

A Comprehensive Framework for Analysing Condition of Rape Victims – Judicial Response, Challenges and way Forward

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Abstract:

Indian society is patriarchal in mind-set. Women and men are not considered as equals in our society and their sexual relationship are hardly ever a simple expression of mutual sexual interest in one another. A mere quick-look of Indian legal literature exposes that sexual relationships are inextricable bound up with economic relationships of dependency and ownership involving certain kind of trade-off, calculation or coercion. The rape victim is always looked upon as sexual object and a person of loose character. There is awful malice in accepting her as an ordinary person. Even Political parties and the media focuses on these issues for political gain but rarely, pursue the case until justice is delivered. This hostile atmosphere further demoralizes the sufferer and her supporters. This system of inequalities has determined the formulation and application of rape laws, which is also one of the major reasons of rape itself.

Keywords: Patriarchal, Inextricable, Awful Malice, Demoralizes, Inequalities

1. Introduction:

Rape is an endless incarnation of the coercive sexuality that penetrate our entire culture. It is an unavoidable result of a system in which sexual relationships are also power relationship in which female sexuality is treated as a commodity and where few men have the source of power excluding physical force. To get rid of rape, we need to change the basic social formation which is merely liable for such crimes. State, being the guardian, has the duty to safeguard its citizen. In case offence of rape is committed in state territory it shows the failure of state. For that the state is under duty to protect the victim and to restore in her previous position in the society either by providing additional protection or by rehabilitation. Such victims are entitled to get the protection of the Constitutional provisions provided in the form of social justice. But today the purpose of criminal justice system appears to be confined to the simple object of ascertaining guilt or innocence and to use the victim merely as a witness.¹

An injured may be a blunt sufferer who have received injury or may be incidental or deviant sufferer who are incapable and dependents on the direct victim or a legal heir who suffers loss accidentally. These victims may face primary persecution or abuse which is a trauma created due to the crime committed by the offender and secondary oppression which is the outcome or consequence of wrong and evil such as ill-treatment or agony by police, delay in trial proceedings and desertion & neglect by the society, etc. Ultimately there is need to define a victim in a wide sense. Victim is a person who is put to death or subjected to tragedy and hardship by another, one who suffers extremely badly through brutal or harsh treatment by delinquent and another who tolerates being the dependent of victim.

UN Declaration says that “victims mean persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their

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

fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws prescribing criminal abuse of power.”²

2. Challenges Faced by Rape Victims: -

The rational finding of rape offence is that in order to eradicate seduction, molestation or sexual assault, we need to change the basic or fundamental social formation or arrangement which builds it. Undoubtedly, all sections and parts of society must make extreme and keen variations before sexual assault or abuse against women and small children that will be removed. But once there is brutality or threat of sexual abuse, the criminal justice system is the only sector of society that has the power and authority to step in and stop the violence by implementing laws against such violence, to carry out a criminal investigation, to arrest and confine a culprit or criminal, and to provide justice to sufferer or injured party.

It is true that our criminal justice system has lot of abuses and these abuses of power can easily endanger and re-victimize victims, but this is all the more reason for the urgent need to confront this system head on, and to remake the current justice system into a system that responds adequately, equitably and even handed to the victims of rape. The history of mankind is known to have assigned a very important status to victims, but in the evolutionary process, the offender somehow snatched this importance. Ever since the state hold the right to criminal prosecution, the image of the victim has disappeared from the criminal justice framework and the criminal has become the centre of legal system. The subject of the criminology also concentrates mainly on the comers of crimes, prevention, control, and treatment of their behaviours. Whenever a rape is committed, legal system’s spirits, vibes and resources are organized and called up to find, recognize, arrest and punish the convict offender notwithstanding the immediate physical, financial or psychological demands of the sufferer.

In India injured have been ignored not only by the legal execution or law enforcement machinery but also by the criminologists, legal scholars, researchers, academicians, observers, investigators and empiricists as well. The circumstances are so threatening or vicious for instance as per recent reported cases a twelve years old rape victim prepares for motherhood after rape with her.³

All of them spent their strength in improving and rehabilitating the offender. The twentieth century has witnessed the re-emergence of the status and role of the victim due to the humanitarian initiatives and vigorous pressuring and brainwashing of victim advocates especially in the outcome of the World War II.⁴ Since then, the developed Nations have made academic as well as practical efforts at improving the lot of victims and the ultimate achievements & success at the international level has been the adoption of the **Declaration of the Basic Principles of justice** for the Victims of Crime and Abuse of Power on November 29, 1985 by the **United Nations**

In India, respect for the fear of law and the law enforcing agency are evaporating from the minds of the rapist and gradually the condition is declining to a lower level. The basic principle of criminal justice is to prove all cases beyond reasonable doubt for ‘conviction’ works as a blessing in disguise for the rapist. In many instances, prosecution in our criminal courts ends in failure and acquittal of rapists due to a variety of reasons such as: -

- non-co-operation of the public,
- hesitation and unwillingness of witnesses,
- lack of coordination among investigating and prosecuting agency,
- lengthy investigation processes,
- widespread and uncontrolled corruption at all levels,
- incompetence, inability and carelessness of investigator and prosecutor, and
- interference of powerful people and politicians.

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

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

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

These acquittals generate a sense of self confidence and courage among the culprits to repeat the crime and make them habitual. As a result, rape cases are increasing day by day as per latest report.

In the Hammurabi code, “Women were seen as equally liable for acts of rape. Both the victim and perpetrator were subjected to death sentences. The appeal process was directed at husbands, only they could commute a death sentence for their wife. Early Hebrew law also sentenced victim and rapist to death equally. However, there were concessions to time and place. If the assault occurred in the city limits, the burden was placed on the woman to scream and demonstrate her lack of consent, the logic being that city residents would come and assist. Outside the city limits, where help was less likely to respond the punishment for the woman was eliminated and the perpetrator was forced to pay a bride price and marry his victim. During the Middle Ages, Jewish women won the right to become litigants and pursue civil charges against perpetrators. In some limited circumstances, damages were even paid to victims themselves as opposed to husbands or fathers. This was the beginning of the conception of rape as damage to the person, as opposed to the family estate. During the reign of Henry II, women could file suit against their rapists, so long as they were not married to them. Women were referred to as the prosecutrix a term occasionally still in use. The standard of proof for this type of suit was blood, torn garments, and the locality of the woman’s objection in the aftermath. In this model, women were responsible for the prosecution and punishment of their rapists.”⁵

It was also during the reign of **Henry II** the rape that some of the first affirmative defences were well-spoken the woman was a concubine to the rapist, she consented, her accusations rose out of bitterness or jealousy, her family pressured her into making the accusation, or the defendant had an alibi. It was not until **Edward II** stated that, “the cannon of Western Law acknowledged that a non-virgin could be forcibly raped, but only by a non-spouse. Edwards’s rule also had several other unique contributions to the legal construction of rape. It was under his reign that the concept of statutory rape was developed along with the differentiation of rape by degrees. However, one of the most important changes was the shift of rape as a crime against a person for which they have the responsibility to prosecute to the reality of conceiving it as a crime against the state. For the first time in the West, the larger power structures of the community were charged with the prosecution of rape. While this represented an important step forward, that women still have no significant voice in criminal proceedings is another object to the larger process of justice. The implications of the criminal process on the safety, well-being and long-term health of victims have been consistently underestimated. Victims of sexual violence often characterize the investigative process necessary for the prosecution of sex crimes as the final act in a long series of violations. The invasive nature of the physical examinations, the rigor of the interview process, and the duration of time that transpires from allegation to trial wear down the resolve and stamina of even the most tenacious victims. The criminal process represents the ultimate polarization of rape: the public disclosure and examination of an intensely personal violation. While the representatives of law enforcement and prosecutorial agencies work tirelessly to ease the process of reporting rape, the reality will always remain: some victims, for very personal and important reasons, will never report their rape.”⁶

3. What is Rape: -

Rape is a form of a violent culture that uses gender notion or stereotyping, among other forms of oppression, to sanction and justify the brutalization or abuse of women and children. While the origins of sexual violence precede any statute or cultural collective, the manner by which social structures choose to intervene or ignore rape speak volumes about larger norms. Survivors of sexual violence testify again and again to the unique and devastating nature of rape. Their experiences, expression and ability underline the impact that sexual assault has on their lives. The origin of the word rape is found in the ancient Greek that is to steal. The etymology of the word alone underscores the cultural assumptions locked within.

⁵ S. Murthy. “Rejecting Unreasonable Sexual Expectations: Limits on Using a Rape Victim’s Sexual History to Show the Defendant’s Mistaken Belief in Consent”, at p. 550

⁶ Statelaw.findlaw new-york-law accessed on November, 14, 2014

Rape, being heinous crime of the worst nature, and encompassed with utter notoriety, has to be looked from various angles. The word -Rape is derived from the Latin word – ‘Rapio’ which means to seize. So, Rape is forcible seizure or the ravishment of a woman without her consent⁷. Different authors have given different meaning to the word Rape and so also the judicial pronouncements, but the fulcrum point is the same in all cases. Rape⁸ literally means the forcible seizure of the human dignity and the same can be done by any person irrespective of the sex of the victim and the perpetrator. Rape is a carnal knowledge of a woman without her consent⁹. Rape is the ultimate violation of the self.¹⁰ The issue of Rape is considered to be one of the most grotesque forms of male violence.¹¹ Susan Brown Miller¹² says- To simply learn the word ‘Rape’ is to take instruction in the power relationship between men and women. The author further says, women were wholly owned subsidiaries and not independent beings. Rape could not be envisioned as a matter of consent or refusal. Rape entered the law through back door, as it were, as a property crime of man against man. Woman, of course, was viewed as property. Thus, according to the author, the approach towards rape victims reveals the minds of the ancient law givers in whom were ingrained strong patriarchal values. They refused to hold Rape as an act against a woman rather they perceived it as a crime against the male estate. This view of the author need not be condemned outrightly, but we should learn one significant belief coming out of it that Rape is a theft of a woman who is only a property. Ideas differ; tastes vary and temperaments disagree. Believing in this faith, without caring about a particular nomenclature of Rape, it can be asserted that Rape is violence on the dignity, integrity and honour of a woman. She is not merely a victim in the ordinary sense but a conglomeration of shame, sorrow and suffering which is hard to be wiped off. She struggles through life with an indelible slur and disgrace. She becomes a pendulum which perpetually oscillates between life and death. She becomes a forlorn entity, neither acceptable to society, nor life worth living nor licking death to snuff out life from the mortal frame. This being apart, Rape is polluting the society and it being a crime, law must lengthen its hands to eradicate this chaos and anarchy to have a smooth sailing order which may provide solace and consolation to the dejected and disappointed soul. Rape being such a terror-stricken act, it becomes incumbent to have a brief glimpse on its historical evolution.

4. Historical Evolution Of the Concept of Rape: -

During **Vedic period** we observe that virginity, modesty, decency and integrity of a woman was at the peak of honor & prosperity. However, there are random and unclaimed indications in the Vedic literature about sexual intercourse outside marriage¹³

In **Rig-Veda** there appears to be a reference to a dancing girl or —hetaira ‘.¹⁴ In another sloka it is said that wives hating (or proving false) to their husbands are believed to go to Hell.¹⁵ There is mention in Rig-Veda that the sage prays to the Adityas remove away from me sin as a woman who gives birth to a child in secret removes it.¹⁶

The gambler states, others have intercourse with his wife.¹⁷ These instances do show that a wife is called the half of man, she is his best companion, she is the root of three aims i.e., truthfulness, success and

⁷ Gour Hari Singh – Penal Law of India Vol.3, Seventh Edn. P.1843

⁸ 24 Abhishek Jain – Reprimand Priyal Patel Case Comment on Priya Patel v. State of M.P. AIR 2006 SC 2639 Criminal Law Journal 2009 Page 39

⁹ 25 Chamber’s Twentieth Century Dictionary (1952) at 914

¹⁰ 26 Hilberman – Rape the Ultimate Violation of the Self – American Journal of Psychiatry Vol.133 (1976) P.437

¹¹ 27 Supriya Akerkar – Economic and Political Weekly, April 29, 1995 – Page 15

¹² 28 Susan Brown Miller – Against our Will – Men, Women and Rape

¹³ P.V. Kane – History of Dharmasastra II PP 637-639

¹⁴ R

ig Veda I.92.4., —adhi pesamsi vapate nrturival

¹⁵ Rig Veda IV 5.5., —patiripo na Janayo durevahl

¹⁶ 32 Rig Veda. II.29.1., —are matkarta rahasur-ivagahl

¹⁷ 33 Rig Veda X.34.4., —anye jayam pari mrsantyasyal

accomplishment of wishes, she is the means of his lifeline, protection and salvation.¹⁸ The third aim does show the sexual aspect of a woman.

Hence, if we read them together, we can safely say that during Vedic period this crime (Mahapatika) was there to some negligible extent but not in a magnified form. However, during the period of Sutras and Smritis there are verses which speak about this —Mahapatikal. The offence of Rape in the early Vedic period was recognized and noticed as an infringement of a woman 's bodily integrity – an intrusion of her self-respect, dignity, autonomy and honour. Virginity and purity of woman was, no doubt, viewed as the most incredible asset and values at that time.

The Vedic texts required and claimed upon the woman to remain virgin, maiden and pure throughout their whole lives and, therefore, put corresponding duty on the males to defend and keep safe the women from all outside ills, wrongs & evils. Their dependence was not doomed as a check on their personal liberty & freedom, but to guard them against evil and bad inclinations.¹⁹ It clearly shows that Hindu Civilization was very particular about the dignity of a woman and was equally apprehensive of the sexual assaults that can be barrier and obstacle on the woman. Manu verses directly or indirectly has talked about it. Manu has used the expression 'STRI SAMGRAHANA'²⁰ which has been translated by Smriti writers as ADULTERY. But this translation clearly seems to be inaccurate and untrue in view of several verses of Manu as Manu has dealt the cases of Rape, Incest etc. under this title only. Under this title there are 37 verses where Manu has referred to various types of sexual abuses under the head —STRI SAMGRAHANA and punishments thereof. So, according to Manu all acts of illicit intercourse with a virgin or an unmarried woman whether with or without her desire are cases of rape and all acts of connection with a married woman, whether willing or unwilling are cases of adultery. Hence his concepts of sexual assault are much more different blindingly and obviously from the modern terminology of the same.

The **Mitakshara**²¹ (on Yaj II.283) states that **SAMGRAHANA** means the unlawful coming together of a man and a woman or sexual enjoyment.

Brihaspati²² says that immoral —**SAMGRAHANA** is of three kinds i.e., brought about by force, deceit or sensual passion.

- The first (which is Rape) occurs when intercourse is had in a secluded place against the will of a woman or with a woman who is intoxicated or is disordered in mind or is under a mistake or when she raises a cry;
- the second occurs when a woman is brought to one 's house by some trick or pretense, an intoxicant is administered to her or her mind is brought under control (by chants or otherwise) and sexual intercourse takes place; and
- the third occurs when intercourse takes place by conveying (passion) to each other by means of the eyes (glances) and when the parties are drawn to each other by the temptation of beauty or of wealth.

Brihaspati²³ also prescribes punishments for Rape which were very severe so that if a rape committed on a woman of the same caste, his all property is to be forfeited, to have his penis and testicles cut out and was to be paraded on the back of an ass and that if the woman raped is of a higher caste, he was to be sentenced to death together with confiscation of all property. Though the punishment stated by Brihaspati looks discriminatory in the modern constitutional sense, it is likely that the rigidity of caste system must have contended.

¹⁸ 34 R.G.Buraway – The Present Position of Hindu women and the means of Ameliorating Their Lot D.B.Taraporeala Sons & Co. 1941 P.5

¹⁹ 35 A.S.Altekar. The Position of Woman in Hindu Civilization, Second Edn. 1959 P.308

²⁰ Manu Smriti-VIII 352-388

²¹ Mitakshara on Yagnakaya II, 283

²² Brihaspati S.B.E. 33 Page 365 Verses 1-2

²³ Madanaratna as quoted in P.V. Kane's History of Dharam Sastra P 396-397

Katyayana²⁴ stipulates that when a man has committed sexual intercourse with a woman against her will, capital punishment is to be inflicted to him as it is a violation of (proper) conduct.

Narada²⁵ holds that sexual intercourse with the step-mother, mother's sister, mother-in-law, the paternal or maternal uncle's wife, father's sister, a friend's or pupil's wife, sister, sister's friend, daughter-in-law, daughter, the wife of one's Vedic teacher, a woman of the same Gotra, a woman that has sought protection with the queen or an ascetic woman or a wet nurse or a virtuous wife or a woman of a higher caste is intimate and abusive & the punishment to be prescribed for this crime is the elimination or removal of the penis and no less punishment is to be given for the same.

Baudhayana²⁶ prescribes branding, labeling and expulsion for a Brahmana infringing the Guru's (spiritual preceptor) bed. The raper of Guru's bed (Gurutalpaga) has been called a big criminal and immorality (Mahapatakin) by Manu.

Vishnu²⁷ is more severe with Mahapatakin. He prescribes capital punishment for all except Brahmanas for whom he recommends expulsion and infixing or labelling. Whereas sexual intercourse with a woman other than the wife is seen with maximum or greatest hatred, there also a caution was advised for husband to guard his wife from proceeding towards other men in order to ensure the purity of the issue and by guarding her the husband guards his reputation, family, soul and his dharma. **Haritha**²⁸ and **Sankha-Likhita**²⁹ also supported by Manu (Manu IX. 7,9) speak on this point very elaborately. Under ancient **Babylonian and Mosaic Laws**³⁰ capture of female outside the Tribe or City by force was perfectly acceptable but such an occurrence within the social order led to chaos. A civilized way of acquiring a wife by payment of money to father and the bride price was codified at 50 pieces of silver. Rape was thus recognized by the father as —the theft of chastity, maidenhood, honour and purity, a misappropriation or misuse of his daughter's fair price in the market. The offence of Rape is not a new phenomenon but has been existence since time immemorial. Ancient Roman Law³¹ gives evidence that there were direct ties between Law, Property and person. —Raptus in the sense of violent theft applied to both property and person under Roman Law.

During the reign of **William the Conqueror**,³² punishment for Rape was blinding and demasculinise i.e. removal or destruction of testicles.

The Statute of Westminster³³ put forward by **Edward I** in the year 1275 made remarkable and considerable changes in the Law of Rape. Rape of virgin and that of a married woman came to be viewed with equal seriousness. Ten years later i.e., in 1285, the second Statute of **Westminster**³⁴ was passed. It recognized rape as the forcible intercourse or molestation of a married woman, mother, mistress, lady or virgin, without her consent by any man.

The statute made the offence in all cases, a crime punishable by death. Further changes were made in 1575. Offences Against the Persons 1861 made Rape a capital offence. But the **Criminal Amendment Act 1885** made it punishable by penal servitude for life. According to Section I of the **Sexual Offence Act 1956**³⁵ it is an offence, triable only on indictment, for a man to rape a woman. Thus, in English Law Rape is the offence of having carnal knowledge of female, idiot, imbecile, defective or lunatic. Vide Sexual Offences (Amendment) Act 1976, a man commits the actus reus of rape if he has unlawful sexual

²⁴ Katyayana-830

²⁵ Narada XV 73-75

²⁶ Kautilya IV 13, See also Manu Smriti XI, 170-71, Yajnavalkya III 231-233, Matsya Purana 227 139-141

²⁷ Baudhayana I, 10,18

²⁸ Vis. V. I-3 & 7

²⁹ Haritha quoted by Smriti Chandrika II. P.239

³⁰ Sankha Likhita quoted by Smriti Chandrika II P.241

³¹ Julia Rand Herman Schewendinger – Rape and Inequality, Sage Publication 1993 P.95

³² 48 Ibid Page 25., See also Pollock and Maitland – The History of English Law 1968, P.490

³³ Ibid P.29

³⁴ Ibid P.30

³⁵ Cross & Jones – Introduction to Criminal Law 10th Edn. P 196

intercourse with a woman who at the time of the intercourse does not consent to it.³⁶ Thus the English Law of Rape does not revolve around Rape as such but on consent thereby it means that consensual intercourse does not fall under the ambit of Rape. Moreover, the consent must be real. An apparent consent is not a real consent.³⁷

5. Evolution or Growth of Laws Concerning Rape In India:-

During British Period, though it did not directly intrude into the Personal Law of Hindus and Muslims, but indirectly interfered under the shadow of judicial verdicts, **Lord Macaulay**³⁸, an eminent and prominent personality in Indian Legal History, who wanted the people of India to be Indians in body but the English in mind, without interfering with the Personal Criminal Law of India brought out the Indian Penal Code to meet the ends of Criminal Justice. In 1837, he presented the draft to Lord Auckland in Council. In Macaulay 's draft, the provisions were called clauses under the heading offences against Human body. CLL.359 and 360 dealt with the offence of Rape. The draft on Indian Penal Code almost framed by Macaulay covered by CLL Nos.359 and 360 reads as below: -

- A man is said to commit Rape, who except, in the cases hereinafter excepted, has sexual intercourse with a woman under the circumstances falling under any of the five following descriptions:
- First: Against her will.
- 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 to be married.
- Fifthly: With or without consent when she is under 9 years of age. Exception: Sexual intercourse by a man with his wife is in no case rape. Clause 360 stipulated the punishment for Rape to be not more than 14 years and not less than 2 years with or without an additional fine.

These clauses do reveal two important components i.e.,

Consent and

Status of woman

Consent is the most important element in the offence of rape. If there is consent to the act of sexual intercourse, it does not amount to rape. However, the consent must be free and voluntary or real consent. The drawback seems to be that Macaulay did not differentiate between active consent and passive consent. Regarding status of woman, she occupied a secondary position in relation to men and Macaulay's draft reflected this element.³⁹ However, he did not differentiate between woman and woman. **According to Macaulay**⁴⁰, his **Penal Code** was based, not on the laws of any country but on rational and humanitarian principles. However, if we deeply explore and carefully analyse, we find that **Macaulay's draft Indian Penal Code** had hostile tendency towards safeguarding man as against a woman. It has been rightfully said that it was a Code designed by a man for a man. The huge drawbacks implicit in the draft Code were operated to the benefit of man. The Code was to prove the innocence of the accused and the family of the victim. However, this draft was accepted legislatively in 1860 with amendments and the Act XIV of 1860 is given as below: -

³⁶ Section 1

³⁷ See (1957) 2 All England Reporter 347 HL

³⁸ He presided the Law Commission and most of the work on Indian Penal Code was done by him

³⁹ Neelam Rai Singhani – The Rights of Women in the 19th Century 1996, P.37 Also see Jane Spencer – Rise of the Women 1986, Amrendra Nath Mookerjee – The Existing Laws on Rape – More Patriarchal than Humane – Criminal Law Journal 1981 P.21

⁴⁰ Vasudha Dhagamwar – Law, Power and Justice: The Protection of Personal Rights in the Indian Penal Code 2nd Edn. Sage Publication P.4

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

- First: Against her will;
- Secondly: Without her consent;
- Thirdly: With her consent when her consent has been obtained by putting her in fear of death or of hurt;
- Fourthly: With her consent when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;
- Fifthly: With or without her consent when she is under [sixteen]⁴¹ years of age;

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

Exception - Sexual intercourse by a man with his own wife, the wife not being under [fifteen] years of age, is not rape.⁴²

The final version of Rape in **Section 375 of the Indian Penal Code** differed little from **Clause 359**. The only amendments affected were in clause fifthly where the age was fixed at 10 years and the exception which read sexual intercourse with his own wife, the wife not being under 10 years of age, is not rape **Section 376 of Indian Penal Code 1860**. fixed the punishment for rape thus, whoever commits rape shall be punished with transportation for life or with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine.

6. Rape And Statutory Perspective: -

Despite changes in the status of women, due to statutory provisions, constitutional imperatives and International Conventions and Declarations, women continue to be treated as a single largest group of backward citizens of India, even after 68 years of Independence. They are still living in the Smriti period where the will of the masculine dominated the petticoat. They are living in the era of barbarism where physically the people in power commits cruelty and brutality on the powerless and vulnerable group that is women. They are suffering from specific forms of violence such as sexual abuse, female-foeticide, witch-killing, Sati, dowry murders, wife- eating and the most atrocious and heinous violence called Rape.⁴³

A classic feminist work on Rape by **Susan Brown Miller** says, —It is sexual violence and especially Rape or threat of Rape which gives men control over women and that all women suffer from this, even if they are not the victim.⁴⁴ Rape is not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional distress. It is only with her sheer will-power she rehabilitates herself in the society, which, on coming to know of the Rape, look down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic Human Rights and is also violative of the victim 's most cherished Fundamental Rights, namely, the Right to Life contained in **Article 21**. It is true and a hard fact that this crime is the creation of the society on the assumption that a man, by impulse, is prone to satisfy his biological urge. So, it is not a sex-crime but is rather a violent crime.

⁴¹ The original word —tenl has successively been amended and finally Clause Fifthly was amended to Sixteen Years of Age and in Exception to Fifteen Years of Age.

⁴² Section 375

⁴³ 1956 Susan Brown Miller – Against our Will, Men, Women and Rape (1975 cited by Dr.Subash Chandra Singh – Defining Rape in Gender-Criminal Law Journal 2003 P.254

⁴⁴ Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty, AIR 1996 SC 922

Hon'ble Apex Court in Priya Patel 's case⁴⁵ has said, - Rape is not a sexual crime rather a violent crime A violent crime because it normally involves force or the threat of force or intimidation, to overcome the will and the capacity of victim to resist.⁴⁶

In India, there are many special laws declared for protection of woman⁴⁷, they are-

Crimes identified under Special Laws;

Crime identified under I.P.C.

Crimes identified under Special Laws against woman are;

1. Commission of Sati (Prevention) Act, 1987
2. Dowry (Prohibition) Act, 1961
3. Immoral Traffic (Prevention) Act, 1956
4. Indecent Representation of Women (Prohibition) Act, 1986
5. The Medical Termination of Pregnancy Act, 1971, etc.
6. Protection of children from Sexual Offences Act, 2012.
7. Sexual Harassment of Women at Working Place (Prevention, Prohibition and Redressal) Act, 2013
8. National Commission of Women Act, 1990
9. Protection of Women from Domestic Violence Act, 2005
10. The Prohibition of Child Marriage Act, 2006
11. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

(2) **Crimes Identified under IPC:** - The following are offences mentioned in Indian Penal Code are;

1. Rape⁴⁸
2. Kidnapping and abduction for different purposes⁴⁹ (iii) Homicide for dowry, dowry deaths or their attempt⁵⁰
3. Torture both mental and Physical⁵¹
4. Importation of girls unto 21 years of age⁵²
5. Molestation⁵³
6. Sexual Harassment⁵⁴

In India, number of victims of sexual crimes are increasing days after days. Even a majority of such victims are not considered as human beings. A rapist violates the victim 's privacy, personal integrity, dignity, autonomy and self-respect and causes physical as well as psychological harm. Rape is physical assault on the women destructing of the whole personality of the victim. Rape is much more heinous crime in comparison of murder as a murderer destroys the victim 's body while, a rapist degrades the victim 's soul. Right to life includes right to live with dignity and the rapists destroy that right of the woman and thus her basic human right is destroyed.

V. R. Krishna Iyer⁵⁵ has said that when a woman is ravished, what is inflicted is not mere physical injury, but the deep sense of some deathless shame judicial response to Human Rights cannot be blunted by legal bigotry.

Some Criminologists⁵⁶ comprehend that crime is a system of social disease and Penologists, accepting this hypothesis, believe that if social evils that germinate this scornful and contemptible crime are eliminated.

⁴⁵ Priya Patel v. State of M.P. & Another, AIR 2006 SC 2639

⁴⁶ Kanta Singh – Rape – A Heinous Crime against Society – Criminal Law Journal 2007 Page 216.

⁴⁷ Chief Justice A.S. Anand – Justice for Women Concerns and Expression 3rd Ed. P.7

⁴⁸ Section 376 I.P.C..

⁴⁹ Section 363-373 I.P.C

⁵⁰ Section 302/304-B I.P.C.

⁵¹ Section 498-A I.P.C.

⁵² Section 366-B I.P.C

⁵³ Section 354 I.P.C. A, B, C, D

⁵⁴ Section 509 I.P.C., Krishna Aggarwal – Crime Against Women – A Socio-Legal Perspective Criminal Law Journal 2012, P.9 – See also Justice K.P. Mahapatra – Crime against women – Criminal Law Journal 1991-P.33

⁵⁵ Rafiq v. State, AIR 1981 SC 519 22 B.C. Pathak – Rape, Law and Flaw – Gogia Law House, Allahabad P.3

⁵⁶ B. C. Pathak- Rape, Law and Flaw- Gogia Law House, Allahabad P.3

The crime of Rape will be extirpated and rooted out automatically. Perhaps this view of the Penologists does not respond to this hypothesis favourably because the crime of Rape springs up due to pervasive tendency of human beings. Man is a rational animal. So long as his rationality remains awake, his divine element behaves with decency and decorum set by the society. But when rationality of the man goes into sound slumber, then the animal instinct of the man gets stimulating vigour and with irritating rigour he starts behaving violently without caring about the dignity of others. He loses self-control and becomes an unruly horse and perpetrates cruelty of the worst order and generally the women become the victim.

7. Judicial Interpretation: -

The subsequent years witnessed minor changes in the laws of rape in the year 1891, 1925, 1949, 1955 wherein provisions governing age were amended and in 1955, imprisonment for life⁵⁷ was substituted in place of transportation for life. But no serious effort was made to overhaul the Laws of Rape to keep pace with the prevalent situation. It is in 1983 that amendments were brought in the laws of rape due to two landmark cases decided by the Judiciary which are discussed elaborately.

In D.P.P. v. Morgan,⁵⁷ the appellant William Anthony Morgan, aged 38 years, a Royal Air Force Pilot had invited his friends over to have sexual intercourse with his wife. Mrs. Daphne Morgan, 35 years old. He told them that any signs of struggle were not to be seen as a lack of consent and that she enjoyed it. The men were convicted of rape, while Morgan was convicted of aiding and abetting his wife. The men had argued that they had the honest belief that the complainant had consented to sexual intercourse. Her behaviour does not amount to submission though the accused claimed that she was a consenting party. In this case it was held that an apparent consent is not a real consent. The House of Lords confirmed the conviction of the accused. In England the ruling of the House of Lords were reduced to a Statutory Form.⁵⁸ In the famous **Mathura Case**⁵⁹ The Mathura rape case was a significant incident of custodial rape in India that occurred on March 26, 1972. Mathura, a young tribal girl, was allegedly raped by two policemen on the compound of the Desaijanj Police Station in Gadchiroli district, Maharashtra. Mathura was an Adivasi orphan living with one of her two brothers. She occasionally worked as a domestic helper. The incident is suspected to have taken place when she was between 14 and 16 years old. Mathura's brother had lodged a complaint claiming that she was being kidnapped by a man named Ashok and his family members. After the complaint, the police brought everyone to the station, but Mathura was asked to stay behind while her relatives waited outside. It was during this time that she was allegedly raped by the two policemen.

Legal Proceedings: -The case came up for hearing in the sessions court in June 1974. The judgment found the defendants not guilty, stating that Mathura's consent was voluntary due to her alleged habituation to sexual intercourse.

On appeal, the Nagpur bench of the Bombay High Court reversed the Sessions Court's finding. The accused policemen were sentenced to one and five years of imprisonment, respectively. The High Court held that passive submission due to fear induced by serious threats could not be construed as consent. However, in September 1979, the Supreme Court of India acquitted the accused policemen. The Court noted that Mathura had raised no alarm and had no visible marks of injury on her body, suggesting no struggle and therefore no rape. The judgment sparked public outcry and eventually led to amendments in Indian rape laws¹.

Aftermath: The Mathura rape case became a watershed moment in India's rape laws. It highlighted the need for legal reforms and a more victim-centric approach to sexual assault. This decision raised so many protests by academicians and women organizations on such a large scale that the decision of the Supreme Court was doubted. M.B. Mazumdar, District and Sessions Judge, **Buldhana**⁶⁰ said, the result of the

⁵⁷ All England Reporter 347 HL

⁵⁸ Williams, Glanville – Text Book of Criminal Law – Universal Law Publishing Co. Pvt. Ltd., Delhi (2003) P 129 & 236

⁵⁹ AIR 1979 SC 185

⁶⁰ M.B. Mazumdar – Review of Law in Mathura Case – 1980 Criminal Law Journal P 28

restriction on the meaning of the word consent put by the Supreme court is disastrous. Fear caused by any means vitiates the consent.

Nitish Nawsagaray⁶¹ says, that Supreme Court has given different meanings to the concept of consent in rape cases while deciding criminal liability and cites the following case law:

Sidheswar Ganguly v. State of West Bengal⁶²

Gurcharan Singh v. Haryana⁶³

Partap Misra v. The State of Orissa⁶⁴

He says that in view of the provisions contained in **Section 375 I.P.C.** the **Hon'ble Apex Court** cannot be said to have laid down correct law in Mathura's Case that **Clauses (3) of (4) of Section 375 I.P.C.** restrict the meaning of consent in Clause (2). All the clauses of that section are independent and must be read together with **Section 44 I.P.C.** which defines injury.

8. Provisions Of Rape Under IPC: -

After Mathura's case there was nationwide outcry from all shades of people and the collective demand was made for a reforming Laws of Rape and the State was compelled to seek the view of the Law Commission in March 1980. Law Commission bestowed its best and careful attention on the law of Rape and considering its own 42nd Report in this regard, and gave its 84th Report recommending changes in Criminal and Penal Policy. The Government brought changes in the Indian Penal Code, (IPC), the Code of Criminal Procedure (Cr. P.C) and the Indian Evidence Act, 1872. Thus, the laws concerning Rape i.e. Criminal Laws were amended along with other amendments in the light of 84th Law Commission Report, The Law after Amendments called "**The Criminal Law (Amendment) Act 1983**"⁶⁵ was enacted. The amended law reads as follows: -

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

- First— Against her will.
- Secondly— Without her consent.
- Thirdly— With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
- Fourthly— With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
- Fifthly— With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives her consent.
- Sixthly— With or without her consent, when she is under sixteen years of age.
- Explanation— Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Exception— Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.⁶⁶

Punishment for Rape-

Whoever, except in the cases provided for by sub- section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped

⁶¹ Nitish Nawsagaray – Consent as an Excuse to Criminal Liability in Rape Cases – 2001 Criminal Law Journal 2001 P 136

⁶² AIR 1958 SC 143

⁶³ AIR 1972 SC 143

⁶⁴ AIR 1977 SC 1307

⁶⁵ Received the President's assent and became part of the Law in December 25, 1983

⁶⁶ 375 Indian Penal Code

is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years,

(2) Whoever,

(a) being a police officer commits rape,

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women 's or children 's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.⁶⁷

Explanation 1- Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2- Women's or children 's institution means an institution, whether called an orphanage or a home for neglected woman or children or a widow 's home or by any other name, which is established and maintained for the reception and care of woman or children.

Explanation 3- Hospital means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

Intercourse by a man with his wife during separation -Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.⁶⁸

Intercourse by public servant with woman in his custody - Whoever, being a public servant, takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.⁶⁹ Intercourse by superintendent of jail remand home, etc. - Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and includes or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse

⁶⁷ 376 Indian Penal Code

⁶⁸ 376A Indian Penal Code

⁶⁹ 376B Indian Penal Code

not amounting to the offence of rape, shall be punishable with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.⁷⁰

Explanation 1— —superintendent in relation to a jail, remand home or other place of custody of a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates

Explanation 2— The expression —women's or children's institution shall have the same meaning as in Explanation No.2 to sub-section (2) of section 376. Intercourse by any member of the management or staff of a hospital with any woman in that hospital- Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.⁷¹

Explanation- The expression hospital shall have the same meaning as in Explanation 3 to sub section (2) of section 376.

No doubt, the **Criminal Law (Amendment) Act, 1983 (Act 43 of 1983)** brought some welcome changes but not to the extent the legal critics required. In spite of the changes brought in the law of Rape, there is an earnest need to plug the loopholes and remove anomalies in the existing legislation.⁷² It is much more that is needed to save the women folk from this cancerous social evil. Deterrent Criminal Law can give the required push but it is the determination, devoted and dedicated desire in the society to come in the forefront to eradicate this social evil being pursued in the name of satisfaction of biological urge. Even after the amendment the law of Rape could not produce the desired results and it went on crushing the human rights and violating the constitutional provision enshrined in Article 21. Judicial response still believed in tyrannical patriarchy of the centuries and relied on circumstances extraneous to the pitiable condition of the victim rendered by the rapist

9. The Protection of Children From Sexual Offences Act, 2012:-

Article 15 of the Constitution, —inter alia, confers upon the State powers to make special provision for children.

Further **Article 39**, —inter alia, provides that the State shall in particular direct its policy towards securing that the tender age of children is not abused and their childhood and youth are protected against exploitation, and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

The **United Nations Convention on the Rights of Children**, ratified by India on 11th December 1992, requires the State Parties to undertake all appropriate national, bilateral and multilateral measures to prevent: -

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity
- (b) the exploitative use of children in prostitution or other unlawful sexual practices, and
- (c) the exploitative use of children in pornographic performances and materials. The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the —Study on Child Abuse: India 2007 conducted by the Ministry of Women and Child Development.

Moreover, sexual offences against children are not adequately addressed by the existing Laws. A large number of such offences are neither specifically provided for nor they are adequately penalized. The interests of the child both as a victim as well as witness need to be protected. It is felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence and hence a comprehensive law was enacted called "**The Protection of Children from Sexual**

⁷⁰ 376C Indian Penal Code

⁷¹ 376D Indian Penal Code

⁷² Amita Kaushal – Rape, Laws & Flaws – 1996 Criminal Law Journal P 85

Offences Act, 2012⁷³. It received assent of the President on 19th June, 2012.⁷⁴ The salient features of the Act are as follows: -

1. This is the first time that an Act has listed aspects of touch as well as non-touch behaviour (e.g., Photographing a child in obscene manner) under the ambit of sexual offences.
2. The Act incorporates child friendly procedures for reporting, recording of evidence, investigation and trial of offences.
3. The attempt to commit an offence under the Act has also been made liable for punishment for upto half the punishment prescribed for the commission of the offence.
4. The Act also provides for punishment for abetment of the offence, which is the same as for the commission of the offence. This would cover trafficking of children for sexual purposes.
5. For the more heinous offences of penetrative Sexual Assault, Aggravated Sexual Assault, sexual assault and aggravated sexual assault, the burden of proof is shifted on the accused.⁷⁵
6. The Act prescribed that the evidence of child shall be recorded within a period of 30 days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.
7. Media has been barred from disclosing the identity of the child without the permission of the Special Court.
8. Punishment prescribed for various offences is fairly consistent with the gravity of the offence.
9. Designation of Special Courts to try the stated offences is a welcome step.

It must be understood very clearly that the children are often considered the precious asset as well as intrinsic wealth of any Nation. In India, traditional values of culture still have a very strong bearing on the social institution of the family. It is in the children of India on whom great faith is reposed so as to lead the nation into bright future. If this faith is strengthened, the bright future of the country is not far away.

POCSO Act, sets forth several actions, should be applied with gravity, urgency, calmness and peace and no obstacle should impede its success. The ambition and intent of the State should not only be safety of the children from sexual abuse but also their empowerment and freedom by ensuring their constitutional rights.

Hon'ble Mr. Justice P. Sathasivam,⁷⁶ CJI, while speaking on —safeguard of Children from **Sexual Abuse Act, 2012** made several propositions for its execution and application and further said, —It is in the best interest of the future of this great nation that the most cherished rights of our young ones, are protected from the evils of child abuse.

The year 2012 saw the State's robust and dynamic legislative approach to solve the issue of children being sexually abused by enacting the **POCSO Act**. But this Act covered only one section which is the root of the nation i.e., the children, but not the tree which has already grown from these roots, i.e., the women who have attained majority and know about the impulse of sexuality. A woman's life is like a flower and chastity is its fragrance, but when her life is twisted by the devils, fragrance being lost.⁷⁷ It is worth nothing that the Murderer destroys only the physical body of the victim. But those who commit Rape on weak and helpless women degrade their very soul.⁷⁸ They are to be protected because their protection is the protection of motherhood.

In the *Adi Granth*, the sacred book of the Sikhs, it is stated, it is the mother who gives birth to kings. Thus, the State realizing this glaring fact and prompted by the dreadful Nirbay incident of Sinful nature brought out **the Criminal Law (Amendment) Act 2013**.

⁷³ Popularly called as 'the POCSO Act'

⁷⁴ Came into force on 14.11.2012 vide S.O. 2705 (E) dated 9th November, 2012 published in the Gazette of India Extra, Pt.II, See 3(ii) No 2250, dated 9th November, 2012.

⁷⁵ Refer Sections 29 of the Act 32 of 2012

⁷⁶ See All India Reporter – Journal Section P.1.

⁷⁷ Babuli Bora v. State (Law Court Report) – The Assam Tribune June 24, 1985

⁷⁸ J .B Kirpalani – —The Rape on Women| North East Times, Friday, 5th Sept. 1980

It was a shameless incident where there was rape and fatal assault on 16.12.2012 on a 23-year-old female physiotherapist intern. While travelling with her male friend in a private bus, she was beaten and gang-raped. There were six other persons including the driver. After the shameless and sinful gang-rape she along with her male friend were thrown out from the moving bus. 13 days later, while under treatment she lost her breathe in hospital in Singapore. The incident generated widespread national and international protests throughout the country and abroad. The Government on 22.12.2012 formed a Judicial Committee headed by Mr. **Justice J.S. Verma – former CJI**, who submitted his report and recommendations within 29 days whereas the time fixed for submission of report was 30 days. 80,000 suggestions were received. On 3.2.2013 ordinance was passed and on receipt of Report submitted by the Judicial Committee, the Central Government acted swiftly and enacted the law called ‘**The Criminal Law (Amendment) Act, 2013**’, made effective w.e.f. 3.2.2013 and **The Criminal Law (Amendment) Ordinance, 2013 was repealed.**

The **amended Act 2013** made amendments to the existing Criminal Laws i.e. **Indian Penal Code, 1860; the Code of Criminal Procedure 1973, the Indian Evidence Act, 1872, and the Protection of Children from Sexual Offences Act 2012.** The amendments to the **IPC, 1860** regarding Rape have been as under: Rape- A man is said to commit rape if he-

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under circumstances falling under any of the following seven descriptions:
 - First- Against her will.
 - Secondly- Without her consent.
 - Thirdly- With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.
 - Fourthly- With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
 - Fifthly- With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
 - Sixthly- With or without her consent, when she is under eighteen years of age.
 - Seventhly- When she is unable to communicate consent.

Explanation 1- For the purpose of this section, vaginal shall also include labia majora.

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

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity. **Exception 1.** A medical procedure or intervention shall not constitute rape.

Exception 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.⁷⁹

⁷⁹ 84 Section 375 41

Punishment for rape- (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,

a) being a police officer, commits rape

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

c) being a member of the armed forces deployed in area by the Central or a State Government commits rape in such area; or

d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman or

g) commits rape during communal or sectarian violence; or

h) commits rape on a woman knowing her to be pregnant; or

i) commits rape on a woman when she is under sixteen years of age; or

j) commits rape, on a woman incapable of giving consent; or

k) being in a position of control or dominance over a woman, commits rape on such woman; or

l) commits rape on a woman suffering from mental or physical disability; or

m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

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

a) —armed forces means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

b) —Hospital means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

c) —police officer shall have the same meaning as assigned to the expression —police under the Police Act, 1861 (5 of 1861);

d) women's or children's institution means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.⁸⁰

Punishment for causing death or resulting in persistent vegetative state of victim.— Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.⁸¹

⁸⁰

⁸¹ Section 376A

Sexual intercourse by husband upon his wife during separation -Whoever, has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description, for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.⁸²

The Amended Act, 2013 is the outcome of a commendable job done by the Judicial Committee, alarming protests and candle-light march-pasts by the public showing their anger on this outrageous crime committed not only against womanhood but against humanity and the dynamic enthusiasm shown by the legislature. Still, it is felt that this law is below expectations. Though law made is swift, stern and stringent but it has not plugged all the loopholes which the ingenuity of the accused is capable of finding the escape route.

N.A. Palkiwalla, a great Lawyer of repute had once said, even if the angels are asked to draft the legislation, still some deficiency or gap will be left. Though the legislature covered a very wide area, still the demand of public which is quite genuine, is not met. Raped woman is neither dead nor alive. She has to live a life with a indignity, stigma, insinuation and humiliation which is indestructible, permanent, deathless and indelible which cannot be abolished, wiped out or destroyed. She is a injured or disabled body and exhausted, tired and weak soul.

Subhod Verma⁸³ gave some statistics about circling assault or barbarousness attack against women which are unexpected and the man is compelled to consider and think about as to which direction we are going. He says, all registered crimes against women went up by 70% between 2001 and 2012, rape increasing by 55%, assault with intent —to outrage modesty rising by 32%, dowry deaths by 20%, and cruelty by husband and relatives by 117%. This is evident and noticeable part of problem because a huge number of crimes against woman go unreported.

After this amendment, while deciding the case of State of Karnataka by Nonavinakere Police vs. Shivanna @ Tarkari Shivanna,⁸⁴ the Hon'ble Apex Court of India issued certain interim directions in the form of Writ of Mandamus to the Director General of Police of all the States, Upon which, DGP of Andhra Pradesh Hyderabad issued a Circular to the all the police stations to follow the said direction which are as follows:

- (i) Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 Cr.P.C. A copy of the statement under Section 164 Cr.P.C should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement under Section 164 Cr.P.C should not be disclosed to any person till charge sheet/report under Section 173 Cr.P.C is filed.
- (ii) The Investigating officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.
- (iii) The investigating officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.
- (iv) If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.
- (v) Medical Examination of the victim: Section 164 A Cr.P.C inserted by Act 25 of 2005 in Cr.P.C imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under **Section 164 Cr.P.C.**

⁸² Section 376B

⁸³ Times of India dated 11, September 2014

⁸⁴ 2014(2) ALT (Crl.) 500 (S.C) on 25-4-2014.

10. Rights of Victims of Rape: -

Violence against women and children unfortunately exists throughout the world without exception. sexual assault is one of them, which has received more judicial attention. Initially criminal liability extremely talks about the punishment, the offenders made to face the trial, but the victim of the crime is almost forgotten. The amendments to Cr. P. C. brought in the year 2008 focused heavily on the rights of the victims in criminal trial. The Criminal Law Amendment Act 2013 also made several provisions providing rights to the victims of rape. Recently, some remarkable judgments have also been delivered by the Hon'ble Apex Court, giving several guidelines to handle the cases of rape and sexual assault. The Hon'ble Apex Court has also provided several rights to the victims of rape including representation, counselling, compensation and rehabilitation through its judgments. The courts have recognized the trauma, pain and suffering that rape victims suffers, and have acknowledged the need for compensation and concealment of identity of victims.

In the landmark case of **Delhi Domestic Working Women Forum v. Union of India & Others**⁸⁵ laid down parameters under which a case of rape has to be tried by taking into consideration the poor condition of the victims during and after the trial. The amendments to the Code of Criminal Procedure brought in the year 2008 focussed heavily on the rights of the victims in criminal trial. Though **Sec. 357** was not amended, a **new section 357A** was introduced under which, the court is empowered to direct the State to pay compensation in such cases where the compensation awarded **U/s 357 Cr. P. C.**, is inadequate for such rehabilitation or where the case ends in acquittal, discharge and the victim has to be rehabilitated when the accused is not traced. Onerous burden lies on District Legal Services Authority to enquire and pay compensation and in fit cases, to order for interim compensation & medical expenses. Until recently, various provisions of the Indian Penal Code were used to deal with several offences against children as the law did not make a distinction between an adult and a child. Traumatized, dejected and horrified family members of unfortunate victims find themselves helpless, confused and unable to cope up with the heinous crime. Even though on **22nd may, 2012**, the parliament passed **The Protection of Children from Sexual Offences Act 2012 (POCSO) Act**, which came into force on **14th November, 2012**, this special law to protect children from offences of sexual assault, sexual harassment and pornography remained an unimplemented law, unknown to most and beyond knowledge or information of those who need, for some period till the judiciary responded through its various decisions. Later **The Protection of Children from Sexual Offences Rules 2012** also came into force.

POCSO Act, 2012, is a self-contained comprehensive legislation inter-alia to provide for safeguard of children from the offences of sexual assault etc., with due regard for safe guarding the interest and well-being of the child, at every stage of the judicial process, incorporating child friendly procedure for reporting the crime, recording of evidence, investigation and trial of offences and provisions for establishment of special courts for speedy trial of such offences.

The Protection of Children from Sexual Offences Act 2012 (POCSO) Act, deals with sexual offences against persons below the age of 18 years. This Act defines -penetrative sexual assault, sexual assault and sexual harassment, making the offence, public servant, staff member of jail, protector of observation home, staff of a hospital or an educational institution or by a member of the armed or security forces. It provided the relief and rehabilitation to the victim as soon as the complaint is made in respect of sexual assault against the child. Special emphasis has been provided during trial to avoid the child not seeing the accused, at the time of testifying and various rights provided to the child victim under this Act.

In his Article Improvement in Administration of criminal **Justice Hon'ble Mr. Justice Mohit S. Shah, Chief Justice, Bombay High Court**, his lordship reiterated about the victim of crime, approach of trial courts and witnesses as follows:

- It may be difficult to define the concept of —justice. It not only includes the rights of an accused or a convict, but also of victims of crime. Society considers the justice delivery system as an instrument of preserving peace and tranquillity and stopping crimes. The society has a legitimate expectation from

⁸⁵ 1995(1) SCC 14

Courts that those who commit crime should be punished and punished after fair and speedy trial. Delayed trials, unmerited acquittals and apathy towards expectations of victims shock the collective conscience of society.

- Time has come to cast off rigid procedures, and rigid interpretations of law. It is necessary to make our system simpler, faster, and less technical and people friendly. Our interpretations of law must adapt to new realities of life while applying statutory and procedural laws. Judges must ensure that an innocent person is not convicted and should also endeavour to see that those who are guilty of heinous crimes do not go scot free. If trial judges fail to do so, the society will not be safe.
 - Trial Judge is tempted to discard testimony of a witness by applying illogical standard for testing memory. But the trial judges must note the observation of the Apex Court describing characteristics of witnesses in following words. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.
- Ordinarily it so happens that witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties, therefore, cannot be expected to be attuned to absorb the details.
- The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one persons' mind where as it might go unnoticed on the part of another. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.
- In regard to the exact time of an incident or the time duration of an occurrence, usually people make their estimates by guess work on spur of the moment at the time of interrogation and one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time sense of individuals which varies from person to person.
 - Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused or mixed up when interrogated later on.
- A witness though wholly truthful, is liable to be overawed by the court atmosphere and piercing cross-examination made by counsel and out of nervousness mixes up facts, gets confused regarding sequence of events, or fills up details from imagination on the spur of moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him. Perhaps it is a sort of psychological defence mechanism activated on the spur of the moment.

In that backdrop, it is necessary to make a note of relevant provisions and decisions dealing with various rights provided to victims of rape from the time of giving report to police, during investigation, trial, judgment and preferring of an appeal.

Rights at the Time of Giving Report:- In most of the cases, the victims of sexual assault, remain silent and will not approach the police to report the incident due to apprehension of further trauma that they may have to undergo in police station and court their families often concerned about honour and the victim's reputation. Considering their plight, the Supreme Court of India in **Delhi Domestic Working Women's Forum Vs. Union of India 1995(1) SCC 14** gave necessary directions to the police recognizing with right to have legal assistance from the time of reporting the matter to the end of the trial. The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It is important to secure

continuity of assistance by ensuring that the same person who looked after the complainant 's interests in the police station represents her till the end of the case.

Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her. The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed. A list of advocates, willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

The advocate shall be appointed by the court, upon application by the police at the earliest convenient movement, but in order to ensure that victims were questioned without undue delay, advocates would be authorized to act at the police station before leave of the court was sought or obtained.

In all rape trials, anonymity of the victim must be maintained, as far as necessary. It is necessary, having regard to the Directive Principles contained under art 38(1) of the Constitution of India to set up a Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment. Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth, if this occurred as a result of the rape.

In this regard necessary amendments are made to **Indian Penal Code and Code of Criminal Procedure**, to protect the victim of sexual assault from further agony. **Sec 154 of code of criminal procedure** says every information relating to commission of cognizable offence, to an officer-in-charge of police station shall be reduced into writing, if it is given orally and shall be read over to the informant, if such information is given in writing, it shall be signed by the informant and substance thereof, shall be entered in the prescribed book kept by such police officer.

Section 154 proviso was introduced in **Criminal Law Amendment Act, 2013** which says if the information is given by the woman against whom an offence under **Section 326A, Section 326B, Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E or Section 509 of the Indian Penal Code (45 of 1860)** is alleged to have been committed or attempted, then such information shall be recorded by a woman police officer or any woman officer.

Provided further that: in the event that the person against whom an offence under **Section 326A, Section 326B, Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E or Section 509 of the Indian Penal Code (45 of 1860)** is alleged to have been committed or attempted is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

1. the recording of such information shall be video graphed;
2. the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) or section 164 as soon as possible.
3. A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.
4. In case of child victim, as **per Sec.19 read with Sec.26(1) of the Protection of children from Sexual Offence Act 2012**, the Special Juvenile police unit or the local police shall give an entry number to the complaint, record the same in writing in a simple language, so that the child understands the contents. The complaint shall be read over to the complainant. In case, contents recorded in the language not understood by the child, a translator or an interpreter shall be appointed. It shall be recorded in the presence of parents of child.

5. If child needs care and protection, after recording the reasons in writing, the special juvenile police unit or local police, shall make immediate arrangement to give such care and protection in a shelter home or in nearest hospital within 24 hours of the report and report the matter to child welfare committee and the special court.

In **Rosy v. State of Kerala**,⁸⁶ The **Hon'ble Apex Court** remarked that if the offence is exclusively triable by a court of Sessions the Magistrate himself has to hold the inquiry and no directions for investigation by the police shall be made. Since the offence of rape is triable by court of session when the police failed to respond to the complaint of such offence, the victim has a right to file complaint before Magistrate, who himself shall hold inquiry by examining all the witnesses produced by the complainant.

In **Sakiri Vasu v. State of U.P.**⁸⁷ the **Hon'ble Apex Court** held that —if a person has a grievance that the police is not registering FIR under **Section 154 of Code of Criminal Procedure**, then he can approach the Superintendent of Police under **Section 154 (3) of Code of Criminal Procedure**, by an application in writing. Even if that does not yield any satisfactory result, in the sense that either the FIR still not registered or that even after registering it, no proper investigation is held, it is open to the aggrieved person to file an application under **Section 156(3) of the Code**, before the Magistrate concerned. If the victim gives a reasonable explanation for the delay in reporting the crime, the delay will not affect the case, since the families are often concerned about their honor and the victim's reputation.

In **state of Punjab v. Gurmit Singh**⁸⁸, **Hon'ble Apex Court** observed that even if some delay in lodging FIR in respect of offence of rape, if it is properly explained and the explanation is natural in the facts and circumstances of the case, that delay would not matter, as such delay can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It was further held that the prosecutrix had no control over the investigation agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. It was further held that the court should not sit as a silent spectator, while the victim of crime is being cross-examined by the defence, it is the duty of the courts to see that prosecutrix is not unnecessary harassed or humiliated.

In **Harpal Singh and another v. State of Himachal Pradesh**⁸⁹, Hon'ble Apex Court held that when the delay in lodging the complaint with police by the victim of sexual assault was reasonably explained by stating that as honour of the family was involved, her members had discussed whether to take the matter to court or not. It was observed by the Supreme Court that it is not uncommon that such considerations delay action on the part of the near relations if a young girl who is raped. Thus, from the above, the following rights are available to the victims of rape at the time of giving report.

1. any information or complaint of victims of sexual assault shall be recorded by a woman police officer or any woman officer, promptly and accurately.
2. complaint of physically or mentally disabled rape victims and child victim shall be recorded at the residence of such victim in the presence of their parent or guardian with the assistance of an interpreter or special educator.
3. the recording of such information shall be video-graphed, in case of physically or mentally disabled victims.
4. copy of FIR shall be given to complainant free of cost,
5. complainants of sexual assault should be provided with legal assistance at the police station and services of counsel throughout the proceedings till the end of the case.
6. victim has a right to know about the action taken by the police i.e. about the results of investigation.
7. if the officer-in-charge of the police station refuses to act on a complaint the victim has a right to send the report to the Superintendent of Police and can file a complaint before the Magistrate concerned.

⁸⁶ AIR 2000 SC 637

⁸⁷ . (2008) 2 SCC 409

⁸⁸ AIR 1996 SC 1393

⁸⁹ . AIR 1981 SC 361

8. if the child victim needs care and protection the police officer shall make immediate arrangements for such care and protection in home or in nearest hospital within 24 hours of the report and to report the matter to the Child Welfare Committee and to the Special Court.
9. if the rape victim needs immediate medical care the same shall be provided in any hospital immediately free of cost without insisting for any legal formalities.

Rights during investigation: -

Right to be Interviewed in Dignified Manner at the time of recording statement: - As per **Section 161 of Code of Criminal Procedure Code**, any police officer making an investigation may examine orally any person supposed to be acquainted with the facts and circumstances of the case. The statement of rape victim may be recorded by audio-video electronic means.

The proviso says that the statement of a woman against whom an offence under **Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E or Section 509 of the Indian Penal Code (45 51 of 1860)** is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer.

Recording of statement of a child⁹⁰:-

- The statement of the child shall be recorded at the residence of the child or at a place where he/she usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector.
- The police officer while recording the statement of the child, shall not be in uniform.
- The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child comes in contact in any way with the accused.
- No child shall be detained in the police station in the night for any reason.
- The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.

Hence, from the above provisions, it is clear that all the victims of rape are entitled for recording their statements by woman police officer in a dignified manner and their statements shall be recorded at their residence and in case of disabled victims their statements shall be video graphed.

Right of Privacy of Rape Victim Disclosure of identity of the victim of certain offences, etc⁹¹ -

Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an [offence under **Section 376, Section 376-A, Section 376-B, Section 376-C, Section 376-D or Section 376-E**] is alleged or found to have been committed (hereafter in this Section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Court to be open⁹²

(1) The place in which any Criminal Court is held for the purpose of inquiring into, or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them: Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

(2) Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under **Section 376, Section 376-B, Section 376-C or Section 376-D or Section 376 E of the Indian Penal Code (45 of 1860)** shall be conducted in camera:

Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular persons to have access to, or be or remain in the room or building used by Court. Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate.

⁹⁰ Section 24 of Protection of Children from Sexual Offences Act, 2012

⁹¹ Section 228A of Indian Penal Code

⁹² Section 327 of Cr. P.C.

Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the Court. Provided that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties. Right of privacy of child victim under **Protection of Children from Sexual Offences Act, 2012**

Procedure for media⁹³ is provided in **Section 23 of the Act**

i) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.

j) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child.

k) Provided that for reasons to be recorded in writing, the Special court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

l) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.

m) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one years or with fine or with both. **Section 24 (5) of Protection of Children from Sexual Offences Act, 2012** – The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.

Procedure and powers of Special Court: - The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial. Trials to be conducted in camera- The Special Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence.⁹⁴

Provided that where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed to issue a commission in accordance with the provisions of **section 284 of the Code of Criminal Procedure, 1973 (2 of 1974)**.

From the above provisions it is clear that the identity of the victim of sexual assault shall be protected from the Public Media.

- The trial proceedings shall be done in camera as far as practicable by a woman judge.
- In case of child victim, Special Court shall try the case in camera in the presence of parent of the child or any other person in whom the child reposes trust and confidence.

Right at the Time of Recording Statement: - Under Section 164 Of Cr.P.C. by the Magistrate: - The Hon'ble Apex Court in the case of **State of Karnataka by Nonavinakere Police v. Shivanna @ Tarkari Shivanna**⁹⁵ spoke about Fast track courts visa-a -vis fast track justice while interpreting **Sec.164 and 164 A of Code of Criminal Procedure and Article 142 of Constitution of India**. In this case, the **Hon'ble Apex Court** gave various directions including medical examination of the victim and statements to be recorded by the nearest Magistrate. The **Apex Court under Article 142 of Constitution of India** exercised its powers and gave the following directions: -

- Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take the victim to a Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under **Sec.164 Cr.P.C.**
- A copy of the statement under Section 164 Cr.P.C should be handed over to the Investigating officer immediately with a specific direction that the contents of such statement under **Section 164 Cr.P.C** should not be disclosed to any person till charge sheet/report under **Section 173 Cr.P.C** is filed.

⁹³ Section 23 of Protection of Children from Sexual Offences Act, 2012

⁹⁴ Section 37 of Protection of Children from Sexual Offences Act, 2012

⁹⁵ . 2014(2) ALT (Crl.) 500 (SC)

- The Investigating Officer shall as far as possibly take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.
- The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid. shall, notwithstanding anything contained therein, record the statement as spoken by the child⁹⁶

Provided that the provisions contained in the first proviso to sub-section (1) of Section 164 of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case. Secondly, The magistrate shall provide to the child and his parents or his representative, a copy of the document specified under **Section 207 of the Code, upon the final report being filed by the police under Section 173 of that Code**

Additional provisions regarding statement to be recorded⁹⁷

(1) The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.

(2) Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a translator or any interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child.

(3) The Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seeks the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.

(4) Where ever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means.

Right to have Medical Examination: - Without Delay Medical Examination of the victim: **Section 164 A of inserted by Act 25 of 2005 in Code of Criminal Procedure**, imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under **Section 164 Cr.P.C.**⁹⁸

Section 27 of POCSO Act and Rules 4 and 5 of POCSO Rules 2012 provides for medical examination of a child. **Right to File Objections Before the Court for Reinvestigation:** -

Victim can file objections and argue for re-investigation.

Victim can file protest petition before the Competent Court of Law if not satisfied with the final report of the police.

Right to have Speedy Investigation: - As per **section 173 (1) code of criminal procedure**, every investigation shall be completed within 3 months from the date on which the information was recorded by the officer in charge of the police station.

Sub section 2(h) provides attaching the report of medical examination of the women where the investigation relates to an offence under **sections 376, 376A, 376B, 376C and 376D or section 376E of the Indian Penal Code** to the final report or charge sheet.

Right to be Heard Before Accepting Final Report: -

In Bhagvanth Singh v. Commissioner of Police and another⁹⁹, The Hon'ble Apex Court has held that when the report forwarded by the office in charge of a police station to the Magistrate under **Section 173 (2)(i) of Cr.P.C.** disclosing that no offence appears to have been committed upon consideration of material, if the Magistrate of the view that there is no sufficient ground for proceeding against the accused

⁹⁶ Section 25 of Protection of Children from Sexual Offences Act, 2012.

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⁹⁸ Cr.P.C. Section 164; Virendra vs NCT of Delhi., decided by Delhi High Court on 29 September, 2009

⁹⁹ 109 AIR 1985 SC 1285

person the Magistrate —must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report and further directed that copies of judgments shall be sent to all the High Courts for further circulation to all the Magistrates to follow the said guidelines.

Right to Move for Cancellation of Bail: -

In R. Rathinam v. State¹⁰⁰, There is a statutory remedy to the aggrieved party by filing applications/petitions for cancellation of the bail granted. Any member of public, whether he belongs to any particular profession or otherwise who has a concern in the matter can move to cancel the bail.

Rights During Trial: -

Victim's Right to an Expedited Trial: -

The concept of speedy trial is read into **Article 21** as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution.

As per **Sec.309(1) of Cr.P.C (recent Criminal Law Amendment Act, 2013)**. Every inquiry or trial shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for the reasons to be recorded: Provided that, when the inquiry or trial relates to an offence **Under Sec.376, 376-A, 376-B, 376-C and 376-D of Indian Penal Code**, the inquiry or trial shall, as possible be completed within a period of two months from the date of filing of the charge sheet. For speedy disposal of cases of sexual offences, two months' time is provided in amended code of Criminal Procedure in **Sec.309 Proviso**.

Section 35 of Protection of Children from Sexual Offences Act, 2012- Period for recording of evidence of child and disposal of case: -

- (1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.
- (2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

ii. Right to have In-camera Proceedings: -

a) The trial of rape and child sex abuse offenses must be tried in camera. The victims will be more comfortable and provide more information about their experiences. This more in-depth testimony will help courts determine the truth. Court to be Open¹⁰¹ -

(1) The place in which any Criminal Court is held for the purpose of inquiring into, or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under **Section 376, Section 376-B, Section 376-C or Section 376-D or Section 376 E of the Indian Penal Code (45 of 1860)** shall be conducted in camera:

Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular persons to have access to, or be or remain in the room or building used by Court.

Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate.

Sec.37 of Protection of Children from Sexual Offences Act, 2012 - provides that Sexual offence against child victim shall be tried In Camera in the presence of the parents or in any other person in whom the child has trust or confidence. It also provides that where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed to issue commission as per **Sec.284 of Code of Criminal Procedure**.

¹⁰⁰ (2000) 2 SCC 391.

¹⁰¹ Section 327 of Protection of Children from Sexual Offences Act, 2012

Right to Video Conference and Right to have Screen: - Section 36 of Protection of Children from Sexual Offences Act- Child not to see accused at the time of testifying: -

(1) The Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in position to hear the statement of the child and communicate with his advocate.

(2) For the purpose of sub-section (1), the Special Court may record the statement of a child through video conferencing or by utilizing single visibility mirrors or curtains or any other device.

In State of Maharashtra v. Dr. Praful B. Desai,¹⁰² while interpreting the term presence in **Sec. 273 of Code of Criminal Procedure** held that the word presence does not mean actual physical presence of witness in court. Commission can be issued to examine the witness, a provision under **Sec. 284 and 285 of Cr.P.C.** for recording evidence. In cases where the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience, the court could consider issuing a commission to record the evidence by way of video conference.

The Right of the Accused to Examine a Minor Victim is Restricted:- Section 33(2) of Protection of Children from Sexual Offences Act -The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

Section 33(6) of Protection of Children from Sexual Offences Act - The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial. • The defense cannot question the victim directly. The defense submits the questions to the court, which will then ask the questions to the victim. This process lessens the embarrassment for the victim.

Right to take Assistance of Expert, Legal Practitioner or Interpreter :- As already stated supra, while discussing the rights of victims at the time of giving report, the researcher has stated the guide lines issued by the supreme court in **Delhi Domestic Working Women Forum v Union of India**, wherein the supreme court stated that victim of rape has a right to have the assistance of legal practitioner not only at the time of giving report but also throughout trail proceedings.

Right to take assistance of a translator or interpreter in case of disabled victims :- Apart from the general rights to have legal assistance to all the categories of rape victims including children, some more rights are provided to the child victims under **The Protection of Children from Sexual Offences Act**, to have assistance of a translator or interpreter in case of disabled victims they have a right to seek assistance of special educator who is familiar with the manner of communication with the child while recording the evidence of child.

Sections 38 to 40 of The Protection of Children Act provides for this right.

Section 38 of Act provides Assistance of an interpreter or expert while recording evidence of child: -

(1) Wherever necessary, the Court may take the assistance of a translator or interpreter having such qualifications, experience and on payment of such fees as may be prescribed, while recording the evidence of the child.

(2) If a child has a mental or physical disability, the Special Court may take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child.

Section 39 of Act provides Guidelines for child to take assistance of experts, etc: - Subject to such rules as may be made in this behalf, the governmental organizations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child. **Section 40 of the Act** provides right of child

¹⁰² AIR 2003 SC 2053

to take assistance of legal practitioner: - As per **Sec.40 of The Protection of Children from Sexual Offences Act,2012**, subject to the **subsection (2) to section 301 of the Code of Criminal Procedure, 1973** (2 of 1974) the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act.

Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them. vi. **Right to have Sufficient Breaks During Testimony:-** The child victim has a right to have sufficient breaks during her testimony to ensure that she is comfortable while giving her testimony, as per **Section 33(3) of the Act** and the same was re iterated in the case of **Sakshi v. Union of India**,¹⁰³ wherein, while dealing with the plight of rape victim, the **Hon'ble Apex Court** held that mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. Therefore, a screen or some such arrangement can be made. It is further held that often the questions put in cross-examination are purposefully be designed to embrace or confuse the victim of rape and child abuse, hence, it will be better if the questions to be put by the accused in cross-examination any given in writing to the presiding officer of the court, who may put the same to the victim or witnesses in a language which is not embracing. Whenever a child or victim of rape is required to give testimony sufficient breaks should be given as and when required.,

Right to have Trial Before a Woman Judge :- Sexual assault cases on women should be tried by women judges. Women judges should try cases involving victims of rape because the victim will be more comfortable and help the court to discharge its duty to determine the truth.

Right to have Child Friendly Atmosphere to the Child Victim in the Court: - Section 33(4) of Protection of Children from Sexual Offences Act - The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.

Right not to be Released into an Unsafe Environment: - Sec.19(5) of The Protection Of Children from Sexual Offences Act says, where the child victim needs care and protection, the Special Juvenile Police Unit or local police shall make immediate arrangements to admit the child in the shelter home or nearest hospital within 24 hours and report the matter to Child Welfare Committee or Special Court. The CWC releases the victim from protective custody only if the home inquiry report reveals that the victim's home environment is safe. The Magistrate releases the victim only if the home inquiry report reveals that the victim's home environment is safe.

Right to be Kept at Protective Home after Rescue and Child Victims Should be Presented to the CWC: - The CWC is the final authority on questions regarding the victim's care, protection, treatment, development, and rehabilitation and the provide for their basic needs and human rights.

- The Juvenile Welfare Board does not have any authority to assist child victims of sex trafficking unless there are no Child Welfare Committee in that state.
- Major victims can be placed in protective homes for 1-3 years.
- They will receive adequate medical care and vocational training.

Evidence Corroborating Victim's Testimony is not Required:-

- The law does not require victim testimony to be corroborated before a judge can rely on it.
- Uncorroborated victim testimony, if credible, is sufficient to convict the accused. A victim is a competent witness like any other.
- Discrepancies in Victim's Testimony Should not Affect the Case. Minor contradictions or insignificant discrepancies in the victim's statement are not sufficient to disregard an otherwise reliable case.¹⁰⁴

Right to Interim Compensation to the Victims of Sexual Offences: - As per **section 357A (6) of the Code**, court may award interim relief/compensation in appropriate cases.

¹⁰³ A.I.R. 2004 S.C. 3566

¹⁰⁴ State of Punjab v. Gurmit Singh, A.I.R. 1996 S.C. 1393, para. 22

Apart from this, **Section 33(8) of The Protection of Children from Sexual Offences Act** provides payment of compensation to the child for any physical or mental trauma caused or for immediate rehabilitation

Rule 7 (2) of Protection of Children from Sexual Offences Rules 2012, a direction for the award of compensation by the Special Court on its own motion or on an application of the victim, where the accused is convicted, or where the case ends in acquittal or discharged or the accused is not traced or identified and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence. Further, **Rule 7 (3)** provides that the criteria to be taken into account while fixing the amount of compensation to be paid include the severity of the mental or physical harm or injury suffered by the child, the expenditure incurred or likely to be incurred on his or her medical treatment for physical or mental health, and any disability suffered by the child as a result of the offence.

Hence the child may recover the expenses incurred on her treatment in this way.

- A criminal court may award compensation to any person for any injury that does not include a fine as part of the punishment.
- The constitution of India guarantees the fundamental right to life and liberty of every person, which includes a right to victim compensation.
- Interim compensation is an attempt to remedy the violation of the victim's right to live with dignity.¹⁰⁵

Right to have Final Compensation and Rehabilitation :- The victims of sexual assault are entitled for final compensation not only u/s.357 of Code of Criminal procedure where the case ends in conviction, but also where the case is ended in acquittal, where the accused is discharged and also where the accused is not traced, but the victim is traced.

As per **Sec. 357-A of Code of Criminal procedure. A Victim compensation Scheme** –

- 1) Every State Government in co- ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.
- 2) Whenever a recommendation is made by the Court for compensation, the District Legal Services Authority or the State Legal Services Authority, as the case may be, shall decide the quantum of compensation to be awarded under the Scheme referred to in sub-section (1).
- 3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under **Section 357**, is not adequate for such rehabilitation, or where the case ends in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.
- 4) Where the offender is not traced or unidentified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the district Legal Services Authority for award of compensation.
- 5) On receipt of such recommendations or on the application under sub- section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
- 6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or may other interim relief as the appropriate authority deems fit.

357B Compensation to be in addition to fine under **section 326A or section 376D of Indian Penal Code**. The compensation payable by the State Government under **sections 357A** shall be in addition to the payment of fine to the victim under **section 326A or section 376D of the Indian Penal Code (45 of 1860)**.

Right to Appeal :- As per **Section 372 Proviso of Code of Criminal Procedure**, the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing in-adequate compensation and such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court.

¹⁰⁵ Suresh and another v. State of Haryana, AIR, 2015 SC 518. 62

Rights of victims of Scheduled Castes and Scheduled Tribes:- Apart from these general rights available to the victims of sexual assault, the victims belonging to Scheduled Castes and Scheduled Tribes are having some more rights as provided **u/s.15(A) of the amended The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) Amendment Act, 2015 (Act.1 of 2016)** which are as follows:

(1) It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.

(2) A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victim 's age or gender or educational disadvantage or poverty.

(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

(4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.

(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court or the Exclusive Special Court trying a case under this Act shall provide to a victim, his dependent, informant or witnesses. iii) the complete protection to secure the ends of justice; iv) the travelling and maintenance expenses during investigation, inquiry and trial; v) the social-economic rehabilitation during investigation, inquiry and trial; and vi) relocation.

(7) The state shall inform the concerned Special Court or the Exclusive Special Court about the protection provided to any victim or his dependent, informant or witnesses and such Court shall periodically review the protection being offered and pass appropriate orders.

(8) Without prejudice to the generality of the provisions of sub-section (6), the concerned Special Court or the Exclusive Special Court may, on an application made by a victim or his dependent, informant or witness in any proceedings before it or by the Special Public Prosecutor in relation to such victim, informant or witness or on its own motion, take such measures including-

(a) concealing the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to the public;

(b) issuing directions for non-disclosure of the identity and addresses of the witnesses;

(c) take immediate action in respect of any complaint relating to harassment of a victim, informant or witness and on the same day necessary, pass appropriate orders of protection;

Provided that inquiry or investigation into the complaint received under clause (c) shall be tried separately from the main case by such Court and concluded within a period of two months from the date of receipt of the complaint:

Provided further that where the complaint under clause (c) is against any public servant, the Court shall restrain such public servant from interfering with the victim, informant or witness, as the case may be, in any matter related or unrelated to the pending case, except with the permission of the Court.

(9) It shall be the duty of the Investigation Officer and the Station House Officer to record the complaint of victim, informant or witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence, whether given orally or in writing, and photocopy of the First Information Report shall be immediately given to them at free of cost.

(10) All proceedings relating to offences under this Act shall be video recorded.

(11) It shall be the duty of the concerned State to specify an appropriate scheme to ensure implementation of the following rights and entitlements of victims and witnesses in accessing justice so as –

(a) to provide a copy of the recorded First Information Report at free of cost;

(b) to provide immediate relief in cash or in kind to atrocity victims or their dependents;

- © to provide necessary protection to the atrocity victims or their dependents, and witnesses;
- (d) to provide relief in respect of death or injury or damage to property;
 - (e) to arrange food or water or clothing or shelter or medical aid or transport facilities or daily allowances to victims;
 - (f) to provide the maintenance expenses to the atrocity victims and their dependents;
 - (g) to provide the information about the rights of atrocity victims and their dependents;
 - (h) to provide the protection to atrocity victims or their dependents and witnesses from intimidation and harassment;
 - (i) to provide the information to atrocity victims or their dependents or associated organizations or individuals, on the status of investigation and charge sheet and to provide copy of the charge sheet at free of cost;
 - (j) to take necessary precautions at the time of medical examination;
 - (k) to provide information to atrocity victims or their dependents or associated organizations or individuals, regarding the relief amount;
 - (l) to provide information atrocity victims or their dependents or associated organizations or individuals, in advance about the dates and place of investigation and trial;
 - (m) to give adequate briefing on the case and preparation for trial to atrocity victims or their dependents or associated organizations or individuals and to provide the legal aid for the said purpose;
 - (n) to execute the rights of atrocity victims or their dependents or associated organizations or individuals at every stage or the proceedings under this Act and to provide the necessary assistance for the execution of the rights.
- (12) It shall be the right of the atrocity victims or their dependents, to take assistance from the Non-Government Organizations, social workers or advocates.

11. Sociological & Rehabilitative Aspect of Victims of Rape:-

The judgment of international tribunal declaring rape an offence against humanity is quit a new development in international law that has been also focused.

Firstly, the sociological aspect, which reflects societal response towards rape victims. \

Secondly, aspect relating to the rehabilitative factor and also focused on aftermath of rape the Indian judicial response towards rehabilitation of victims.

It has been observed that Indian society is by and large patriarchal in its outlook. In Indian culture, a woman's body seen as an object of pride or pleasure. The social context determines whether the women is viewed as divine, good, or bad – as partner in ritual as mother, or as a whole. In the context of rituals, women are honoured and respected with honour. In her material aspect, actual or potential, women are again a person deserving all reverence. It is only just as a woman, as a female sexual being, that the patriarchal culture's horror and scorns are reflected. Culture is vital in human species, but some culture patterns are destructive. Although rape has always existed.

Indian society is very patriarchal in its outlook. Women and men are not considered as equals in our society and their sexual relations are scarcely ever a simple expression of mutual sexual interest in one another. A mere glimpse of Indian legal literature relating to the subject of research reveals that sexual relationships are inextricable bound up with economic relationships of dependency and ownership, and they involve some kind of trade-off, calculation or coercion. The rape victim is always looked upon as sexual object and a person of loose character. There is terrible hostility in accepting her as a normal human being. Political parties and the media highlight such issues for political advantage but rarely, pursue the case until justice is delivered. This hostile atmosphere further demoralizes the victim and her supporters. The system of inequalities has determined the formulation and application of rape laws is also one of the root causes of rape itself.

Rape is an extreme manifestation of the coercive sexuality that pervades our entire culture. It is an inescapable by-product of a system in which sexual relationships are also power relationship, in which female sexuality is a commodity and where some men have the source of power except physical force. In

order to eliminate rape, we must alter the underlying social structure which is solely responsible for such crimes.

State, being the guardian, has the duty to protect its citizen. If any offence of rape is committed in state territory it is due to the failure of state. For that the state is liable to protect the victim and to make them in her previous position in the society either providing her additional safety or by rehabilitation. Such victims are entitled to have the protection of the Constitutional provisions provided in the form of social justice.

But today the purpose of criminal justice system appears to be confined to the simple object of ascertaining guilt or innocence and to use the victim merely as a witness. A victim may be a direct victim who have received injury or may be indirect victim who are dependents on the direct victim or a legal heir who suffers loss indirectly. These victims may face primary victimization that is a harm caused due to the crime committed by the culprit and secondary victimization that is the result of crime such as torture by police, delay in trial proceedings and abandonment by the society, etc. Ultimately it has been a demand to define a victim in a broad sense. Victim is a person who is put to death or subjected to misfortune by another, one who suffers severely in body or property through cruel or oppressive treatment by offender and another who suffers being the dependent of victim.

Dr. Justice A. S. Anand in his lecture, delivered at Hyderabad in, **July. 14, 1997. 17 UN Declaration** says that “victims means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws prescribing criminal abuse of power.” The logical analysis of rape crime is that in order to eliminate rape, we must alter the underlying social structure which produces it. No doubt, all segments of society must make profound changes before sexual violence against women and small children that will be eliminated. But once there is violence or threat of violence, the criminal justice system is the only sector of society that has the power and authority to step in and stop the violence, to enforce the laws against such violence, to carry out a criminal investigation, to arrest and detain a perpetrator, and to provide justice to victims.

12. Conclusion and Suggestions: -

It is true that criminal justice system has lot of abuses. It is also true that these abuses of power can easily endanger and re-victimize victims, but this is all the more reason for the urgent need to confront this system head on, and to remake the current justice system into a system that responds adequately, equitably and even handed to the victims of rape. The history of mankind is known to have assigned a very important status to victims, but in the evolutionary process, the offender somehow snatched this importance. Ever since the state engrossed the right to criminal prosecution, the image of the victim has faded out from the criminal justice scenario and the criminal has become the centre of legal system. The subject of the criminology also concentrates mainly on the doers of crimes, prevention, control, and treatment of their behaviours. Whenever a rape is committed, legal system’s energies and resources are mobilized to find, apprehend and punish the culprit notwithstanding the immediate physical, financial or psychological demands of the victim. In India victims have been ignored not only by the law enforcement machinery but also by the criminologists, legal scholars, researchers, academicians and empiricists as well. The situations are so dangerous such as a twelve years old rape victim prepares for motherhood after rape with her as the cases reported recently.

All of them spent their great energy in reforming and rehabilitating the criminal. The twentieth century has witnessed the re-emergence of the status and role of the victim due to the humanitarian initiatives and vigorous lobbying of victim advocates especially in the aftermath of the World War II. Since then, the developed countries have made academic as well as practical efforts at improving the lot of victims and the ultimate triumph at the international level has been the adoption of the Declaration of the Basic Principles of justice for the Victims of Crime and Abuse of Power on November 29, 1985 by the United Nations. The present research study has been initiated with this background. The victim movement has

yet to gain momentum in India, though in several other countries number of efforts has been made in this direction. This research is a concentrated effort to find out the place of the victims of rape, who suffers double victimization in the legal system. The study analyses the social, legal, judicial, and political responses to the sufferings of this special class of victims. Rape is perhaps the most devastating of all acts conducted by one human on another. The announcement in this respect of new forms of victimization now has become commonplace during the last years. Some of these claims gained wide acceptance, whereas others met with considerable scepticism. But debating the merits of particular claim ignores underlying pattern, the way contemporary Indian who interprets victimizations. However, women or man, the damage to the victim is life changing.

Whereas in India, respect for the fear of law and the law enforcing agency are evaporating from the minds of the rapist and gradually the situation is deteriorating to a lower level. The basic principle of criminal justice is to prove all cases beyond reasonable doubt for 'conviction' works as a blessing in disguise for the rapist. In many instances, prosecution in our criminal courts ends in failure and acquittal of rapists due to a variety of reasons such as non-co-operation of the public, reluctance of witnesses, work of coordination between investigating agency and prosecuting agency, lengthy investigation procedures, rampant corruption at all levels, inefficiency of investigator and prosecutor, and interference of powerful people and politicians. These acquittals generate a sense of self confidence among the perpetrator to repeat the crime. As a result, day by day rape cases are showing an increasing trend. Rape is an expression of a violent culture that uses gender stereotyping, among other forms of oppression, to sanction and justify the brutalization of women and children. While the origins of sexual violence predate any statute or cultural collective, the manner by which social structures choose to intervene or ignore rape speak volumes about larger norms. Survivors of sexual violence testify again and again to the unique and devastating nature of rape. Their experiences and eloquence underscore the impact that sexual assault has on their lives.

. In the Hammurabi code, "Women were seen as equally liable for acts of rape. Both the victim and perpetrator were subjected to death sentences. The appeal process was directed at husbands, only they could commute a death sentence for their wife. Early Hebrew law also sentenced victim and rapist to death equally. However, there were concessions to time and place. If the assault occurred in the city limits, the burden was placed on the woman to scream and demonstrate her lack of consent, the logic being that city residents would come and assist. Outside the city limits, where help was less likely to respond the punishment for the woman was eliminated and the perpetrator was forced to pay a bride price and marry his victim. During the Middle Ages, Jewish women won the right to become litigants and pursue civil charges against perpetrators. In some limited circumstances, damages were even paid to victims themselves as opposed to husbands or fathers. This was the beginning of the conception of rape as damage to the person, as opposed to the family estate. During the reign of Henry II, women could file suit against their rapists, so long as they were not married to them. Women were referred to as the prosecutrix a term occasionally still in use. The standard of proof for this type of suit was blood, torn garments, and the locality of the woman's objection in the aftermath. In this model, women were responsible for the prosecution and punishment of their rapists."

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

Women is a superb and wonderful formation of God Having complex character with calibre of kindness, flexibility, adaptability, sincerity & endurance

A woman is gifted with equal perceptiveness, intelligence, a savior and giver

*A nation is not conquered until the hearts of its women are on the ground.
Then it is done; no matter how strong their weapons or how brave its war.
I want every woman to inform that her voice has power to change the world.
A woman is symbol of respect, devotion and sentiment and passion
A woman is a true architect of society & act as a glue to hold community together.*