations all over the country, which worked on child rights, women's rights and the rights of sexual minorities, to give their suggestion. Thereafter, legislature made amendment in Cr.P.C. by insertion of 357A and 357B to section 357 which provided scheme of compensation to rape victims. But there was wide demand for having new

law on rape after Delhi Gang rape case in, 2012 then legislature has passed new Criminal Law on rape.²³

The Malimath Committee report on the definition of rape

Similarly the legal development of rape issue is very important to be discussing here. In November, 2000 the ministry of human affairs of the government of India constituted one committee, popularly known as the Malimath Committee²⁴ with a broad mandate to examine the fundamental principles of criminal jurisprudence, including the Constitutional provisions relating to criminal jurisprudence, and suggested amendments. The committee had suggested some changes in the present definition of rape in following words.

-forcible penetration, penile/oral, object or finger/vaginal and object or finger/anal should be made a separate offence under IPC presenting appropriate punishment on the lines of section 376 of IPC”

-However, these charges proving to be inadequate and the social aspects of the matter is to be taken care of recently, when criminal law (Amendment) Act, 2005 has been passed by the parliament which contains some of the recommendation which is being implemented. There has been no sign by the government to implement the rest of the law Commission recommendations to reform of rape laws effectively, it has to be accompanied by a much wider range to tackle particular institution including the judiciary and the central and state legislations. Such reforms have not and do not provide answer to the problems faced by the society. The committee has already raised this issue and made recommendations earlier. But then spending resources on

²³ —Report on Overhaul of rape laws gathering dust, *The Hindu* December‘ 03, 2012, New Delhi, p. 6.

²⁴ The Malimath Committee Report 2003: The Committee submitted its report in a April, 2003.

committees and commissions have always been understood as part of the governance. The legislature came up with further amendment in 2008 and 2013 in Indian Criminal law.²⁵

2.4.8 Judicial response to the definition

Before coming Criminal law Amendment Act, 2013 into force the narrow definition of rape has been criticized time to time and again by Indian and international women's and children's organizations. Their reasons have been succinctly encapsulated in, *Sakshi v. Union of India*,²⁶ before the Supreme Court:

-The interpretation [by which such other forms of abuse as offences fall under section 354 IPC or section 377 IPC] is contrary to the contemporary understanding of sexual abuse and violence all over the world. There has been for some time a growing body of feminist legal theory and jurisprudence which has clearly established rape as an experience of humiliation, degradation and violation rather than an outdated notion of penile/vaginal penetration. Restricting an understanding of rape reaffirms the view that rapists treat rape as sex and not violence and thereby condone such behaviour.

Critical appraisal of rape definition from International perspective

As per International perspective rape is defined in different ways, Article 2 of the Declaration on the Elimination of Violence against Women 1979 reads as follows:

-Violence against women shall be understood to encompass but not limited to physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence,

²⁵ *Ibid.*

²⁶ AIR 1999 6 SCC 591.

marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.¶

Australia

Rape offences as in Australian law Criminal law Consolidation Act, 1935 defines rape, -as sexual intercourse without consent section 5 of the same Act states that sexual intercourse includes oral intercourse in Judgments by the Australian courts reveal the insertion of objects into the victim's vagina and anus also amount to rape. The definition of rape states that sexual penetration is necessary but the slightest penetration of the body of the female by the male organ is sufficient. Emphasis on the word 'slightest' reveals the intent behind the definition is to give the victim and not the criminal benefit of the doubt.¶²⁷

Singapore

-Singapore penal code contains provision identical to that section 377 of the Indian Penal Code in a judgment rendered by the Court of Appeal in Singapore. It was held that forced anal intercourse represented the gravest form of sexual abuse and the act contained very much contains an element of violence.¶²⁸

Spain

The legal definition of 'rape' under Spain, law, means, -sexual intercourse with another person, vaginal, anal or oral using physical force or intimidation¶²⁹.

Ukraine

²⁷ *Ibid.*

²⁸ <http://www.justicewomen/signapore-16-ihtml>. accessed on December 2, 2014 at 12:45 p.m.

²⁹ *Ibid.*

In Ukraine, the criminal code of Ukraine describes rape, in the same way of sexual intercourse combined with use of force, threat or with use of helpless state of the victim.

Kinds of rape

So far as rape is concerned if victimizations are common, consequential, and clear-cut, and visible. -But sexual victimization often goes unrecognized and unacknowledged, not only by the larger society but even by the victims themselves. Society may simply be unaware of such victimization to some extent. However, new ways of thinking abuse some form of victimization or new evidence or a new willingness of victims to speak up can make a neglected social problem visible. In this view, identifying new types of victims of sexual abuse reflects social progress, as it seems that a more enlightened society gives victimization the attention that deserves in case of rape offences.

Acquaintance rape

This is the kind of rape, an acquaintance rape is a sexual encounter forced by someone who is known to the victim or may be the family member

As per NCRB report³⁰ that is very amazing which reveals the truth that in 95% rape cases victim and offender are known to each other.³¹ Statistically it is clear that acquaintance rape continues to effects lives of victims and deserves careful attention. It is one of the main difficult sexual abuse situations to predict or avoid and cannot

³⁰ NCRB report, 2015.

³¹ -95% offenders accused of child rape know their victims, *Indian Express*, June 11, 2017, New Delhi p.7.

always prevented.³²In fact, research indicates the most frequent acquaintance rapists are men whose victims apparently know them well.³³

Marital rape

In the Constitution of India the protection of the dignity of women is enshrined as one of the fundamental duties. Apart from that pursuant to this, many judicial and legislative measures are being taken in this direction. In the last two decades, especially rape is worth noticing.³⁴ However one sensitive area has been kept out of criminal legislative preview that is marital rape.

Position in India

So far as Indian position is concerned, section 375 of the Indian Penal Code clearly provides that sexual intercourse by a man with his own wife when the wife not being under fifteen years of age is not rape.³⁵ If wife is 15 or above, there is no rape even if she does not consented or the husband uses force. Under criminal law, as indicated earlier, it is rape if a girl is not the wife of the man involved and is below 18 years, on the other hand, it is rape if the girl is 15 and does not consent but is married to the man. However, it is now argued in India as well that marital rape should be a crime and that the guilty husband should be punished. Theoretically, this argument appears to be sound but in this vast country where child marriages are being conducted in contravention of the law, if marital rape is punished it will result in injustice everywhere. With regard to marital rape, the Cr.P.C. at present stipulates that

³² —Another woman alleges rape by father in law, *The Times of India*, July 12, 2005, New Delhi, p. 10.

³³ —Liberty at Stake, *Hindustan Times*, HT City, September, 4, 2012, New Delhi, p. 2.

³⁴ See Law Commission of India, 154th Report on Criminal Procedure Report 1973, (1996); Law Commission of India, 172nd Report Review on Rape Laws, March 2003, report on the Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs, March, 2003.

³⁵ Section 375, Exception clause.

if it has taken place and acquiesced in by the wife, who is under 15 years, for more than one year no prosecution should be launched³⁶. This provision appears to have been enacted to save a marriage from being broken up. This cautious and balanced approach is reflected in the language of the section. Section 198-A requires that the court should not take *suo-moto* action in the case of domestic quarrels. This provision is also enacted with a view to helping the woman to save her marriage.

In 1971, the law commission of India, vide its 42nd report, recommended that sexual intercourse by a man with his child wife, that is, if below fifteen, should be made a separate offence and even a Bill to that effect was introduced but the same was dropped as the joint committee was of the view that an intercourse by man with his own wife, regardless of her age, should not be regarded as rape. However, another amendment was made in 1983 and section 376 A was added in the IPC, which provides punishment for a man who has sexual intercourse against the consent of his wife living separately from him under separation decree or under any custom or usage. But here again law discriminates by awarding lesser punishment of 2 years imprisonment only. In 2000, after almost two decades, in its 172nd report, the law Commission recommendations failed to take a serious account of the offence of marital rape. It merely rose the age of consent of the wife from 15 to 16 years, after which the woman is not protected from rape by the husband³⁷. However, in case of minor wives, the need for marital rape protection clause needs to be seriously considered. In India, where else marriages are still rampant, minor brides do need

³⁶ Section 198(6) Cr.P.C. contains -No Court shall take cognizance of an offence under Section 376. Indian Penal Code where such offence consists of sexual intercourse by a man with his own wife, the wife being under 15 years of age, if more than one year has elapsed from the date of the commission of the offence. |

³⁷ *Supra* note 34.

protection in the interest of their physical, mental and emotional health. Hence, the age of consent even within marriage needs to be raised.³⁸

Apart from the above description, there are some other factual problems which are nonetheless very important in marital rape cases to be taken care of, for instance, wives may be even less likely to report rape by their husbands to authorities because of potential consequences for themselves, the children, or the marriage. –They sometimes still believe that it is their duty to submit to their husband's sexual demands. These beliefs often leave women feeling trapped, helpless, and fearful. Marital rape as per of domestic violence is not caused primarily by mental illness, alcoholism, pathological marriage relationship, status imbalance, or stress. Such violence is best understood from a cultural perspective. The more rigidly a culture prescribes and enforces gender roles the more likely are women to be abused by spouses.³⁹

One more thing is also very important here that until prominent social discourse accept that violence against women in the family is not only about dowry, property and inter-familial- negotiations. It is also about incest, marital rape range of sexual innuendoes that will challenge accepted norm with the dignity of women.⁴⁰

Western concept

There is western concept where marital rape exemption in Common law finds support. In the following observation of Lord Mathew Hale, a 17th century English jurist, –the husband cannot be guilty of rape, committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife although give up

³⁸ –Marital Rape – Exemption or Protection, *The Hindustan Times*, July 30, 1996, New Delhi, p. 12.

³⁹ Check, J.V.P., and Malimath, N.M., –Sex Role Stereotyping and reaction to depiction, Strangers Versus acquaintance rapel. *Journal of Personality and Social Psychology*, 15 (1983).

⁴⁰ Narain, Siddhart, —For an effective Law on Rapel, *Frontline*, Vol. 20, Issue 23, November 08-21, 2003.

herself in this kind into her husband, which she cannot retract⁴¹. In former times, it was impossible in the eyes of the law for a woman to be raped by her husband. In many countries, this is still the case. In recent years, that assumption has been challenged, and the concept of marital rape has been accepted. With revolutionary changes in the status of women the principle of marital rape exemption has also come to be assailed. The change is manifested in the laws of various countries where marital rape exemption clause has been held as unconstitutional and wives can prosecute their husband. In United States, raping one's wife is a crime in all the 50 states⁴². In England, after more than two centuries in which men could not be convicted raping their wives, though in law they could have been convicted of indecent assault and non-sexual violent crimes, the English courts finally held in *R v. C*⁴³ that husbands were liable to conviction, the old common law declared to be a fiction which had become anachronistic and offensive.

Protection of Women from Domestic Violence, Act 2005

-Protection of Women from Domestic violence is a pattern of coercive control founded on and supported by force, threats, or physical violence. This abuse may take the forms of sexual violence. Sexual violence is characterized by physical attacks of the breast or genital area, unwanted touching, rape with objects, and forced sexual relations, including marital rape. The long-term effect of domestic violence on victims and children can be profound. A daughter sees abuse as an integral part of a close

⁴¹ -Quoted in Irma Mackay, Educating the Professional to aid abuse victims in achieving human rights, *Intimate violence: Interdisciplinary Perspective*, (ed.) Washington DC: (1992) p. 133.

⁴² See http://www.equalitynow.org/action_eng-16_1.html. December, 6, 2014 at 11:23 p.m.

⁴³ (1991) 1 All ER 755; R.V.R. 91991) 2 WLR 1065, Affirmed by the House of Lords (1991) 3 Vol. 767.

relatively. Thus, an abusive relationship between father and mother can perpetuate future abusive relationship.⁴⁴

Indicating a long standing demand by women's organizations, the parliament passed the Protection of Women from Domestic Violence Act, 2005. -The Act recognizes the rights of women live in violence-free home. It aims to provide women an effective safeguard and remedy against domestic violence of any kind. According to the act, not just violence but even the threat of physical, sexual, verbal, emotional or economical would attract penal action⁴⁵.—Under the act magistrates empowered to help women to secure the rights in providing for the appointment of protection officers and the registration of Civil Society Organization (CSOs) as service for violent women. However, this also may notable to give women full protection against violence. As in matrimonial violence cases, most of the times women do not want to leave home or put their partners behind bars they just want to stop the violence⁴⁶.—The aim of the Act is to protect not just housewives but also women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or adoption. Under this legislation sister, widows, mothers, single women and women living with their abusers are entitled to legal protection⁴⁷. According to the provisions of the act an offender will have to pay for the women's medical expenses. A breach of the magistrate's protection order is punishable with a year's imprisonment or a fine of Rs. 20,000 or both.

⁴⁴ *Ibid.*

⁴⁵ -Magaic Bill, *Sunday Pioneer*, August 28, 2005, New Delhi.

⁴⁶ -Intimate enemy, *The Hindu*, June 24, 2005, New Delhi, p. 7.

⁴⁷ —Redefining shared spaces, *The Indian Express*, June 23, 2005, New Delhi, p. 11.

Male rape

Male rape was once considered by some to be a paradoxical concept, especially when rape has been defined narrowly as penile-vaginal contact. However, there are increasing reports of men who have been subject to sexual abuse either by other men or by women, and sex forced on males is gradually becoming recognized as a real problem⁴⁸.

There have been women forcing men to have sex who have received little attention in the criminal literature and has never been taken seriously by the general public⁴⁹. In a research paper on "sexual abuse of men by women" in US⁵⁰, the researchers cited evidence that males can be quite capable of erection and ejaculation in situations where they are afraid or anxious. Among male prison populations, sexual assault of men by men seems to be quite common⁵¹. In USA in one of the few studies available, of 486 male inmates, 101 had been targets of at least attempted sexual contact. It has been seen that fifty percent of the victims had been subjected to anal intercourse.⁵²

It is clear that the abuse of boys is less likely to be reported than abuse of girls. Both of these facts need to be understood within the context of our culture's view of maleness and masculinity. Our society may at some level feel that boys really do not need or deserve the same protection from sexual abuse as girls. It may also be some reports where such incidents of sexual abuse would be viewed by the boy himself, or by someone close to him, as an admission of being a powerless victim, a role that is

⁴⁸ -Desai Nishtha, Paedophilia in Goa After Peats, *The Lawyers Collective*, (Vol.) 12, No. 5, 1997, p.1; Report on Seminar on Child Rape, held in New Delhi October 7-8, 1993 organized by National Commission for Women (April) 1993, p. 41.

⁴⁹ -HC Frees Swiss Pedophilial, *The Times of India*, March 26, 2002, New Delhi, p. 4.

⁵⁰ Sarrel, P. & Masters, W., "Sexual Molestation of men by women, *Archives of Sexual Behaviour*", 11 (1982), pp. 117-131.

⁵¹ -Toddler, Tiber, Jail Inmate Sodomised. *The Times of India*, December 2, 2014, New Delhi, p. 3.

⁵² -Struckman, Johnosn, C. & Struckman Johnson, B., Men pressured and forced into sexual experiences, *Archives of Sexual Behaviour*, 23(1), (1994), pp. 93-114 at 95.

not respected.⁵³ However, they appear to react to sexual coercion and violence in the same essential ways as women, feeling a tremendous loss of control. It can be viewed as such a humiliating assault, males feel, demasculinised, embarrassed, traumatized and depressed. Males are taught that they should not be victims, and this probably often prevents them from ever reporting such abuse to authorities ⁵⁴ However males require the same sort of support and counseling, as women deal with the emotions, conflicts, and loss of self-esteem that follow rape⁵⁵.

Definition of rape under IPC does not comprehend male

rape

The concept of rape as defined under IPC is based on the –patriarchal and –feminist divide. Though the concept of sexual assault is considered with respect to women but there are some examples of abuse of male children in India.⁵⁶ For instance, the phenomena of pedophilia in India came to be highlighted with the arrest of Freddy Peat in April 1991. The Peat case was the first to expose the possibility of organized sexual abuse of both male and female children. The case relentlessly pursued by child right crusader *Sheela Barse*,⁵⁷ was the first conviction for child sex abuse in India and first pedophilia conviction in Asia. Many NGOs were arguing that the Peat case was only the tip of the iceberg.⁵⁸ Sexual abuse of male child occurs more commonly in closed institutions like orphanages, remand homes, special schools for

⁵³ Schwartz, D. –Negative impact of Sexual abuse on adult male gender: Issues and Strategies intervention, *Child and Adolescent Social Work Journal*, 11(3) (1994), pp. 179-194.

⁵⁴ Struckman, Johnson, C., 9 Struck man, Johnson, D, —Acceptance of male, rape myth college men and women, *Sex Roles* 27 (3-4), (1992), pp 85-100.

⁵⁵ See [http://interpol.int/public/children/sexual Abuse/national Law](http://interpol.int/public/children/sexual%20Abuse/national%20Law). December,10,2014.

⁵⁶ –Teenager Sodomises, Murder Friends, *The Pioneer*, June 21, 1997, New Delhi, p. 3.

⁵⁷ JT 1988 (3) 15.

⁵⁸ *Ibid.*

the mentally retarded and similar places.⁵⁹ Such cases are treated under the heading of unnatural offences under section 377 IPC.⁶⁰ The Law Commission in its 172nd report has suggested that the law relating to sexual assault be made gender neutral.

Child rape

Sexual abuse of child⁶¹ can be broadly defined as under.

-Any sexual activity, whether it be ongoing or a single occurrence, ranging, from sexual overtones to sexual intercourse, between a sexually maturing or mature person and an unconsenting or consenting child who is cognitively and developmentally immature. This pertains whether or not the perpetrator has himself/herself committed the sexual act or has permitted or encouraged the child to indulge in any sexual activity, for example child prostitution.⁶²

In India data reveals a very disturbing trend in cases of rape against children.⁶³ It is also to be borne in mind that a majority of sexual offences committed against children are not even reported, let alone prosecuted. In our culture, children are taught to respect and obey adults, and at the same time are often given little direct information about sex and their own sex organs. They are easily manipulated, both physically and psychologically, and often easily frightened into silent sexual compliance. Children often reluctant to report, lack the ability to explain clearly what happened. Unfortunately, even when they report sexual abuse, which are not taken

⁵⁹ Baxi, P.M., -The Law of Rape including position of child victims: An Overview, *Seminar on Child Rape*, held in New Delhi October 7-8, 1992, p. 60.

⁶⁰ *Ibid.*

⁶¹ In most cases, rape in its strict interpretation does not secure rather child is observed sexuality in many other forms, thus the term sexual abuse has been used.

⁶² Sandler, H.S. & Sepel, N.L, *Violence against Children: Sexual Abused*, McKerndricks, B. & Hoffman, W., (ed.) *People and Violence in South Africa*, Cape Town, Oxford University Press (1970), p. 213.

⁶³ -Cases of Minor rapes top all crimes on kids, *The Hindustan Times*, May 1, 2013, New Delhi, p. 7.

seriously. Rape of a girl child of an immature age has a greater traumatic effect which often persists throughout her life leading to various disorders, both physical and psychological. The effects of rape on the victim are multidimensional. The younger the victim, the greater the repercussions of the offence.⁶⁴ This can result in persistent feelings of shame that affects the individual's self-concept.⁶⁵

Protection of women and children is the symbol of well society. Nothing is more horrifying than the sexual abuse of a child; nothing more reprehensible than a criminal system that subsequently victimizes the victim, police behaviour that adds terror to agony. Child sexual abuse is the physical or mental violation of a child coupled with sexual intent, usually by an older person who is in some position of trust or power. Even though both men and women can sexually abuse a child, most abusers are males in society. The children are within family, a father, an uncle, a person whom a little child trustingly looks for protection becomes her/ his violator. Incest is contrary to the morals of all societies.⁶⁶

Whereas the number of rape cases are highest among all crimes committed against children.⁶⁷ As a news item appears, regarding rape of a daughter by the father or uncle, mostly it might seem that such things happen only in poor, disorganized and unstable families, but that is mainly because these families are the ones which come to the attention of social services. Child abusers come from all strata of

⁶⁴ Dr. Kameshwari., —Child as a Victim of Rape (2001) 2 SCC Journal Section p. 27.

⁶⁵ Walser, R.D. & Kern, J.M., —Relationship among childhood sexual abuse, sex guilt, and sexual behavior in adult clinical samples. *Journal of Sex Research*, (1996) 33(4), pp. 321-326.

⁶⁶ Pandey Mani, —Incest is 'Extreme Case' of defiance, *The Times of India*, New Delhi, April, 23, 1995, New Delhi, p. 3.

⁶⁷ *Supra* note 62.

society⁶⁸. Showing its serious concern the Supreme Court in *Madan Gopal Kakkad v. Naval Dubey*⁶⁹ stated:

-Though all sexual assaults on female children are not reported and do not come to light there is an alarming increase of sexual offences on children. This is due to the reasons that children are ignorant of the act of rape and are not able to offer resistance and become easy prey for lusty brutes who display the unscrupulous, deceitful and insidious art of luring female children and young girls. Therefore such offenders who are a menace to civilized society should be mercilessly punished in the severest terms. || ⁷⁰

Custodial rape

Custodial rape is another example of increasing rape. -The torture of common man by rulers in order to silence his voice against the regime could be justified by them in the pre-independence era, but what justification can the state give for assaulting innocents in a democracy. The offence of rape is rampant committed by the police, para-military forces, and jail authorities and even by the officials of protective homes run by the state. When in individual or a group of individuals commit a crime what is required a punitive action by the state against the guilty. The more pertinent issue is the remedy when the state itself commits such crimes. The issues of custodial and related tortures come to light through the press reports and studies conducted by the human rights organizations. A report of Amnesty International has revealed not

⁶⁸ -Child Rape, *The Hindustan Times*, October 12, 1992, New Delhi, p. 7.

⁶⁹ 1992 SCC (Cr) 598.

⁷⁰ Amnesty International on India – A Report on _Fortune Rape and Death in Custody. The report refers to casers that occurred between 1 January 1985 to 1 November 1991, i.e. a period immediately followed by the among into force 1993 amendment.

only practices of state agents but also the disinterested casual and irresponsible behaviour of those in political era, is equally responsible for the offences.⁷¹

Having regard to the place of occurrence, the vulnerable situation of the victim in custody, and the power and status of rapist, there is the least possibility for the victim showing resistance and this passive submission could very well be argued and proved by the defence and admitted by the court as ‘consent’, as in Mathura case.⁷²

When the victim disappears after the initial complaint, the prosecution collapses and in due course the policemen are acquitted. In the case of custodial rape even where the policemen are suspended, the cases drag in the court for years. Moreover, in such cases, if any inquiry or investigation is carried out, it will be done by fellow policemen whose sense of solidarity would rarely let them disclose the true story.⁷³

The custodial rapes were specifically inserted under section 376, 376 A to 376 D through the amendments made in 1983. The above amendments made later through 2005, 2008 and 2013 amendment Act. This amendment was certainly a welcome step . It has proved only theoretical value, the enhanced punishment and the presumption as to absence of consent in custodial rape cases, has deterred the policemen or other authority men from committing such atrocities. The Amnesty report cites statistic given by the administration itself.⁷⁴

There are few more categories of persons who, because of their peculiar status can and do take advantage of the weaker position of women, to commit sexual

⁷¹ Sebastian, Amnesty report on Custodial Abuse 27 Economic and Politically, Bombay (1992), p. 876.

⁷² AIR 185, 1979 SCR (1) 810.

⁷³ -No justice for rape victims, *Indian Express*, March 4, 1992, New Delhi, p. 9.

⁷⁴ -Torture Chambers, *Sunday Calcutta* 5-11, April 1992, p. 67.

offences, sexual assaults committed are doctors, hospital authorities, in remand homes, children homes by teachers. Such kind of reports is a regular feature of the daily incidents, which depicts that the legislative changes have not been helping the poor victims of custodial rape.

Caste based rape offences against Dalit women

Human rights abuses against these people, known as Dalits. A random sampling of headlines in mainstream Indian newspapers tells their story: *-Dalit „witch“ paraded naked in Bihar Dalits burnt alive in caste clash; Dalit woman gang-raped, parade naked.*⁷⁵ -India's untouchables are relegated to the lowest jobs and live in constant fear of being publicly humiliated, paraded naked beaten and raped with impunity by upper-caste seeking to keep them in their place.⁷⁶-Dalit women are particularly hard hit. They are frequently raped or beaten as a means of reprisal against male relatives. The relatives have committed some act worthy of upper-caste vengeance.⁷⁷They are also subject to arrest if they have male relatives hiding from the authorities.

A rape case reported in 1999 illustrates the toxic mix of gender and caste. —A 42 years old Dalit women was gang-raped and then burnt alive and her husband along with their two sons had been held in captivity and tortured for eight days. Her crime was, her another son had eloped with the daughter of the higher-caste family. They are also subject to caste panchayat or Khap Panchayat. The local police knew Dalit family was being held, but did nothing because of the higher-caste family's local

⁷⁵ Hillary Mayell, -India's Untouchables' Force Violence, Discrimination, National Geographic Newsl, June 9, 2003 i3 paraded naked in Rajasthan, Arrested, *The Times of India*, December 1, 2002, New Delhi, p. 51.

⁷⁶ The International Dalit Conference May 16-18 in Vancouver, 2004 Canada.

⁷⁷ -Gang Rape victims want to lift alone, *The Times of India*, July 15, 2012 New Delhi, p. 6.

influence. There is very little recourse available to such victims.⁷⁸ –According to a report released by Amnesty International in 2001, an ‘extremely high’ number of sexual assaults on Dalits women, frequently perpetrated by landlords, upper-caste villagers, and police officers had been found. The study estimates that only about 5 percent of attacks are registered and those police officers dismissed at least 30 percent of rape complaints as false. The study also found that the police routinely demand bribes, intimidate witnesses, cover up evidence, and beat up the women’s husbands. No step has been taken to prevent attacks on rape victims by gangs of upper-caste villagers seeking to prevent a case from being pursued. Rape victims have also been murdered. Such crimes often go unpunished. More than thousands of pre-teen Dalit girls are forced into prostitution under cover of a religious practice known as Devadasis, which means female servant of God. The girls are dedicated or ‘married’ to a deity or a temple. Once dedicated, they are unable to marry, forced to have sex with upper-caste community members, and eventually sold to an urban brothel.⁷⁹

–Statistics compiled by India’s NCRB indicates that in the year 2015, the latest year for which figures are available, 50,455 crimes were committed against Dalits. Every hour two Dalits are assaulted, every day three Dalit women are raped. No one believes these numbers are anywhere close to the reality of crimes committed against Dalit women. Because the police, village councils, and government officials often support the caste system which is based on the religious teachings, many crimes go unreported due to fear of reprisal, intimidation by police, inability to pay bribes demanded by police or simply having the knowledge that the police will do nothing.⁸⁰

⁷⁸ U.S. Department of State Country Reports on Human Rights Practices: India, 2001.

⁷⁹ Hell of Dalit Women Exposed, *Guardian*, May 9, 2011, U.K.

⁸⁰ *Ibid.*

-Despite the fact that untouchability was officially banned when India adopted its Constitution in 1950, discrimination against dalits remained so pervasive. In 1989 the government passed legislation known as the prevention of Atrocities Act.⁸¹ Since then the violence has escalated largely as a result of the emergence of a grass root human right movement among Dalits to demand their rights and resist the practice of untouchability.

Rape of disabled

The original meaning of -victim⁸² is defined by Webster's doctrine⁸² as a person subjected to oppression, deprivation or suffering someone, tricked, duped, or subjected to hardship, someone badly used or taken advantage. Thus a victim may suffer at the hands of another; a victim may either be victimized for causes beyond his or her control-natural disasters, accidents of birth-or suffer as a result of his/ her own actions.

Disabled victims of rape are double victimized. First they have been singled out by the nature of a handicap a victim of physical limitations that results in psychological and social consequences. Second, at the hands of another, they have been made a victim by being sexually abused. Even the Supreme Court failed to acknowledge their vulnerability and specific requirements. In *Phul Singh v. State of Haryana*⁸³ the accused, -a youth of 22 years of age, was charged of committing rape on a deaf and dumb girl of 12-13 years. The trial court convicted the accused for the offence of rape and sentenced him to 4 years rigorous (hereinafter referred as _RI_) imprisonment. The High Court affirmed it in appeal. The Supreme Court however

⁸¹ The Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

⁸² Webster's Third International Dictionary (1971).

⁸³ 1979 SCC (Cr) 413.

reduced the sentence to 2 years RI on the ground that the accused was a youth with no criminal antecedents and that he had a young wife and a family to look after. However, in *Tulsidas Kanolkar v. State of Goa*⁸⁴ the Supreme Court gave its considerate verdict acknowledging the mental age of the victim, –a girl whose mental faculties were underdeveloped, as not more than 12 years, rejecting the defense of consenting age. The court stated that sub section 2 of section 376 of clause (f) relates to physical age of a woman under 12 years of age. But what happens in a case when the mental age of the victim is not even twelve years? Such a woman is definitely in a more vulnerable situation. In this case the Bombay high court however reduced the sentence from 10 to 7 years imprisonment. The Supreme Court simply upheld the conviction with no other relief to the mentally challenged victim.

Judicial Interpretation of Rape Definition

The Supreme Court has now added a new dimension to the law by implicitly admitting that rape is not simply a physical assault but a psychological violence. Earlier, courts used to take the position that if there were no proof of physical assault there would be no rape.⁸⁵

In the case of *Mohammed Habib v. State*⁸⁶ High Court of Delhi allowed a rapist to go scot-free merely because there was no injury on his penis, assuming that the victim had not resisted. That the victim was a seven years old girl who had suffered a ruptured hymen and bite marks on her body was not taken into

⁸⁴ 2003 8 SCC 590.

⁸⁵ *Ashok Kumar Chatterjee v. State of M.P.* JT 1989 (3)-SC 451; *State of H.P. v. Raghubir Singh* (1993) 2 SCC 622; *State of Rajasthan V. Narayan* (1992) 3 SCC 615; *Ravji v. State of Rajasthan* JT 1995 (8) SC 520; *Mohd.Miraz v. State*, 2001 (90) DLT 702; *State of Haryana v. Jai Singh*, (2003) 9 SCC 114; *State of M.P. v. Ghanshyam Singh*, JT 2003 (Suppl. 1) SC 129.

⁸⁶ See <http://peacewomen.org/news/india/rapevictims.html>. accessed on March 05, 2014.

consideration. Even witnesses, who saw the rape at a bus stop and then deposed in court, were unable to convey to court.

Judges are expected to be circumspect and self-disciplined in the discharge of their judicial functions. But the fact is, judicial activism in India is partly the consequence of a legislative vacuum, especially in the field of victim's rights. Where lawmakers are inattentive to the rights of citizens, the Constitution empowers the court to take legislative function. This rule of strict interpretation cannot be applied universally and it should not leave loopholes for other offenders for escaping liability. In case of Sakshi, the rule of strict interpretation was not applied.

Definition of rape under new anti-rape laws⁸⁷

On the recommendation submitted by J.S. Verma Committee, The Parliament has amended Indian Penal Code and substituted new sections on the definition and punishment of rape.

-Substitution of new sections for sections 375, 376, 376A, 376B, 376C and 376D. For sections 375, 376, 376A, 376B, 376C and 376D of the Penal Code, the following sections shall be substituted namely:

Rape-

-375. A man is said to commit 'rape' if he;

a. -penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person or

⁸⁷ The Criminal Law (Amendment) Act, 2013.

- b. -inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person|| or
- c. -manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any of body of such woman or makes her to do so with him or any other person|| or
- d. -applies his mouth to the vagina, anus, and urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions||

Firstly- -Against her will.||

Secondly- -Without her consent.||

Thirdly.- -With her consent, when her consent has been obtained by putting her or any person in whom she is interested, 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 her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.||

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

Seventhly. - -When she is unable to communicate consent.

Explanation I. - -For the purposes of this section, 'vagina' shall also include labia majora.

Explanation 2.--Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act.

-Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception I. - —A medical procedure or intervention shall not constitute rape.

Exception 2.- -Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Punishment for rape-

The following are the punishment as per new anti rape laws under section 376:

1. -Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.
2. -Whoever,—
 - a. Being a police officer, commits rape—
 - i. within the limits of the police station to which such police officer is appointed; or

- ii. in the premises of any station house; or
- iii. on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer¹ or
 - b. — being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant¹ or
 - c. -being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area¹ or
 - d. -being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution¹ or
 - e. -being on the management or on the staff of a hospital, commits rape on a woman in that hospital¹ or
 - f. -being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman¹ or
 - g. -commits rape during communal or sectarian violence¹ or
 - h. -commits rape on a woman knowing her to be pregnant¹ or
 - i. -commits rape on a woman when she is under sixteen years of age¹ or
 - j. -commits rape, on a woman incapable of giving consent¹ or

- k. -being in a position of control or dominance over a woman, commits rape on such woman|| or
- l. -commits rape on a woman suffering from mental or physical disability|| or
- m. -while committing rape causes grievous bodily harm or disfigures or endangers the life of a woman|| or
- n. -commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.||

Explanation.—For the purposes of this sub-section,—

- a. -armed forces|| means the naval, military and air forces and includes any member of the Armed Forces constituted under any Jaw for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government!, or the State Government||
- b. -hospital means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation||
- c. -police officer, shall have the same meaning as assigned to the expression police under the Police Act, 1861;
- d. -women's or children's institution means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or

an institution called by any other name, which is established and maintained for the reception and care of women or children.¶

Punishment for causing death or resulting in persistent vegetative state of victim is as follow:

-376A. Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.¶

Sexual intercourse by husband upon his wife during separation

-376B. Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.¶

Explanation.--In this section, -sexual intercourse¶ shall mean any of the acts mentioned in clauses (a) to (d) of section 375.¶

Sexual intercourse by person in authority if commits:

376C. -Whoever, being-

a. -in a position of authority or in a fiduciary relationship¶ or

- b. —a public servant|| or
- c. -superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution|| or
- d. -on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than 6 years, but which may extend to ten years, and shall also be liable to fine.||

Explanation 1. -In this section, _sexual intercourse' shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of IPC||

Explanation 2. -For the purposes of this section, Explanation I to section 375 shall also be applicable||.

Explanation 3 -Superintendent, in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.||

Explanation 4 -The expressions _hospital' and _women's or children's institution shall respectively have the same meaning as in Explanation to sub-section (2) of section 376.||

Gang rape if committed by offenders shall be punished by following punishment:

376D. -Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

Punishment for repeat offenders the same offence

376E. -Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376B and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.

Sexual harassment of women at workplace Act⁸⁸

-This act provides protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto as follows:

⁸⁸ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Whereas sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment.⁸⁹

And whereas the protection against sexual harassment and the right to work with dignity are universally recognized human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India,⁹⁰

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace

The Act will ensure that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realization of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.

The objective of this act has been seen in the following points:

- -This Act defines sexual harassment at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges,

⁸⁹ *Ibid.*

⁹⁰ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

- This Act also covers concepts of ‘quid pro quo harassment’ and ‘hostile work environment’ as forms of sexual harassment if it occurs in connection with an act or behaviour of sexual harassment,
- As the definition of ‘aggrieved woman’, who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organized or unorganized sectors, public or private and covers clients, customers and domestic workers as well,
- While the ‘workplace’ in the Vishakha rulings confined to the traditional office set-up where there is a clear employer-employee relationship, the Act goes much further to include organizations, department, office, branch unit etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation. Even non-traditional workplaces which involve tele-commuting will get covered under this law,
- As per the act the Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days,
- In his profession every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level,
- These Complaints Committees have the powers of civil courts for gathering evidence,

- These Complaints Committees are required to provide for conciliation before initiating an inquiry, if requested by the complainant,
- Enquiry process under the Act should be confidential and the Act lays down a penalty of Rs 5000 on the person who has breached confidentiality,
- This Act requires employers to conduct education and sensitization programmes and develop policies against sexual harassment, among other obligations,
- Penalties under this act have been prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine of up to ₹ 50,000. Repeated violations may lead to higher penalties and cancellation of license or registration to conduct business,
- The government can order an officer to inspect workplace and records related to sexual harassment in any organization. ⁹¹||

The POCSO Act⁹²

The Indian parliament has passed this act which is applicable to the whole of India. It defines, -a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from sexual abuse. It also intends to protect the child through all stages of judicial process and gives paramount importance to the principle of best interest of child Penetrative and aggravated penetrative sexual assault, sexual and aggravated sexual assault, sexual harassment, and using a child for pornographic purposes are the five offences against children that are covered by this act. This act envisages punishing even abetment or an attempt to commit the offences defined in the act. It recognizes that the intent to commit an offence, even when unsuccessful needs to be penalized. The punishment for the

⁹¹ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

⁹² The Protection of Children from Sexual Offences (POCSO) Act, 2012.

attempt to commit is up to half the punishment prescribed for the commission of the offence. This act suggests that any person, who has an apprehension that an offence is likely to be committed or has knowledge that an offence has been committed, has a mandatory obligation to report the matter *i.e.* media personnel, staff of hotel/ lodges, hospitals, clubs, studios, or photographic facilities. Failure to report attracts punishment with imprisonment of up to six months or fine or both. It is now mandatory for police to register an FIR in all cases of child abuse. A child's statement can be recorded even at the child's residence or a place of his choice and should be preferably done by a female police officer who is not below the rank of sub-inspector.⁹³ As per the objective of this act the medical examination of child can be conducted even prior to registration of a first information report. This discretion is left up to the investigation officer. That investigation officer has to get the child medical examination in a government hospital or local hospital within 24 hours of receiving information of offence. This is done with the consent of the child or parent or a competent person whom the child has the faith of trust and in their presence.

-Apart from the Child Welfare Committees (CWC) play a vital role under the POCSO Act that has been stated as the cases registered under this act need to be reported to the CWC within 24 hours of recording the complaint. These committees should take into account the child's opinion to decide on the case within three days and conclude whether the child should remain in an institution or be with the family. With the consent of the child's parent guardian other person on whom the child trusts, should appoint a support person to assist the child during the investigation and trial of

⁹³ *Ibid.*

the case. This is the good step taken by the government in this act which helps in prevention of rape crimes.¶⁹⁴

Under the provision of this Act, –the State Commissions for Protection of Child Rights (SCPCR) has been empowered and with the responsibility of monitoring the implementation of the provisions of the POCSO Act 2012, to conduct inquiries and to report the activities undertaken under the POCSO Act 2012, in its annual report. The commission is also empowered to call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC. The commission can also recommend interim relief, or make recommendations to the state government to effectively redress the matter.¶

–The Act looks into a support system for children through a friendly atmosphere in the criminal justice system with the existing machinery *i.e.* the CWC and the commission. The positive aspect is the appointment of the support person for the child who would assist during investigation, pretrial, trial and post-trial. The major challenge also would be convergence between different entities under different legislations. The act makes it mandatory to report to the police about any offence defined under POCSO Act 2012. The recent decision of the cabinet in a bill to reduce the age of consent for sex to 16 years will mean that the protection given under this law to protect children from sexual crimes will be restricted to the children who are 16 years of age. There is a fear that this would end up taking away safeguards available to victims under the POCSO Act, especially girls in the 16-18 age bracket. The benefit of it would trickle down to the child only if this act is implemented in its true sense and spirit by all the agencies.¶⁹⁵

⁹⁴ *Ibid.*

⁹⁵ –The Growing Career¶, *The Hindustan Times*, October, 13, 1993, New Delhi, p. 5.

Victims of Rape

Who gets raped?

There is worse situation where everyone from little girls of six months old to grandmothers are raped. For instance, an octogenarian was raped to her 19 years old grandson's friend in Delhi. The victim does not always have to be young or unknown to the perpetrator.⁹⁶ Age is no barrier. Class is no barrier. The rich, the educated, the poor, the illiterate woman has no safety as well. Usually, a sexual predator chooses a victim on the basis of her vulnerability and not her physical appearance.

In 1948, Von Hentig, a criminologist, listed as typical victims –the young the female, the old, the mentally defective, the depressed, the acquisitive, the lonesome, and the heart broken.⁹⁷ It is certainly true that youth is a factor of victimization. But how important is gender as a factor in victimization? For instance there are news reports which raise more questions to answers.

Everywhere rapes happen across all social strata in India. In Indian villages, it is the poor villager's wife or sister or daughter who gets raped by another poor rowdy villager, and everyone from the local place from police station house officer to the landlord. These rape cases, unless the news becomes public⁹⁸ and due to unavoidable reasons, are never reported. The media will report a rape only when it is a different kind of rape from a normal rape, like Delhi rape case. In rapes that occur in Indian families, the males and females equally blame as everyone supports each other for the sake of family honor. It is only the rape victim who has no chance of justice. In a cruel way this often

⁹⁶ –Every Girl is a target, *The Hindustan Time*, October 19, 2003, New Delhi, p. 8.

⁹⁷ Von Hentig, H., –The Criminal and his Victim: Studies in the Sociology of Crimes, New Haven: Yale University Press, (1948), p. 248.

⁹⁸ –Imrana, a Mother of five, Raped, by her Father-in-Law, *The Indian Express*, June 15, 2015, New Delhi, p. 6.

forces the rape victim to accept rape as an unfortunate occasional occurrence within all families, and she herself may threaten for another rape tomorrow.

Rape and its perpetrator

Male perpetrators

There are two reasons why this research is important. First, to reach the root cause of the problem; secondly, without knowledge of the rapist, one cannot have the complete knowledge of the crime. It is just beginning to understand the psychological dynamics of perpetrators of rape, more specifically child sexual abuse, unfortunately not much research has been done in Indian context. The psyche of the rapist has been dissected in the west much more thoroughly. One of the most basic facts has come forward through literature review is regarding men who commits are not equal to the other offenders.⁹⁹The rapist is normal in personality, appearance, intelligence, behaviour, and sexual life. In fact, studies by some researchers ¹⁰⁰ have found one type of rapist who is fairly meek and mild-mannered. The fact is clear that the rapist is not an exotic freak. Rather, rape evolves out of a situation in which normal males feels a need to prove themselves to be 'men' by displaying dominance over females. Some adult sexual offenders have brain abnormalities in a particular portion of their brains that may predispose them to abusive behaviour with children and that some

⁹⁹ Nicholas Groth, A. -Men who Rape: The Psychology of the Offender", Plenum Press, NY 91979), P. 12.

¹⁰⁰ Menachen Amir, -Patterns in Forcible Rape", University of Chicago Press, Chicago (1971) p. 314; See also Benjamin Kaspan, -The Sexual Offender and his offences", Julian Press, New York, (1954), pp. 38-39; Camilla, E., Le Grand, Rape of Rape Laws Sexism in Society and law, California Law Review, 61 (1973), p. 922; Murray, L., Cohen, Ralph Garofalo, Richards, Boucher, of Theohari Seghorn, -The Psychology of rapist, Seminars in Psychiatry", 3 (Aug. 1971) p. 317; Kennedy, H.G. 7 Grubin D.H, Patterns of Denial in Sex Offender Psychological Medicine, 22(1), (1992), pp. 191-196.

offenders experience hallucinations commanding them to commit the acts as part of schizophrenic mental illness.¹⁰¹

The Federal Bureau of Investigation in the U.S., for instance identifies five types of rapist that are mentioned as under.

1. Power Reassurance rapist - Rapist who forces his fantasy on the victim, since he is unable to realize it with other women in _normal terms,‘ the rapist believes that the victims are willing, participatory lovers.
2. Power Assertive Rapist- Rapist who wants to show off his male prowess. Men who rape their lovers fall in this category.
3. Anger Retaliatory Rapist- Rapist of this category is extremely hostile and aggressive men, who are probably taking revenge for some perceived wrong.
4. The anger Excitation rapist - this category of rapist is the most dangerous of all since he is aroused by the suffering of his victim.
5. Opportunity Rapist - the rapist, who just desires to have sex.

It is true some time men commits rape because of sexual hunger, from a need to prove themselves, from hatred of women, or a desire for revenge, as a political statement, or from peer pressure, (as in gang rapes) which become further blurred with drunkenness or drug use.¹⁰² The psychological motivation of rapists is now considered more complex than was formerly thought. As the pioneering Brown Miller explains:

-Once we accept the relationship of aggression and submission; once we recognize force or struggle as an integral component of the sexual courtship (as in the

¹⁰¹ Lang, R.A., -Neuropsychological deficits in sexual offenders; Implications for treatment-Sexual and marital Therapy, 8(2) (1993), pp. 181-200.

¹⁰² Charles, W., Dean, May de Bruyn-Kops Chales Thomas, C. -The Crime and Consequences of Rape”, Springfield, 111 (1982) p. 41.

battle of the sexes) it follows that the sex act itself is only a less emphatic expression of all those elements that make up criminal rape.¹⁰³

It is evident through some researchers who believe that such behaviour may well be rooted in the perpetrator's own treatment as a child, with at least some evidence suggesting that abusive adults were themselves sometimes sexually abused to children.¹⁰⁴ However other factors are also crucial in the development of sexually abusive behaviour. For example, child abusers tend to have lack of confidence during their own childhood and had been emotionally isolated. They use sex as an escape route and solution to emotional pain. As adults they tend to attribute sexual meanings to the normal behaviours of children and to view their victims as sexual objects. Sexual abusers of children seem to have well-developed mechanisms for coping internally with what they have done. They may distort or rationalize their behaviours in their own minds, and they may also be very self-denigrating, making it even more likely that they will feel unable to control their desire of sexual urges. Some offenders blame their victims for the sexual abuse, or blame third parties, such as a spouse for not providing them sexual satisfaction in certain circumstances.

Through the different methodology that is familiar and is a barrier to real research conducted by those who are willing to reach conclusions which is based on data, not on opinion. Few persons are known about women who sexually abuse children. Studies of convicted female (in U.S.) child molesters have shown them generally to be of marginal intelligence, to have a history of sexual and physical abuse of themselves, and to have dissatisfactions with their adult sexual lives. They often act out of anger or to retaliate against a partner or spouse. Frequently, they commit the

¹⁰³ Brown Miller Susan, *Against Our Will: Men Women and Rape, Especially the Chapter in the Beginning was the Law*. N.Y. Bantam, (1974), p. 88.

¹⁰⁴ McKibben, A., Proulx, J. & Lusign, R., *Relationships between conflict, affect and deviance sexual behaviours in Rapists and paedophiles Behaviour Research and Therapy* 325) (1994), pp. 571-575.

sexual abuse with another adult person usually with a male offender. It has been observed that female offenders may be particularly reluctant to admit the abuse of sex, since it is seen in a society, as a particularly unexpected role of a woman. It may also be that the sexually abusive behaviour of women is more covert than that of men, making it a less noticeable phenomenon to victims and authorities.¹⁰⁵

Rape promoting factors and rape myths

-Research on rape in certain area, highlighted the importance of prejudicial, stereotyped or false beliefs about rape, rape victims and rapists, in creating a societal climate that is hostile to rape victims- most of whom are female.¹⁰⁶The following most common rape __myths‘ are given below:

1. -Rape is a sexual act perpetrated for sexual gratification by men who have lost their self-control in the face of women‘ s sexual provocation,
2. Women encourage for rape. The assumption is that women consent to sexual relations, and in this way __invite‘ rape. This is linked to the myth that only bad girls get raped,
3. Women derive sexual enjoyment from being raped,¹⁰⁷
4. A woman cannot be raped if she fights back,
5. Women falsely accuse men for rape to make trouble for them, and to protect their own virtue retrospectively,
6. Rapists are always strangers.¶

As per the above preposition of rape myths, -rape myths reflect the prominent cultural view that rape is essentially a sexual act, as opposed to an act of violence.

¹⁰⁵ *Ibid.*

¹⁰⁶ Many rapist, lodged in Tiban Jail stated to Dr. Mitra that the victims actually enjoyed the rape but complained later, they refuse to believe it was not so.

¹⁰⁷ *Ibid.*

Although it is clear that the desire for sex is part of the rapist's motivation, rapists also use sex to fulfill non-sexual needs, such as the need for power, the need to dominate and the need to reaffirm masculinity. Feminist analysis of violence against women maintains that such violence demonstrates a general devaluation and objectification of women that is expressed in its most extreme form in acts of violence.¶

The widespread internalization of these myths decreases social censure for rape, and makes it more difficult for a rape victim to be seen as a victim of violence. Persons close to the female rape victim may be subject to the same prejudices and mythologies around the rape that are held by the general public.

There are very few researches to best efforts and knowledge of the researcher which pertaining the factors directly influencing and prejudices child rape victims. The impact of societal construal may be directly processed, or may be influenced by the interpretations of significant adults in the child's environment, who will also reflect attitudes borne out of their own socialization. These rape myths will be reflected through an analysis of Indian criminal justice systems as that has been discussed in coming chapters.

New mythology of rape

The disturbing change has taken place in feminism approach of rape. Rape has ceased to be an act of violence, which a rapist commits against individual women. It has become and been placed at the service of a larger political agenda, which accused all men of raping all women. Instead of being an act of violence committed against victim. It is disturbing in at least one aspect; it has overcome a gender crime. It is used to consider as an experience different than the normal life a crime or a violation of normal life.

Feminists shredded the myths in 80s, that only bad girls who walked alone at night were raped. Research indicates that every woman was vulnerable to attack, even in her own home and by someone she knew. It is revealed that rapists could be apple-cheeked boys next door. Feminism replaced mythology with facts and with practical aid for women in pain.

But in the 90s, a theoretical groundwork was laid that placed rape at the very heart of our society. Rape became an expression of how the average man viewed the average woman. In 2000, rape had become thoroughly politicized: it has now viewed as a major weapon by which patriarchy kept women in their place.

Rape, it seems is no longer a crime committed by individuals against individuals; it has become part of class analysis, in number of cases it appears. Rape had found its existent within a political ideology with a revolutionary agenda, but victims have yet to carve their place.

¹¹⁵ Testimonials from an installation entitled –Grown Women Die of Itll displayed in Vancouver BC, 1993 as documented in *Violence Against Women: An International and Interdisciplinary Journal* Vol. 2, 1996.

¹¹⁶ *Ibid.*

Attractiveness as a reason for rape

The view regarding the physical beauty influences risk factors consistent with women at the ages of peak attractiveness (late teens and early twenties) being the most frequent victims of rape. It is also consistent with descriptions that, -rape in other cultures, made by people completely unaware of the political and ideological issues that have come to dominate discussions of rape in our society. For example, consider this statement made by Onega, a leader among the Kawaka people of Mount Hagen, Papua New Guinea, while recalling the rapes that took place during the tribal wars he lived through. When we left our women behind and went out to fight, they were in danger. Men came to find them, chasing them down to the edges of streams till they seized hold of them, *especially if their bodies were good to look at*¹¹⁷.

Under evolutionary hypothesis for rape, -increased knowledge is the key to reducing rape. If rape is an incidental effect of men's psychological adaptation for obtaining high mate numbers without commitment, reducing the incidence of rape will depend upon complete knowledge of the adaptations involved and of the circumstances under which they give rise to rape as a by-product. If rape is itself an adaptation, reducing rape will depend upon full knowledge of the evolutionary historical cues that stimulated adaptive rape by males during human evolutionary history. Such knowledge, for example, could reduce the high incidence of rape in war, where evolutionary historical benefits of rape are high and corresponding costs are typically trivial. A common media claim is that the evolutionary analysis of rape cannot account for the rape of boys, men and non-reproductive-age females. Although the majority of rapes involve percent and young adult females, some rapes involve

¹¹⁷ Randy Thornhill., -The Biology of Human Rape, *Jurimetrics J.*, Vol. 39, pp.137 – 147. 1999.

other victims. Rape of these other victims is an incidental effect of men's strong libido for obtaining many mates of fertile ages. Every adaptation has incidental effects that are maintained because the adaptation enhanced overall reproductive success of its bearer, even when the adaptation's incidental effects lowered reproductive success in some circumstances. Males and infertile females that are of the same species as the rapist are common rape victims across many species. In some species, males rape females of other species. Male seals even copulate with corpses, and living juveniles are also rape victims. Males of every animal species have an evolved preference for fertile females of the same species, but the libido that motivates the dogged pursuit of that preference results in some maladaptive mating. The media often focus on the uninformed criticism that for evolution to apply to human rape there must be a significant rate of pregnancy associated with rape in modern societies.¹¹⁸

It is important to realize that all features of life, -including rape, are ultimately the result of the evolutionary process. Even the computer is ultimately a by-product of evolution because certain psychological adaptations give rise to the behaviors and mindset responsible for the computer. It is never a question of whether evolution applies to a feature of living things, including any given human activity. The only question is how to apply evolution to fully understand the feature. Furthermore, some human adaptations are frequently maladaptive now. For example, the consumption of large quantities of refined sugar causes widespread health problems, but the sweet tooth (actually a psychological adaptation for pursuing ripe fruit) evolved because it resulted in nourishment in human evolutionary environments. Rape may or may not be currently adaptive, i.e., promote net reproductive success despite its costs. And rape may be currently adaptive in some societies (e.g., in preindustrial societies without

¹¹⁸ Randy Thornhill and Craig T. Palmer. —A Natural History of Rape: Biological Bases Coercion.

contraceptives), but not others. In the U.S.A., pregnancy follows from rape in about 2.5% of the cases. Rape-pregnancy, however, is much higher during warfare.¹¹⁹

The current addictiveness of rape is an entirely different issue than the evolutionary historical addictiveness of rape. -The reason of the rape adaptation hypothesis is that rape was adaptive in human evolutionary history, but now it may or may not be adaptive. Historically adaptive rape is demonstrated by the existence of an adaptation functionally specialized for rape. The media also have commonly been amazed that we claim in our book that evolutionary biology includes procedures for knowing the deep-time past of the human species. Many erroneously believe that this past is unknowable. Darwin invented the method of historical science and this rigorous method is routine practice in all sciences that explore the past (biology, geology and astronomy). Actual historical causes will have left consequences. Finding these consequences provides the definitive evidence for past causes that cannot be observed directly. This is why the existence of an adaptation in men functionally specialized for rape demonstrates direct selection for rape during human evolutionary history.¹²⁰

It is proposed that, -all men are potential rapists has been interpreted by the media as meaning that all men will rape. Actually, we mean that at conception essentially all human males have genes which might lead to raping behavior if, and only if, those genes interact with certain specific environmental factors during the development of the individual. Hence, we emphasize that many men do not rape and are not sexually aroused by laboratory depictions of rape. This suggests that there are cues in the developmental backgrounds of many men that prohibit raping

¹¹⁹ Ms.Pearcey is with the Discovery Institute, which promotes the teaching of divine creation mythology in U.S. schools as a scientific alternative to Darwinism.

¹²⁰ Randy Thornhill. -The Biology of Human Rapel, *Jurimetrics J.*, Vol. 39, pp.137 – 147. 1999.

behavior.¹²¹ These cues, in part, may involve boys growing up with adequate resources, father presence, and enduring social relationships with others. That all boys are potential rapists is only bad news from science if people continue to ignore the utility of evolutionary biology for understanding rape's proximate causes. The media has presented various inaccurate depictions of the book's treatment of rape victims' psychological pain following rape. This stems from, in part, the uncritical media picking upon a comment in the paper by Coyne and Berry.¹²² Thornhill states that, -reproductive age female rape victims have more mental pain than post-reproductive-age female victims.¹²³ Thus, rape offence is an experience that would have reduced female reproductive success in human ancestral settings. Psychological pain is widely recognized in evolutionary biology as an adaptation that functions as a defense against social losses by aiding in solving the problems involved and avoiding them in the future. The researcher here discussed from his perspective the entire idea about rape victims and its perpetrator. The researcher tried to find out the root cause of rape problem as per the nature of the offenders. Now the researcher desires to know the basic rights available to women irrespective of her caste, religion and region inter-alia so called Human Rights that will be discussed in next chapter.

¹²¹ Nancy Thornhill and Randy Thornhill. —An Evolutionary Analysis of Psychological Pain Following Rape: I. The Effects of Victim's Age and Martial Status, *Ethology and Sociobiology*, Vol. 11, pp.155 – 176. 1990.

¹²² Sarah L. Mesnick. -*Sexual Alliances: Evidence and Evolutionary Implications*], in Gowatry, Patricia A. (ed.), pp. 207 – 257. N.Y., Chapman and Hall, NY.

¹²³ Frans B.M. de Waal., Survival of the Rapist, *N.Y. Times*, Book Review, pp. 1 – 2. 2 April, 2000.

Chapter 3

HUMAN RIGHTS OF VICTIMS OF RAPE: AN EVALUATION OF INTERNATIONAL INSTRUMENTS IN NATIONAL PERSPECTIVE

CHAPTER 3

HUMAN RIGHTS OF VICTIMS OF RAPE: AN EVALUATION OF INTERNATIONAL INSTRUMENTS IN NATIONAL PERSPECTIVE

Offenders Have rights But Do Victims?

The 10th U.N. Congress ¹

Researcher has discussed in the chapter one and two the basic concept of crime of rape and the reasons for rape crime. Now the researcher analyzes the legal mechanism to curb this problem. It is necessary to know what rights are available to women as human rights. So the researcher is discussing same rights in this chapter. Human beings are considered supreme among all creatures in this world. It is perhaps due to this celebrated glory of man that human community, right from the early days of civilization, has consistently held certain basic values, which are inviolable under any circumstance. These basic values of life and personal liberty are known with different terms as civil liberties and human rights. It is historically evident that there is full of instances of successful and endless struggle whenever authorities are protecting human rights. These authorities comprising the police, prosecution authorities, Judiciary and other authorities form the core of the criminal justice system in a country. It is quite often when they end up violating these rights of their own people, not only they are violating our Constitution's basic principles which guarantees to all citizens certain fundamental rights but also amounts to gross violation of the human rights, the Universal declaration of Human Rights (hereinafter referred to as UDHR), 1948.

¹ Tenth United Nation Congress on the Prevention of Crimes and the Treatment of offender, 2000.

Firstly, criminologists as well the international bodies focused only on the human rights of offenders but the focus started shifting when they encountered the fact that the person who is victim of crime is getting nothing out of the whole process of criminal justice system except so called satisfaction by seeing the offender punished. -Therefore jurists, penologist etc. in every country started giving their attention to the cause of victim. The General Assembly of the United Nations, at its 96th plenary on November 29, 1985 adopted the declaration of basic principles of justice for victims of crime and abuse of power (hereinafter referred as the U.N. Declaration on Victims).² The Declaration constitutes an important recognition of the need to set norms and minimum standards in international law for the protection of victims of crime.

Meaning of Human Rights

In its broad sense human rights may be regarded as those fundamental and inalienable rights which are possessed by every human being, irrespective of his or her nationality, race, religion sex, etc. simply because he or she is a human being. Human rights are thus those rights which are inherent in our nature and without which we cannot live as human beings. These fundamental freedoms allow us to fully develop and use our human qualities, intelligence, talents, and conscience and to satisfy our physical, spiritual and other needs. These are sometimes called fundamental rights or basic rights or natural rights; as such rights cannot, rather must not, be taken away by any legislature or any act of the government. As natural rights, they are seen as belonging to men and women by their very nature. They may also be described as ‘_common rights’ which all men and women in the world would possess,

² See <http://www.nationamaster.com/graph-T/eni-rap4int-1, www.all10list.com>. accessed on December 18, 2014 at 9:30 p.m.

just as the common law in England, for example, it was the body of rules and customs which, unlike local customs, governed the whole country.³ Such rights have been set out in our Constitution as the expression of fundamental rights.⁴ -The recognition of equal and inalienable rights of every members of the family is the basic foundation of freedom, justice and peace in the world. The enjoyment of human rights has always been proclaimed as the highest aspiration of the common people. In India, section 2 (d) of The Protection of Human Rights Act, 1993 (hereinafter referred as Human Rights Act) defines human rights as the right relating to liberty, equality and dignity of the individual guaranteed by the Indian Constitution as embodied in the fundamental rights and also in the International Covenants.⁵

Indian Law and International Instrument on Human Rights

Prior to the adoption of the Constitution, the Indian practice regarding the International Law to Municipal Law was similar to the British practice. When the Indian Constitution came into force everything depended upon its provisions. Therefore, in order to know the position of relationship between International Laws in the form of international instruments and internal law in India, it is necessary to see the relevant provisions of the Constitution of India.

The Indian Constitution and its spirit towards International Law.

Article 51 of the constitution provides the following:

-The state shall Endeavour to

(a) Promote international peace and security;

³ Fawcett, J. E.S. -*The law of Nation Alien lane*”, The Penguin press London (1968) p. 151.

⁴ Part III of The Constitution of India consists of fundamental rights.

⁵ *The Preamble*, UDHR 1948.

(b) Maintain just and honourable relations between nations; and

(c) Foster respect for international law and treaty obligations in the dealings of organized peoples with one another....”

In the present context, -article 51 (c) is relevant though it does not give any clear picture regarding the relationship between the international law and the municipal law. The said Articles is incorporated under Part IV of the Constitution, which deals with the Directive Principles of the State Policy (hereinafter referred as directive principles). Provisions contained in this part are unenforceable by any court and are non-justifiable. However, it would be wrong to contend that article 51 is of no relevance and provides no guidance at all. Article 37 which in its first part provides that the provisions contained in part IV of the Constitution are non-justiciable adds in its later part in unmistakable terms that the principles are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. The majority of constitutional experts in the country now subscribe to the view that simply because of the principles contained in Part IV are non-justifiable, it cannot be successfully contended that they are of no significance or even of less significance than the fundamental rights contained in part III of the Constitution, which are justiciable. Amendments of the Constitution particularly 24th and 25th amendments confirmed this view.⁶ In *A.D.M Jabalpur v. Shukla*⁷ one of the questions, inter alia, for consideration of the Supreme Court was whether UNDHR

⁶ Kapoor, B. K. *-Human Rights under International law and Indian law* 2nd ed., Central Law Agency, (2001) p. 245.

⁷ AIR, 1976 SC. 1207.

and the two international covenants on human rights of 1966, were part of Indian municipal law. In his dissenting opinion H.R. Khanna J. held that if there was a conflict between the provisions of an international treaty and the municipal law, it is the later that will prevail. But if two construction of the municipal law were possible the court should give the Construction as might bring about harmony between municipal law and international law or treaty. In his view, the constitutional provisions should be construed in such a way as to avoid conflict. The view expressed by Judge seems to be rational and better while accords with the current view. It may be noted here that by the time this case India had not ratified the two Covenants on human rights and India ratified the two covenants on March 27, 1979.

Although the position will be different when there is no conflict between the International Convention and the domestic law. While dealing with the problem of sexual harassment of working women, the Supreme Court pointed out in *Vishakha v. State of Rajasthan*.⁸

-In the absence of domestic law occupying the field to formulate effective measures to check the evil of sexual harassment of working women at all places of work, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality of right to work with human dignity in article 14, 15, 19 (1) (g) and 21 and of the Constitution and the safeguards against sexual harassment implicit therein. Any international convention not consistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof to promote the object of constitutional guarantee.¶ (*J.S. Verma, CJI*)

⁸ AIR 1997 SC 3011.

The apex court observed it in consonance with the spirit of article 51(c). It is also implicit in the enabling power of parliament laws for implementing the international conventions, and norms by virtue of article 253 read with entry 14 of the Union List in seventh schedule of the Constitution. The court stated further.

-It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law.⁹

Victims of crimes its- meanings

The etymological meaning

As per the best knowledge of researcher, Indian legislature has not bothered to define -victim of crime under any law and the Indian judiciary is also on the same footing. The etymological meaning of phrase suggests that it would mean or will encompass:

- (a) Anyone suffering physical, emotional or financial harm as a direct result of a crime;
- (b) Spouses and children of the person who has suffered; and
- (c) Parents, foster parents, siblings, guardians or other custodians of minor victims, mentally or physically incapacitated victims, or victims of homicide.¹⁰

Meaning of victim under UN Declaration

Herein reliance can be placed upon the U.N. declaration on victims, which through article 1 and 2 gives exhaustive definition of the phrase:

⁹ See <http://www.ichrp.org>. accessed on May 4, 2015 at 11:00 a.m.

¹⁰ *Ibid.*

Article.1 says that “*Victims means persons who individually or collectively have suffered harm, including physical or mental injury emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member states, including those laws prescribing criminal abuse of power*”

Article 2 says that “*A person may be considered a victim under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term victim also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.*”¹¹

Therefore, the combined effect of these articles problems encompasses everything under the sun that ought to have been the part of definition of the phrase.

The combined effect of above mentioned articles probably encompasses everything under the sun that ought to have been the process of definition of the phrase.

Human Rights of Victim and Human Rights of Accused

Some offenders rights are guaranteed by national Constitutions and are also included in international law and a number of international instruments, however, in contrast to this, victim’s rights have been recognized lately and that too only by one international instrument,¹² e.g., the UN Declaration on victims. Indian Constitution also contains a series of fundamental rights for the offender’s but has none specific for victims

¹¹ U. N. Declaration on Victims, 1985.

¹² *Ibid.*

Rights of offenders

3.4.1.1. Rights of offender under International Instrument:

3.4.1.1. (a) UDHR 1948

All offenders are entitled to a series of rights, which can be termed as (i) protection and safeguards, such as protection against arbitrary arrest; detention, exile etc. and safeguards e.g. counsel, fair hearing, public trial, translators; appeal; etc (ii) fundamental rights like rights to life, liberty and safety.¹³

(b) ICCPR 1966

Similarly, under International Covenant on Civil and Political Rights there is a list of Article (Article 6-15) which grants similar protections and safeguards as stated above to the accused of a crime.

(c) The convention against torture and cruel Inhuman or Degrading

Treatment or Punishment, 1984

-The Convention totally outlaws intimidation, coercion, infliction of pain or suffering, whether mental or physical, for securing information, besides providing all the same protections discussed above to the accused.¹⁴ -This has been upheld by the

¹³ Provision relating to the right of the offender under declaration are as follows:
Article 3, -Everyone has right to life, liberty and security of a person.∥
Article 5, -No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.∥
Article 9, -No one shall be subjected to arbitrary arrest, detention or exile.∥
Article 10, -Everyone is entitled in full equality to fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him.∥
-Article 11(1), -Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence∥
—Article 12, —Right to privacy has been recognized as both a fundamental right and a right guaranteed (As published by the United Nations Department of Public Information DPS/2088/AC February (2000).∥

¹⁴ Articles 6, 9, 12, 14, 17.

Supreme Court of India as a fundamental right under article 21 of the Constitution. The same has been amended being part of the basic structure.¹⁵

Rights of offender under Indian Criminal Justice

System

Indian criminal justice system includes the following rights for offenders:

(a) Rights under the Constitution of India

- -not to be subject to arbitrary arrest, detention, search or seizure;¹⁶
- to protection in respect of conviction for offences¹⁷
- to speedy trial¹⁸
- to silence, not to incriminate himself¹⁹
- to move a court to enforce fundamental rights²⁰
- to legal aid²¹

3.4.1.2. (b) Rights under other Laws²²

- — to counsel;
- presumption of innocence;
- standard of proof (beyond reasonable doubt);

¹⁵ Bidwai, Praful, -Righting terror, upholding law, The centrality of human rights, complied by UNDP, Sustainable Development.

¹⁶ The Constitution of India, Article, 22.

¹⁷ *Ibid.*, Article 20.

¹⁸ Implicit in Article in 21

¹⁹ *Ibid.*

²⁰ *Ibid.* Article 32 and 226; Article 359, says that ever during a state of emergency, the right to move a court to enforce fundamental rights may be temporarily suspended, but article 20 and 21 cannot be suspended.

²¹ *Ibid.* Article 39A.

²² S. 145 of Indian Evidence Act of 1872.

- to a public trial by an independent court;
- to test the prosecution evidence (e.g. to cross-examine witnesses);
- to give and call evidence;
- to appeal; and
- not to be arrested or prosecuted themselves for answering in any civil or criminal proceeding^l

Malimath Committee,²³ -had been vested with the broad mandate to examine the fundamental principles of criminal jurisprudence included the Constitutional provisions relating to criminal jurisprudence, including the Constitutional provisions relating to the criminal jurisprudence and such if any modifications and amendments are required. In 2013, criminal law has been amended²⁴ but it does not give to victims the same protection as have been provided under previous laws. The Constitutional Review Committee did not recommended the taking away any of accused's rights. Accused are still enjoying every right with full support of the Constitution.

Rights of victims

The international community agreed in the U.N Declaration on victims, the following rights are available for victims:

- -to be treated with respect and recognition;
- to be entitled to adequate support services;
- to receive information about the progress of the case;

²³ *Supra* note 34.

²⁴ The Criminal law (Amendment) Act, 2013.

- to be present and give input to the decision-making;
- to counsel;
- to protection of physical safety and privacy and;
- of compensation, from both the offender and the state¹

Conflict of rights

The main problem with victims' rights is their potential to clash with those of offenders. The UN Declaration, itself stipulates that victims' rights must not interfere with the offender's right to a fair trial. The most significant conflict is that victims are exposed to repeat cross-examination in public about sensitive matters to satisfy the offender's right to a fair trial. Victims are not allowed to speak in key decisions made by the court, including those about sentencing parole and probation.

International Crime Victims Survey (ICVS), 2000

Under ICVS offenders may now have several well-entrenched rights, but a growing number of surveys have revealed widespread dissatisfaction among their victims. -More than 50 percent of victims around the world are unhappy about the way police treat them, and many others end up severely traumatized by criminal justice systems, according to the International Crime Victims Survey (hereinafter referred as ICVS) which has been carried out in more than 60 countries over the past decade including south Asian countries like India. Mr. Van Dijk, a principal officer of the UN Centre for International Crime Prevention, who is also a key initiator of the ICVS, noted that the police attitude towards women in some Asian countries was not 'up to standard'. In his words: *If private companies may exercise criminal justice of*

*the world, they would all go out of business because half of their main customers who are the victims of crime have dissatisfied with their services.*²⁵

According to human rights watch (hereinafter referred as HRW), –police in some Asian countries routinely reject complaints of victims of sexual violence and harass them. It is submitted that such incidence are not uncommon in India as well.²⁶ –Some nations have taken steps to protect victims from this kind of onslaught. The US Supreme Court, for example, recently decided not to reopen rape cases on the grounds of new defense evidence because this could inflict fresh trauma upon victims. In the United States, victims have campaigned for an amendment to the Federal Constitution they would allow them to attend and speak at all crucial stages of criminal proceedings. According to their argument this would not compromise offenders rights, but give victims‘ rights equal weight.²⁷–Experiment has also been made with new methods that aim to satisfy both offenders and victims. In New Zealand, restorative justice tries to satisfy victims‘ offenders and their families by bringing them together in informal meetings to discuss the offence. The object of restorative justice is for offenders to compensate victims for damages, with offenders‘ family sharing responsibility. The method has been successful in juvenile cases but how it would work with more serious crimes, such as murder or rape, are still unclear.²⁸

²⁵ In an effort to refocus attention on the UN Victim. Declaration, delegates at the 10th United Nation Crime Congress, 2000 reviewed the progress on National action plans to boost victims right, <http://www.amnesty.org/> April 14, 2015 at 9:00 p.m.

²⁶ *Ibid.*

²⁷ Ellen and Justice Harris Lord, Impact Statement - A Victim's Right to speak ... A Victim's Responsibility to Listen National Centre for victims of crime. Arlington, VA, (1994).

²⁸ Regional Centre for Victims of Crime, Statutory and Constitutional Protection of Victims' right implementation and Impact on crime Victims. Final Report Arlington VA, Table C.9 (1996).

International Instruments on Human Rights of Women

It is well established that women constitute half the world's population; there is still no society in which they enjoy full equality with men. Patriarchal attitudes and consequent power imbalances have adversely affected women culturally, socially, politically and economically. The UNDHR in its preamble (Article 2) while reaffirming the faith in the dignity and worth of the human person and in the equal rights of men and women, envisaged the enjoyment of such rights without any distinction of any kind, including discrimination on the basis of sex. However gender discrimination constitutes one of the most pervasive forms of violation of human rights. In the light of this fact the Vienna Declaration of 1993 explicitly asserts that the human rights of women are an inalienable, integral and indivisible part of UDHR. Later in that year, the UN General Assembly adopted the Declaration on the Elimination of Violence Against Women to strengthen global efforts to eradicate the problem which defines 'violence against women' as any act of gender based violence that results in or is likely to result in, physical sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring to public or private life. As regards the later, further violence against women includes the physical, sexual and psychological violence occurring in the family, other traditional practices harmful to women, on-spousal violence and violence related to exploitation. For long due to public and private dichotomy in human rights jurisprudence, violence perpetrated against women within the four walls of her home remained ignored and could not be brought under the purview of UN instruments and local legislations, however the international human rights discourse has identified and recognized the private sphere violations of the

human rights of women, this include victims of rape as well. As in general it is the woman who becomes the victim of rape in reality.

The U.N. Declaration on victims recognized four important components of the rights of victims of crime access to justice and fair treatment; restitution compensation and assistance. An analysis of these four components falls under the different agencies of Indian criminal justice system and has been discussed in detail under the respective chapters of the present research.

The Constitution of India that propagates the spirit of equality before law through Art. 14 and by Art. 15, it mandates the state, not to discriminate between citizens on certain grounds, including the sex of the person. Art. 15(3) is an ameliorative provision, which authorizes the state to make special provision for women and children. However, since the adoption of the Constitution the situation so far as the victims of rape are concerned has not changed significantly because of the existence of discriminatory laws on the one hand and lack of political will to enforce laws that do grant women their due rights on the other.

-International Instruments provided by the United Nations should ideally form the corpus of international customary law, applicable in all democratic countries. If the instrument is ratified, a signatory is bound to bring in laws that conform to United Nations standards. Even if these instruments are not legally binding, they are morally compelling. India has yet to ratify a host of international instruments. The mandate of the National Human Rights Commission (hereinafter referred as NHRC) established under the Human Rights Act, provides a lens through which the situation can be better understood. According to the statement of objects and reasons of the Human Rights Act, the NHRC would review the existing laws, procedure, and the system of

administration. On January 18, 1994, South Asia Human Rights Documentation Centre (hereinafter referred as SAHRDC) wrote to NHRC to reiterate SAHRDC's desire to see Clarification on clause 1, sub-clause (d), as discussed earlier, 'Human Rights' as defined in the sub-clause (d) of clause 1 of the Human Rights Act, is extremely restrictive and does not adhere to the international instruments. In fact that it goes against the very spirit of the UNDHR. However, in its first Annual Report the NHRC suggested some amendments to the Human Rights Act. Referring to the same section human rights shall mean the right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants, Conventions and Treaties to which India is a party. The only difference in the suggested amendments is that if India is a party to a Covenant they do not have to be legally enforceable in the courts in India for the NHRC to act on petitions based on these concerned human rights issues.²⁹

Custodial Crimes – A gross violation of Human Rights by state agencies.

The increasing tendency in the Indian society towards criminalization of police and an attitude of irresponsibility on the part of the regime, leading to a state of 'government lawlessness' where little importance is given to the rule of law. The worst impact of these state affairs can be witnessed in the manner the Indian police, paramilitary forces, prison system, hospital and the state run homes and other agencies operate. In their functioning they create another class of victims of criminal violence and abuse of power, *i.e.* victims of custodial rape.

²⁹ India Human Rights Report; see http://www.ncbuy.com/reference/cowby/iontro_in.html. June 11, 2006. at 10:44 p.m.

Victimization in state runs homes

The state run homes for destitute women children etc. and the patients in the state mental hospitals are equally important here. These closely guarded institutions have become state funded brothels. The problem becomes worse when women and children are abused by the functionaries appointed by the state to safeguard them. Escape of society from juvenile homes, complaints of sexual abuse by staff administration is not rare news touches the ear. Such features are too common in daily newspapers.

Victimization under police custody.

Justice A.N. Mulla had once commented:

*-I say it with all sense of responsibility that there is not a single lawless group in the whole country whose record of crime is anywhere near the record of that organized unit which is known as the Indian Police Force.*³⁰

In fact the police force has gained much negative publicity for its lawlessness. More than two decades ago, a public campaign over the acquittal by the Supreme Court of constables *Tukaram* and *Ganpat*³¹ accused of custodial rape (disbelieving the testimony of the prosecutrix Mathura in 1979) finally led to the Criminal Law Amendment.³² Section 114-A introduced in the Indian Evidence Act by this amendment, lays down that the court shall presume lack of consent in cases of custodial rape where sexual intercourse by the accused is proved and the woman states that she did not consent. The amendment, however, seems to have had little effect in practices. Contrary to popular impression, no overall shift of burden of proof

³⁰ —Custodial death abuse of police power rising, *The Times of India*, Nov. 22, 2014 New Delhi, p. 10.

³¹ Ch. 5, Table of Cases No. 03.

³² *Supra* note 80.

was brought about by the amendment. The legal position is not that the accused has to prove his innocence in cases of custodial rape. Rather prosecution has to first establish the factum of sexual intercourse without consent.

The entire criminal justice system in rape cases started from the lodging of the first information report (FIR), which the police officials are always reluctant to register.³³ Medical examination recording of statements by the police and depositions in court till the finalization of case human rights of victims are grossly violated by each and every agency of legal system.³⁴ -Criminalization of the police through corruption bad leadership and political interference is growing so as the disregard for the human rights of victims.³⁵

Apart from the less conviction in custodial rape raises serious questions about the working of the law.³⁶ -This affects not just crime control, but also the maintenance of law and order. Atrocities by the security forces have grown much more in politically disturbed area such as Kashmir and Assam. Police misbehavior operates in a different sphere altogether and in that sphere the crime of rape for the most part is quite normal. It is here that the most brutal behaviour of the police and the most callous face of the criminal justice system are exhibited.³⁷

³³ This certainly is a violation of article 7 and 8 of UDHR and Article 14 of -The Indian Constitution as they speak about the equality of all before the law and everyone is right to an effective remedy by competent tribunal for violation of their fundamental rights. |

³⁴ *Ibid.*

³⁵ -Bilkis rape case- CBI indicts Gujrat Policel, *The Times of India*, February 26, 2005, New Delhi, p. 5.

³⁶ —Another blow to women's hopes of getting justice through the courts, the session court of Delhi on March 16, 2005 acquitted sub inspector RS Sharma and Jaipal Singh of Custodial rape on grounds of Lack of evidence. The incident took place within the presents of the Tilak Marg Police Station, hereby a stone's throw from the Supreme Court of India Cops acquitted, *The Hindu*, March 18, 2005, Hyderabad, p. 86.

³⁷ PUCL response to questionnaire by committee on reforms of criminal of criminal justice system PUCL Bulletin, November 2002: <http://www.pucl.org/topics/law2009/response.html>. August, 14, 2014. at 5:05 p.m.

Human Rights violation by state health agencies

It is extending aspect of the violation of human rights of victims by the state, beyond physical torture. Health professionals are invariably involved in the investigation of human rights violation through the conduct of medical examination of the rape victims and autopsy in case of rape followed by murder of the victim. The abysmal condition of medical examination room, conduct of examinations across the country, conduct of autopsies, quality of their reports and access to these reports *etc.* have been a matter of concern for long. Reports in the press about the pressure exerted by the police on doctor to give favorite findings, especially in custodial rapes.³⁸ It is a common practice that is incomplete and often unscientific medical reports are produced in rape cases, making grounds for acquittal. The use of torture to exceeded information, confessions and obtain obedience is widespread within the criminal justice system. There have been instances of doctors participating in torture, although in India there is little documentation of such involvement.

The issue emerged again when in the aftermath of Godhra incident in 2003, the extremist committed rape and the victims were taken to the government hospital in Vadodare (Gujrat) for medical examination. The response of the officials of the medical college and hospital staff, that cooperation with the police was their duty once again raised the concern about dual responsibility. As doctors in government service maintain their loyalty to the employer (State) even when asked to participate in the violation of human rights.³⁹

³⁸ *Ibid.*

³⁹ -Gang rape victim eyes justice for Gujrat Women after ruling, *The Hindu*, August 9, 2014 Hyderabad, p. 3.

Contemporary response of the Supreme Court on custodial crime

The Constitutional rights that have been granted to the victim of custodial crime to receive compensation were reiterated by the Supreme Court in *Nilabati Behera v. State of Orissa*.⁴⁰ The court held that it was not enough to relegate the heirs of victim of custodial violence to the ordinary remedy of a civil suit. The right to get relief of compensation in public law from courts exercising their writ jurisdiction was explicitly recognized. This was further developed in *D.K. Basu v. State of West Bengal*⁴¹ where it was explained that, the award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortuous act, committed by the functionaries of the state. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen under the public law jurisdiction is thus in addition to the conditional remedies and not in derogation of them.⁴²

Judicial response on Human Rights of rape victims.

In *Mohammed Habib v. state*⁴³ Delhi High Court bench allowed a rapist to go scot-free merely because there was no injury to his penis assuming that the victim had not resisted. That the victim was a seven years old girl who had suffered a ruptured hymen and bite marks on her body was not taken into consideration. Even witnesses, who saw the rape at a bus stop and then deposed in court, were unable to sway the court's judgment. Any such requirements would undermine and be contrary to

⁴⁰ (1993) 2 SCC 746.

⁴¹ (1997) 1 SCC 416.

⁴² *State of A.P. v. Challa Ramkrishna Reddy*, (2000) 5 SCC 712.

⁴³ 1989 Cr.L.J.137.

international principles which required states to take appropriate and effective measures to overcome all form of gender-based violence, whether by public or private act and specifically, to ensure that rape laws _give adequate protection to all women and respect their integrity and dignity‘ .⁴⁴

In the *Bhanwari Devi* case⁴⁵ a judge remarked that the victim could not have been raped since she was a *Dalit* while the accused hailed from the upper caste, and an upper caste man would not stop to sexual relations with a *Dalit*. On November 15, 1995 the judgment passed by District and Sessions Court, Jaipur acquitted five men of gang rape of Bhanwari Devi, a *Sathin* working with the Women’s Development Program of Rajasthan. The judgment seeks of prejudice and gender bias which have become characteristic of sexual offence cases.

These judgments run contrary to the commitment made by the government of India when it ratified in CEDAW in July 1993. The convention has clearly acknowledged that violence against women is this worst form of discrimination, which violates women’s basic human rights including the right to life with dignity, the rights to liberty and security of person, and the right to equal protection of the laws amongst others.

The Supreme Court of India has started recognizing the plight of victims and has in number of decisions recognized many of the suggested rights and remedies under U.N. Declaration on victims. Apart from the exemplary compensation to victims of crime resulting from state excesses, the Supreme Court has also identified

⁴⁴ Committee on, -Elimination of All form of Violence against Women, Recommendation 19 on Violence against WomenI (Eleventh Session 1992), Para 24(b).

⁴⁵ On November 15, 1995 the judgment passed by District & Session Court, Jaipur Rajasthan and Acquitted five men namely Gyarsa Gujar, Badri Gujar, Ram Sukh, Ram Karan Gujar and Shrivam Panda from the charge of gang rape on Bhanwari Working with the women's development program of Rajasthan. The judgment seeks of prejudice and gender bias which hence become characteristic of sexual offence cases.

various other remedies. For example, the Supreme Court in *Bodhisattave v. Ms. Subdhra Chakraborty*⁴⁶ has already held that rape amounts to violation of the fundamental right guaranteed to woman under article 21 of the Constitution of India and in the case of *Chairman, Railway Board and others v. Chandrima Das and others*⁴⁷ the apex court held, –that even those who are not citizens of this country and came here merely as tourists or in any other capacity will be entitled to the protection of their lives in accordance with the Constitutional provisions, they also have right of life in this country. Thus, they also have the right to live, so long as they are here, with human dignity. The state is under an obligation to protect the life of the person who is not citizen. Similarly in *Smt. Hanuffa Khatoon* case Court stated, –that the victim who came here as a citizen of Bangladesh was nevertheless, entitled to all the constitutional rights available to a citizen so far as ‘right to life’ was concerned. As a national of another country, she could not be subjected to a treatment, which was below dignity, nor could she be subjected to physical violence at the hands of government employees who outraged her modesty. The right available to her under article 21 was thus violated. Consequently, the state was under the Constitutional liability to pay the compensation to her.

Another incident of violation of human rights of victims of rape has been brought to the notice of the apex court though in a piecemeal manner and the apex court has also given appropriate directions to the government for protection of human rights of the aggrieved party in various judicial pronouncements.⁴⁸ The apex court cannot remain oblivious of the social needs and requirements for protection of human rights of all concerned by restoring the credibility of the criminal justice system. It is

⁴⁶ (1996) 1 SCC 490.

⁴⁷ 2000 1 AD SC 401.

⁴⁸ *Delhi Domestic Working Women Association Forum v. Union of India*, 1995 SCC (Cr.), *Vishakha Case*.

really the innocents, fragile persons due to the failure of system that need the court's protection for securing to themselves the enjoyment of human rights.

The Supreme Court in *Delhi Domestic working women's Forum*⁴⁹ gave directions to the government for providing the following assistance to victims of rape

- (a) -Legal assistance at police station;
- (b) A list of advocates willing to act in these cases should be kept at police station;
- (c) Police should be under a duty to inform the victim of her right to get free legal assistance before any questions were asked to her; and
- (d) The role of victim's advocate would not only be to assist her in police station and the court but to guide her as to how the victim might get mind counseling and medical assistance

-Whereas later on the apex court has clearly recognizes the rights of victims, but mere recognition is not sufficient unless such directions are implemented in its true sense and spirits. For instance, judgments in rape cases continues to work against woman because of traditional notions of patriarchy and codes of conduct completely minimizing a woman's vulnerability as well as her expression of violence.⁵⁰ In the observation of Justice V.R. Krishna Iyer, a former judge of the Supreme Court,⁵¹ -indeed human rights have reality only if judge's sensitiveness with society are concerns, and they are always available to undo violations of rights. Injustice is the end of government. It is the end of civil society. In his opinion justice has been and ever will be pursued until it is obtained or until liberty is secured.

⁴⁹ 1995 SCC (Cr.) 7.

⁵⁰ -Women increasingly usage from the lawl, South Asian Citizens Wire March 7, 2014.

⁵¹ Krishna. Iyer., V.R. -Indian Judicaturell, *Frontline*, Volume 19, issue 11, May 25 June 2002.

The apex court in *State of H.P. v. Shree Kant Shekari*⁵² held that, -rape is not only crime against the women; 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 a crime against basic human rights, and is also violative of the victim's most cherished of the fundamental rights namely the right to life contained in Article 21 of the Constitution. The courts are, therefore, expected to deal with case of sexual crime against women with utmost sensitivity.¶

As report submitted by Malimath Committee⁵³ clearly admitted that, -people by and large have lost confidence in the criminal justice system realizing that victims feel ignored and are crying for attention and justice. In its turn the report had made extensive recommendations to ensure that the system must focus on justice to victims.¶⁵⁴ -It is submitted that Indian criminal justice administration has come up with new direction recently in 2013 towards better and quicker justice once the right of victims are recognized by law.¶⁵⁵ However, a common threat in most of the Committee's recommendations is an absolute disregard for human rights both Constitutional and International standards.

Researcher in this chapter focused on Human rights of victim of rape with the idea of U.N. Declaration on the related subject and finds that many countries in Declaration agreed to draw up action plans to help victims gain better access to legal proceedings, fair treatment, restitution for damages and general assistance in legal proceedings. The document led to new laws in several nations as well as some local projects to boost victims' rights. The NCW has funded projects to help women

⁵² *Ibid.*

⁵³ *Supra* note 34.

⁵⁴ The Criminal Law Amendment Act, 2013.

⁵⁵ *Ibid.*

victims of domestic and sexual violence. This organization has not only become a pioneer in raising awareness about sexual violence and educating victims about their rights, but has taught police that they have an obligation to provide justice for women Police and Prosecutors. India still treat victims with disrespect, keep them in the dark about cases and the make vital decisions without them. Unlike offenders, victims of rape are to be given free legal counsel. While some reforms have been introduced in the criminal laws to deal with the issue of violence against women but they have never been effectively implemented. In spite of these efforts however, overall progress in victims' rights is very slow. The researcher in this chapter reached on the conclusion of poor implementation of International instruments in domestic laws like in the Constitution and Statutes. Now the researcher's assessment here guides his work in chapter four and five where the study is concerned with the place of victims in the Indian Criminal Justice System and Judicial protection to the rape victims.

CHAPTER 4
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CHAPTER 4

SOCIOLOGICAL AND REHABILITATIVE ASPECT OF VICTIMS OF RAPE

After discussing previous chapter six, the researcher has seen international perspective of rape victims. The judgment of international tribunal declaring rape an offence against humanity is quit a new development in International law that has been also focused. Now the researcher in seven chapters discusses two other important aspect of the problem. The first is sociological aspect, which reflects societal response towards rape victims. The second is relating to the rehabilitative factor and also focused on aftermath of rape the Indian judicial response towards rehabilitation of victims.

It has been observed that Indian society is by and large patriarchal in its outlook. In Indian culture, a woman's body seen as an object of pride or pleasure, but as something that is made impure everyday¹ an abode of sinfulness. The social context determines whether the women is viewed as divine, good, or bad – as partner in ritual as mother, or as a whole. In the context of rituals, women are honored and respected with honor. In her material aspect, actual or potential, women are again a person deserving all reverence. It is only just as a woman, as a female sexual being, that the patriarchal culture's horror and scorns are reflected.

Culture is vital in human species, but some culture patterns are destructive. Although rape has always existed, it had only lately been observed by social scientists

¹ Reuss Suzette, J.A, A Poem referred from, Parks Jean M., Rape Victim's Perception of Long-term Effects Three or more years Post-Rape, Viano Emilio, (ed.), *The Victimology Handbook Research Findings, Treatment, and Public Policy*, Trinity University, Garland Publishing, Inc. New York London (1990), p. 21.

and practitioners, as a form of violence. Researcher's focus is on English author, Susan Griffin who wrote:

-I have never been free of the fear of rape”²

She touched a responsive chord in most women of the world. Everyone knows the fear of being alone at home late at night or the terror strikes her when she walks along on a lonely street or receives the telephone call.³ The author also acknowledges these situations as ‘mini rapes’ the crowded bus, the whistle from a passing car, the stair at her bust during a conversation, a universal phenomenon Griffin, though has argued in the context of western society but admitted that the same is absolutely true in case of Indian society. She is absolutely right in her argument that rape is a kind of different situational as per circumstances.

Sociological Evaluation of Legal Definition of Rape

If healthy heterosexuality were characterized by loving warm and reciprocally specifically satisfying actions, then rape could be defined as sex with consent therefore involving either domination or violence. Instead it is legally defined as sexual intercourse by a male with a female other than his wife, without the consent of the woman and affected by forces duress intimidation, or deception as to the nature of the act. The spousal exemption in the law, which still remains in effect in India means that a husband cannot be guilty of raping his wife, even if he forces intercourse against her will. The implication of this loophole that violent, unwanted sex does not necessarily define rape. Instead rape is illegal sex-that is, sexual assault by a man who has no legal rights over the woman. In other words, in the eyes of law, violence in

² Referred from Human Dianne, F., *The Rape Culture* (3rded.) Prentice Hall Publication (1984), p. 34.

³ *Ibid.*

legal sexual intercourse is permissible, but sexual relations with woman who is not his wife then it is a crime.

Unawareness of Their Own Victimization

Although victimization (sexual) of women and children is widespread, consequential, and clear cut surprisingly, it is invisible. Victim's sufferings often go unrecognized and unacknowledged, not only by the larger society but even by the victims themselves. Society may simply be unwilling to acknowledge such victimization. New ways of thinking about some form of victimization or a new willingness of victims to speak up can make a neglected social problem visible. In this scenario recently identifying new types of victims of sexual abuse reflects social progress, as an enlightened society gives victimization the attention it deserves.

Victimisation also may be deliberately concealed. But secrecy does not require great conspiracies. Offenders may convince individual victims for example, sexually abused children, to keep the experience secret. Beyond failure of society to acknowledge victims, victims themselves may not recognize victimization for what it is. They may be ashamed, afraid, or otherwise unwilling to reveal their victimization to others for the reasons well understandable like social stigmatisation losing relations or chances of marriage in case of young girls, jobs and many more interests.

Unawareness of Claims of Victimization by the Society

-In India where a rape occurs every 30 minutes, psychological and mental trauma coupled with physical abuse and societal pressures leads many rape victims to end their lives rather than relive their humiliation in court. NGOs that work on the issue of sexual

violence say that the incidences of suicide are high among rape victims⁴. It takes great courage to step forward and acknowledge one's victimization more specifically in rape cases in which such individuals take a precarious ground against the Indian legal and social institutional form that promote and conceal their victimisation. The victim is always looked upon as sexual object and a person of loose character. There is always problem in accepting her as normal human being, political parties and the media highlight the issues for political advantage but rarely pursue the case until justice is delivered. The atmosphere, as a whole is more hostile thus demoralizes the victim and her supporters.

The system of inequalities which has determined the formulation and application of rape laws is also, as it is commonly believed, is the root cause of rape itself. Women and men do not face each other as equals in our society and their sexual relations are scarcely ever a simple expression of mutual sexual interest in one another. Sexual relationships are inextricable bound up with economic relationships of dependency and ownership, and they involve some kind of trade-off calculation or coercion. Rape is only an extreme manifestation of the coercive sexuality that pervades our entire culture. It is submitted that is an inescapable by-product of a system in which sexual relationship are also power relationships in which female sexuality is a commodity and in which some men have no source of power except physical force. The logical conclusion of this analysis is that in order to eliminate rape we must alter the underlying social structure which produces it.

In rape cases at every stage victims receives no responsibilities from the every section of society. The police prosecutors, judges and general public frequently attribute blame and responsibility to the victim for her own victimization. Proof of rape both to the police and in court often required to take the form of proof of

⁴ Surviving the trauma of rape, *The Tribune*, Nov. 9, 2013, Chandigarh, p.5.

resistance, substantiated the extent of injuries suffered by the victim. The victim is told that it was raped it was because she did not resist enough but if she fights back and is raped and otherwise assaulted police blame her again for bringing about her own injury, because of her resistance. Next come physicians who are hesitant to do medical examination or diagnose injuries as caused by a sexual assault due to their reluctance to go to court to testify on behalf of the prosecution. For many victims the experience of having their account of the events scrutinized mocked or discounted continues outside and inside of the courtroom. It seems it is the victims not the accused were the persons on trial. According to Burgess and Holmstrom the famous English authors says:

-Going to court, for the victim, is as much of a crisis as the actual rape itself.⁵

Our society has an ambivalent and biased attitude towards the victims of rape. Instead of treating them with sympathy for having undergone such a horrifying experience, aspersions are cast upon her character. Unfortunately, these negative responses are often compounded by reactions from family and friends.⁶ Encounters with parents, relatives, friends and spouses many times make victim foolish enough to get raped and for embarrassment and shame that family members will suffer as a result of the attack on victim. Here is an illustration

*-I would rather have my daughter dead than comeback to me spoilt and shamed.*⁷

A wailed and grieving mother of a girl, who after being raped never came home.⁷

⁵ Burgess Ann Wolbert & Holmstrom Lynda Lytle, *Rape: Victim of Crisis*, Bowie, M.D., Robert Brady Co. (1974), p. 197.

⁶ The trauma of rape, *The Hindustan Times*, October 25, 2015, New Delhi, p. 7.

⁷ *Ibid.*

Also, a hierarchical regression indicates that age, sex, education and income are significant predictors of attitudes toward victims.⁸As Justice Krishna lyer, observed in *Rafiq* case;

-When no woman of honor will accuse another of rape since she sacrifices thereby what is dearest to her, we cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken by the victim strikes a judicial mind as probable. When a woman is ravished what is inflicted is not merely physical injury, but the deep sense of some deathless shame⁹

Similarly, the Supreme Court, in *Gurmeet Singh case*¹⁰has clearly explained the victim's testimony;—The courts must, while evaluating evidence remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her.¶

Such judgments are not avail for victims at all. The victim even today have to struggle a lot not only in the legal system to protect her version but also to the society including her own family that has been subjected to rape for no fault of her. Rape is the only crime which the victim must prove her innocence.

The Rape and the Blame Game

⁸ Nagel B., Matsuo, H., McIntyre, K.P., Morrison, N., Attitudes towards victims of rape: Effects of gender, race, religion and social class, June; 20 (6) 2005. 725-37, Department of Pathology, Saint Louis University, USA (2005); see http://www.ncbi.nlm.gov/entrez/query.fcgi?abdb_pub.ed&ernd-search&term-morrisonsn. Accessed on December 25, 2016 at 5:33pm.

⁹ *Ibid.*

¹⁰ *Ibid.*

Rape victims or the society

Victim-type behaviour prompts victimisation

The other aspect of victimization that has not been properly acknowledged is the extent to which seeing oneself as a victim prompts victim type behavior and such victim-type behavior inspires the offence against the person. It is most probable that men like dogs, unconsciously scent fear, and find it gratifying and exciting and ultimately interpret it as a cue for attack, explains one English author.¹¹ Men who are afraid of other men reassert themselves by making women afraid of them. However, the small children who are abused are incapable of feeling fear; they do not understand that keeping on crying will place them in extreme jeopardy. The truth seems to be that female fearfulnesses a cultural construct, instituted and maintained by both men and women in the interests of the dominant, male group. The myth of female victim-hood is emphasized in order to keep women under control, planning their activities, remaining in view, telling where they are going how they are getting there, when they will be home. The father who insists on picking his teenage daughter up if she is out at night and bringing her home in his car is unconsciously instilling fear into her at the same time that he consciously exercises control over her.

Self-Blame: Rape victims feel guilty for being victim of a crime

Even in the 21st century, it is the victim who feels guilty for the crime in Indian society. A research in this area indicates that one of the most common causal attribution responses to rape is self-blame. It appears that self-blame, in victims of rape, appears to be detrimental to the individual's psychological recovery. The concept of victim-blame and Stockholm Syndrome (hereinafter referred as the

¹¹ Geis, F.L., Self fulfilling prophecies: A Social Psychological view of gender. Biell, A.E. & Steinberg, R.J. (ed.), *The Psychological of Gender Guilford*, Press, New York (1993), pp. 9-54.

Syndrome') it is submitted that, Stockholm Syndrome were developed in the west but are basically related to the sociological and psychological aspects of the victims of rape and therefore relevant enough to discuss here.

Victim blame – Its meaning

Victim blaming is holding the victim responsible for what has happened to her/him. One way in which victim blaming is perpetuated is through rape myths. Rape myths allow us to blame the victim and are often common false beliefs.¹² As discussed earlier, the crime of rape is heavily connected with prejudice, stereotype and myth. As a result of these myths, rape has been stigmatized as shameful for the victim.¹³ There may be feelings of grief or anger over the fact that the victim has allowed herself to become devalued or damaged merchandise and such responses may reinforce the victim's sense of humiliation and devaluation.¹⁴

Stockholm syndrome – Its meaning

Another aspect to consider in understanding self-blame that the victim identifies with the perpetrator's worldview in order to understand what will help them to survive. One such phenomenon known as the 'Stockholm syndrome.' It implies the difference between guilt (meant for a perpetrator) and shame (felt by victims and confused with guilt). Victims of especially severe abuse often identify with the abuser' in order to survive.¹⁵ This means she will actually begin to agree with the criticisms and perspectives of the abuser while her

¹² Burt M.R. Cultural myths and supports for rape, *Journal of Personality and Social Psychology*, 38 (1980), pp. 217-230. www.seu.edu/ethics/publications/iie/v3n2/justworld.html.

¹³ Mio, J.S. & Foster, J.D., Effects of Rape upon Victims and families: Implications for a comprehensive family – therapy, *American Journal of Family Therapy*, 19(2), (1991), pp. 147-159

¹⁴ Silverman, D., Sharing the Crisis of Rape: Counseling the mates and family of victims: *American Journal of Orthopsychiatry*, 48 (1978), pp. 166-173.

¹⁵ Burgess, A.W. & Holmstorn, I.L. Rape trauma syndrome, *American Journal of Psychiatry*, 31(9), (1974), pp. 981-986.

own personality, opinions, and views fade to the background; this is a serious set of psychological reaction after rape.¹⁶

Four situations or conditions are present that serve as a foundation for the development of the Syndrome. These situations can be found in

- (i) Hostage, severe abuse, and abusive relationship:
- (ii) The presence of a perceived threat to one's physical or psychological survival and the belief that the abuser would carry out the threat;
- (iii) The presence of a perceived small kindness from the abuser to the victim; and
- (iv) Isolation from perspectives other than those of the abuser and the perceived inability to escape the situation.

In the syndrome there is a daily preoccupation with trouble. Trouble may be any individual, group, situation, comment, or cold meal that may produce a temper tantrum or verbal abuse from the controller or abuser.¹⁷ The abusing partner may threaten to spread rumors or tell intimate details or secrets.

Society plays its own part

¹⁶ McCaul, K.D., Veltum, L.G., Boyechko, V. & Crawford, J.J. Understanding attribution of victim blame for rape: Sex, Violence and Force ability, *Journal of Applied Social Psychology*, 20 (1990), pp. 1-26.

¹⁷ Jalna Hanmes & Sheila Saunders, *Women Violence and Crimes Prevention: A West Yorkshire Study*. Aldershot: Avebury, U.S.A., (1993), p. 128.

Human actions and experiences are best understood as process of individual's choices or as shaped by social arrangements is a main issue in every social theory. Focusing on victim's ability to control their own lives and emphasized the power of social awareness, there is a requirement to develop the roots of our social systems. Their values which reinforce the deep down male dominance philosophy, and patriarchal attitudes which is directly and indirectly associated with the problems of victims of rape.

Reinforcement of male dominance: A continece step of society

It is submitted that as long as sex in our society is construed as a dirty, low, and violent act involving domination of a male over a female, rape will remain a common occurrence. The male dominance here implies that whenever women are in a subordinate position to men, the likelihood for sexual assault is great. Indian society has just begin to see that rape is not the only way in which women and children are sexually victimized, and that other forms of sexual exploitation are rampant in our society. If one peeps through functioning of our society, its various institutions than the fact will come out that rape is logical outcome if man act according to the _feminine masscult mystique, and women act according to the -feminine masculinell both are taught right from their birth to behave, and to act accordingly. Its presence is an indication of widely held that are traditional view of appropriate male and female behaviour, and of how strongly enforced these views are. Our society is helping tool to or one can say it is fully supportive to rape often because it fosters and encourages rape by teaching male and female. It is natural and normal for sexual relations to involve in aggressive behaviour on the part of males. To end, rape people must be

envison a relationship between the sexes that involve sharing of views and equality, and to bring about a social system in which those are fostered.

What Indian women still feels in this early 21st century has been in consonance with investigations made in the late twentieth century by authors Hanmer and Sander, who lists three stages of reaction, first fear, shock and disgust, then anger or outrage, then guilt, shame, or humiliation.¹⁸ The atmosphere of threat that women feel surrounded by is mostly fraudulent. For instance, Sandra McNeill in her book has discussed a situation of a sight of a man exposing his genitals, which is not very uncommon in Indian society as well. It generally causes fear among women; the man who exposes -himselfl is almost always rewarded by the sight of submissive behaviour as women passing by avert their eyes and hasten their steps. According to the author such submissive behaviour may be accepted. In truth, the man standing with his pants down is extremely vulnerable.¹⁹

Rape in form of violence and aggression of male supremacy

As it has been discussed prior, rape and sexual violence are hardly new crime and it would be difficult to state in a conclusive way that men are now more violent than ever before. Yet in the last decade male violence towards women and small children has become one of the biggest socio-legal problems of Indian society. It seems that one of the root causes of the problem of rape also remains in the answers to questions e.g., what is it about male sexuality that makes it a social problem? How have we reached the point where violence is automatically associated with men's

¹⁸ *Ibid.*

¹⁹ Sandra McNeill, *Flashing: Its effect on Women*, Jatna Hammer, & Mary Maynard, (ed.), *Women Violence and Social Control*, Basingstoke: McMillan (1987), p. 126; see also Shiela. Jeffreys. *Indecent Exposure*, Rhodes, D., & Sand McNeill (ed.), *Violence Against Women*, Women Press. London, (1985), p. 128.

sexual behaviour and our relationships with women? For sure, answers are not easy as the questions itself involves the most intricate philosophies, on which our social set-up is based. These assumptions differ between men and women have an ancient time but they were given an important secular and scientific backing in the solutions theories of Charles Darwin's study of natural science. In the plant and animal world convinced him that women's discussing role was to restrain the animal urges of men (which tended specially to threaten human progress towards civilization) and re-entered them into family life.²⁰ This gave a scientific rationale for the trouble standard of female chastity. This model of male urgency and male receptivity still persists despite wider acceptance of women's own sexual needs and pleasures, and the boundary between rape and sex these sexual activity remains blurred.²¹

The idea of natural male aggression has earlier roots also in the 17th century philosophy of Thomas Hobbes. He portrayed man as violent, essentially individualistic and competitive in the selfish pursuit of his objectives. Hobbes philosophized as nature was in fact more description of a particular society, and that the violence and aggression were both a product and a justification for the morality of times.²²

In Indian society, as discussed before men demonstrate their competence as people by -masculine. As a part of the definition of masculinity which involves contempt for anything feminine or for females in general. Reported rapes, in fact, are frequently associated with some form of ridicule and sexual humiliation, such as urination on the victim and anal intercourse, fellatio, and ejaculation in the victim's

²⁰ Taylor, S.E., Adjustment to Threatening events: A Theory of Cognitive Adaptation. American Psychologist, 38 (1983), pp. 1161-1173.

²¹ *Ibid.*

²² Lovenne Clark & Debra Lewis, *Rape: The price of coercive sexuality*, Women's Educational Press, Toronto, (1977), pp. 111-124.

face and hair.²³ Insertion into the woman's vagina of broomsticks, bottles, and other phallic objects is not an uncommon news item in the national daily newspapers. According to Menachem Amir, the overvaluing toughness expresses itself in a disregard for anything associated with fragility. In the rapist's view his assertion of maleness is automatically tied to violent repudiation of anything feminine.²⁴

In this respect some other most relevant findings of the western researchers are worth to discuss. Susan Brown-miller, in her famous book *Against Our Will: Men Women and Rape*²⁵ -first set out the ground for the idea of rape as a universal system of control. She collected a wide range of persuasive supporting evidence for this theory from different historical periods and for different cultures. It has been variously suggested that men's violence is biologically determined; that it is learnt through cultural socialization; or that it is primarily the result of deprivation and the oppressive divisions imposed by the alienated work process to capitalism. Radical feminism has further argued that men are reluctant to confront the problem of violence simply because men enjoy the power. Men know which side their bread is buttered on, and are quite happy to exert control and extort sexual and other services by the use of threat of force. There is an undeniable element of truth in this, yet it seems inadequate as an explanation.

M.G. Clark observation is -touching the core of whole issue. According to him the problem of male sexual violence is principally that of the deep psychic construction of masculinity within the social and material meanings our culture ascribes to it. A potential for violence becomes encoded in the way we are defined as

²³ Man Ejaculated on women's head in Cinema hall, *The Times of India*, March 17, 2003, New Delhi, p. 3.

²⁴ Tony Eardley, *Violence and Sexuality*, Metcalf Andy & Humphries Martin, (ed.), *The Sexuality of Metcalf*, Andy Plato Press, London, (1985), pp. 86-109; See also Dobash, R.E., & Dobash, R.E., *Women, Violence, and Social Change*, Rutledge, London (1992).

²⁵ *Ibid.*

men and learn to experience ourselves in relation to women. ⁻²⁶ To change this in any fundamental way, which will require radical shifts not just in the framework of legal protection and sanctions, or even just in sexual attitudes but also in the organization of child rearing, in household structured and in employment patterns which reproduces masculinity.

Changing perception of criminals

A major difference lies in our society's perception of 'victims' of rape and criminals with a charge of rape. As discussed earlier that conviction rate in cases of rape is merely 6.6%²⁷ which means almost 94% rapist are set free who may be roaming around, may be working with us and for sure ruling us. News items such as 'Minister acquitted from rape charges,'²⁸ Politicians, bureaucrats, involved in sex scandal or acquittal of acquaintances of high police officials, VIPs or ministers from rape charges is not at all a news taken seriously by our society members. The result, today many of them are well respected members of the society. In the early 1960s (time after independence) and till late 1980s, offenders were treated almost as a breed set apart from the rest of society. Conviction for a criminal offence was a relatively rare occurrence in most communities and was likely to bring dishonor and ostracism from family and neighbors. Those convicted, young males from lower class backgrounds were seen by most people such as criminologists, as well as by many working within the criminal justice system as suffering from imbalances of their family and society. Forty five year later, though media stereotypes of criminals' still abound, possession of a criminal conviction is by no means unusual and is much less

²⁶ *Ibid.*

²⁷ Lorene Clark, M.G. *The Right of Women: The theory and practice of ideology of male supremacy* Parlo King .j., and Shea, W.R.(ed.) contemporary issues in political Philosophy, Canadian contemporary Philosophy Series, Science History Publication, New York, (1976).

²⁸ *Times of India*, March 18, 2013, New Delhi, p. 3.

likely to be stigmatizing. Furthermore in-depth and extensive research in criminal field as well as high publicity for particular rape cases has helped to bring about wider recognition that such criminal behaviour is not a near monopoly of poor and deprived young males. Rapists are people hails from a wide range of age groups and all social classes.²⁹

Ostrich head in the sand attitude of the society

The offences of sexual abuse can also be prevented by measures undertaken by the family and the community to some extent. Indian society with rising sexual crime rates have failed to recognize the social antecedents of the criminal and have lacked the courage and will to eradicate them. These communities adopt what would amount to an -ostrich head in the sand attitude while on one hand they tolerate or even encourage sexual norms, entertainment, and commercial advertising that stimulate and glorify deviant sexual passions, though they complain about increase of sexual crimes, while on the other hand they refuse to acknowledge what is obvious to the naked eye that currently accepted social norms lead to sexual transgressions in India.

The commoditization of female sexuality

There is more to the issue of sexual value than has so far been discussed. While it is obvious that loss of virginity is a major setback to women, given that it forever prevents them from being desirable as objects of an exclusive sexual relationship, this does not in itself explain why the law on the one hand apparently refuses to protect women who are somewhat more -liberal in the distribution of their sexuality and the society treats certain types of rape victims as women who got what

²⁹ *Ibid.*

they deserved, were asking for it, or, simply, as women who are not credible because of their 'promiscuity' or 'lewd and unchaste' behavior? A very recent example of such societal reaction was found in the newspaper, following a rape case reported in the capital. Various matter of a gang rape was reported in newspapers committed in Delhi.

The matter was reported in the national newspaper but with the doubtful remarks on victim's presence at that point of times.³⁰ Simple explanation is that women who voluntarily give up that which with them desirable as objects of an exclusive sexual relationship are seen as common property, to be appropriated without penalty however temporary, of any man who desires their services. What this public attitude seems to entail is that the voluntary granting of sexual access outside the social barometer leads to the loss of sexual and physical autonomy. Women are expected to avoid taking any unreasonable risks with the assets they hold. Women who place themselves in compromising situations, who visit frequent low areas of the city or associate with undesirables, are seen as taking risks with themselves which they ought not to take, and as being either reckless or negligent in the protection of which they have a duty to preserve. Since taking of unreasonable risks means that the victim contributes to the commission of the offence by assumption of the risk, she is regarded as being undeserving of redress in the event that risk. This is what that lies behind the popular phrase 'she got what she deserved.'³¹ Women who use their sexuality as they themselves desire, who appropriate to themselves alleged right to sexual autonomy, are 'cast out' and 'rebel'. They are making free with a commodity which they have no right to dispense, and therefore they fall well beyond the definition of the 'respectable' women who were meant to be the beneficiaries of

³⁰ Another rape reported, -The Hindustan Times, October 14, 2005, New Delhi, p. 2.

³¹ Edward Shorter, -*The Making of the Modern Family*, Basis Books, New York (1975), p. 222.

rape laws. In the end, 'respectable' women are just women who agree to live by the rules of the society in which they find themselves, as wives and mothers, who accept their status as forms of private property and relinquish any claim to ownership rights in their own sexuality and reproductive ability. Women who refuse to accept these rules and limitations are viewed as relinquishing any right to be protected, and are thereby punished for making that option.

Role of media

The news, media-newspapers, magazines, radio and television deserve a great deal of credit for contributing to the rediscovery of victims, in contemporary times. Running accounts of crimes as front page items, main cover stories with prominent headlines and as the lead story in broadcasts, is a new standing journalistic tradition. Today everyone is familiar with India's crime problem not because of firsthand experience but because of second hand accounts relayed through the news media. In the past the offender received a lion's share of attention. But now it is routine to inject some 'human interest' by including details about the injured party. Drawing upon an inexhaustible source a crime-ridden society – the news media are saturated with stories about deception, loss, injury, brutality, death, and tragic irony and sexual abuse cases. Given this daily bombardment, members of the general public might well be expected to be experts about how when and where rapes are committed, and what it is like to be victimized.

Although two questions arise with increasing frequency –how accurate is media coverage of the plight of rape crime victims? and –how ethical are journalists when they report on harm suffered by victims? The crime reporting can explain in precise detail just what happens to victims – how they are harmed, what

losses they incur, what emotions they feel, what helps and hinders their recovery. By remaining faithful to the facts, journalists can enable their audience to transcend their own limited experiences with criminal, and see emergencies, tragedies, triumphs, and dangers through the victim's eyes. Skillfully drafted accounts can convey a full picture of the consequences of lawless acts from the raw emotion and drama of the institution to the institutional responses that make up the criminal justice access. Accurate information and well-grounded insightful interpretation allow non-victims to better understand and empathize on the action, the actions and reactions of victims. But to the dismay of victims have as well the news media's coverage of crime and its impact is misleading instead of enlightening, and is a source of fallacies and myths instead of the truth. The images depicted by the news media are often distortion of instead of reality. Several kinds of obvious as well as subtle biases colour most news reports about victimization. First of all, almost by definition, the items considered newsworthy must be attention grabbers; that are some, aspect of the crime, the offender, or the victims must be unusual, unexpected, stranger, perverse, or shocking. What is typical common place, or predictable is not news. As a result, as soon as some pattern of victimization becomes well known, it ceases to be newsworthy. The media's roving eye has a notoriously short attention span.

Superficiality of coverage represents another bias within crime reporting. Space and time limitations dictate that items be short and quick, making fast-paced news more entertaining but less informative. As a result, the intricacies of the victim-offender relationship, and the complicated reactions of victims of crimes, are rarely examined in any depth. At the root of the media's tendency to depart from accurate portrayals of victims' plights is a desire for financial gain. Newspapers, magazines, radio stations, and television networks are profit-oriented businesses. Shocking stories

attract readers, listeners, and viewers. Blaring headlines, gripping accounts, colourful phrasing, memorable quotes, and other forms of media -hypell (hyperbole) build the huge audiences that permit media firm to charge sponsors high rates for advertising. Unfortunately it is difficult to get preventive measures implemented because of politically powerful vested economic interests in the entertainment and commercial advertising industries.

The aftermath of rape

Rape effects on the victim are multidimensional. It can be psychological, medical, financial, and practical that affects personal relations, family life, and ability to function at work and productivity and the general outlook towards society. Trauma, fear, lost of income, medical expenditures, short-term and long-term medical, psychological problems and disabilities also affect many victims. Victims are younger and the repercussion of the offence is greater. Even a single, brief incident can have consequences that extend throughout the victim's life. The theme of lasting consequences is central to the claims of cycles of abuse in which abused children become abusive parents.³²

So far as after-effects of rape on its survivor are concerned not much research has been done in India. However, good research has been conducted in the west specifically in U.S.A on victims' response to sexual assault than to any other crime.³³ It is submitted that the nature of the crime is same so are its effects on its victims irrespective of their caste, creed or country. The culture, however may affects the rehabilitation process, by the way of subsisting the myths regarding rape and its

³² See <http://www.up.org/domentral/study/ker/index.htm>.accessed on December 26, 2016 at 3:33pm.

³³ Burt, Martha, R., Karz Bonnie, L. Rape, Robbery and Burglary: *Responses to Actual and Feared criminal victimization, with special focus on women and Elderly*. *Victimology*, 10 (1985), pp. 325-358.

victims, by holding its conservative attitudes towards victims and blind-eye attitude towards the rapist and thereby keeping its patriarchal outlook. Due care has been taken about Indian culture while making observation from these researches by the researcher.

This research on rape victims has focused on the short term effects during the first year after committing rape with women.³⁴ The rape offence committed on women many years, the effects after the first year are not efforts to describe effects a year or more after the rape have under both situation.³⁵ For example, to increase justice process is often mentioned as a long-term effect and destruct, and affects the lives of the victims.³⁶

Rape trauma syndrome

At the time of rape, victims are in such a state of terror that they have no control over bodily functions, some may laugh hysterically, others weep, some urinate or even defecate, some experience acute original dryness. Rape is not sex and orgasm and the rape is not pleasure, it is the ultimate terror and shame. The victim's body betrays her and appears to succumb to the rapist, even as her mind may remain aloof and strong. Rape is not comparable to any of violent crime. It violates a victim's physical safety and their sexual and psychological integrity. It is sexual terrorism. It is invasive, dehumanizing and humiliating. It is a crime akin to torture. The psychological pain that follows a sexual assault may vary in its intensity, depending on a variety of circumstances, although the reactions are generally difficult and unpleasant. The typical reaction to forced sex,

³⁴ Kilpatrick, Dean, G. Lois, I. Veronen, & Resick Patricia, A. The Aftermath of Rape: Recent empirical Findings, *-American Journal of Orthopsychiatry*, 49 (1978); pp. 658-69; Southerland, Sendra, & Donald Sehart, Patterns of Response among Victims of a Rape, *American Journal of Orthopsychiatry*, 40 (1970), pp. 503-511.

³⁵ *Ibid.*

³⁶ *Ibid.*

sometimes called the rape trauma syndrome, often occurs in two phases, also described by many authors as short term and long term effects on victim.

3.5.2. Post-traumatic stress disorder

The first acute or disruptive phase is characterized by most of the researchers what has been called ‘posttraumatic stress disorder (PTSD)’, involving stress and emotional reactions, such as anxiety, depression, lowered self-esteem, and social adjustment problems. At the same time, they may be agitated, hyper alert.³⁷ The second one is recovery phase may last many months and involves a long term reorganization to regain a sense of personal security and control over one’s environment. Relationships with a partner or family members may be seriously disrupted and need to be resolved over a period of time. Many victims feel a great deal of anger, which needs to express outwardly rather than be allowed to turn into inner guilt, depression, or self-hatred. The below table shows the variety of stress and effect on rape victim after committing rape with women.

Table 7:1 Post Traumatic stress disorders

Physical effects	Emotional effects	Family trauma	Criminal trial trauma	Economic and other effects
Reactionary or secondary bleeding other physical injuries wounds, if any as a result of violent sexual attack	Anxiety depressed on, lowered self-esteem social adjustment problems Agitated hyper alert distrust low self-esteem	Social stigma loss of relationships with relatives, friends	Harassment during registration of FIR, test-identification parade and other primary investigations Medical examination	Medical Expenses

³⁷ Foa, E.B. & Riggs, D.S., Post-traumatic stress disorder following assaulted: Theoretical Considerations and Empirical Findings, *Current Direction in Psychological Science*, 4 (2) (1995), pp. 61-63; Frazier, P.A. & Burnett, J.W., Immediate coping strategies among the rape victims, *Journal of Counseling and Development*, 72 (1994), pp. 633-639.

Physical effects	Emotional effects	Family trauma	Criminal trial trauma	Economic and other effects
Lack of control Anger Numbness Changes in eating or sleeping pattern physical safety	Loss of sense of security	Separation	Traumatic process of medical examination	Disruption or loss in continuing education, job and other regular activities
Venereal diseases Sexual Transmitted diseases HIV/AIDS	Long term depression neurosis Hysteria nervousness lack of confidence loss of interest in life sense of guilty; inferiority complex	Public harassment social withdrawal	Embarrassing cross examination	Expenses incurred due to change of house from place to another; change of work job.
Pregnancy	Insanity and other psychological orders	Fear	Insensitive judicial response	
Contractures and abrasion in vaginal walls causing shortening of vaginal tube;	Relationships with the partner or family members may be seriously disrupted	Reduced chances of marriage of brothers and sisters	Unfair judgments no relief from judiciary no rehabilitation	
Physical and mental retardation	Suicide	Divorce		

Rehabilitation Aspect of Victims of Rape and the Indian Criminal Justice System

CHAPTER 5

CONCLUSION AND SUGGESTION

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To sum up after discussion in preceding chapters, researcher concludes his research study and states some recommendations on the concerned problem. The researcher humbly submits that the thesis is concerned on the implicit assumption that the problem of rape lies in our criminal justice system therefore it must find its full answer in the society. It may be stated that the solution to the problem of the crime of rape does not resides in adopting a more harsh and criminal justice system. Rape does not have its origin in failures of the criminal justice system, and the answer to it does not lie in designing a perfect criminal justice system. The rape problem lies in the society initially, and criminal law is only a partial response of society to it. Most of the response to crime has to come from social, political and administrative measures.

No doubt, all segments of society must make profound changes before sexual violence against women and small children will be eliminated. But once there is violence or threat of violence, the criminal justice system is the only sector of society that has the power and authority to step in and stop the violence, to enforce the laws against such violence, to carry out a criminal investigation, to arrest and detain a perpetrator, and to provide justice to victims. It is true that criminal justice system is permeated with abuses. And it is also a fact that these abuses can easily endanger and re-victimize victims, but this is all the more reason for the urgent need to confront this system head on, and to remake the current justice system into a system that responds adequately, equitably, and even handily to the victims of rape.

The criminal justice system is far from satisfactory in its task of protecting the rights of the rape victims and the society, who merely fails to accommodate and support the victim of rape. The study explores many problems associated with almost every aspect of the service and legal systems responses to the victims of rape and has discussed how these problems result in disservice to victims. However it is admitted that it is easy to be cynical and find fault with the system; what is difficult is to come out with radical and workable solutions. The solution does not lie in the stringency of the law but in its applicability. The scope of the law has to be widened, conviction rates have to improve, and the police have to inspire confidence so that victims feel emboldened to report crimes. However, as the problem of rape is multidimensional, it has to be tackled from all direction so as to ensure a secure and safe environment to every female and child.

It is submitted that general conclusions if drawn about the place and behaviour accorded to victims or rape by the criminal justice system that would undermine the real problem. However, in order to bring brevity in the work done few generalized conclusions as an outcome of the study are discussed below. The conclusions are followed by few suggestions simultaneously and relatively. The researcher, with due respect chooses this opportunity to produce the conclusion and suggestions together with reasons. The prime reason is the well knows fact that Indian criminal justice system is too complicated and comprehensive. The fact becomes more complexes when it deals with a victim of a socio-legal problem like rape offence.

The Prevention of Children from Sexual Offences Act, framed by the parliament actually violate the provisions of Indian Penal Code in regard to the trial of rape cases by giving separate proceeding of sentencing policies.

Reluctance of the police to register case flows from, apart from a desire to keep the workload within manageable limits, an anxiety to keep crime figures low. As there is always remains a tacit collusion between the police and the highest officials in the executive. The following are the observations:

- -If we have to cut at the roots of this unholy nexus, the media will have to play a major role by educating the common man that the police whether they like it or not, will have to draw up an FIR in respect of very cognizable crime.
- Courts can come down heavily on police officers who refuse to register an FIR. But this will not solve the problem as only a few instances are brought to their notice. It is the unlettered victim who has to be deducted to make the demand or the police herself.
- Police go to great lengths to make the public believe that it is sufficient to rely on police internal affairs for investigation of police misconduct. It is increasingly recognized that there is a society-wide need for independent mechanisms for investigation and control of police. The problem is that there is no interactive relationship among the public, the legislative and executive arms of government, and furthermore there is a very little public involvement in the day-to-day working of the criminal justice system.
- Women should be encouraged to report such cases this can happen only when the system starts functioning properly.
- Effort should make to promote and encouraged reporting of rape cases by third party. As rape complainants must still battle to gain credibility in the eyes of some

police investigative officers and that stereotypically based judgments continue to impact negatively on police perceptions and decision making.

- A mechanism may be established to encourage outside partners (statutory, voluntary and private sector) to gather depersonalized information, to encourage the reporting and investigation of rape cases within community homes and hospitals. The relationship with such people representing rape victims can be strengthened to report the cases.
- There is possibility also a need for a victimization survey has been so well systematized in the other countries like United States which could throw up patterns not otherwise known to us.
- It will however be wrong to lay the blame wholly on the police. In rape cases victims are subject to a variety of pressures and inducements, and the police are a mute witness to this tragedy sometime. Some judges are appreciative of the odds against which the police do their investigation. Many others do not so understand.¶

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