

## CHAPTER -I

### INTRODUCTION

The Indian Eastern tradition promotes MAATRI DEVO BHAVA, which translates to "worship the mother" and calls for treating women with the same veneration as a goddess. India's culture and morals are diverse from those of its Western equivalents. However, the development of sociology has demonstrated that,

**"WOMEN ARE THE NAME OF FORTITUDE: THE NAME OF SELF SACRIFICE; THE NAME OF TENACITY AND SUCCESSFUL PURSUIT."**

History demonstrates that while man has subordinated women to his will, exploited them to further his own enjoyment, to cater to his sexual pleasure, and to further his comfort, he has never wished to raise them to the position they were intended to hold. He has done all in his power to degrade and subjugate her intellect, and he now looks triumphantly upon the destruction he has wrought. All women want of men is that they remove their feet from our necks and allow them to stand upright on the ground that God intended for us to occupy.

Even while ancient literature hints to a better position for women, many of the authors of that time, like Confucius, Aristotle, Manu, and others, believed that men had a natural right to establish their authority and that women are essentially inferior. They can be sold or exchanged as a sort of property, and even in the Greek society, females were confined inside the four walls of the home.

Therefore, these incidents show that despite holding a prominent role in the household, they were still subject to male control and denied any rights. This dominance eventually gave rise to sexual perversions, which were shown to be the primary factor in both the breakdown of society and the family. Due to women's subordinate status, ease transferability, and accessibility, sexual perversions in breeding occurred in the culture.

Over the years, there has been an alarming deterioration in moral standards everywhere. This is also evident in India, where immoral lifestyles are being adopted under the pretence of open culture.

In most cases, when people think of violence, they think of physical violence and destructive behaviour. The most straightforward definition of violence is activity intended to hurt someone or destroy property.

Violence against women is a societal mechanism used to maintain the inferior status of women. It is a consequence of the historical power imbalance between men and women, which has resulted in dominance over and discrimination against women. Even though they make up more than half of the world's population, women nonetheless experience suffering. According to a 1980 UN study, women make up half of the world's population, work nearly two-thirds of the time, get one-tenth of global income, and own less than one-hundredth of global property.

Any act of gender-based violence that causes or is likely to cause physical, sexual, or psychological harm or suffering to women is referred to as violence against women. This definition includes threats of such acts, coercion, and arbitrary deprivation of liberty, whether they take place in public or private life.

Sexual violence is the intentional use of sex as a weapon to exert control over and cause suffering and humiliation to another person. Any physical or psychological abuse that involves sexual activity or targets sexuality is considered sexual violence. The harsh reality of sexual assault in women's life is a stain on the face of civilised human society. A lifelong scar in the victim's memory caused by sexual abuse severely damages her mental mind in addition to the acute physical trauma it causes. In addition to violating the human rights of the victim, sexual assault has a significant negative impact on society at large by since it directly affects the potential of women, who make up decreasing the possibilities approximately half of the population.

Both homosexual and heterosexual people can engage in sexual violence. Due to their oppressive and subservient status in society, women are far more likely to sexual violence susceptibility According to the information that is currently available, at least one in five women worldwide have experienced physical or sexual abuse at some point in their lives.

Every nation's legal codes give sexual offences against women, the most horrific crime against human conscience and decency, a substantial position. Even though all sorts of crimes can be committed against women, some crimes, such rape, molestation, sexual harassment, and immoral trafficking, are only committed against women. The most detrimental and terrible offence against the dignity of women among them is rape.

In addition to socioeconomic and educational considerations, a woman is particularly susceptible to tyranny at the hands of men due to her innate vulnerability. A comprehensive search for ways and strategies is necessary to stop crimes, violence, and atrocities against women since women, whose inferior position is set at the time of birth due to female infanticide and sex determination, face several challenges throughout their lives.

With time and place, crime against women has always occurred. Unfortunately, Women were not only given a reduced place in society but also started to be exploited as objects of fun and pleasure, which subjected them to routine exploitation and victimisation. Crime types and patterns also continued to alter as a result of changes in mind set and tactics. The continuation of the human species depends on sex, which is a natural event. Sexual exploitation is the worst kind of degrading treatment of individuals who engage in it. Women experience significant guilt and humiliation when their virginity is violated.

### **FACTORS THAT DETERMINE SEXUAL VIOLENCE**

Recent international studies on rape and family violence suggest that four factors, when combined, are strong predictors of violence against women in a society: (I) economic inequality between men and women; (ii) a pattern of using physical violence to resolve conflict; (iii) male authority and control of decision-making; and (iv) limitations on women's ability to leave the family setting. These studies drew data from 90 societies around the world.

In addition to these four main predictors, there are a number of auxiliary elements and corollaries that exist in society that eventually lead to circumstances where women are sexually assaulted. Below are a few of the key factors influencing sexual violence:

### **Unequal Power Relation in Society**

The historically ingrained disparity in power relationships between men and women is the most significant determinant of sexual violence. Violence is a result of unequal power dynamics in society rather than being a natural or biological phenomena. Sexual violence really reflects other types of social inequality as well as gender inequality.

Women are still excluded from the governance of the knowledge system and its discourse because they earn less than males do and are therefore less likely to rise to positions of authority and influence.

### **Cultural Practices and Ideology**

Violence that has its origins in uneven power relationships between men and women can also involve the routine inflicting of violence that is excused or justified by tradition, religion, custom, etc. Violence against women is accepted, or at least tolerated, in many societies. Among the many acts of violence that cultural and religious customs support and promote are the Devadasi system and female genital mutilation. Another important prelude to sexual assault against women is such societal devaluing of women.

### **Control of Women's Sexuality**

Many legal systems, which place a strong focus on women's chastity, have as their main goal the regulation of female sexual activity. The paternity of the child born to such a woman is established by such sexual conduct, which is crucial to ensuring that the property will be inherited by the rightful line of successors. Violence is frequently employed as a tool to regulate sexual activity.

Women become sexual objects when they are solely seen as sexual objects, which dehumanises and objectifies them and sets them up as legitimate targets for violence.

## **Women as an Object of Pleasure**

Every system has been dominated by men, and women have been viewed as objects of pleasure. The lady has been and continues to be viewed like property that can be disposed of whenever convenient. Women are increasingly being utilised to advertise items and to capitalise on their attractiveness in modern society.

## **Impact of sexual violence**

The lack of human security for women may be the most detrimental effect of sexual assault. Violence is a threat to women's life that interferes with the most fundamental human security demands on all levels, including the personal, social, economic, and political.

Women are never secure or treated similarly to males in society: personal insecurity follows them from birth to death. Women's decisions on where to go, when to go, what jobs to take, and other decisions are influenced by their fear of violence. Women who are afraid of violence are compelled to look to males for protection, which creates a position of vulnerability and reliance that is harmful to women's empowerment and advancement.

Women who experience sexual abuse have substantial health risks, and the physical harm they sustain occasionally might be deadly. Sexually transmitted illnesses and unintended pregnancies might be contracted by mistreated women. The likelihood of HIV transmission is made easier by genital region injury.

Compared to the psychological, emotional, or spiritual effects, the bodily effects are still simpler to list. Women who have been abused may exhibit severe anxiety, physical illnesses, or personality abnormalities.

The healthy growth of the children and households of the victimised women is also jeopardised by sexual violence. The vital functions and institutional sustainability of the family may be at jeopardy when such violence occurs within the family. Women's potential and contributions to growth and development are greatly hampered by sexual violence against them, making it difficult to achieve human-centred development goals. Sexual assault is a barrier to eradicating

poverty since it can significantly restrict women's job options, especially when it occurs at the workplace.

Rape, eve-teasing, sexual harassment at the workplace, molestation, and other types of sexual violence are all too common and may be found in many spheres of society.

### **Rape: Concept**

In addition to being a criminal against the person of a woman, rape is also a crime against society as a whole. It completely devastates a woman's mind and causes her to experience severe emotional crises, it is a violation of fundamental human rights. The ultimate selfviolation is rape. It is a humiliating and distressing experience in a woman's life that causes existential terror and a sense of helplessness.

The most terrible experience a woman can have is being raped. All women experience rape terror. It affects how they can act and how freely they can be, which has an impact on life as a whole. Every woman in society grows up with a deep-seated dread of being raped, which shapes her personality and influences how she chooses to behave. Every woman is a typical rape victim since they come in all shapes and sizes, including old women, young girls, people in wheelchairs, lesbians, virgins, and women from every colour and socioeconomic level.

Since the term "rape" comes from the Latin verb "rapio," which meaning "to snatch," it literally implies "a forced seizing," and this element is a defining aspect of the crime. It can be narrowly defined as the forced and against her will carnal knowledge of a woman, or as the ravishment of a woman without her permission by coercion, fear, or trickery.

Susan Brown Miller defined rape as an interior attack from one of many angles and by one of many techniques, or, to put it another way, as the forced sexual invasion of the body or an intrusion into the private, personal inner sense. It is an angry, demeaning act of violence that results in an intentional violation of one's emotional, bodily, and mental integrity. Nicholas A. Groth defined rape as a "pseudosexual act," a social behaviour pattern more focused on domination, status, and antagonism than on sexual gratification or sensual delight.

Rape must be viewed as the severest kind of sexual violence committed against women, an extreme example of the sexual violence continuum. Rape is a social problem that affects many women, and it is a result of sexist norms and beliefs. The inequality of power and aggressive act in between men and women is a social and political problem. Rape which the victim's right to self-determination is violated. According to Kate Millett, rape is a classic example of a dominance act in which the feelings of hatred, contempt, and the desire to destroy or violate a person's individuality take place.

### **Reaction to Rape**

The victim of rape and society as a whole experience a variety of responses. While the victim views rape as the most horrific assault on her autonomy, society's responses to rape and the rape survivor reveal morally dubious double standards.

### **Reaction of Rape Victim**

The crime of rape encompasses a wide range of situations, from misunderstandings between acquaintances to unexpected attacks by strangers. Age, maturity level, life experience, ethnicity, and socioeconomic status are all varied among raped women. Additionally, the understanding and treatment of the victim by friends, family, and law enforcement personnel will differ, which will alter the incident's effects.

### **I. The Incident**

The type of rape impacts how much a woman blames herself or is thought to be at least somewhat culpable by others. An attacker raped a lady acquaintance frequently believes that the assault was her fault or that she could have stopped it. Because she places the blame on herself, she finds it difficult to handle criticism from friends and family, which reduces her likelihood of reporting the crime and may lengthen the period of time it takes for her to get over her guilt feelings.

## **II. The Victim**

Young, sexually inexperienced females may be more concerned about the sexual aspect of rape than older women. Teenagers who have been sexually assaulted frequently feel degraded and fear that no one would ever desire them again. The socioeconomic status of a woman may also have an impact on how they respond to sexual assault. Because they are less accustomed to violence, crime, and victimisation, women from the middle and upper classes may experience more emotional shock. Women from lower socioeconomic strata may view rape as another challenge in their already challenging life.

## **III. The Three Stages of Reaction**

Each victim's rehabilitation is unique, but there are typically three stages to a rape reaction. These stages include:

### **The Immediate or Acute Reaction**

The initial emotion during this period, which may last several days, could be one of astonishment, disbelief, rage, or dismay, combined with worry and dread. There may have been no rape since some women react by sobbing and acting restless and agitated, while others are calm and composed. Physical discomfort, such as a headache, nausea, a stomach ache, etc., are usually present at this phase.

The sufferer can have trouble sleeping and fear being alone themselves. At this point of the response, it's possible that the sufferer is being assaulted once again while attempting to flee in the nightmares. Changes in eating habits and appetite decrease are both possible. Moving the victim into the second phase of adjustment at this point requires both practical and emotional support.

### **Outward Adjustment**

When a lady appears to be picking up her activities in a regular manner, she has entered the second stage of adjustment. She no longer wants to share about her experience and loses



interest in getting therapy. Her physical discomfort lessens, and she could resume eating normally.

The victim may now become too active in her attempts to rearrange her life; she may decide to switch employment, schools, or apartments. This stage might start right away after the attack or take several weeks. A victim's relatives can stop offering assistance if she seems to have resumed her regular activities. The victim would benefit at this point from knowing what to anticipate as she moves into the third phase of healing.

### **Integration**

The victim may retreat from social interaction during this stage. She is attempting to decide how she feels about the rape, the perpetrator, and others who treated her insensitively. Anyone who attempts to assist her can encounter resistance, and eventually her sadness might resurface.

Unless the victim engages in obsessive routines or exhibits worries unrelated to the rape, this phase of response is likely to be brief and can be regarded normal. Some people take proactive measures to lessen their vulnerability, including moving or enrolling in self-defence lessons, or they become involved in aiding other rape victims or pursue charges against the attacker, for example, to help them deal with the event and go on with their life.

### **Reactions of the Society**

The society has contradictory attitudes about rape and rape victims. Rape is denounced as a terrible crime at the level of codified legislation and public statements, but at the level of practical execution, it may be considered as nothing more serious than a small skirmish in the inevitable struggle of sexes.

Traditional definitions of rape emphasise a marked sexual insanity; it is one type of abusive sexual contact carried out by an outsider using physical force against a virgin has received treatment as the classic antisocial offence. Coercive sex, which deviates from this paradigm, has, in contrast, frequently been disregarded or ignored.

The societal perceptions of rape and rape victims are completely at odds with one another. The victim of a rape is also condemned by society, which also condemns rape. Because most rapists are seen to be naturally violent and animals for whom it is hard to suppress sexual appetites, the victim is said to have provoked the rape by her words, actions, or very existence.

In patriarchal society, a woman's virginity and chastity are seen as her greatest assets, and losing them-whether voluntarily or by coercion- is humiliating to her. Rape is viewed as a breach against chastity, and the victim of rape faces harsh criticism and condemnation for losing her virginity. Because of the continual jabs and criticism that society dumps on her, she not only has a sense of personal humiliation but is also burdened with guilt for no fault of her own. In the realm of women, the culture connects virtue with chastity. In the culture, a criminal guy may be accepted, but women must be innocent and even impervious. Due to these social beliefs, women are being told from an early age that rape is the worst thing that can happen to them, Women's lives are fundamentally impacted by their awareness of the danger of being raped, being rapable is a societal, not biological, condition that defiles who a woman is, all women are potential victims, even if not all males are likely to commit rape.

Rape victims face social stigma and are never recognised by society as regular people. She may be expelled from her house, rejected by her kin and friends, and suffer a fate worse than death.

### **Misconception about Rape**

- Rape is obviously a crime that does not lend itself to one definition, thus it is understandable that there are so many myths about it. There are many myths and lies out there that distort the truth and draw people's attention away from the true issues surrounding rape, leaving the woman to bear the full burden of blame for the crime. In a patriarchal culture, rape myths are used as a tool of social control and female subjugation. Myths about rape help to maintain unfavourable societal attitudes and downplay the true extent of male violence towards rape victims. Women are taught to take responsibility for their own mistreatment. The rape myths lay the groundwork for our society's institutional acceptance of rape and enable it to become the norm.

- The Most Prevalent Myths About Rape Are Mentioned Below:
- Rape is purely a sex crime.
- A rapist is a sex starved maniac.
- Rapists attack without warning.
- Rape is the result of a sudden impulse.
- Rapists always attack in dark alleys and other secluded public spots and if a woman would stay at home where she belongs, she would not be raped.
- It is the woman \_s fault she is raped, since a man cannot control himself once he is aroused.
- Women secretly desire to be raped.
- Women invite rape by their actions or the way they dress.
- Women often Cry rape to get revenge or cover up a pregnancy. Nice women \_are not rape.
- Only young: Attractive women are raped.
- A strong and healthy woman cannot be raped.
- Women who appear unreasonably upset by rape are unstable.

### **Motivation for Rape**

Most rapists are discovered to be married or involved sexually with girlfriends, and they are not denied access to sex. Rape is actually the use of sexuality to communicate concerns of power and fury rather than being largely an expression of sexual desire. It is a sexual act that is considerably more focused on status, aggressiveness, dominance, and control than it is on sexual gratification or pleasure. **Rape where sex is the primary motivation.**

Most classifications apply to rape if the main driver is not sexual desire but rather some underlying psychological need. victimisation studies' data have created a brand-new categorization for rapes that is separate from existing categories. These are non-stranger rapes that appear to be committed primarily for sexual purposes.

According to urban legend, salesmanship is the sole distinction between rape and rapture. While there might be grey areas, rape is generally defined as having intercourse with a

woman without her permission. Additionally, because of the way the system is set up, women who put themselves in risky circumstances sometimes believe that they are to blame for the rape and choose not to report it. As the feminist movement became stronger, it became more and more obvious that although acquaintance rapes are more common than stranger rapes, the victims are nonetheless affected negatively. The harshness and violence are typically lacking in intimate partner rapes. Any definition of the reason for rape would have to include sex in addition to power, wrath, and sadism because sex is the fundamental motivator in these circumstances.

### **Rape where sex is not the primary motivation**

Rape is more often committed for revenge and compensation than for sexual purposes. It is primarily an aggressive behaviour that conveys a variety of complex psychological meanings. There are three main categories for rapes in which sex is not the major motive.

#### **Anger Rape**

As a manifestation of rape, scorn, hatred, rage, and frustration, fury rape is thus named. In this type of attack, the victim is put through more cruelty and force than is required to win her acquiescence. The perpetrator rapes his victim, beats and hits her, rips her clothes, knocks her on the ground, and usually coerces her into doing or agreeing to demeaning activities.

Instead of being sexually aroused, the rapist feels uneasy and angry. Rape is the method through which he hurts and degrades others with the weapon of sex. His attack is forceful and vicious, and he intends to injure. He attacks women sexually out of hatred and wrath with the intent to exact retribution, degrade, and humiliate them.

#### **Power Rape**

In this kind of sexual assault, the perpetrator will use whatever amount of force to exert control over the victim, and the victim will yield to his requests for sex as a result of verbal

threats, physical intimidation., or both. He overcomes underlying emotions of inadequacy by using this to give him a sense of power, security, mastery, and control.

The attack is planned and is preceded by fantasies: it clears out unsettling worries about masculinity and sexual inadequacy. He could think the victim is drawn to him and wants to have sex with him, but he doesn't get any pleasure from the assault. He commits rape to dispel his thoughts of inadequacy by demonstrating his power and strength.

### **Sadistic Rape**

In a sadistic rape, the victim is tortured and hurt in order to satisfy the rapist's need for sexual gratification. The violence is sensual and a really exhilarating sensation in and of itself. The victim is stalked, caught, and mistreated during the premeditated and intentional attack. The attack may not include the rapist's genitalia, and the victim may be raped using a bottle or a stick instead.

Rape committed for this reason causes the victim great anguish and, occasionally, even death. A guy under the influence of narcotics or a mentally ill rapist are both possible perpetrators of this type of rape.

### **Types of Rape**

➤ **There are two major types of rape:**

➤ **Blitz Rape**

It happens without previous notice or conversation between the attacker and the victim. The presence of the man is unjustified. He abruptly enters and forces himself into the conversation. He frequently chooses an unnamed victim and makes an effort to maintain his secrecy. He can cover the victim's face, use gloves or a mask.

The blitz rape is when A Stranger may sneak up on a woman or break into. her home at night without her knowledge since they are frequently difficult to spot.

### ➤ **Confidence Rape**

The Confidence Rape is a crime when the attacker coerces the victim into having intercourse with them under false pretences by lies, treachery, and frequently violence. Prior to the attack, there is some interaction between the attacker and the victim. He convinces the victim to trust him before betraying that trust, just like the confidence man. Instead of using physical force to seize the victim, the attack employs dialogue. Confidence rape can entail more than one attacker plus a decoy, possibly another lady.

### **Typology of Rapists**

Rapists are placed in some general categories to describe some of the characters:

#### **The Criminal Rapists**

The rapist is just another common criminal. This individual completely disregards the rights of others in order to seize what he wants. He frequently has a history of offences other than rape, is antisocial, susceptible to persuasion, and lacks self-control. Such a man can pose a threat to both men and women; he is just as likely to mug or break into a home as he is to rape. He employs force if necessary to get what he wants, and when he rapes someone, he also uses violence, but simply to enforce his will. He could murder the person, but not for sexual gratification-only to get rid of a witness. Attacks by this individual are not necessarily deliberate; in fact, they could be committed as a last-minute addition to burglary or another crime.

#### **The Mentally -ill Rapists**

These males perpetrate cruel rape by conflating aggressiveness with sexual desire. Their idea of sex includes erotic fantasies and tends to be more focused on controlling, shaming, and overcoming a partner than on sharing love and pleasure. Some psychiatrists think that unlike criminal rapists, mentally ill rapists could benefit from therapy.

### **The Group Conformer**

Multiple rapist subtypes are involved in gang rape. There are leaders who start the rape in the first place. They are forceful, frequently harsh, and show no consideration for the victim, which makes them comparable to criminal rapists. The other members of the group do not fit this description. Although not all of the group's followers are interested in engaging in sexual activity with the victim, the majority of them are due of peer pressure and a need to demonstrate their manhood.

### **The Incompetent Romeo**

The ineffective Romeos are decent youngsters who shock their entire society when their attacks are uncovered. They are naive young men who fantasise about having sex. They are affected by pornography and the boasting they overhear in locker rooms despite having little practical knowledge of the matter and wanting to partake in the sexual adventures they perceive other guys to be having. This kind of rapist may do the victim great pain or perhaps murder her if the victim puts up a strong struggle or humiliates him. He commits rape out of a drive for power and a desire to boost his self-esteem.

### **Types of Relationship between Rapists and Victim**

Four categories can be used to categorise the sort of relationship that existed between the rapist and the victim before the rape:

#### **Rape by a total stranger**

Total stranger rape is when a woman is raped by someone she has never met before, without any warning or preparation. The random rapist is driven by rage, ambition, or sadism. In reality, the example presented for this type of rapist describes a case when the assailant raped a woman he had never seen before without giving her any warning. Although it is more likely to be reported, statistically speaking, this form of assault probably makes up a small portion of all attacks.

## **Stranger Rapes based on Confidence in the Rapist**

Although it may be brief and situational, the victim and her assailant had some past contact in this type of connection. The attacker would typically have. He would manage the circumstance to present a greater chance for rape than if he simply seized a lady as soon as he spotted her. This arranges the individual seeks out a victim to attack, circumstances to provide for the required seclusion and time, and attempts to jeopardise the victim's credibility as a witness in the event of legal action.

**This type of rapist can be called a strategic and patient stranger.**

➤ Acquainted but not Well Known

This includes situations where a woman meets a man in a pub, has a few drinks with him, and then extends an invitation to her house. She clearly has greater responsibility for the predicament than for the total stranger rape. At the time of the accidental meeting, the attacker's purpose in this instance might not have been clearly determined. The victim may not agree with the attacker's interpretation of the circumstances, but the attacker may.

In this instance, the victim gives the assailant what he sees as support and a chance for privacy.

➤ Acquainted and Well Known

A scenario where a guy and woman are spending the evening together at her apartment but during the evening they dispute or he gets drunk and aggressive might serve as an example of how rape occurs in this sort of relationship. When she asks him to go, he refuses and compels them to have the sexual activity he had been planning to have before the night was through. An extreme case of this would be a husband raping his wife either after their separation or even when they were still cohabitating.

The relationships described above appear to be a key factor in determining the sort of rape, its motivation, and the type of rapists. The following categories are built on a scale of closeness that goes from strangers to lovers.



## **Sexual Harassment: Concept**

It is a contemporary phenomenon that has long existed. Sexual harassment undermines women's ability to be economically independent by preventing them from remaining in their places of employment or education. Numerous wealthy nations have particular.

legislation or rules that offer a recourse mechanism in situation of workplace harassment, whereas in emerging nations, being legislative proceedings have been started or are being considered. In a significant ruling in the case of **Vaisakha v. State of Rajasthan**, the Indian Supreme Court stated that when interpreting domestic legislation, consideration for international agreements and standards must be given. The provisions of international treaties and standards are crucial because, in the absence of local law, they may be used to create effective measures to stop the evil of sexual harassment of working women at all workplaces.

The General Recommendation 23 states that sexual harassment encompasses such inappropriate sexually motivated behaviour as:

- i) physical contact and advances
- ii) a demand or request for sexual favours
- iii) sexually coloured remarks
- iv) showing pornography and
- v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature:

The Supreme Court of India included the aforementioned criteria when it ruled in **Vaisakha v. State of Rajasthan** that sexual harassment violates the Constitution of India's guarantees of gender equality and the right to life and liberty. Sexual harassment undermines women's human rights and breaches Articles 14, 15, 19(1) g, and 21 of the Indian Constitution.

Certain types of sexual harassment, including as molestation and eve-teasing, are recognised by the penal code. The definition of molestation is as follows: Whoever assaults or uses criminal force on any woman with the intent to offend or knowing that it is likely that he would do so, will be punished with imprisonment of any sort for a time that may not exceed two years, with fine, or with both.

## **Justification**

Nevertheless, the rate of crime against women has not decreased despite these important advancements. The National Crime Record Bureau's statistics illustrates the deplorable situation of affairs. According to statistic data from 1953to 2010, the rate of rape has grown by 791percent.this rise in rape cases raises rape concerns about the effectiveness of the current criminal legislation as well as the threat to the moral principles. Along with that, there is the distressing truth that India's increase in contemporary control systems have failed, leading to a frequency and severity of violence against women.

## **OBJECTIVES**

The above mentioned study has been undertaken by the researcher keeping in views the following objectives

1. To know the position of females in general and sexual offences committed on her.
2. To identify the causes of different categories of violence against women especially rape.
3. To study the victimological dimensions of rape.
4. To work out the ways and means for preventing/reducing violence against women.
5. To study the legislative framework concerning sexual violence against women especially rape.
6. To study the judicial approach concerning sexual violence against women particularly in cases of rape.

It is believed that the study will be helpful so as to build a meaningful and vibrant supportive system to minimize the chances of rape in India.

## **METHODOLOGY**

The Indian legislative framework, comprising the laws, policies, the function of the Indian judiciary, and the social impact on the life of the victim, have been subjected to a critical analysis using the doctrinal research technique. The researcher's study was based on a review of several judgements made by the Supreme Court of India and High Courts regarding rape offences. As part of his doctrinal study for the examination of various government laws and policies implemented in the protection and rehabilitation of rape victims, the researcher had visited several law libraries. The National Crime Records Bureau (hence referred to as "NCRB") records on rape and internet websites connected with rape victim in their protection and rehabilitation in India were all used by the researcher to accomplish this study.

## **STATEMENT OF THE PROBLEM**

In the current adversarial criminal administration and justice system, victims of rape under the Indian Penal Code, 1860 receive less help from the government and the criminal court system for their protection and rehabilitation than the accused and victims of other crimes.

There is a great deal of interest in the study of the effects of rape crime on victims and in measures to help them in the present decade of victim logical research. Helping rape victims is extremely important since they have experienced irreversible trauma and damage as a result of the crime. The issues surrounding violent physical crime and its effects on victims are numerous and intricate. The criminal justice system's agencies are therefore supposed to be sensitive to the compensating demands of rape victims and deal with their problems in a sincere and sympathetic manner, exactly like in the United States, Europe, and other developed nations. Rape victims' rehabilitation and access to justice must be guaranteed on an equitable basis.

## **HYPOTHESIS**

The Indian judiciary and legislature offer the least help to rape victims. Indian law seems to prioritise accusers above victims. The compensation plans for their rehabilitation are not well enforced. insufficient. In India, there are anti-rape laws in effect, although they in India, rape offences are increasing steadily. The rehabilitation and protection of rape occasionally victims

are not adequately protected by the law. Even the Indian judicial system resisted classifying sexual assault as rape. In rape cases, there is a relatively low conviction rate. In both pre- and post-rape scenarios involving rape victims, the safety provided to their families seems insufficient.

### **RESEARCH QUESTIONS**

1. What is the historical background of the existing acts concerning the rape justice system in India ?
2. What are the relevant statutory and constitutional provision regarding the rape justice system in India ?
3. What are the judicial perspective relating rape and its justice system in India ?
4. What specific changes were made to laws related to sexual violence in India after the Nirbhaya case, and to what extent have these changes been implemented ?
5. How have the changes in laws related to sexual violence in India after the Delhi gang rape case affected the reporting and prosecution of such crimes , and what are the remaining challenges ?

### **SCOPE OF STUDY**

The goal of the study is to conduct a critical analysis of the Indian legal system, including the provisions of the Indian Constitution, the Indian Penal Code, the Criminal Procedure Code, and the interpretation of compensatory jurisprudence by the High Courts and Supreme Courts of India. The study takes into account secondary victimisation, which is post-victimization that occurs indirectly as a result of the offence. The focus of this study has been limited to rape victims and their standing in the criminal justice system in India, both of which are acquiring increased significance in the traditional but gradually modernising Indian social structure. The most vulnerable members of society to such crimes are women and small children.

They are harmed by a number of social and political causes in addition to their own errors and frailties (both physical and emotional). The kind of Although the hurt is highly personal in character, the socioeconomic and political ramifications are more serious. The criminal justice system and society more often see the unfortunate victim as a criminal or as someone to be despised. No other victims experience the shame that comes with being a rape victim. Unfortunately, a rape victim who musters the strength to knock on the door of justice after being physically and psychologically destroyed and shunned by society is regarded more like a guilty person than as a victim throughout the trial. When the victim enters the criminal court system, she will face considerably greater humiliation and disadvantage.

#### **SCHEME OF CHAPTERISATION:**

The notion of sexual violence is covered in the introduction chapter, specifically with relation to rape. A brief look at the past reveals that women were denied rights and subjugated to male control. goals, approach, and Problem, theory, and research questions are stated. Study's scope.

Chapter II : The nation of Strisangrahana (Rape) and the punishments imposed by the early codifiers of law, including Manu, Narada, Bhraspati, Katya, and many more, are covered in the chapter headed "Historical Perspective of Rape."

Chapter III : The chapter "Rape: Legislative Framework in India" examines the evolution of rape legislation from the Macaulayan period to the present.

Chapter IV: The challenges surrounding the idea of rape are highlighted in the chapter headed "Issues Concerning Rape: A Critical Comparative Analysis."

Chapter V: The "Rape: Judicial Approach in India" chapter focuses on the standards used by the higher judiciary for determining sentences in rape cases.

Chapter VI: A Paradigm Shift: The Implementation of Laws Post Nirbhaya Case

Chapter VII: Conclusions and Suggestion , the book's last chapter , offers a critical assessment of recent advancements in the field of sexual offences against women as well as some modest recommendation for change to the current rape laws.

## CHAPTER -II

### HISTORICAL PERSPECTIVE OF RAPE

An important indicator of social fairness in a country is how women are treated. The way a society views women is extremely important since women's status in a society serves as a genuine barometer of its social, economic, political, cultural, and spiritual progress. According to cultural context, family structure, class, caste, morals, and property rights, there have been many differences in the position of women across the Indian subcontinent.

The role and status of women have been characterized as varying from a position of power and independence to one of subservience over the course of human history.<sup>1</sup>

Historical documents, prehistoric tales, poetry, and narrations all show that women have held a prominent and contradictory position in Indian culture throughout history. According to numerous Hindu holy texts, women in ancient India had the position of Devi (goddess), according to the country's cultural past.<sup>2</sup>

### **CONCEPT UNDER HINDUISM**

The Vedic era<sup>3</sup>, Women held a high status and shared equality with males in a position of honors. The Vedic age is best described as a time of both male and feminine majesty, sagacity, and liberty. The Vedas contain copious evidence that women were treated equally to males in terms of access to religious rites and education. The young girls were living in a Brahmacharya ashram. Importantly, girls were advised to use upanayanasamskara. Brahmavadins, six, and

There were two different types of Sadayodvratas: the first were lifetime students of religion and philosophy, while the second continued their studies up until getting married. Women were not only able to pursue their academic goals during this time period, but they also had the

<sup>1</sup> Louis Reuou, Classical Vedic India, (Translated from the French by Philip Sparrt, 1957) 57, cited Women and the Law, (A.P.H, Publishing Corporation, New Delhi, 1st ed. 1997); See, Romila Thaper, - Looking Back in History in Devika Jain, India Women (Publication Division Ministry of Information and Broadcasting, Government of India, New Delhi, 1975), cited by Mamta Rao Law Relating to women and children, (Eastern Book Company, Lucknow, 3<sup>rd</sup> ed. 2010) p.26

<sup>2</sup> Yatra naryastu puhyante, ramante tatra devta " meaning – the place where women are worshipped, god themselves inhabit that place.

<sup>3</sup> Vedas are Shruti which are divine revelations or utterances of god. the Vedas have been declared to be the sole treasury of all true knowledge and are said to be the sacred books of Hindu and first source of Hindu law; The Vedas Comprise of Rig Veda the Veda of verses, Sama Veda, the Veda of chant consisting of prayer composed in meter, yajur Veda, the Veda of sacrificial formulae and prayers for averting calamities. See, Satya jeet A Desai, Mulla Hindu Law, (Lexis Nexis, Haryana India, 21 ed. 2010) p.28  
freedom to engage in political and social activities and fully participate in family life.

The Vedas' depiction of marriage and family life demonstrates a very high level of development. Marriage was viewed as a sacred ceremony and stands in for a crucial and sacred social and religious institution. According to the Rigveda, marriage is important for procreation, becoming a householder, and offering sacrifices. One who is not married loses their right to completeness according to Aitereya Brahmana. It is never viewed as a contract but rather as a holy religious union brought about by divine decree. The union was seen as indissoluble and placed the husband and wife on an equal footing, providing a suitable foundation for a long-lasting, mutually loving partnership<sup>4</sup>. Brides had given up the exclusive right to choose their own spouse in marriage, and the wife was seen as an equal partner with the husband in caring for the family and taking care of the home. Her presence was seen as essential for religious rituals, and the wife was responsible for singing the "mantras" during the sacrifice rite.<sup>5</sup> The word,

The word "Dampati," which appears so frequently in the Vedas and describes both the wife and the husband, denotes the high position of women in ancient society and is a sign that the relationships between the sexes were based on reciprocity, and autonomy in their respective fields of activity.<sup>6</sup>

The Vedas depict a culture where monogamy was widely and customarily practiced. The connection of more than one bride in a typical sacrifice is not permitted by the Rig Vedic marriage customs. However, there are cases where polygamy is well documented. Polygamy was a social practice among the wealthy, rulers, and ruling class. Aitereya Brahman acknowledges that a man may have several wives. The renowned thinker of Upanishad Brahadaranyaka The fact that Yajnavalkya had two wives shows that society accepted polygamy. The widows are permitted to remarry, just like a widower. The burial chant in the Vedas commands the widow to wed the man who takes her hand and is willing to wed, and the deceased's brother held primary duty for the widow.<sup>7</sup> Proprietary rights were scarcely acknowledged in society during the Vedic era. The Vedic writings place a greater focus on rituals and sacrifices than on socioeconomic concerns, and as a result, women's freedom or individuality to keep and inherit landed property has decreased. On the other hand, allusions in the Rig Veda suggest that the women had the authority to possess and hold independent property.<sup>8</sup> The hymns of marriage Two lines in the Rig Veda show that a bride has the right to keep any property given to her as Stridhana. They are called Prinahya and Vahatu, and Prinahya refers to the bride's price (Shulka) and presents that were delivered to the bridegroom's home with the bride, while Vahatu refers to the cows and other items provided to the girl to make

<sup>4</sup> Rig Veda. X.55.24

<sup>5</sup> Rigveda Samhita, sukta 79, sloka 872 explains that the wife should do agnihotra (yagna), sandhya (puja) and all other daily religious rituals. If, for some reason, her husband is not present, the woman alone has full rights to do yagna.

<sup>6</sup> Arthur Anthony Macdoll and Arthur Berriedale Keith, Vedic Index of Names and Subjects, (John Murry, London, 1912) cited by Mamta Rao, supra note. I



<sup>7</sup> Rig Veda part X. hymn 18. Verses 7; Aatharva. XVIII.3.1.2, Aatharav Veda, IX.5.27-28 Supra note 12

<sup>8</sup> Rig Veda part X, hymn27, verse12,

her want to be married (premarital gifts). Thus, only a few goods, such as "Gifts from parents and brothers," "Gifts before the nuptial fire," "Gifts in the wedding procession," and "Earning through mechanical skills," nuptial The Veda also were acknowledged by the Vedic society as belonging to women.<sup>1</sup>The Rig Veda also makes mention of unmarried daughters receiving a part of their father's estate and childless widows having a claim to their husband's property .There are allusions to paying dowry to the bride by a sibling or parent in Atharva Vedic and Yajur Vedic marriage songs, as well as father giving presents to daughters at the time of marriage. These factors seem to indicate that women could often only acquire property as presents from their relatives at or after their marriage. Many passages in the vedas indicate the opinion that women have no right to inherit. However, because the Veda itself had a strong bias against adopting sons, it seemed sense that a brother less daughter would be the first to adopt get her right of inheritance. <sup>2</sup>These factor unmistakably support the idea that women possessed proprietary right in ancient societies, including the freedom to keep their property successfully and independently and to dispose of it as they saw fit.

### **Post-Vedic age**

Manu, the first proponent of law, claimed that the status of women in the Post-Vedic era was appalling. The Manusmriti placed a number of limitations on the rights and privileges of women, which had the effect of lowering their status and robbing them of their customary standing. The famous Manu commandment, which states that a woman should never be independent because "as daughter, she is under the observation of her father, as a wife, of her husband; and as a widow, of her son," perfectly captures the subservience of women.<sup>3</sup> The countless stories found in the epics, however, demonstrate that this regulation was not adhered to strictly and that women were respected both in the household and in society. Manu, the author of the law, said: "Where the ladies are revered, then all deities are delighted; and where they are dishonored, there all religious deeds become futile." Medieval period

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<sup>1</sup> Rig Veda, part II, hymn 17, verse7,

<sup>2</sup> Rig Veda, part I, hymn124, verse7, supra note 12

<sup>3</sup> Manu is Known as first progenitor of human race, The Code of Manu Manusmriti' is complete code embracing all branches of law under 18 titles: I. Recovery of Debts; II Deposit and pledge; III. Sale without ownership; IV. Concerns amongst partners; V. Resumption of gifts; VI Nonpayment of wages or hire; VII. Nonperformance of agreement; VIII. Rescission of sale and purchase; IX. Disputes between master and servant; X. Disputes regarding boundaries; XI. Assault; XII. Defamation; XIII; Theft; XIV. Robbery and violence; XV. Adultery; XVI. Duties of man and wife; XVII. Partition (of inheritance); and XVIII. Gambling and betting. See, Dr. RG. Chaturvedi, Manusmriti. The Constitution of the Vedic Society, (Universal law Publishing Co, New Delhi India, 2003)

In Indian history, the mediaeval era is known as the "black age" for women. In contrast to the Vedic period, when women enjoyed equal rights to males and a position of dignity, their standing significantly deteriorated throughout this time. Many foreign conquests took place in mediaeval India, which led to a decrease in women's status and the total subjection of women. Muslims and other invaders introduced their own culture to India when they came. The majority of Muslims adhered to previous norms from the time of the ancient Persians, which placed women in a subordinate position. Women in mediaeval culture were more dependent on males since they believed that women were only the property of their father, brother, or spouse and did not possess a free choice.

Many traditions and behaviors developed throughout the Middle Ages, which was detrimental to the cause of women. Due to Muslim governance, the Pardah and Polygamy System became widespread. Hindu used these techniques as a safeguard to preserve them.

away from the traitorous Muslims' line of sight. However, this system restricted women's independence, made them withdraw from society, and prevented them from pursuing education.<sup>4</sup> According to the stipulations of the Muslim Personal Law Application Act of 1937, polygamy is legally permitted for Muslims.

### **CONCEPT UNDER ISLAM**

There is a lot of controversy about Pakistan's zina and rape laws both inside and outside of the Muslim world. The topic has provided opponents of Shari's law with an excellent chance to criticize Islamic law as patriarchal and unfair to women. Some people have even advocated that Shari's law should be completely repealed. The Pakistani laws concerning zina and rape, on the other hand, have many devout Muslim intellectuals and activists concerned. They see them as at odds with fundamental Qur'anic tenets and the prophetic heritage.

After careful consideration, we at KARAMAH have come to the conclusion that the existing state of Pakistan's zina and rape legislation is incompatible with Islamic law. We initially turned to the Holy Qur'an and the Sunnah of the Holy Prophet before turning to the writings of important scholars like the great Imam Abu Hanifah, whose school of thought serves as the basis for Pakistani law. As will be made obvious in the remainder of this position paper, we also referenced the writings of Imam Malik, Imam al-Shafii, Ibn Hazm, and others. Furthermore, we firmly believe that Islamic law must be practiced and applied in accordance with its original goals and intentions. Hudood, indeed.<sup>5</sup> Laws should be viewed as a component of a comprehensive system of moral and social principles that collaborate to create and

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<sup>4</sup> Patricia Jeffrey, *Frogs in a Well: Indian Women in Purdah* (New Delhi: Vikas, 1979), p.174; See, S.C. Roychoudhary, *History of Muslim India*, cited in Neelam Upadhyay & Rekha Pandey, *Women in India: Past and Present*, (First Published, New Delhi, 1990) P.18

<sup>5</sup> (Sing, Hadd), means literally (God's) limits, and refers to His divinely ordained punishments for those who transgress them.

safeguard a healthy society, not only as a means of punishing wrongdoers and criminals. The hadd of zina, as it is now understood and used in Pakistan, is an egregious illustration of what may happen when people misunderstand the spirit and purposes of the Shari's.

injustice and discrimination, the opposite of the Islamic ideal of *adalah* (balance, justice, harmony).

Due to this, we will explore Pakistan's zina and rape legislation in this essay from the perspective of Islamic law, keeping in mind the central Islamic tenet of *adalah*. In contrast to rape, which is an aggressive forceful act that completely eliminates any chance of permission, the act of zina includes two consenting adults. Our goal is to illustrate the differences between these two acts. Unfortunately, some contemporary Muslim academics have failed to realize that this is not just a significant factual discrepancy but also a significant Islamic jurisprudential one.

We will start our discussion by carefully examining the relevant verses from the Holy Qur'an and the Holy Prophet's Sunnah on this crucial topic. The Hanafi School's jurisprudential contribution to this subject will next be discussed because of its unique relevance to Pakistani law. However, we will subsequently consider the views of other schools of thought, particularly the Maliki School, as it appears to us that the Maliki perspective on zina and rape has affected the relevant Pakistani law.

#### **Zina in Islamic Law: Definition, Requirements for Proof of Zina and Punishment:**

According to Pakistan's statutory criminal code, rape, adultery, and fornication are treated as linked offences under the Zina Ordinance, which deals with their evidential requirements and penalties. If specific evidential standards are met, it prescribes the Penalties of public flogging or execution by stoning for both transgressions.

However, it appears from a review of Pakistani law that the line between zina and rape is blurred by the legal concept of zina. For the purposes of the ordinance, "sexual intercourse without being legitimately married" refers to both zina and zina-bi'l-jabr (forced illegal sexual relations, i.e., rape) The fact that rape occurs without permission is obviously the sole distinction between the two crimes, and it is a significant one. Major legal ramifications stem from this distinction. In fact, according to current Pakistani law, if a woman cannot demonstrate that the sexual act took place against her will (that is, if she Cannot demonstrate that she was in fact

if a woman is sexually assaulted (i.e., raped), the sexual act itself is a crime against society, making the woman responsible for the hadd of zina.

Due to this strategy, Pakistani zina laws essentially penalize raped women for reporting crimes against them and their family rather than shielding Muslim women from violence and rape. As a result, these rules have a terrible impact on how often these crimes are reported. Furthermore, Pakistan's rape laws have been shown to be ineffective over time, leading to an alarming rise in rape. When we realize that rape often has a profound effect on the victim's extended family in Muslim communities as well, we begin to realize the worrisome scale of the issue. The ideal Muslim state, however, is not one in which reporting of crimes are reduced out of concern for

reprisals or retribution. Instead, it is a state where each victim is urged to request justice and redress from the wali (head of state), the qadi (the court), or the ahl al-hall wa al-aqd (community leaders/representatives of the people), in line with divine principles.

It is obvious that the issue's roots are not religious but rather lie in a Jahili. <sup>6</sup>social conduct that has to be eradicated. They are also present in the incorrect assignment of the burden of proof in rape cases and the incorrect application of fundamental Shari'ah principles to the evidentiary standards. The harmed lady is unfairly burdened by things as they currently exist. Furthermore, Pakistan's rape laws combine the crimes of zina with rape, which previous jurist's were very careful to avoid doing. This is a severe conceptual blunder. Pakistani women and their families have suffered severe harm as a consequence of the cumulative impact of these mistakes and Jahili conduct. For the sake of the ummah's maslahah (well-being), this tragic situation is untenable, and the wali, qadis, and ahl al-hall wa al-aqd must take action by promoting stronger, more effective rules as well as widespread education.

We think that a misinterpretation of the divine rule of zina as declared by the Holy Qur'an and the Sunnah is a major factor in the inability to build legislation that protects the rights of people, men and women, their families, and society at large.

Such a serious misinterpretation of Islamic law requires correction, but Qadis have no done so to date. Therefore, by quickly reviewing the basics of Islamic law as they apply to our issue, we will explain here the entire scope of this misinterpretation of the law.

Islam views zina as a serious sin and a perverse path. Islam and other Abrahamic religions both hold similar beliefs in this regard. We must emphasize that in Islamic law, the term "zina exclusively refers to bodily penetration during an actual intercourse. No other action falls within the same legal definition as zina and is thus not termed zina. According to the Qur'an, the prophetic tradition, and Islamic law, having sex without a legally binding marriage is known as zina and is punished for both genders equally. It is significant to emphasize that men and women get the same penalties for unauthorized sexual activity. Thus, it is evident that the traditional Islamic system for handling inappropriate sexual activity is equitable and genderbalanced.

Several times in the Quran, zina is discussed. We begin by citing the broad principle from the Qur'an that forbids Muslims from engaging in zina:

### **PRESENT POSITION**

The definition of rape has changed as society has advanced. The substantive offence of today focuses on the sexual exploitation of women. Rape is seen as a violent invasion of a woman's privacy and a violation of her bodily integrity and honors.

The crime is covered under Sections 375 and 376 of the Indian Penal Code, 1860. The former explains the crime, whereas the latter is a part that imposes penalties. Rape is defined as when a man engages in sexual activity with a woman who is not his wife against her will, without

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<sup>6</sup> This refers to the pre-Islamic Age of Jahiliyyah or ignorance. Muslim thinkers have argued that some Muslim societies are going into a modern (secular or tribal) jahiliyyah that does not reflect Islamic values.

her agreement, with her consent given out of fear for her safety or life, out of mistake, or while under the influence of any sedative or euphoric medication. Unless the lady is under 15, sexual activity between a man and his wife is never considered rape. For the purposes of a victim female under the age of 16, consent is irrelevant.

The crime of rape is then punishable under Section 376 IPC, 1860. The maximum term is life, although the court may, for good cause, extend it up to seven years.

impose a sentence that is shorter than the bare minimum allowed. Following the notorious Mathura case in the 1970s.<sup>7</sup> A nationwide protest was organized for the inclusion of custodial rapes under the legislative provisions after a tribal girl who had been rape a police custody testified but the court rejected her claim. As a result, the 1983 Criminal Law (Amendment) Act was passed, which covered cases of aggravating rape. Therefore, a heavier punishment of a period not less than 10 years that may extend to life has been imposed in situations of gang rape, as well as cases of rape of a woman when she is pregnant, in jail, in a hospital, or while in the custody of the police. The 1872 Indian Evidence Act has also been changed to place the burden of demonstrating consent on the accused in the aforementioned aggravated rape instances, as opposed to the prosecution's usual position.

The rising frequency of the offence is one feature, nevertheless, that has persisted in bothering lawmakers and the average person. Despite legislative attempts to strengthen the rules, the numbers of rape cases-whether they include medical students in Delhi, a 16- year-old who was raped in a Mumbai chowki by a police officer, German women at Rajasthan University, or other victims-continue to climb.

### **MAGNITUDE OF THE PROBLEM**

Rape may be considered a "burning problem" with confidence. It persists despite efforts to reduce its frequency. Rape incidents have shown a mixed trend over the previous 5 years, with a fall of 2.5 percent in 2001 and an increase of 1.8 percent in 2002, according to the Crime in India, 2002 report produced by the BRPD.<sup>8</sup> With 2891 instances recorded, Madhya Pradesh contributed 17.6 percent of all cases reported nationwide. It was followed by Uttar Pradesh (1415), Maharashtra (1352), Rajasthan (1051), and Bihar (1051). (1040).

We discover that data on reported occurrences of rape were not recorded until 1970 if we try to trace the growth in the offence from 1950 to 2002. Rape cases were recorded in 2487 instances in 1971, 5409 cases in 1981, 10,410 cases in 1991, and 16373 cases in 2002. The results show a startling rise in the number of instances. Here, we must keep in mind that since many hundreds of thousands of such cases go unreported out of fear of societal shame, rejection, family honor, etc., these numbers only represent reported cases and not the true numbers.

The statistics given above paints a somber picture of the situation when it comes to violations of the human rights of sexual assault victims. While many incidents go unreported, those that do encounter even more terrible tribulations. Sometimes the victim is left more traumatized

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<sup>7</sup> . Tukaram v. State of Maharashtra AIR 1979 SC 185

<sup>8</sup> Bureau of Police Research and Development, New Delhi

and insecure than the act occurred due to the investigation's insensitive and callous approach, followed by the prosecution, and then the judiciary.

### **IDENTIFYING THE POSSIBLE CAUSAL**

**a)** Ironically, crimes against women are on the rise in India, a nation where several female gods are revered. The following inquiries: “Why do rapes happen”? what motivates a rapist to do the crime? There are no simple solutions to “what elements contribute to it?” But answering these questions is crucial if you want to develop a plan to stop the crime. In order to understand the potential causative element contributing to the issue, this portion of the study investigates both the macro level issues- social structure, societal beliefs, legislation, and the like- and the micro level factors – motivation and psychology of the attacker. **b) Social Factors**

**Patriarchal society:** Patriarchal is an ideology and a system in which the father is seen as the head of the family and, as a result, control. It is described as “a system of social structure and behaviors in which males rule, oppress, and exploit women” by walby (1990, p.20). The lives of women are the toughest in such civilization (Johnson,1997) because males tend to consider them as their own personal property. the patriarchal ideals that dominates the Indian mind –set are likely a significant contributing reason to the high rates of crime against women, which manifests as female feticide, dowry killings, sexual, harassment, and even rape.

**Gender Inequality:** According to dr. Manmohan Singh, the Indian Prime Minister, “No nation, no culture, and no group can hold its head high and claim to be a member of the civilized world if it condones the practice of discriminating against one half of human kind.”<sup>9</sup>

Women are represented. Unfortunately, gender inequality exists in India as it does in many other countries throughout the globe. According to data, India’s gender ratio ( the percentage of girls to men per thousand ) decreased from 962 in 1901 to 933 in 2001 to 914 in 2011.<sup>10</sup> “*The significant preference for a son in parallel with a quick drop in fertility can be primarily attributable to the worsening of sex ratio imbalances, since young daughter may be subjected to mistreatment neglect and abandonment, and new technology allow sex selection biases against females.*”

This disparity results from the cultural preference in the nation (Sharma and Mukherjee,2012) for a male kid and the inferior status accorded to women in all sphere of life, it also provides a veiled justification for why rapes occur in the nation.

It is paradoxical that sex remains banned in the second-most populous nation in the world, which gave the world the Kama sutra (books about sex). This disagreement was significantly influenced by the historical setting. In the past, sex was not stigmatized, but Victorian ideals demonized sexual liberty in India. since then, conservatism has spread throughout India, and

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<sup>9</sup> [Cited 11 march 2023.]. Available from URL  
[http://www.nytimes.com/2008/04/29/world/asia/29india.html?\\_r=0](http://www.nytimes.com/2008/04/29/world/asia/29india.html?_r=0)

<sup>10</sup> [ Cited 15 march 2023] Available from URL: <http://www.articlebase.com/women-issues-articles/genderimbalance-in-indiacauses-and -consequences-235104.html>

talking about sex is now forbidden. The underlying shifts in Indian mentality consequently indirectly contributed to a notable rise in rapes.

### c) Cultural Factors

**Power Distance:** The level of social inequality tolerance among a social system's members is reflected in Hofstede's (1980,1998) power distance dimension. India receives a score of 77, indicating is a factor in the power gap, and women frequently have significantly less influence than men. This might be the cause of more frequent rape in the nation as well as easier sexual exploitation of women by men.

**Masculinity:** The varied roles that men and women fill in a society are referred to as the masculine vs femininity component (Hofstede,1998). Cultures with low levels of machismo promote gender equality. Indian is seen as a masculine society and receives a score of 56 on this metric. Significant differences in the duties of the sexes may be observed as a result of its patriarchal society. Men regulate women's sexuality, and their sense of honors depends on this control being viewed as appropriate by society (Luther and Luther, 2002). A situation like that might result in crimes like rape in India.

### Institutional Factors

**Legislation:** Despite a number of anti-rape legislation in India, the number of rape incidences has been rising. The following details a legal loophole that the perpetrators use.

This definition, therefore, excludes forces oral sex, sodomy, and penetration by foreign objects: instead, these actions are criminalized under section 354 of the IPC, which deals with "criminal assault on a woman with intent to outrage her modesty"<sup>11</sup>. Sexual intercourse with a woman and the absence of consent are the essential components of the rape law as defined under Section 375 of the Indian Penal Code. The methods used to gather Evidence in cases of rape are by no means uniform. India has come under fire from

Human Rights Watch for continuing to employ one of the oldest forensic practices. Issues in registering the complaint and establishing that the rape actually took place have an impact The processes and mechanisms in India are characterized by a low conviction rate, a humiliating investigation, and stigmatization of the victim. These condition are used by criminals, who increase the like hood of rape events in India.

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<sup>11</sup> [Cited 20 march 2023] Available from URL: [http://www.legalserviceindia.com/articles/rape\\_1.htm](http://www.legalserviceindia.com/articles/rape_1.htm)

## CHAPTER-III

### RAPE: LEGISLATIVE DEVELOPMENTS IN INDIA

The Women's Law Project (WLP) and *Acquits: The Prosecutor's Resource on Violence Against Women (Acquits)* were requested by the National Academy of Sciences to analyse the legal definitions of rape and other sexual assaults.

My fundamental argument is that a thorough examination of the role consent plays in rape legislation reveals that it presupposes the complete sexual autonomy of women, which it purports to destroy.<sup>12</sup>

-Consent in classical liberal theory refers to the expression of autonomy and free will by competent and rational individuals who are free from coercion and pressure<sup>13</sup>, because it exaggerates female agency and ignores the power gap between men and women, postmodern feminists argue that this traditional liberal interpretation of "consent" does not accurately represent women's choices in a patriarchal society. This is especially true in the normative context of social institutions that exclude female experiences and completely disallow women's freedom of choice.

Liberal feminists have, predictably, argued that this perspective devalues female agency by downplaying it and that, by emphasising a social and sexual contract that subordinates women to men, it contributes to the infantilization of women by portraying them as helpless, reliant, inexperienced, and immature beings.

The analysis of the consent standard in Indian rape law presented in this article challenges the liberal feminist claim that acknowledging gendered inequality in access to "choice" and "consent" is infantilizing. Instead, it makes the case that any successful statutory reform of consent standards in rape law should start by recognising that the real restrictions on the consensual freedom and agency of women constitute day-to-day oppression. rather than handy creations, realities. We may place rape legislation into the larger power structures that enable males to exert dominance over women and also urge women to "voluntarily" subscribe to patriarchal standards by realising that rape is not merely a crime of violence but is primarily a statement of male power and dominance. This way of looking at rape successfully contextualises consent and shows that, more often than not, women may appear to "agree" to offensive or violent acts of males because they lack adequate alternatives and "consent" is safer than resistance.

**Given that "consent," when understood as tacit agreement or non-resistance, is not a strong enough tool to safeguard women's autonomy and choice, any consent criteria that aims to properly classify non-consensual sex as "rape" must confirm the subjective experiences of all victims. The "objective" legislation prohibiting rape frequently undermines the subjective feelings of women who have been raped. To show that women**

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<sup>12</sup> Louise Du Toit,- The Condition of consent , in *Choice and Consent: Feminist Engagements with Law and Subjectivity*,59 (eds. Rosemary Hunter and Sharon Cowan, Routledge-Cavendish,2007).

<sup>13</sup> See Rosemary Hunter and Sharon Cowan,- Introduction, in *Choice and Consent: Feminist Engagement with law and subjectivity* , 1-9 (eds. Rosemary Hunter and Sharon Cowan, Routledge-Cavendish, 2007) (discussing the ideological tensions between scholars tackling agency in rape law)



**are erroneous about their own experiences and incapable of comprehending the nature of what occurred to them objectively, the defence, for instance, places an excessive amount of emphasis on the victim's mental condition during the trial process. As will be detailed below, rape defendants humiliate and psychologize the victim in front of a patriarchal judge by employing strategies like gruelling cross-examination. Defendants take advantage of a deeply ingrained cultural**

The purpose of the narrative is to instil self-doubt in the rape victim, forcing her and the judges to misinterpret assault as seduction and mistake socially normalised male dominance and submission to it for romance. The legal concept of consent in rape legislation purposefully disregards the social dynamics at play. In this understanding, sex is essentially an act that the woman "consents" to rather than engages in, framing the way in which she participates in it as one in which she is not an active, equal participant but rather a passive, receptive object in a predominantly male performance of sex with her body. We must thoroughly situate this term inside Indian society, a culture that suffers from egregious gender inequity and violence against women, in order to comprehend how it functions. Out of 193 United Nations (UN) member states surveyed in June 2013, the Thomson Reuters Foundation found that India was the most dangerous place in the world for women in terms of healthcare, economic resources, cultural or traditional practises sexual violence and harassment, non-sexual violence, and other factors. Along with forced marriage, stoning, and female infanticide, customs like these include human trafficking (including sex slavery and domestic servitude). Even though there are no official numbers available, a percentage of Indian women experience physical or sexual intimate partner abuse at least once in their lifetime. India has a depressing ranking of 127 out of 160 nations in the 2018 UN Gender Inequality Index, which analyses gender inequality based on the most recent statistics on reproductive health, empowerment, and labour market participation. Additionally, the National Crime Records Bureau (NCRB) statistics and the government's own survey information offer convincing proof that fewer than 1% of sexual assault by spouses is reported to the authorities. To protect the "holy" institution of marriage, the government has vehemently pushed for the retention of marital rape as an exemption to rape under the Indian Penal Code (IPC). In addition, a large number of feminist legal scholars have examined patterns in judicial decision regarding rape and sex discrimination, demonstrating how the Indian judiciary-which, in comparison to other nations, has a great deal of interpretive power and political clout-has frequently served to legitimise structural patriarchy and sex discrimination. The IPC is the main topic of this article, hence same-sex sexual assault is not covered because IPC 375 only considers the offender to be male and the victim to be female. Furthermore, even if the changes proposed in this Article under 375 ought to assist transgender women who ought to be recognised as female under the terms of the law, such an examination is outside the purview of this Article. However, it is vital to recognise that not all rape victims in India<sup>14</sup> are born with the female sex; frequently, gender nonconformity not only serves as a justification for sex crimes, including rape, but also makes it more difficult for survivors to get

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<sup>14</sup> Same-sex violence is covered under sec. 377 of the IPC which criminalizes- carnal intercourse against the order of nature. It has recently been interpreted to decriminalize consensual sex between gays and lesbians, but still covers same-sex sexual violence. See Navtej Singh Johar v. Union of India through Secretary Ministry of law and justice, Writ Petition (Criminal) No.76 of 2016 (Supreme Court of India, 2018).

assistance. The author's However, attention is narrowly concentrated on a particular type of gender-motivated violence that occurs in India. According to research, male aggression against women is by far the most prevalent form of violence in India, and gender-neutral rape laws are likely to result in more pain and

### **Humiliation of the female victim, who is already disadvantaged.**

Indian feminists contend that the social reality of sexual abuse in the nation is completely disconnected from the gender-neutrality of the rape statute. Legal feminists have warned against gender-neutral models because they make ill-considered attempts to build a more perfect society based on formal equality language, which This stifles reforms and diverts attention from fairness. This is particularly important to take into account in the Indian context due to the stark gender disparity and widespread home and public violence are discussed against women, both of which are discussed in more detail below.

### **LAW SINCE INDEPENDENCE**

In 1949, rape laws were further amended in respect of the age of consent. The age was raised to 16 years in clause fifth of section-375, dealing with extra-marital cases and 15 years in the exception dealing with the marital cases, by section-3 of the amending Act. Another amendment was brought about in 1955, which substituted the words transportation for life by imprisonment for life in section-376.

The Indian Law Commission had stated its intention of revising the Indian Penal Code in 1959, but it was only after twelve years, in 1971 that the Law Commission could send its report on the IPC to the Union Law Minister.

### **The main recommendations of the 42nd Law Commission Report are as follows**

1. The members of Law Commission noted that under the third clause of section-375. consent of the woman is vitiated only when she has been put in fear of death or bodily hurt to herself. The clause did not cover the situations, where death or grievous hurt is threatened to someone else present on the spot. They suggested the addition of words either to herself or to anyone else present at the place after the word hurt to cover such situations.

The members of Law Commission took note of the case of forcible sexual intercourse by the husband, when the couple had been living apart under a decree of judicial separation or by mutual agreement. They considered that such sexual intercourse should be treated as rape. The members recommended that the forcible intercourse by husband when the under 15 years of age, should not be called rape in the technical sense and punishment for the offence may be provided in a separate provision. They recommended section-376-A, which provided for the punishment for sexual intercourse with his child wife.

The members opined that in case of a girl between 12-16 years, who consented for the intercourse, the offence should not be equated and not punished as severely as rape. they

recommended a separate section-376-B for such cases and the maximum period or punishment was prescribed as 7 years.

The Law Commissioners prescribed enhanced rigorous punishment of 14 years for the offence of rape.

The most significant contribution by the Law Commission was the recognition of the phenomenon of \_custodial rape. It was commented that under certain situations, woman submission to sexual intercourse is really not a willing consent, whereby men in authority take advantage of the women under their custody. Sections -376-C, D and E were recommended, prescribing for punishments in cases of illicit intercourse by a public servant, superintendent of women's or children's institution and manager of a hospital.

### **The 42nd report had few inherent anomalies:**

1. Section 376-A as suggested by the Law Commission, which provided for the punishment for sexual intercourse with child wife in fact diluted the punishment in case of wife under 12 years of age. The Law, then prevailing, provided a discretion to the Court to extend the punishment up to 2 years in all rape cases, whereas the suggested Section reduced the punishment to a maximum of 2 years. 2. The patriarchal notions were reflected in the provisions as the maximum punishment provided in section-376-3, for the rape of a girl between 12-16 who had consented was 7 years with fine and the maximum punishment for her married counterpart only 2 years.

3. Whereas the cases of illicit intercourse of public servant, superintendent of children's or women's institution and manager of a hospital, etc., were covered under sections 376-C, D, E, Custodial rapes committed by police, were not even recognised by the Law Commission.

The 42nd Law Commission Report was followed by the IPC (Amendment) Bill, 174. A Joint Committee was appointed to review the Bill., which presented its report on Feb.29, 1976. Its main observations were as follows:

1. The Committee was of the opinion that sexual intercourse by a man with his own wife whatever might be her age, should not be regarded as rape.
2. The Committee diluted the maximum punishment to 10 years from life imprisonment, which could be imposed depending upon the gravity of offence.
3. Punishment for 3 years was recommended in case of judicially separated wife.
4. The cases of custodial rape, cases of seduction by the public servant etc., taking undue advantage of his position, were recognized and compulsory imprisonment with fine were imposed as punishment. In case of a mental patient, the rapist knowledge of her condition was rendered irrelevant.

The Bill of 1972 also lapsed and for more than 100 years old rape law continued to exist with minor amendments from time to time regarding the age of consent. In 1979, the Bill, which was passed by Rajya Sabha and was pending in Lok Sabha lapsed because of the dissolution of Lok Sabha in 1979

## **IMPACT OF MATHURA CASE; CAMPAIGN FOR AMENDMENTS AND THE 84TH LAW COMMISSION REPORT**

The decision of the Supreme Court in **Tuka Ram v. State of Maharashtra**<sup>23</sup> created furores in the field of rape law. The facts of this case were so peculiar and the decision so coldly legalistic and unjust that it led to the culmination of mass movement for the amendment of rape laws.

In this case, Mathura was a young girl of 14-16 years. She had developed a relationship with her employer's cousin. On March 26 1972, her brother filed a report that Mathura was kidnapped by her employer and her boyfriend. They were all brought to the Police Station at 9 P.M. and their statements were recorded., When everybody started to leave, Mathura was directed to remain at Police Station by Tuka Ram, the Head Constable and Ganpat, a Constable. While both Policemen were on duty, they bolted the doors and put off the lights. Ganpat raped Mathura and Tuka Ram fondled her private parts Tuka Ram was too drunk to rape Mathura. A crowd gathered outside and then shortly after Mathura came out and announced that she had

<sup>23</sup> 1979 AIR 185, 1979 SCR (1) 810

been raped by Ganpat. Mathura was examined on the next day. Her report showed old ruptures of hymen and that she was habituated to sexual intercourse. In Sessions Court, this fact was held against her and the accused were acquitted. It was held that Mathura had in fact consented to the act. The Bombay High Court reversed the decision and sentenced Tuka Ram to rigorous imprisonment for 1 year and Ganpat for 5 years. The High Court held that mere passive submission or helpless surrender of the body and its resignation to the others lust induced by threats or fears cannot be equated with consent.

The Supreme Court reversed the decision and held that Mathura had consented to the act. There were no injuries on person of Mathura, thus, it was held that the story of rape was concocted by her and her testimony was disbelieved. Further, it was held that only fear of death or hurt could vitiate consent in the clause thirdly. The operation of clause secondly was not even considered.

The decision drew attention of four law teachers; Prof. Upendra Baxi, Prof. Raghu Nath Kelkar, Prof. Lotika Sarkar of Delhi University and Prof. Vasudha Dhagamwar of ILS, Pune. In October, 1979, they wrote an Open Letter to the Chief Justice of India\_, protesting against the judgment. This letter created an unprecedented furore and received tremendous publicity from the Press. The Open Letter criticized Supreme Court judgment and stated that there is a clear difference in law and common sens between consent and submission. The facts of the case revealed submission on part of Mathura and not the consent. It was questioned in open letter, is the taboo against premarital sex was so strong as to provide a licence to Indian Police to rape young women.

The laws of Rape have undergone vast changes all over the globe. Countries, whether common law or civil, have attempted to strengthen its provisions so as to afford the highest level of protection to the hapless victims of this crime. Thus, in some places, the word rape has been substituted with '\_sexual assault' or sexual coercion"; in some places, it has been made genderneutral; in some others, the element of consent has been done away with, while in few

others, marital rape has been recognized. The present writer has begun the chapter by examining the international developments aimed at reducing violence against women and recognizing their human right to live a violent free dignified existence. Thereafter., the legislative provisions as regards rape of some countries of the world has been laid down; thereafter an in-depth analysis of our country's own laws has been attempted in order to understand how far we have been able to internalize the global trends towards a non-patriarchal gender- friendly law.

Women in India, in spite of a prohibitive and severe punitive approach of criminal law and untiring efforts of a host of women organizations and the National Commission for Women (NCW), constituted under the National Commission for Women Act 1990, to liberate them from the hitherto unjust social, political and economic subjugation and suppression, are being sexually exploited, abused and assaulted. During recent years, unfortunately, crimes against women are on the increase'. Rape is the most monstrous and insensitive crime against a woman, amongst the various crime against them. It makes a woman's life worse than a corpse; the society refuses to accept a rape victim despite having no fault of a victim whatsoever, a woman who gets raped loses all the confidence and starts blaming herself for all the injustice that has been done to her.

The execution of convicts in the **2012 Nirbhaya gang rape** and murder case was the first instance post-Independence in which four men were hanged to death 'together. This development shows that India is trying to acquire a no-tolerance attitude towards heinous crimes against women. India has a long way to go, but it's a positive sign towards achieving something big.

Rape is a cogent issue in cultures around the world and India is one of the worst affected countries with a large number of rape cases. For women across India, fear is an incessant companion which never leaves their path at any corner of their life. Rape is one of the growing problems in today's society and with the passing time, it is getting even more difficult to overlook the surprising statistics about this crime. According to several reports of the Indian media, rape, rape is becoming the fastest growing crime in India.

## **RAPE LAWS IN INDIA**

In ancient India-sexual offences were punishable by law. As per Hindu Law, they were mainly divided into two classes - rape (Sahasa) and adultery (Stri Sangraha). The ancient law gives described rape as one of the most heinous crimes and provided stringent laws inflicting severe punishments and penalties on the rapists. The caste of the victim and of the rapist played a very crucial role. It was a major determining factor in the severity of the punishment to be inflicted. The Code of Manu prescribed corporal punishment for the ravishment of an unwilling woman<sup>15</sup>. other ancient scholar has prescribed capital punishment and the confiscation of entire property in rape cases of minor's girls and high caste women.<sup>16</sup>

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<sup>15</sup> Ram Prasad Das Gupta, Crime and Punishment in Ancient India 1973,p.73

<sup>16</sup> Ibid, quoted Kautilaya, Yagnavalkya and Narada

In British India, the courts set up by the East India Company administered and adopted Muslim penal norms of criminal justice<sup>17</sup>. In 1828, an Act for improving the administration of criminal justice in the British colonies in Asia was passed, which declared rape as an offence punishable with death, provided the girl was below eight years and with imprisonment in other cases. In 1834, Thomas Macaulay landed in India to take his seat as Law Member on the Supreme Council; under the charter of 1833<sup>18</sup>. He undertook the Herculean task of providing a code of substantive criminal law for India. He devoted clauses 359 to 360 to the offence of rape in the Penal Code. Section 359 defined the offence and section 360 specified the punishment for it. Clause 359 of Macaulay's code read-

A man is said to commit rape, which, except in the cases hereinafter accepted, has sexual intercourse with a woman under circumstances falling under any of the following descriptions:

- First Against her will.
- Secondly Secondly-Without her consent, while she is insensible.
- Thirdly- With her consent, when her consent has been obtained by putting her in fear of death or of hurt.
- Fourthly - With her consent, when the man knows her consent, is given because she believes that he is a different man to whom she is, or believes herself to be married.
- Fifthly-With or without her consent when she is less than nine years of age.
- Exception - Sexual intercourse by a man with his wife is in no case rape.

Section 360 stipulated that the punishment for rape should not be more than 14 years and not less than 2 years, with or without an additional fine. Macaulay did not give any reason for his drafting of clause 359. JF Thomas, a judge in Madras Presidency, criticized the code for giving too wide a range of punishment. He argued that once the commission of rape is proved, character of the woman should be no criteria and same punishment should rape be awarded to all offenders,<sup>19</sup> But the Law Commissioners took a different view and held that injury in case of a high class woman is surely infinitely more than in case of a woman of low caste, who was presumed to be without character.

It is pertinent to point out that both Law Commissioners and Thomas saw the problem in terms of a high caste woman's violation by low caste man as the most heinous of rapes, requiring the strictest punishment. Hence, instead of assuring equal protection of law for all, the Commissioners were only reinforcing the caste system hierarchy. Section 375 of the final version 7 differed from clause 359 as it incorporated as important amendment that sexual intercourse by a man with his own wife, the wife not being under 10 years of age, is not rape'. No reasons for this change were given by the Select Committee.

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<sup>17</sup> Tapas Kumar Banerjee, Background to Indian Criminal Law, 1963,p.33

<sup>18</sup> Sir Edmund C Cox, Police and Crime in India, 1976, p.72

<sup>19</sup> Report on the IPC, vol 1, para 448, quoted in Vasudha Dhagmwar in Law , Power and Justice , 1992

For 30 years, after the enactment of Indian Penal Code in 1860, rape law remained the same. In 1891, Sir Andrew Cobble introduced the Bill, which culminated in the Indian Criminal (Amendment) Act 1891. This Act raised the age of consent to 12 years both in case of marital and extra-marital rapes. The object of the Act was humanitarian, viz., to protect female children from immature prostitution, which resulted in immense suffering and sometimes even death of the girl and generally resulted in injury to her health and that of the progeny. The beginning of the 20<sup>th</sup> Century witnessed increased public attention towards the improvement in the physique of the nation and reduction of causes leading to abnormal mortality of younger generation. In 1922, Rai Bahadur Bakshi Sohan Lal, MLA, moved for leave to introduce a bill in marital and extra-marital cases. This attempt to legislate proved futile, but with the passing years, agitation for a modification of law steadily grew owing to a better knowledge of the civil consequences of early marriage and early consummation.

In 1924, Dr. Hari Singh Gaur introduced a Bill to amend section 375, IPC, raising the age to 14 years in both marital and extra-marital cases. The Bill was referred to a Select committee which made a material alteration by reducing the age from 14 to 13 in the case of marital rape. On September 1, 1925, Sir Alexander Muddiman introduced the Bill fixing 14 years the age in extra-marital cases and 13 years in marital cases, which culminated in amendment Act 1925. The amendment in 1925 for the first time introduced a distinction between marital and extra-marital rape cases by providing different age of consent in marital rape cases. The distinction was further emphasized in section 376 by consent incorporating the words '-unless the woman raped is his own wife and not under twelve years of age', in that case the punishment was diluted by prescribing a maximum of two years. Thus, the purpose aimed to be achieved by rising the age of consent to 13 years, stood mitigated to a large extent by the diluted punishment provided by the amended section 376. Dr Hari Singh Gaur again introduced a Bill in 1927 to rise the age to 14 and 16 years in marital and extra-marital cases respectively. It was followed by the appointment of the Age of Consent Committee, which reviewed the prevailing situation and suggested some amendments. The Committee recommended the use of term '\_marital misbehaviour' instead of rape in marital cases. The offence of marital misbehaviour would be committed by a husband in case of sexual intercourse with his wife below 15 years of age. The Committee recommended the inclusion of offence of marital misbehaviour in chapter XX of IPC and those sections 375 and 376 of the IPC be confined to rape outside the marital relation. The Committee also recommended maximum punishment of either description for 10 years and fine where the wife was below 12 years of age and imprisonment which may extend up to one year or fine or both, where the wife was between 12-15 years.

In British India, the reflections of Victorian morality' could be seen in provisions of IPC dealing with the offence rape and their implementation. Very strong moral judgments were brought to bear upon the victim and her character before she could

obtain justice. It would be pertinent to point out that on one hand, in case of homosexuality, sodomy or other unnatural offences, whatever may be the age of both the parties, even mutual consent was considered irrelevant and on the other hand, the rape victim was considered capable of giving at a very young age<sup>20</sup>. The Law Commissioners in 1846 had assumed Indian morality to be the principles professed by upper class male. coupled with this, the sexual ethics of Indian society deteriorated the scenario and justice became a utopian illusion for the rape victim.

□ **Vasudha Dhagamwar has commented:**

It is extremely depressing to see how the narrow authoritarian sexual ethics of Indian society, heavily weighted in favour of the male, has inspired a case law, which renders the Penal Code even more hostile to those, who seek justice or protection than its Victorian framers made it. In British India, Indian courts were following more or less the English precedents, though there were few marked differences. The sections of the IPC dealing with rape were so drafted that they could be construed to permit a miscarriage of justice. Courts adopted a very loose definition of what constitutes consent and had set very rigid and inflexible standards regarding the reliability of the woman's testimony.

### **DEVELOPMENT OF RAPE LA WS IN INDIA**

In 1949, rape laws were further amended in respect of the age of consent. The age was raised to 16 years in clause fifthly' of section 375, dealing with extramarital cases and 15 years in the exception dealing with the marital cases, by section 3 of the Amending Act<sup>21</sup> Another amendment was brought about in 1955, which substituted the words transportation by imprisonment for life in section 376. The Indian Law commission had stated its intention of revising the PC in 1959 but it was only after 12 years, in 1971 in 1971 that the Law Commission could send its report on the IPC to the Union Law Minister.<sup>31</sup> The main recommendations of the 42nd Law Commission Report are as follows:

1. The members of Law Commission noted that under the third clause of section 375, consent of the woman is vitiated only when she is put in the fear of death or bodily hurt to herself. The clause did not cover the situations, where death or grievous hurt is threatened to someone else present on the spot. They suggested the addition of the words \_either to herself or to anyone else present at the place' after the word hurt' to cover such situations.

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<sup>20</sup> Vasudha Dhagamwar in Law , Power and Justice , 1992, p.118.

<sup>21</sup> Indian Penal Code 1860 and Code of Criminal Procedure ( Amendment ) Act 1949, No. XLII of 1949. <sup>31</sup> Law Commission of India , 42<sup>nd</sup> Report, IPC , Government of India ,Ministry of Law , june 1971 ( attached to annexure II )



2. The members of Law Commission took note of the case of forcible sexual intercourse by husband when the couple had been living apart under a decree or Judicial separation or by mutual agreement. They considered that such sexual intercourse shall be treated as rape.
3. The members recommended that the forcible intercourse by husband when the wife is under 15 years of age, should not be called rape in the technical sense and the punishment for the offence may be provided in a separate section. They recommended section 376A, which provided for the punishment for sexual intercourse with his child wife<sup>22</sup>.
4. The members opined that in case of a girl between 12-16 years, who consented for the intercourse, the offence should not be equated and not punished as severely as rape<sup>23</sup>. They recommended a separate section 376B for such cases and the maximum period of punishment prescribed was seven years.
5. The Law Commissioners prescribed enhanced rigorous punishment of 14 years for the offence of rape.
6. The most significant contribution by the Law Commission was the recognition of the phenomenon of 'Custodial rape'. It was commented that under certain situations, woman's submission to sexual intercourse is really not willing consent, whereby men in authority take advantage of the women under their custody. Section 376C, D and E were recommended, prescribing for punishment in cases of illicit intercourse by a public servant, superintendent of women's or children's institution and manager of the hospital.

### **Major Criminal Law Amendments relating to rape laws in India**

Criminal law in India governs and prohibits the offences/crimes and punishes those who commit crime(s) in accordance with the laws. All the offence/crimes committed in India are all deemed as offences/ crimes against the State. In India, generally criminal law comprises of three major statutes; Criminal Procedure code, Indian Evidence Act and the Indian Penal Code. There are other criminal laws in India like the Dowry Prevention Act, The Narcotic Drugs and Psychopathic Substances Act, etc.

### **Why were the amendments made to criminal law?**

The amendments were brought about to Criminal law due to massive change in the structure of committing crimes. In this modern era, the crimes have increased drastically and the ways of commission of the crimes have also undergone changes. The provisions that were drafted about a century ago though stands good in most cases, there are many offences/crimes which were never even thought or heard of before (e.g.: Acid attack). With the advent of modern technologies, the criminals have started to use

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<sup>22</sup> Annexure II ,section 376-A IPC

<sup>23</sup> Law Commission of India , 42<sup>nd</sup> Report ,IPC Government of India , Ministry of Law , June 1971, Para 16

these in commission of crimes (e.g.: stalking and voyeurism). The amendments have brought about changes to the then existing laws and have also inculcated new types and forms of offences/crimes and also have given them new dimensions and definitions

### **The major amendments to Criminal law in India Aftermath of four rapes that shook India**

#### **1. The Criminal law amendment of 1983:**

The Criminal law amendment, 1983 was the consequence of a rape case, famously known as "The Mathura Rape Case"<sup>24</sup> in 1972. This was a peculiar case of custodial rape inside as Desaijanj police station in Maharashtra. On the night of 26th March 1972, a young tribal girl, aged between 14-16 years who, worked as domestic help went to Desaijanj police station along with her brother and other relatives to lodge a complaint of her abduction. After receiving the complaint, the policemen sent the girl's brother and other relatives out leaving behind the girl inside the station. The girl was allegedly raped by two policemen inside the police station.

It was held by the sessions court that, the policemen were not guilty of the offence of rape as the girl did not raise any alarm and was habituated to sexual intercourse. On an appeal the Nagpur Bench of High Court of Bombay, the sessions court judgement was set aside and the accused policemen were imprisoned. The accused policemen appealed to the Supreme Court of India in 1979 where the policemen were acquitted as there was no suggestive evidence of rape.

After few days of pronouncing the judgement in Mathura rape case, there was a huge public outcry and widespread protests by women organisations throughout India and some eminent scholars even wrote letter to the Supreme Court for excluding "consent" in Mathura rape case. These ultimately led to the Criminal Law Amendment, 1983. The amendments that were made are:

#### **Indian Penal Code, 1860**

- Sec.228A - Disclosure of identity of victim of certain offences etc., Indian Penal Code, 1860 [Prescribes punishment for any person who prints or publishes the name or any other information related to the identity of a rape victim; unless such disclosure is with the consent of the victim or, in case the victim is dead/minor/unsound mind, by the next of kin of the victim, or by or under an order of the Court].
- Sec.375 - Rape, Indian Penal Code, 1860
- Sec.37 punishment for Rape, Indian Penal Code, 1860
- Sec.376A - Intercourse by a man with his wife during separation, Indian Penal Code, 1860
- Sec.376B Intercourse with public servant with woman in his custody, Indian Penal Code, 1860

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<sup>24</sup> Tuka Ram and Anr v. State of Maharashtra [ 1979 AIR 185, 1979 SCR (1) 810]

- Sec.376C - Intercourse by superintendent of jail, remand home etc., Indian Penal Code, 1860
- Sec.376D- Gang Rape, Indian Penal Code, 1860
- Sec.498A - Husband or relative of husband of a woman subjecting her to cruelty Indian Penal Code, 1860 [Whoever bring the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and also be liable to fine].

### **Code of Criminal Procedure, 1973**

1. The Commission recommended that sub-sections (3) and (4) be inserted in section 160, CrPC to the effect that the statement of the victim shall be recorded by a female police officer, in case a female police officer is not available, by a female government servant available in the vicinity and in case a female government servant is not available, by a female authorized by an organization interested in the welfare of women or children. Where either of these alternatives are not available, the officer in charge of the police station shall record the statement of the victim in presence of her relative 2. Substitution of the proviso to sub-s (1) of sec.160, CrPC, was also recommended for raising the age limit from 15 years to 16 years.<sup>25</sup>

3. The Commission recommended that the age limit prescribed in the clause sixthly to section 375 IPC, be raised to 18 years from the existing 16 years.

4. The Commission recommended the insertion of a new section 164A, CrPC, for medical examination of the victim with her consent, by a medical practitioner, during investigation, so that the valuable medical evidence is not destroyed the delay etc.<sup>26</sup>

The Commission also recommended the insertion of a new s 53A, CrPC, to provide for the medical examination of the accused without delay.

### **Indian Evidence Act, 1872**

1. Law Commission recommended the insertion of s 53A, which provides that where consent of the victim is in issue, her past sexual experience with any 1 consent of the RELEVANT.<sup>37</sup>

2. The Commission was of the view that sec 146(4) should be inserted, prohibiting the questions regarding general character of the victim<sup>27</sup>.

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<sup>25</sup> Section 160, proviso, Crpc

<sup>26</sup> Section 164A CrPC <sup>37</sup>

Section 52A IEA

<sup>27</sup> Section 146(4)IEA.

## **The Code of Criminal Procedure (Amendment) Act, 2005.**

The Amendment Act of 2005 provides the provisions for the medical examination of the rape victim and the accused which are as follows:

### **Criminal law amendment of 2013:**

The criminal law amendment, 2013 was the consequence of the Nirbhaya rape case<sup>28</sup> in 2012. This rape shook the whole world, when 23-year-old physiotherapy student was travelling with her friend in a private bus in southern Delhi. The girl was gang raped, beaten and tortured. She died few days later at Singapore, where she was under treatment.

After the incident came to light there were numerous protests condemning the then laws and seeking for strong and stringent laws, hence the Criminal Law Amendment, 2013 came into force

### **THE AMENDMENTS THAT WERE MADE ARE:**

#### **Indian Penal Code, 1860**

- Sec.166A - Public Servant disobeying direction under law, Indian Penal Code, 1860
- Sec.166B - Punishment for non-treatment of victim, Indian Penal Code, 1860
- Sec.354 Assault or Criminal Force to Woman with intent to outrage her modesty, Indian Penal Code, 1860
- Sec.354A Sexual Harassment and Punishment for Sexual Harassment, Indian Penal Code, 1860
- Sec.354B - Assault or use of criminal force to women with intent to disrobe her Indian Penal Code, 1860
- Sec.354C- Voyeurism, Indian Penal Code, 1860
- Sec.354D- Stalking, Indian Penal Code, 1860
- . Sec.375 -Rape, Indian Penal Code, 1860
- Sec.376- Punishment for Rape, Indian Penal Code, 1860
- Sec.376A - Punishment for causing death or persistent vegetative state due to rape, Indian Penal Code, 1860
- Sec.376B - Sexual Intercourse by husband upon his wife during separation, Indian Penal Code, 1860
- Sec.376C-Sexual Intercourse by a Person in Authority, Indian Penal Code, 1860
- Sec.376D - Gang rape, Indian Penal Code, 1860
- . Sec.376E - Punishment for repeat offenders, Indian Penal Code, 1860
- Sec.509 - Word, Gesture or Act intended to insult the modesty of a woman, Indian Penal Code, 1860

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<sup>28</sup> Mukesh and Anr v. State for net of Delhi and Ors.

### **Code of Criminal Procedure, 1973**

- Sec.154(1) - Information in cognizable cases, Code of Criminal Procedure, 1973 [In case of sexual offences and acid attack, the statement will be recorded by a woman police officer or a woman officer]
- Sec. .161 Examination of Witnesses by Police, Code of Criminal Procedure, 1973 [The statement may be audio-video recorded; statement of a victim for cases of sexual assault and rape will be recorded by a woman police officer or a woman officer]
- Sec.164(5A) - Recording of confessions and statements, Code of Criminal Procedure, 1973 [Judicial Magistrate shall record the statement of the victim of an offence under Sec. 354, 354A, Sec. 354B, Sec. 354C, Sec. 354D, Sec. 376, Sec. 376A, Sec. 376B, Sec. 376C, Sec. 376D, Sec. 376E of the Indian Penal Code, 1960, in the manner prescribed under Sec. 164(5) of the Code of Criminal Procedure, 1973 as soon as the commission of such offence is reported]
- Sec.197- Prosecution of Judges and Public Servants, Code of Criminal Procedure, 1973[ no sanction is required in case of public servant committing a sexual offence]
- Sec.198B - Cognizance of Offence, Code of Criminal Procedure, 1973 [Marital rape cases under Sec. 376B can only be filed by the wife]
- Sec.273 Evidence to be taken in presence of accused, [Where the evidence of a person below 18 years who has been subjected to sexual assault or sexual offence is being recorded, the court will ensure that the person will not be confronted by the accused.]
- Sec.309(1) - Power to postpone or adjourn proceedings, Code of Criminal Procedure, 1973 [The trial in rape cases must be conducted daily and shall as far as possible be completed within 2 months]
- Sec.357B - Compensation to be in addition to fine paid under Sec. 326A or Sec. 376D of Indian Penal Code, Criminal Procedure Code, 1973 [Medical practitioner has to mandatorily inform police]
- Sec.357C Treatment of victims, Code of Criminal Procedure, 1973 [Immediate firstaid or medical treatment will be provided free of cost by all hospitals to the victims of any offence covered under Sec. 326, Sec. 376, Sec. 376A, Sec. 376B, Sec. 376D, Sec. 376E of the Indian Penal Code, 1860; medical professionals are required to immediately report the crime to the police which is not in the interest of the survivor who may not want to report the crime]

### **Indian Evidence Act, 1872**

Sec.53A- Evidence of character of previous sexual experience not relevant in certain, Indian Evidence Act, 1872[ In a prosecution of sexual offences, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent]

Sec.114A - Presumption as to absence of consent in certain prosecution for rape [Absence of consent shall be presumed in cases of aggravated rape given under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (I), clause (j), clause (k), clause (l), clause (m), clause (n) of sub-section (2) of Sec. 376 of the Indian Penal Code, 1860]

Sec.146 Questions lawful in cross-examination [In the prosecution for commission of offences or attempt to commit offences under Sec.376 to 376E, where the consent of the victim is the issue, neither evidence nor questions in cross examination can be put to the victim, regarding her immoral character or her previous sexual experience.]

### **Criminal Law Amendment, 2018:**

The Criminal law amendment 2018 was the result of two unfortunate rape cases, one in 2017 at Unnao, Uttar Pradesh and one in 2018 at Kathuna, Jammu and Kashmir. Unnao Rape case<sup>[iii]</sup> is an incident of gang rape of a 17-year-old girl in June 2017 at Unnao, U.P. The main accused in this case was a politician who is now convicted for the rape and is sentenced to life imprisonment. In 2018, this incident caught the attention of media when the victim tried to immolate herself in front of the accused politician's residence.

Kathuna Rape case<sup>29</sup> is the tragic rape and murder of 8-year-old girl at Kathuna in the then state of Jammu and Kashmir in 2018. It is believed that the girl was abducted and kept inside a shrine and was repeatedly raped and murdered. This incident came to light when the trial began. Both the incidents drew the attention of media and public which protested for amendments in criminal law for rape. These two incidents led to Criminal law amendment, 2018.

### **The amendments that were made are:**

Sec.376- (a) in Sub-section (1), for the words shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine, the words shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine shall be substituted:

(b) in sub-section (2), clause (I) shall be omitted;

(c) after sub-section (2), the following sub-section shall be inserted, namely:

(3) Whoever, commits rape on a woman under sixteen years of age 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, and shall also be liable to fine.

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<sup>29</sup> Kuldeep Singh Sengar v. State of U.P and Anr

Sec.376AB - Whoever, commits rape on a woman under twelve years of age 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 , and with fine or with death.

## CHAPTER-IV

### ISSUE CONCERNING RAPE: A CRITICAL COMPARATIVE ANALYSIS

The above quote Of Dr . Martin Luther King. Jr. compels one to reflect on what matters most to us, individually as well as collectively. Rape, sexual assault and verbal abuse of females of all ages and socioeconomic strata have become common incidents in India.. Such crimes distress countless women and challenge their well-being. The paper endeavor to analyse the problem of Rape' and its re occurrence from multiple perspectives at the micro and macro levels in India, applying institutional, sociological and particular the paper presents Root Cause Analysis of a rape case which occurred on December, 16\_2012 in New Delhi which stirred the country for its brutality and attracted national and international attention.

#### THE INCIDENT

The incident of rape on December, 16, 2012 in New Delhi, the capital of India shocked the entire nation. A 23year old woman was gang raped by six men in a moving bus. The woman, a student of psychotherapy, with her male friend was returning home after a movie at about 9.30 pm from Saket, a busy place in South Delhi.<sup>30</sup> They boarded a deluxe luxury white bus, assuming it was a public bus, to reach their destination. The only passengers in the bus were five men and the driver of the bus, The bus was diverted from the usual route to an isolated location and the doors locked without them being aware of it. The driver and the five men tormented the woman and her friend. The friend lost consciousness from being hit on the head when he resisted.<sup>31</sup> The woman was then dragged to the driver's cabin and raped in the moving bus by them. The couple was dumped out of the moving bus and were discovered by the Delhi Police lying on the road. The police transported the couple to a hospital, where the woman received emergency treatments.<sup>32</sup>

#### The Aftermath

After the incident, it was reported that the assailants were taken into police custody within 24 hours of the incidence. Five of the men identified were in the age group of 19-35 years and were in drunken state; the sixth offender was a minor (under 18 years). The bus was and being operated illegally by the men, who had no authorization to pick up passengers. Prior to the

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<sup>30</sup> {Cited 11 jan 2013 } Available from URL ; <http://www.dailymail.co.uk/news/article-2258306/Delhi-gangrape-rape-five-men-charged-joyti-Singh-pamdey-murder-appear-court.html>.

<sup>31</sup> [Cited 11jan 2013] Available from URL:<http://www.thehindu.com/news/national/delhi-gangrapr-victimnarrates-the-tale-of-horror/article4230038.ece>

<sup>32</sup> [ Cited 11 jan 2013 ] Available from URL:<http://m.ibtimes.co.uk/delhi-gang-rape-juvenile-attacker-brutalraped-420247.html>



rape incident, the gang is reported to have robbed another passenger, a carpenter, who had boarded the bus believing it was a scheduled bus, and had later got off.

The medical reports stated that the woman suffered severe injuries due to the assault. The police reported that the women struggle bravely to fight off the attackers, but was outnumbered.

The woman, in extremely critical condition, was given the best possible medical care in a New Delhi hospital where her condition continued to be critical. Eventually it was decided to transfer her to an advanced multi-organ transplant speciality hospital in Singapore'. The woman fought for her' life there but her condition continued to deteriorate and she died of cerebral edema' on 28 December 2012.<sup>33</sup> Her body was flown back to India and was cremated on December 30, 2012 in Delhi under high police security.

Audio-visual, print and social media played a critical role in covering and continuously reporting the situation, reactions and comments from all sections of people from across the country and abroad. This not only made people aware but also angry and resulted in unprecedented social support in the form of mass movement in different parts of the country involving corporate organizations, school and college students (both boys and girls), working professionals, housewives, and common man through candle march, slogan shouting, demand for urgent action against the assailants. The six men were charged under sections 307 (attempt to murder), 201 (destruction of evidence), 365 (kidnapping or abducting), 376 (2) (g) (gang rape), 377 (unnatural offence), 391 (hurting in committing robbery) and 34 (common intention) of the Indian Penal Code.

## **ANALYSIS OF THE PROBLEM**

ROOT Cause Analysis is a technique designed to understand the underlying causes for the occurrence of problems. In addition to the what and how' of a problem this technique endeavor to understand the why of a problem to provide recommendations in order to prevent its recurrence (Rooney and Helve, 2004). It has been defined as -a structured investigation that aims to identify the true cause of a problem and the action necessary to eliminate it . (Andersen and Fagerhaug, 1997, p.12). Carrying out analysis through this technique is versatile and generally involve an identifiable set of steps (Andersen and Fagerhaug, 1997). This paper uses a five step procedure (Mind Tools, 2013) for carrying out the root cause analysis on the problem of rape in India. The first step involves defining the problem under investigation by describing its nature and symptoms . The second step establishes the evidence that the problem described in stage one is worth studying. The researcher needs to carefully analyse the situation before looking out for the cause of the problem at hand . The third step involve analyzing the condition that allow the problem to occur. It also seeks to uncover other factors of problem that lead to the problem at hand . The fourth step involves identifying the root cause i.e. the real reason because of which the problem occurred to dig deeper into the problem . finally in the fifth stage recommendation , based on the root causes, are presented . For example- How could

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<sup>33</sup> Cited 11 jan 2013 ]. Available from URL:<http://www.bbc.co.uk/news/world-asia-india-20860569>

incidents be prevented from happening again? Who can implement the solutions? How can the solution be implemented?

### **Step one: Defining Rape**

The word rape is derived from a Latino word implying 'to seize'. Rape is a crime that involves sexual assault usually involving sexual intercourse which is initiated by one or more persons against another person without that person's consent.<sup>34</sup> Rape in India is defined under Section 375 of the Indian Penal Code -as intentional, unlawful sexual intercourse with a woman without her consent. This definition is too narrow and has been sporadically criticized for not incorporating other forms of sexual assaults.

In the Indian context, the phenomenon of rape entails a sociocultural perspective as well. Rape not just harms the victim physically but also disgraces and tarnishes one's soul with devastating effect on the victim. Based on a variety of situations, rape has been classified into various types viz., -Acquaintance rape, stranger rape, Gang rape, Statutory rape, spousal rape are a few types of rape. Acquaintance rape involves some kind of association or connection between the victim and the assaulter(s); Stranger rape is the one wherein a victim is unfamiliar with the assault; Gang rape is often the most violent and dehumanizing and involves a group of adulterers that rape the victim; Statutory rape involves having sexual intercourse with a minor below the age of 18 ( below the age of legal consent ) ; Spousal rape involves forcing sexual intercourse towards the spouse.

### **Step 2: Magnitude of the problem in India**

As per National Crime Records Bureau (NCRB) statistics, India witnessed 24,206 recorded rape incidents in 2011. There has been a 9.2 per cent increase in the number of rape incidents reported from 2007 to 2011. India is ranked third in rape incidents in the world after United states and South Africa. The situation is grave and deserves root analysis a woman is raped in India every twenty minute.<sup>35</sup>

Table 1 yields that there has been copious increase in the rate of rapes over the past 40 years. A critical look at table 2 reveals the alarming increase in the incidents of rapes in India from 2007 to 2008. However, 2009 recorded marginal decrease followed by consistent rise, recording an increase of 9.2 percent from 2010 to 2011. Table 3 provides the regional representation of rape incident. It can be observed that incident of rape are highest in North, followed by Central, East and South. Least number of cases has been reported in west followed by North East of India .

### **Step 3: Identifying the possible causal**

It is ironic; in India, a country where many female goddesses are worshiped, crimes against It women are on the rise. The questions: \_Why does a rape occur? What causes someone to commit rape? \_What factors contribute to it? do not have easy answers. Nonetheless, delving

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<sup>34</sup> [ Cited 11jan2013] Available from URL :<http://en.wikipedia.org/wiki/rape>

<sup>35</sup> [Cited 11jan 2013] Available from URL:<http://cikaloon.blogspot.in/2012/12/rape-happens-every-20-minutesin-india.html>.

into these questions is essential to plan a strategy to prevent the crimes. This section of the paper examines the macro level factors: social structure, social beliefs, legislation and the like, as well as, the micro level factors: motivation and psychology of the assailant to understand the possible causal factors contributing to the problem.

#### **d) Social Factors**

**Patriarchal Society:** Patriarchy is a system and an ideology wherein the father is considered as the head of the family and by virtue of this position he rules. Walby (1990, p.20) defines it as -a system of social structures and practices in which men dominate, oppress and exploit women. The lives of women in such societies are the hardest (Johnson, 1997) as men are predisposed to view them as their personal property. The Indian mind-set is mainly defined by patriarchal values and this is probably a major contributing factor to high incidences of crime against women which manifests in form of female feticide, dowry deaths, sexual harassment and even rape.

**Gender Inequality:** In the words of the Indian Prime Minister, Dr Manmohan Singh -No nation, no society, no community can hold its head high and claim to be part of the civilized world if it condones the practice of discriminating against one half of humanity represented by women.<sup>36</sup> Unfortunately, gender inequity is a reality in India like in many other parts of the world. The statistics reveal that the gender ratio (the proportion of females per thousand males) has fallen from 962 in 1901 to 933 in 2001 to 914 in 2011 in India.<sup>37</sup>

*“The deepening of sex ratio imbalances can be largely attributed to a marked preference for a son in tandem with a rapid decline in fertility, as infant daughters may be subjected to maltreatment, neglect and abandonment, and new technologies allow biases against females.”* This imbalance is due to the cultural preference (Sharma and Mukherjee, 2012) for a male child and subordinate position given to women in all walks of life in the country. It also gives an indirect explanation of rapes in the country.

**Sex as Taboo:** It is a paradox that in the second most populated country, which developed Kama Sutra (literature on sex) for the world, sex is considered a taboo, The context history played a major role in this contradiction. Sex was not considered a stigma in ancient times but -Victorian values stigmatized sexual liberalism in India. Conservatism has Since become a part of India and sex became a topic prohibited discussion topic. The fundamental changes in the Indian mindset subsequently also indirectly led to significant increase in number of rapes.

#### **e) Cultural Factors**

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<sup>36</sup> [ Cited 11 jan 2013]Available from URL:

[http://www.nytimes.com/2008/04/29/world/asia/29india.html?\\_r=0](http://www.nytimes.com/2008/04/29/world/asia/29india.html?_r=0)

<sup>37</sup> [Cited 11 jan 2013] Available from URL :<http://www.articlesbase.com/womens-issues-article/genderimbalance-in-indiacauses-and-consequences-235104.html>.

**Power Distance:** Hofstede (1980, 1998) power distance dimension represents the degree of tolerance of social inequality by members in a social system. India scores 77, which signifies that the country approves hierarchy and top-down structure in the society. Gender inequality is a source of power distance in India and females often have much less power than their male counterparts. This may be a reason for easier sexual exploitation of females by males and prevalence of rape in the country.

**Masculinity:** The masculinity versus femininity dimension refers to the different roles assumed by men and women in a society (Hofstede, 1998). Low-scoring masculinity cultures allow for equality between the sexes. India scores 56 on this dimension and is considered a masculine society. Because of its patriarchal culture significant difference can be seen in the roles of the two genders. -Men are in charge of the sexuality of women and their sense of honour depends on this control being socially accepted as legitimate (Luthar and Luthar, 2002). Such a scenario may lead to crimes like rape in India.

#### **f) Institutional Factors**

**Legislation:** India has a number of laws to mitigate rape; despite that incidents of rape have been on the rise. The following presents a gap in the law in which the offenders take advantage. The essential elements of the rape law as defined under section 375 of Indian Penal Code are - sexual intercourse with a woman and the absence of consent . This definition, therefore, does not include acts of forced oral sex, or sodomy, or penetration by foreign objects; instead those actions are criminalized under Section 354 of the IPC, which deals with criminal assault on a woman with intent to outrage her modesty.<sup>38</sup> The evidence collection techniques for rape are by no means standardized. The Human Rights Watch has criticized India for continuing to use one of the most archaic forensic procedures.

**Challenges** in getting the complaint registered, proving the rape actually occurred, impact of a low conviction rate, an embarrassing investigation, stigma attached with the victim characterize the procedures and systems in India. Criminals take advantage of these factors which leads to incidents of rape cases in India.

**Educational System:** The Indian educational system has still not been able to incorporate sex education in schools because of various -political reasons and conservative nature of Indian culture.<sup>39</sup> The World Health Organization has stated that -Early sex education delays the start of sexual activity, reduces sexual activity among young people, and encourages those already sexually active to have safer sex. Lack of knowledge and inquisitiveness to indulge in sexual acts is a possible cause for increase in sexual crimes like rape.

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<sup>38</sup> [ Cited 11 jan 2013] Available from URL:<http://www.legalserviceindia.com/articles/rape-1.htm>

<sup>39</sup> [ Cited 11 jan 2013 ] Available from URL:<http://www.csrindia.org/index.php/sex-education>

### **g) Environmental factors**

**Migration:** There has been a substantial increase in the urban population in the country. 290 million people live in urban areas at present, compared to 25 million people in 1901. Lack of opportunities available in rural areas is a major factor leading to rural-urban migration. According to World Urbanization Prospects (the 2011 revision), by the year 2030 this number will increase to 497 million.<sup>40</sup>

Migration has resulted in loosening of social controls and widening of social gap between the privileged and the disadvantaged. Security and violence have not been regarded as core issue of urban management. This is one of the major reasons for increased crime in the society. Separation from family, lack of identity and possible anonymity of the migrants is also a possible explanation of the increasing rate of rape.

**Westernization:** India is experiencing a sea change in terms of economic growth and development, technology, lifestyle etc. In the process it is adopting western outlook and concept. These changes have significantly affected our values and concepts, for example growing number of nuclear families and break down of traditional joint family. The technology has exposed children to all kinds of violent behaviour, criminal ideology, and porn movies as well as rapes too. This influences children and even adults indulging in these activities which increase the potential risk of rape in the country.

### **h) Individual Level Factors**

**Psychological Reasons:** There is possibility of psychological reasons which may compel people to commit such crimes. Rapists may be suffering from some emotional distress or abnormalities in their personality. Sex addicts, for example, are obsessed with sexual thoughts and therefore they cannot control their need to be satisfied, thus indulge in acts like rape. Mental illness, dementia, and childhood experiences like child abuse, sexual inadequacy of the past are some of the other psychological factors leading to rape.<sup>41</sup>

**Motivational Reasons:** The motivation to indulge in this crime may be varied for example the desire to dominate/overpower the victim; to demonstrate one's masculinity; to take revenge against a woman; to tarnish the image of the woman or her family members; to Compensate one's underlying feelings of inadequacy etc. "Rape can also be committed out of Sadism or need for power and control in a manner that is intentional, premeditated and coercive.

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<sup>40</sup> [Cited 11 jan 2013] Available from URL:<http://www.indianexpress.com/news/indias-urban-population-toincrease-by-497-mn-in-201050-un/933442>

<sup>41</sup> [ Cited 11 jan 2013] Available from URL: <http://www.rediff.com/news/special/into-the-mind-of-the-rapistspecial/20121026.htm>

#### **Step 4: Identifying the root causes**

This section of the paper seeks to identify the root causes of the 'Delhi Gang Rape Case' at three levels: i) the Criminals, ii) the victim and iii) the protesters.

##### **i)The Assailants**

*"Anatomy of the gang rape accused"*<sup>42</sup>

With the objective to explore an in-depth analysis for the reasons behind a crime committed by the accused, it is important to identify their brief demographic profile.

**Assailant 1:** He was a 35 year old widower, the main accused of the incident, belongs to the neighbouring state (about 200 miles from Delhi) and had been staying in a slum in South Delhi. He worked as bus driver for two schools in Delhi and Noida and had access to the bus that was used in the crime. He was in a drunken state at the time of the incident and indulged in provocative behaviour instigating the crime. He was tracked through close circuit television (CCTV) footage from the bus.

**Assailant 2:** He was in his early thirties and the brother of Assailant 1. He worked with his brother as a cleaner of the bus and drove the bus occasionally. He was accused of raping the woman, and hitting her and her friend with an iron rod. He was driving the bus when the incident occurred.

**Assailant 3:** A 19 year old Fruit Vendor. He was accused of assaulting the victim's friend. He also helped in throwing the couple out of the vehicle.

**Assailant 4:** A 20 years old, married man and a father of two children who resided in a village in a neighbouring state and was employed as a helper on the bus. He was accused of sexually assaulting the victim and also destroying the evidence after the incident.

**Assailant 5:** A 20 years old assistant trainer who worked at a gym. He was reported to have held the girl's friend down while his accomplices' beat him with iron rod and later also assaulted the girl sexually.

**Assailant 6:** A runaway juvenile from a broken home. He was identified as one of the three attackers who most brutally assaulted the girl. He solicited the couple on to the bus. He sexually assaulted the women and continued brutalizing her even after she lost her consciousness. The following present theoretical basis for the analysis of the behaviour of the criminals with the help of some psychological theories. We have used a variety of theories because of multi-dimensionality and complexity of the problem.

#### **Erik Erikson Identity Theory**

Erik Erikson's psychological theory gives insights about the accused especially the juvenile gang rape case. Erikson was the first to develop an eight stage human developmental model. Each stage represents a person with some conflicts, termed as crisis/es that a person to successfully deal with before moving to needs stage (Sokol,2009).Erikson (1968,p.96) used the

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<sup>42</sup> [ cited 11 jan 2013] Available from

URL:<http://thestar.com.my/news/story.asp?file=/2013/1/3/reutersworld/1301031713-profile-of-men-to-becharged-over-delhi&sec=reutersworld>

term crisis -in a developmental sense to cannot to the next e not a threat of catastrophe, but a turning point, a crucial period of increased vulnerability and heightened penitential.

#### **4.2 THE STAGES OF HUMAN DEVELOPMENT HAVE BEEN PRESENTED.**

The sixth accused juvenile, by age criteria, lies in the fifth stage of Erik Erikson developmental model. The Adolescence stage which lasts from 12-18 years is marked by crisis of identity vs. confusion (Elkind, 1970). Adolescents in this stage attain physical maturity and desire freedom. At the same time they are also confused about their identity and often seek answer to questions like Who am I? They also experience sexual feelings and generally do not know how to deal with those feelings.

The accused juvenile appears to be experiencing the fifth stage, considering he was 17 years old and was a run away from a broken home. Considering his economic status and demographic profile, the crisis of sexuality and identity had not yet been resolved in his case. This unresolved crisis and search for identity might have pushed him into this ruthless act. This might have been his first encounter with sexuality and thus his fascination and desire may have intensified his brutality.

As for the other accused, their detailed profiles are not available but sexual deprivation and unknown identity in the urban setting might have been a possible factor for them to indulge in this act.

#### **Rational Choice Theory ( RCT)**

The other theory that can explain the behaviour of criminals in the incident is Rational Choice Theory (RCT). RCT has its genesis in the field of economics but has been applied widely in other disciplines as well (Lindauer, 2009). The theory is concerned with how incentives and constraints affect behaviour (Gul, 2009). Beccaria applied this theory to the field of criminology (Hayward, 2007) to suggest that the criminals purposefully weigh the potential risks against the rewards and then take the decision to indulge or otherwise in the crime. The accused must have assessed the risk involved in the activity for fun and would have found it to be not only low risk but also that they could get away with it. This is because the conviction rate for rape in India is very low due to low reporting of cases and also due to social stigma attached with rape which would prevent the victim from lodging a complaint against such a crime. The leniency with which such cases are often dealt with and the consistent mild sentence of punishment would have probably increased the boldness of the culprits to commit the crime.

#### **Social Disorganization Theory**

Social Disorganization Theory (SDT) developed by Shaw and McKay (1942) offers yet another perspective to analyse this case. The theory argues that -crime and deviance reflect conditions that disrupt the integrity of local communities and weaken the regulatory power of social norms. (Baron and Straus, 1987). Migration, separation from the family, marital issues may be some of the reasons to indulge in criminal activities (Blau and Blau, 1982).

The profile of the accused indicates that three of them were natives of other neighbouring states and had come to New Delhi for livelihood. It also reveals that all except one were living away from their spouse for a job. This lack of family life, security and anonymity led to loosening of social control motivating the accused to indulge in such heinous act .

### **Strain Theory**

General strain theory has developed into a social psychological theory of crime. Agnew,(1992) proposed that strain theory could be used to understand the way individuals cope with negative reactions by indulging in criminal acts. This theory suggests that when individuals are not able to achieve their aspirations through approved means then they adopt other means like crime.

The accused in the case belong to low socio - economic strata involved in jobs that would barely provide for their two square meals a day. They indulged in different unethical activities to fulfil their desires. They used the bus in an unauthorized manner, robbed a passenger of INR 8000 who was enticed to board the bus on the way. They would have, more likely, purchased liquor with that money to have fun during the joy ride. It is possible that to meet their physical needs and to demonstrate their masculinity theory indulge further in the rape crime .

### **ii) The Victim**

#### **The Bravery of the Victim:**

The 23 year old young, educated, hard working woman who personified India's respected woman lost her life in the incident. She was responsible and had followed general guidelines for safety of women. Believing she was safe, travelling at 9:30 pm, a reasonable time, in a public transport bus, which is considered safe and was accompanied by a male friend who would protect her in case of a crisis. There is no such report that she dressed indecently or invited undue attention because of her appearance; with no apparent fault of her own she became the victim of the crime.

She fought during and after the incident with her indomitable spirit. She is the personification of an average modern Indian woman who is educated, ambitious, professional and brave and does not coward to crime against her and fights for her life. Though she struggled to fight off her attackers, she could not fight enough to survive the multi organ failure due to severe injuries inflicted on her during the gang rape. Her critical condition constantly deteriorated and on the 14<sup>th</sup> day all the hopes of recovery were shattered when she took her last breath with her family present.<sup>43</sup>

The family comprising, father, mother and two brothers were greatly aggrieved. The mother of the girl called for capital punishment for the assailant of her daughter while the father made

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<sup>43</sup> [ cited 11jan 2013] Available from URL :[http://www.dnaindia.com/india/report\\_delhi-gang-rape-victim-diesnation-mourns-delhi-on-high-alert\\_1782943](http://www.dnaindia.com/india/report_delhi-gang-rape-victim-diesnation-mourns-delhi-on-high-alert_1782943)



the name of his daughter public on the condition that a strong anti-rape law be introduced in India and be named after his daughter.<sup>44</sup>

### iii) **The Protestors**

Indians involving all age groups and genders swarmed on streets and public places in various Indian cities to condemn the gang rape of the 23 year old psychotherapy student. Thousands gathered shouting slogans with protest signs in their hand. Delhi and national capital region had an unprecedented crowd which blocked major roads and it became almost impossible for the police to control them. Nothing could prevent people from participating in demonstrations, marches and rallies. The mob defied all efforts to keep them away from press and express their demand to award capital punishment to the guilty and to urgently introduce a strong law for crime against women. Also, different localities participated in candle vigil marches in support of the cause. The protesters demanded speedy justice for the victim and strengthening of rape laws in the country. The behaviour of the crowd can be defined using two conceptual frameworks: social identification and compassion explained below.

**Social Identification-** It is conceptualized as that -connection that exists between people personal affiliation, closeness, or similarity (e.g., values, gender, culture)! (Duffy, et al., 2012). Social Identification is one of the many possible reasons for such aggressive protest by the youth and women of the country. Social identification is a process-whereby people come to perceive themselves more as the interchangeable exemplars of a social category than as unique personalities. (Turner, et al, 1987, p. 50). people identified with the victim, believing that any woman could have been in the place of the victim. Such a violent crime stirred almost everyone especially women. The victim's death has intensified anguish in millions of people. By way of demonstration and rallies the youth, women and others put tremendous pressure on the government to ensure women safety and security.

**Compassion-** The concept that can best capture the reaction of demonstrators for the victim is compassion. Compassion is that virtue which makes human actually behaves as human, Compassion has been defined both as a state and a process. It is a state which is induced by another person's suffering (Nussbaum, 1996). Clark, pro (1997) described it as a process which constitutes three sub processes: -noticing another suffering, -feeling the other's pain, and responding to that person's suffering (Kannov, et al., 2004).

All the three sub processes of compassion towards the victim by the demonstrators were clearly evident in this case. People recognized the pain as soon as details of the incident were made public by the audio-visual, social and print media. People felt her pain, expressed empathy, anger, anguish and frustration and even outburst at the leniency of the system. The social identity and compassion could be seen in form of candle light marches in hope for

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<sup>44</sup> [ cited 11 jan 2013] Available from URL:<http://www.theaustralian.com.au/news/world/father-names-rapevictim-as-jyoti-singh-pandey-to-hearten-other/story-e6frg6so-122658496546>

recovery of the victim when she was fighting for her life in the hospital.<sup>45</sup> Even after her death, people prayed for her soul and continued the protests to force government for speedy justice to the victim.

### **Step 5: Recommendations**

In this section we propose some recommendations, based on the factors discussed in the paper, to mitigate this distressing phenomenon. We draw from the Ashby (1968) principle of requisite variety. It suggests that a -control system may not be able to optimally respond When the variety in the stimuli is greater than the variety in the system's internal set of responses (Gray, 2000, p. 177). Based on this principle and keeping the complex nature of the problem we suggest a multi-dimensional strategy for mitigating the problem of Rape in India. This section has extracts from the FCCI policy paper of (Bopurai et al, 2012). **Social and Cultural:**

- At a macro level, begin campaigns to strongly address the patriarchal values and cultural bias in India favoring the male sex.
- The society as a whole should address the causes and catalysts for the gender imbalance in India.

#### **Institutional:**

##### **Policing:**

- Increase conviction rate in the cases of rape.
- Ensure that complaints get registered as soon as reported.
- Education and training for police officials in investigation and interrogation techniques for these cases.
- Promote values like integrity and honour among the police personnel .
- Legal sanctions and deterrents: .
- Rape laws must be modernized and re-vitalized according to international standards. .
- Improve quality of investigation, methods and procedures for investigation especially taking into account the psychological trauma to the victim. .
- Overhaul the punishments for the offenders.
- Improve enforcement of existing laws by introducing watchdogs and additional support system for victims..

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<sup>45</sup> Cited 11 jan 2013 Available from URL : <http://www.hindustantimes.com/india-news/newdelhi/delhigangrape-violence-at-india-gate-top-cop-say-public-sentiments-hijacked/article1-979832.aspx>

- Ensure justice and punish in time bound manner.

## CHAPTER-V

### 5. RAPE: JUDICIAL APPROACH IN INDIA

In a country where we are developing and enlarging the scope of fundamental rights with In each passing phase, we are having to see marriage as a solution to rapes. It is a bizzare view that the Apex Court which passes the Hadiya judgement declaring Right to choose a life partner as a fundamental right is the same Court which passes a judgment saying a rape accused can be granted bail if he promises to marry the victim. Sadly, this is broadening the scope of patriarchy and encouraging criminals because in either of the situations, the victim has no say. When we talk about Judicial Discretion, we refer to the discretion of the judges whereby the Courts take a step beyond the written law to provide justice to the aggrieved party. However, such demeaning patriarchal judgments seem to be moving in the direction of Judicial Overreach because they do not even consider the plight and despair of the aggrieved party. In the year 2011, a man accused of raping a woman for nearly three years was granted temporary bail by the Bombay high court so that he could marry his victim.<sup>46</sup>

Instead of diving into the true interpretation of the remarks made by the Chief Justice of India, it is pertinent to focus on the difference between judicial activism and judicial overreach of which this situation can be considered as an example. The making of such an appalling and disheartening remark by the Apex Court is a clear case of crossing the boundaries of judicial activism because it clearly disregards the penal provisions meant to punish a rape accused.

Judicial activism is where the judiciary decides in the favour of justice in the absence of a legal provision. In this case, there is an existing legal provision which seems to have been wantonly disregarded by the Court in favour of an archaic and barbaric view. This kind of response depicted by the Chief Justice is also a violation of fundamental right to life with dignity of the rape victim as it takes away her right to choose her life partner and instead punishes her for life by making her spend her life with a person who abused her in the first place.

Apart from violating the fundamental rights of the victim, it also tends to legitimize the grave issue of marital rape by justifying marriage as a remedy to rape. It not only demeans the sanctity of marriage which is supposed to be a sacrament, but also forces the victim to a lifetime of torment wrongful confinement where she is bound to live with her abuser in the constant fear of being raped again. Marriage may bring a social recognition and acceptance to the victim within a society of limited diameter but, that does not act as a compensation to what she has suffered and to the violation of her fundamental right to live with dignity.

Hence, such a remark made by the Apex Court brings out a clear example of judicial overreach where the judiciary has stepped beyond the circumscribed limits of justice. It also illustrates

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<sup>46</sup> Dr. Farrukh Khan is an Advocate and Managing Partner of law firm - Diwan Advocates.

the gross insensitivity and the complete absence of any compassionate and humane approach towards the survivor of a sexual assault. Judicial Overreach refers to an extreme form of judicial activism where arbitrary, unreasonable and frequent interventions are made by judiciary into the legislature's domain, often with the intention of disrupting the balance of power between executive, legislature and judiciary.

Judicial activism is construed to be a reverse of Judicial restraint in order to transform the society through judicial decision. The mixed Civil as well as Common Law system in India enable the free activity to the judiciary in framing new laws or improvising the previous laws. According to Article 141 of the Indian constitution, the law declared by the Supreme Court is binding on all the court within the territory of India and indirectly binds the citizens.

However, some recent judgments seem to have crossed the live to aims a judicial overreach. The same judiciary which brings out death sentences in a Nirbhaya case and amends the POCSO Act to protect women and children, also shows a negative transition it bringing out ideas of marriage between the rape accused and the victim. The nation still lacks a legal provision penalizing marital rape and now getting the rapists married may make it even more difficult to penalize people for martial rapes.

Judicial activism of the Supreme Court took place in case of the Visakha judgment where the absence of policy of sexual harassment at workplace was filled in by the judiciary on July 15, 2020, it was reported in The Print that.

In **Jalal v. Emperor**,<sup>58</sup> two men raped the victim when she was alone in her home. The victim called for help and several people appeared including called for help and several people appeared including her mother-in-law. These persons saw the accused persons escaping.

<sup>58</sup> 92 Ind case 857

The court held that it was quite clear from the evidence that the accused entered the house of the victim and committed criminal assault and not rape upon her. The court observed that the report of the chemical analyzer regarding the presence of cement on the victim's clothing was not sufficient to prove that the victim was actually raped.

In **Emperor v. Mahadeo Tatya**,<sup>59</sup> the victim a married girl of about 15 year and a ghee seller was asked by the police constable on duty to put the ghee in his room. She was raped inside the room, closed and bolted by the constable. After the alleged rape. she was taken to a Railway Station and on the way deprived of her ornaments by the man who was wid to accompany her at the behest of the accused.

The order of conviction of accused, who was a police constable, passed by the trial Court in consultation with Jury was set aside by the Bombay High Court for want of corroboration. The Court observed that a charge of rape was very easy charge to make and very difficult one to

refute and corroboration must necessarily depend on the facts of a each case. It observed that in a contested case of rape, medical evidence showing injury to the private parts of the victim, external injury to her body as a natural consequence or resistance by her; use of force by the accused and the presence of seminal stains on her clothes and on the clothes of the accused or at the place of occurrence were needed for the corroboration of charge/allegation. It further observed that the subsequent conduct, by itself, although important, was not enough because a witness could not corroborate himself herself.

In **Nura and Ors v. Rex**,<sup>60</sup> the victim aged around 12 to 13 years, having intimacy with a friend in the neighbourhood once went to her house on an invitation, and was introduced to her husband and another friend of his. The friend asked the victim to go with these two men who took her out of the village and several men allegedly raped her.

In **Muhammad Afzal v. The Crown**,<sup>61</sup> the victim was raped by two ticket collectors, on the pretext of taking her to a refugee camp where she wanted to go after coming out of the Railway station. They later left her at the Railway Platform. The victim gave contradicting statements about her consent to the Military Police and then to the sub-inspector at the police station.

In **Rajput Bhima Karasan v. The Kutch Government**,<sup>62</sup> Bhuj, the victim, a young Meghwar married woman of about 17 years, lived with her husband and parents-in-law, and had gone to the field to give food to her husband and father-in-law . When she was returning home a, a Rajput boy of 25 waylaid her, caught hold of her and ravished her against her will and in spite of her protests.

The court held that it should demand some test of genuineness of the victim's evidence and in absence of such tests it should accept that evidence as conclusive. It was true that the lack of those tests was not victim's fault. It was the police's fault, but that should not act to the prejudice to the accused person. The accused should get benefit of doubt .

Although the court could not make itself free from the requirement of corroboration but the acknowledgement of absence of direct corroborative evidence in rape cases was a welcome progress in the assertion of facts. The first progressive development occurred in 1952, with the

<sup>59</sup> (1942) 44 BOMLR216

<sup>60</sup> 1950 CriLJ 29

<sup>61</sup> 2003 VIIAD Delhi 1,107 (2003)DLT 385, 2003 (71) DRJ 178, 2003 (3) JCC 1669 <sup>62</sup> AIR 1954 SC 700  
pronouncement of Supreme Court in Rameshwar v. State of Rajasthan.<sup>4763</sup>

Woman, who has been raped, is not an accomplice... corroboration can be dispensed.... when it is safe to do so. The rule, which according to the cases has hardened into one of law is not

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<sup>47</sup> AIR 54, 1952 SCR 377

that corroboration is essential before there can be a conviction, but the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with.

The judicial stand in Rameshwar case was followed in many cases, holding that corroboration is not sine qua non of conviction.

In **Rahim Beg v. State of U.P.**,<sup>48</sup> the victim (deceased); aged about 12 or 13 years resided with her father and was married about six years but her Gauna ceremony was not performed. On one morning both the accused persons, Rahim Beg and Mahadeo, followed the victim who were seen by two prosecution witnesses when the victim did not arrive at home, her parents searched for her and at about 4 p.m., her dead body was found lying under a bush in a Bhinta.

The court held that there were semen stains on the langot of the accused who was a young man but it could exist because of a variety of reason and would not necessarily connect him with the offence of rape. In this case rape was alleged to have been committed by a fully developed man on a girl of 10 or 12 years who was virgin and whose hymen was intact. There was absence of any injuries on the male organ of accused that would point to his innocence.

In **Phul Singh v. State of Haryana**,<sup>49</sup> the accused, aged 22 years, entered into his cousin's house next door, and in broad daylight, raped the victim, aged 24 years. The Sessions Court imposed a sentence of 4 years rigorous imprisonment, and the High Court affirmed it in appeal. The Apex court held that the culpability was beyond doubt and upheld the conviction.

In **State of Haryana v. Prem Chand and others**, the accused along with one other person contended that Ravi Shankar committed rape on the victim in the field at Bhawani Khera on two occasions. Ravi Shankar abducted victim from Bhawani Khera to take her to Jammu, but the two other accused, who were police officials posted at Bhawani Khera police station, took Ravi Shankar and the victim, when they arrived at the bus stand of Bhawani on their way to Jammu, to the said police post and put Ravi Shankar and the victim in different rooms and committed rape on victim one after the another and thereafter accused took Ravi Shankar and the victim girl to the railway station and left them there.

The Supreme Court reduced the sentence to five years from ten years. Then the State of Haryana filed this review petition to enhance the sentence. But it was refused.

It was held that the factors like the character or reputation of the victim were wholly alien to the very scope and object of section 376 and could never serve either as mitigating or extenuating circumstances for imposing the sub- minimum sentence with the aid of the proviso to section 376(2). Thus where the Supreme Court in its judgment had used the expression-conduct in the lexicographical meaning for the limited purpose of showing as to how the victim had behaved or conducted herself in not telling anyone for about five days about the sexual assault perpetrated on her and it was observed that the peculiar facts and circumstances of the

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<sup>48</sup> AIR 1973 SC 343, 1972 CriLJ 1260, (1972)3 SCC 759, 1972 (4) UJ 898 SC

<sup>49</sup> AIR 1973 SC 343, 1972 CriLJ 1260, (1972)3 SCC759, 1972(4)UJ 898 SC

case coupled with the conduct of the victim girl did not call for minimum sentence as prescribed under section 376(2) , it could be said that the supreme court neither characterized the victim, as a woman of questionable character and easy virtue nor made any reference to her character or reputation.

On the question of sentencing, while reducing it from 10 years to five years, it expressed its opinion that this court was second to none in upholding the decency and dignity of its opinion womanhood and it had not expressed any view in its judgment that character, reputation or status of a rape victim was a relevant factor for consideration by the court while awarding the sentence to a rapist.

The Supreme Court judgment in the Suman Rani case is distressing not just because the policemen who were convicted of custodial rape by three lower courts had their sentence reduced by half, using the proviso of -adequate and special reasons I, which empowers court a to reduce the sentence, but because of the reason given by the court for this mitigation. The gist of these is that victim's character was such that she more or less asked for it and that in the circumstances the men were not wholly to blame.

Significantly, the Sessions Court judge who gave an earlier ruling in Suman Rani's case had stated that all said and done, even a girl of easy virtue was also entitled to all the protection of law and could not be compelled to sexual intercourse against her will and without her consent. Offence of rape and other allied offences were created for the protection of fallible, earthly mortals, and not for goddesses.

In *State of Maharashtra v. Madhulkar Narayan Mardika*,<sup>66</sup> the accused, Madhulkar, was serving as a police inspector at Bhaiwandi Town Police Station. In the night, he went to the hut of the victim in uniform and forcibly raped her in her hut.

The court held that offender-victim relationships might be a better test for determination of questionable consent. Legal traditions were such that rape accusations were looked upon with some suspicion in Case where there was anything more than passing acquaintanceship. But it was not a correct position of law.

It further held that in order to gain a proper understanding of rape from victim's perspective, it was necessary to include more sexual acts than the law did at present , it was also important to make distinction between those sexual acts finally included. Thus, rape could be defined as sexual access gained by any means where the woman's over genuine consent was absent and where there was an absence of relative equality. Only evidence of the positive desire dignified sexual intercourse and ade it joyful and anything less was against her will and wisdom ought to be considered as rape.

The decision in this case deserves a bouquet. It serves to correct certain indefensible extension and assumption drawn by patriarchal laws, which violate the human right of privacy of a category of women referred to -women of easy virtue. These assumptions often aid and abet acquittals in cases relating to crimes committed by men in uniform, i.e., the police.



In *State of Karnataka v. Mahabaleshwar Gourya Naik*,<sup>67</sup> the accused, Mahabaleshwar Gourya Naik, 18 years old, wrongfully restrained the victim girl, aged about 15 years, studying in 9th standard, and committed rape without her consent and during the course of said offence, the accused caused hurt to the victim. The victim committed suicide before the trial of the case and her evidence could not be recorded.

<sup>66</sup> AIR 1991 SC 207, 1991 961) FLR 688

<sup>67</sup> 1992 AIR (SC) 2043, 1992 (2) CRIMES 654

The trial court convicted the accused for wrongfully restraining and causing simple hurt to the victim and acquitted him of offence of rape. Both trial and High Court on appeal took the view that the victim was dead and not available for examination, the accused could not be convicted for committing rape.

In the Supreme Court, Ratnavel Pandian J., pointed out that on the basis of evidence of the prosecution witnesses and medical evidence, it is established that there was an attempt of rape, if not rape itself. The judge observed:

As stated merely because a victim was dead and consequently could not be examined can never be a ground to acquit the accused if there was evidence otherwise available proving the criminal act of the accused concerned.

It was held that an offence of attempt to rape was committed. The Supreme Court sentenced the accused to undergo rigorous imprisonment of five years. In this case, Supreme Court had taken out the procedural law on rape from the thicket of technicalities and led it to the road of plain common sense to provide justice to the helpless victim of rape.

### **THE NIRBHAYA RAPE CASE**

In 2012, the gruesome Delhi rape case shook the whole country with the brutal gang rape of young woman who was named Nirbhaya by media for not revealing her identity as per Section 228A (2) of IPC. She was brutally gang raped by six men on a bus in Delhi, and her internal organs were pulled and her private parts were mutilated in a very inhuman manner that caused grave injuries which ultimately annihilated her life.<sup>50</sup> She was treated as an object, an article for experimentation and prey to the pervert proclivity of the six. "The attitude, perception, the bestial proclivity, inconceivable self-obsession and individual centralism of the six made the young lady to suffer immense trauma and, in the ultimate eventuate, the life-spark that moves

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<sup>50</sup> BUSINESS STANDARD , [https://www.Business-standard.com/article/current-affairs/brutality-of-nirbhayagang-rape-sounds-like-story-from-different-world-sc-117959591358\\_1.html](https://www.Business-standard.com/article/current-affairs/brutality-of-nirbhayagang-rape-sounds-like-story-from-different-world-sc-117959591358_1.html), (last visited may 4 , 2023 ). <sup>69</sup> THE HINDU , <https://www.thehindu.com/news/national/nirbhaya-case-four-convicts-hanged-to-death-intihar-jail/article31114864.ece>, (last visited may 4, 2023)

the bodily frame got extinguished in spite of availing of all the possible treatment that the medical world could provide. On 29 December 2012, she succumbed to her injuries and died at a Singapore hospital.

The four defendants were convicted of rape, kidnapping, murder and destruction of evidence in September 2013 and were sentenced to death penalty which was upheld by the Supreme Court in 2017 by stating that the case clearly came within the category of 'rarest of rare case'.<sup>69</sup> One of the accused Ram Singh, allegedly committed suicide in Tihar Jail and the juvenile perpetrator was sentenced to three years of punishment in a reform home, as per the provisions of the Juvenile Justice Act.<sup>21</sup>

### **JUSTICE VERMA COMMITTEE REPORT**

The national level demonstration and massive public outrage after the Nirbhaya case led the government to act quickly and as a result Justice J.S. Verma committee was set-up to suggest amendments to criminal laws. The committee made recommendations on a wide range of issues dealing with all kinds of sexual crimes. The Committee recommended that the exception for marital rape should be removed and stated, "the relationship between the accused and the complainant is not relevant to inquiry into whether the complainant consented to the sexual activity. It made recommendations to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 and criticized the existing mechanism of Internal Complaints Committees stating that it defeated the purpose of the Bill and recommended setting up of an employment tribunal.

With respect to the punishments for rape, the committee was of the view that such offenses need to be graded. The committee stated that "There are instances where the victim/survivor is still in a position from which she can, with some support from society, overcome the trauma and lead a normal life. In other words, we do not say that such a situation is less morally depraved, but the degree of injury to the person may be much less and does not warrant punishment with death. It took into consideration the view of the Working Group on Human Rights which suggested that "the murder rate has declined consistently in India over the last 20 years despite the slowdown in the execution of death sentences since 1980. Hence, the committee was of the opinion that the introduction of death penalty for rape may not have a deterrent effect. The committee also took into account the views of majority of scholars, leaders of women's organizations, and other stakeholders who strongly submitted that "the seeking of death penalty would be a regressive step in the field of sentencing and reformation" However, they enhanced the punishment to mean the remainder of life.

The Committee further recommended the insertion of certain offenses such as Voyeurism, Stalking and Intentional Touching in the Penal code. It also reviewed the practice of the "twofinger test" during the medical examination of the victim and suggested the scrapping of the test by stating that "the size of the vaginal introitus has no bearing on a case of sexual assault, and therefore a test to ascertain the laxity of the vaginal muscles which is commonly

referred to as the two-finger test must not be conducted. On the basis of this test observations/ conclusions such as 'habituated to sexual intercourse' should not be made and this is forbidden by law".

The committee emphasized on the importance of gender equality and also drafted a separate Bill of Rights for women stating "Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of violence, exploitation, cruel, inhuman or degrading punishment and treatment targeting women are prohibited".

## CHAPTER-VI

### **A Paradigm Shift: The Implementation of Laws Post Nirbhaya Case**

The heinous 2012 Nirbhaya gang rape case in India shook the nation to its core, igniting widespread outrage and demands for immediate action. The incident served as a catalyst for significant changes in the country's legal system, prompting a comprehensive review of existing laws and a push for more effective implementation. In the aftermath of the case, India witnessed a paradigm shift in its approach to combating sexual violence and ensuring justice for victims. This article explores the key legislative reforms and their implementation since the Nirbhaya case, shedding light on the progress made and the challenges that remain.

**The Criminal Law Amendment Act, 2013:** In response to the public outcry, the Indian government swiftly enacted the Criminal Law (Amendment) Act, 2013, amending various sections of the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC), and the Evidence Act. The act sought to redefine and expand the definition of sexual offenses, enhance punishment, and establish new provisions to safeguard victims' rights. It introduced stricter penalties for rape, including the introduction of the death penalty in cases of extreme sexual violence leading to the victim's death or permanent vegetative state.

**Fast-Track Courts and Special Initiatives:** To expedite the trial process and ensure speedy justice, fast-track courts were established exclusively for handling sexual offense cases. These courts aimed to reduce the backlog of cases and prioritize the timely delivery of justice. Additionally, special initiatives like One Stop Centers (OSC) and Women Help Desks were set up across the country to provide survivors with comprehensive support, including legal aid, counseling, and medical assistance.

**Strengthening Legal Framework for Victims:** Recognizing the vulnerability of survivors throughout the legal process, several reforms were introduced to safeguard their rights. Anonymity of the victim was emphasized, prohibiting the disclosure of their identity in media and court proceedings. In-camera trials were made mandatory to protect the victim's privacy and prevent intimidation. Furthermore, the act included provisions to ensure the sensitivity and respectfulness of police and medical personnel during the investigation and examination of victims.

**Improved Reporting Mechanisms:** Efforts were made to encourage victims to come forward and report crimes without fear or hesitation. The introduction of dedicated helplines, such as the Emergency Response Support System (ERSS) and Women's Helpline (181), provided a platform for immediate assistance and guidance. The government also implemented awareness campaigns to educate the public about reporting mechanisms and legal rights, empowering individuals to take action against sexual offenses.

**Strengthening Law Enforcement:** To enhance the efficiency and effectiveness of law enforcement agencies, specialized training programs were conducted to sensitize police personnel on dealing with sexual offense cases. The objective was to ensure a victim-centered approach, minimize retraumatization during investigations, and improve evidence collection techniques. Additionally, the use of technology, such as the Crime and Criminal Tracking Network and Systems (CCTNS), facilitated better coordination among various agencies and expedited the investigation process.

### **Challenges and Future Outlook:**

While significant strides have been made in the implementation of laws and the overall response to sexual offenses in India, challenges remain. The backlog of cases and delays in the judicial system continue to hamper the delivery of justice. Moreover, societal attitudes, victimblaming, and the underreporting of sexual offenses persist as barriers to effective implementation. Addressing these challenges requires continued efforts, including awareness campaigns, sensitization programs, and support for survivors.

The implementation of laws post the Nirbhaya case marked a turning point in India's fight against sexual violence. The legislative reforms, establishment of fast-track courts, and initiatives to support survivors demonstrated a commitment to ensuring justice and protection for victims. However,

The implementation of new rape laws in any country can face several challenges. In the case of India, after the enactment of the Criminal Law (Amendment) Act, 2013, which brought significant changes to laws concerning sexual offenses, several challenges have been encountered in the effective implementation of these laws. Here are some of the challenges:

#### **Challenges for implementation of laws :-**

##### **Awareness and Education:**

One of the primary challenges is the lack of awareness and education among the general public about the new laws. Many people, including potential victims, may not be fully aware of their rights and the legal recourse available to them. This lack of awareness can hinder reporting and access to justice.

### **Reporting and Under-Reporting:**

Sexual offenses, including rape, continue to be significantly under-reported due to various reasons, such as fear, social stigma, and lack of trust in the justice system. Victims may face pressure or discouragement from reporting the crime, leading to under-reporting and a significant gap between the actual number of incidents and reported cases.

### **Backlog of Cases:**

The Indian judicial system is burdened with a substantial backlog of cases, including those related to sexual offenses. This backlog often leads to significant delays in the trial process, causing frustration for victims and impacting their access to timely justice.

### **Investigation Challenges:**

Effective investigation of sexual offense cases can be complex and challenging. Collecting timely and credible evidence, ensuring the preservation of forensic evidence, and maintaining the confidentiality of victims during the investigation process are crucial but can be difficult to achieve in practice.

### **Victim Support and Protection:**

While efforts have been made to establish support mechanisms like One Stop Centers and Women Help Desks, there may still be gaps in their availability, accessibility, and quality of services across different regions. Adequate support, counseling, and protection for victims throughout the legal process remain critical challenges.

### **Societal Attitudes and Victim Blaming:**

Societal attitudes and victim-blaming attitudes continue to pose significant challenges. Victims often face victim-blaming, social judgment, and stigmatization, which can discourage them from reporting crimes and seeking justice.

### **Training and Sensitization:**

Law enforcement agencies need to be adequately trained and sensitized to handle sexual offense cases with empathy, professionalism, and sensitivity. Ongoing training programs and sensitization efforts are necessary to ensure a victim-centered approach and effective investigation.

Addressing these challenges requires a multi-faceted approach, including awareness campaigns, legal reforms, improvements in the judicial system, enhanced victim support

services, and changes in societal attitudes. It is crucial for the government, civil society organizations, and all stakeholders to work collaboratively to overcome these challenges and ensure the effective implementation of rape laws to provide justice and support to victims of sexual offenses.

#### Legislative Reforms:

The Indian government enacted the Criminal Law (Amendment) Act, 2013, to strengthen laws related to sexual offenses. This amendment expanded the definition of sexual offenses, increased the punishment for rape, and introduced the death penalty in certain cases.

#### Fast-Track Courts:

Special fast-track courts were established to handle sexual offense cases, with the aim of expediting trials and ensuring swift justice for victims. These courts were intended to address the issue of lengthy delays in the judicial process.

#### Strengthening Victim Support:

Various measures were implemented to provide support and protection for survivors. One Stop Centers (OSC) and Women Help Desks were set up to offer comprehensive support services, including legal aid, counseling, and medical assistance. Efforts were made to protect the privacy and identity of victims throughout the legal process.

#### Awareness Campaigns:

The government and NGOs launched awareness campaigns to educate the public about reporting mechanisms, legal rights, and the importance of addressing sexual offenses. These campaigns aimed to encourage victims to come forward and report crimes, as well as to sensitize society to the issues surrounding sexual violence Training Programs:

Specialized training programs were conducted for law enforcement personnel to sensitize them on handling sexual offense cases. These programs focused on victim-centered approaches, minimizing retraumatization during investigations, and improving evidence collection techniques.

While these reforms and initiatives have undoubtedly brought about positive changes, challenges in the implementation of laws and the overall response to sexual offenses persist. The backlog of cases and delays in the judicial system continue to be a concern, and efforts to change societal attitudes and combat victim-blaming are ongoing.

It is crucial to refer to the latest updates from trusted sources and follow the developments in this area to obtain an accurate understanding of the current situation regarding the implementation of laws after the Delhi gang rape case.

As of my knowledge cutoff in September 2021, several laws have been enacted and measures have been implemented in India to address sexual offenses and protect rape victims. However, the extent to which these laws are followed and implemented effectively can vary across different regions and jurisdictions. It is important to note that implementation challenges, including issues such as the backlog of cases and delays in the judicial system, may still persist.

Efforts have been made to establish fast-track courts to expedite the trial process and ensure timely justice for rape victims. These courts aim to prioritize sexual offense cases and reduce the burden on the regular judicial system. However, the effectiveness of these courts can vary based on factors such as the availability of resources and the commitment of authorities to expedite cases.

Additionally, measures have been taken to strengthen victim support and protection. One Stop Centers (OSC) and Women Help Desks have been set up to provide survivors with comprehensive support services. These initiatives are intended to offer legal aid, counseling, medical assistance, and other forms of support to victims. However, the accessibility and availability of these support services may vary in different regions, and there could be gaps in their implementation.

While the law prohibits the disclosure of the victim's identity and mandates in-camera trials to protect their privacy, there have been instances where these provisions have been violated. Media reporting of rape cases without maintaining the anonymity of the victim remains a concern.

Efforts have also been made to sensitize law enforcement personnel through specialized training programs. These programs aim to ensure a victim-centered approach, minimize retraumatization during investigations, and improve evidence collection techniques. However, the effectiveness and uniformity of these trainings across different law enforcement agencies can vary. It is worth noting that the implementation and adherence to these laws and measures can be influenced by various factors, including the capacity and resources of the judicial system, societal attitudes, and the commitment of authorities at different levels.

To assess the current situation regarding the implementation of laws concerning rape victims, it is recommended to refer to the latest reports, studies, and updates from reliable sources and official channels. These sources can provide insights into the progress made, challenges faced, and ongoing efforts to ensure the effective implementation of laws related to rape victims in India.



## CHAPTER- VII

### CONCLUSION

It is ironical that when Indian mythology places women on very high pedestal and they are worshiped and honoured as Goddess of Learning- Saraswati; of wealth - Laxmi; of power - Parvati, the Indian society adopts double standards in so far as her guaranteed rights are concerned. There has been over the decades alarming decline in moral values all name of progress and advancement , the people are losing out on moral values. It is rather sad that while one keeps celebrating women right in all sphere , the people exhibit no concern for her honour and her dignity. It is a sordid reflection on the attitude of indifference of the society .

An attitude of men to treat women as a property , to be possessed to the extent beneficial to them, has almost become a value in itself . Further , an unchaste woman is treated as a symbol of sin , to be discarded from the society irrespective of her involvement or innocence, or the hostile circumstances that placed her in that situation , This newly highlighted , yet age - old problem regarding a safe and secured life for women folk is worthy of attention with an open mind . At one, there is doubt as to adequate security for moral values in existing criminal law; at another , there is a fear as to the development in the people of disrespect to these values.

Women no less than men , require to be treated as person, not statistical abstraction. Notwithstanding the enactment of the laws relating to dowry, rape , violence against women , the ground reality is rather distressing. It appears that our society is becoming a psycho - sick society with an uncivilized behaviour .

Whenever crime is committed against women and that too a violent crime, it sends shock waves to the society but those shock waves burst like bubbles in a very short span. Moreover , it is also true that in the male dominated society of india , in spite of heinous crime against women , women victims are looked with a sense of hatred and stigma instead of hatred against the rapists, Prejudice of the people towards rape needs serious attention and the society must change its attitude .

The Indian Constitution advocates social justice , a poignant component of which is gender justice. What is demanded I neither charity , nor grace , nor as legal aid to a weaker sex. The

militant claim is the woman's right to be oneself, not a doll to please, nor an inmate of a workhouse. She has the human right to be a woman. The courts have taken greater recourse to the right to life and personal liberty guaranteed by Article 21 of the Constitution for mainstreaming women's rights into the paradigm of human rights.

The concept of rape can be best understood by considering rape as a crime of power and not of lust. Rape is not a sexual act; it is the most blatant form of violence perpetuated against women. In India, chastity and virginity are considered to be great assets of a woman, and loss of chastity, whether out of her choice or force, is a great handicap. On being raped, the woman is severely criticised and condemned for loss of chastity. The raped woman faces not only a personal sense of shame, but also is weighed down with guilt for no fault of her. In a society like ours, where a woman's chastity is valued more than her intellect, a woman who has been raped is ashamed and afraid to identify the criminal.

Rape must be understood as the gravest kind of sexual violence against women, a crime of power, which is an extreme manifestation occurring in the continuum of sexual violence. Rape stems from sexist values and beliefs and it is not simply an issue affecting individual women. It is a social and political issue directly connected to power imbalances between men and women in society.

The traditional concept of male and female sexuality, males being sexually aggressive and females sexually passive, paves the way for the assumption that rape is a natural fact, the occurrence of which cannot be stopped. In patriarchal societies, the social training imparted to the individuals, perpetuates the belief that domination is the inherent aspect of all sexual activity and thus, emerges the close association between violence and sexuality. In fact, violence and sexuality remain so intricately intertwined that it becomes difficult to draw a line between normal heterosexual relations and rape.

The rape victim not only undergoes a sequential pattern of emotional reactions called rape trauma syndrome but is also ostracised from the society. The rape victim undergoes varied reactions which may be immediate or long-term reactions, aimed at physical and mental integration, worldly adjustment and personality adjustments. In patriarchal societies, virginity

and chastity are considered to be the great assets of a woman without her existence becomes meaningless.

The jurists and criminologists have identified the motivation for rape ; and on the basis classify the typology of rape and rapists, be it may blitz rape, confidence rape; or the criminal rapists, the mentally - ill rapist, group reformer , incompetent romeo, debt collector ; yet rape is considered to be a transgression against chastity and the raped woman is severely criticised and condemned for loss of chastity. For women, the awareness of the possibility of rape determines thrie life in avery basic way curtailing the choices of daily behaviour which are extremely threatening to the liberty of women .

Rape remains a vastly under reported crime due to the reactions of the society and the existence of certain myths surrounding the concept. There is a whole package of myths and lies which mask the real problem of rape diverts the attention of the society, so the key issues of rape remain obscure and ambiguous and the responsibility of rape is attributed to the woman . Few of the commonly held myths that only young and attractive women get raped, men rape because of uncontrollable urges, women ask for it or women cry rape reflect that it is the women sexuality which is to be held responsible for provoking or precipitating her rape and men are innocent people who cannot control their sexual urges and commit rapes because the female sexuality provides a provocation which they cannot resist.

The existence of these myths shield the fact that rape is a power crime and the coercion of masculinity provides the basis for its occurrence. Rape is a produce of sexist society it is the price, which a society based on coercive sexuality must pay; where women are seen as objects for male pleasures, as passive creatures needing and wanting to be dominated and controlled. Thus, rape is the manifestation of institutional coercion that flows from the structure of economic, social and political relations between men and women generally.

Historically speaking, the hindu scriptures have seriously criticized the unlawful coming Together of a man and a woman for sexual enjoyment brought about by force,deceit or Sexual passion; and hve prescribed severe punishment on the person guilty of the same ranging from the confiscation of the property , extermination of genital organs , social ostracization and even

death sentence . The female is also not left scot free and had to undergo a penance for the same . The punishment for sexual exploitation varies according to the caste , the protection and the marital status of the male and female.

Even the muslim law, prescribes that a woman has to be respected and protected under all circumstances, whether she belongs to your own nation or to the nation of an enemy, whether she follows your religion or belongs to some other religion or has no religion at all. A Muslim cannot outrage her under any circumstances. All promiscuous relationships have been forbidden to him, irrespective of the status or position of the woman, whether the woman is a willing or an unwilling partner to the act. The words of the Holy Quran in this respect are:- Do not approach (the bounds of) adultery. Heavy punishment has been prescribed for this crime, and the order has not been qualified by any conditions. Since the violation of chastity of a woman is forbidden in Islam, a Muslim who perpetrates this crime cannot escape punishment.

### **Special Legislation**

The Indian Penal Code was drafted in 1860, and is still holding the ground to deal with the cases of sexual assault against the females including rape. The substantive Law stands, thoroughly complemented by the procedural Laws, i.e; Criminal Procedure Code, 1973 and Indian Evidence Act, 1872. Due interpretation to the legal provisions contained in these enactments has been provided by the Indian judiciary, yet despite of these significant developments, the crime rate against women remain unabated. The data put forth by national crime record bureau portrays the sordid state of affairs. The statistical data from 1953 to 2010 reveals that this offence of rape has increased tremendously i.e. 791%. Statistics given above reveals that the offence of Rape is increasing at a very high rate .It is not enough to punish rapists nor is to enough to treat (reform)the rapists.

Therefore, the increase in crime rate can be attributed to the shortcomings of the legislations as one of the reasons warranting the adoption of altogether a fresh piece of legislation especially dealing with the cases of sexual assaults concerning females.

Recently there has been an attempt in India to frame out a special piece of legislation dealing with sexual assault in the form of Criminal Law Amendment Bill 2012 . This bill has been prepared on the lines of sexual Offence Act of 2003 of England . The most impressive feature of this bill is , it gives protection not only to females but is gender neutral.

### **Classification of Rape**

Two school of thought are significantly predominant in the classification of rape . one school considers rape as an sexual offence; whereas the other consider it as a sexual assault. In recent times the school which consider rape as sexual assault has gained predominance over the other school. It believes that rape is an act of aggression in which the victim is denied her self - determination . It is an act of violence , which , if not actually followed by beatings or murder is nevertheless always quite close to a life threatening situation. It is an act of violation , which leaves woman in a state of humiliation, degradation , fear and rage . Recent research findings contradict the traditional view and establish that rape is an act of violation and aggression , reflecting the assailant's feelings of inferiority and insecurity and is far from being sexually motivated. At the most , rape can be considered as the sexual expression of frustration and anger and the motivation to assert power and authority . It is a vain delusion to perceive rape as the expression of uncontrollable desire of sex rather it is a declaration of domination, whereby the rapist loses control over his aggressive derives and not sexual passions. This school of thought favour the rape as sexual assault approach , which stresses the violent character of rape without denying its sexual overtones or undercurrents . These feminists are convinced that rape is a power crime directed against the female sexuality . They maintain that for the power rapist, the choice of the genitals as the object of aggression is not accidental, but essential because he is interested in inflicting a particular kind of damage on the victim. It is imperative that the offence must be seen in terms of violence than sexuality . As long as rape is perceived as an act of sexuality rather than aggression and hostility , it will continue to be interpreted as predominantly pleasurable to both parties rather than harmful to the victim. It is emphatically pointed out that rape should be removed from the category of sexual offences and reclassified as an assault for recongnizing and respecting the human rights of women .

## **Redefining Rape**

Even in the absence of the above parameters of improvement , there is urgent need to redefine rape so as to keep abreast with the methodology of sexual assaults. Flavia agnes has remarked that in all criminal offences, injury and hurt caused by using weapons is more grievous than the one caused by the use of limbs but in case of rape, the injury caused by the use of iron rods, bottles and sticks does not even amount to rape. The lacunae inherent in the definition of rape make it impossible to recognize the concepts like marital rape, digital rape , etc, thus rendering the definition a hollow statement.

## **Suggestions**

Following are the points suggested to design and promote:

Advice and guidelines packages for victims pre and post trial ;

1. Advice and guidelines packages for the role of the witnesses;
2. Crime prevention advice packages for rape;
3. Advice packages for educational establishment in consultation with the department of education these will include education in men, in particular young men and women about issues of consent;
4. Public reassurance scheme by enhancing awareness and understanding of serious sexual assault ;
5. Programme for awareness of male rape;
6. Anti - rape laws by women;
7. A policy to involve academic researchers to increase knowledge on rape throughout India;
8. Setting up of more forensic labs for investigation .

Finally , rape is not a reformist but a revolutionary issue. If the goal is to eliminate rape, than the same cannot be achieved without a revolutionary transformation of the society. It means a transformation of the family , the economic system and the psychology of men ans women outside legal setup, so that sexual exploitation would be impossible vain and unimaginable in our society .

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