



**A CRITICAL ANALYSIS OF RAPE,
ITS PSYCHOLOGICAL IMPACT ON
VICTIM'S MIND, WITH A STUDY OF
ANTI- RAPE LAW IN INDIA**

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ABSTRACT

The anti- rape law doesn't form with a few sentences. The whole text, which has mentioned the demarcated chapters and that can't be opted. A murderer can destroy the body of the victim concerned, but a rapist not only make physical assault and injuries, but he degrades the soul of the helpless victim. This article highlights what is mentioned under the provisions of Indian Penal Code with regards to Rape as well as punishment along with different sections like Section 376, 376A, 376B, 376C, 376D as well as 376E of Indian Penal Code, by which the accused are punished as per the law, moreover discussion has been made how its effects the individuals mind. A detailed study has been made regarding the protection of women from sexual harassment by the Police Personnel. The increasing rate of offence against women are somehow due to the result of social system and the result of individual pathologies. The article highlights the current burning issue of Marital Rape and decriminalization of Rape in India, and reason why the marital rape is not criminalized in India in spite of increasing rape cases and comparative analysis with other western nations, more a discussion has been made regarding various anti rape laws and the recommendations provided by Justice Verma Committee after the brutal rape case in 2012 which is regarded as "

rarest of rare case" and the Criminal Law (Amendment) Act, 2013 made after the rape case held on 16th Dec 2012 and Criminal Law (Amendment) Act, 2019 along with relevant cases decided by the Supreme Court of India.

KEYWORD - Anti- Rape Law, Rape, Criminal Law, Justice Verma Committee, Marital Rape.

INTRODUCTION

Rape is not only the violence against human body but, indeed it destroys the complete personality of the victim concerned, and due to sexual assault, many instances were found where she was subject to ostracism as well as degraded by questioning on her dignity and character from the society. The victim not only suffers from the physical violence and injuries but the mental torture is very deep.

HOW HAVE THEY CHANGED OVER THE YEARS? WHEN WAS THE DEATH PENALTY CLAUSE INCLUDED?

On 28th November 2019, another incident took place which shocked the whole nation when a veterinarian was gang raped and murdered brutally in Hyderabad.

In Kuldeep Singh Sehgar Vs State of U.P (2) in 5th December, the rape case occurred in Unnao, Uttar Pradesh, an outcry for justice for the victims was there all over the nation. Due to the increasing number of instances of sexual assault, demand was made by general public to make anti rape legislations much more strict for reducing the sexual crimes against women and children.



WHAT HAS BEEN THE SYSTEM IN PLACE

The term 'Rape' was defined as offence was first inserted under the provisions of Indian Penal Code 1860. Earlier there were frequently distinct and conflicting laws prevailing all over the India.

A law Commission was formed under the chairmanship of Lord Macaulay ,as well as various legislations were passed in India after the Charter Act ,1833,then based on the decision of the Commissioner the Criminal law was classified into two distinct codes.Indian Penal Code was the first statute consisting of substantive laws of crimes which was passed in October 1860 but came into force on 1st January ,1862. Then in 1861,the first statute of Criminal Procedure Code was enacted ,which was procedural law and combined the various laws relating to the establishment of Criminal Court and the various procedures required during trial as well as investigation of an offence took place.(3)

WHAT DID IPC SAYS ?

Section 375 IPC states if a man intercourses with a woman forcefully without her consent, then such offence is considered as Rape. Moreover, as per the definition of rape under Sec 375 IPC also covers intercourse when she has given her consent but consent was taken by putting her or any person in whom she is interested, in fear of death or of hurt.

As per Section 376 IPC ,it states whoever commit the offence of rape under Section 375 IPC has be punishable for seven years of jail term to life imprisonment.(4)

[1]Mamta Rap, Law Relating to Women and Children(Honble Justice A.K.Shrivastava, Third Edition, 2012)P.-97

[2]Kuldeep Singh Sehgar Vs State of U.P(1997)7 SCC 677:1997 SCC(Cri)1151

[3]1181 of 2019

(4) Sohiban Rocky Singh, Explained: The laws on rape and sexual crimes, 2019 <<https://www.google.com/amp/s/www.thehindu.com/news/national/what-are-the-laws-on-rape-and-sexual-crimes/article30233033.ece/amp/> accessed in 27 June 2020

The amendment in the Criminal law took place after the heinous rape case of Mathura Custodial rape case in 1860. On March 26, 1972, allegation was made against a police from Besai Gunj Police Station in Maharashtra ,that he had committed the offence of rape to a adivasi girl. The Session Court decided that she was habituated with maintaining sexual intercourse with multiple partners and whatever took place was not rape under the provision of Sec 375 IPC. But both the police men were acquitted, on the other hand the High Court convicted them. But when the Supreme Court reversed the order of the High Court by stating that the intercourse in question is not yet proved to form rape. Later ,in 15th September, 1978, the Supreme Court in a decision stated that was no marks or sign of injury on the girls body after the incident and that indicates that it was not a rape. (5)

As per Section 375 of IPC ,definition of Rape has been provided where -

(a) A man is considered to have committed the offence of rape if he penetrates to certain extent into the vagina (private part of female), urethra, anus or the mouth of the victim or compels her to do the same .



(b)if he inserts any object or the part of his body other than organ into vagina, urethra or anus of the person or compels or forces her to do the same with him or with another.

(c)if he influences or manipulated any part of the body of the victim ,in order to continue penetration into the vagina, urethra,anus of the victim or compels her to do the same with him or another one.

(d) use his mouth to the vagina, anus, urethra of the victim or compels her to do the same .

In the following circumstances /situations -

(I) done against her will

(II) In absence of her consent

(III) by taking her consent ,but it was taken by putting her in the fear of hurt or injury or the death of her or some one else with whom she is close or have interest.

(IV)By taking her consent in those situations where she believed the opposite one is her husband to whom she is or considers herself to be married legally ,but the person is someone else and not her husband.

(V)When the consent was given when due to unsoundness of mind or due to heavy intoxication or by the effect of incapacity to think or understand the consequences or unwholesome substances,she couldn't able to understand the effect of giving her consent.

(VI)When the victim is under 18 years of age ,her consent or not does not matter.

(VII)In the case ,when is not competent to give her consent. (6)

As per Section 376 IPC provides Punishment for committing rape -

Other than those provided under sub section 2 ,they will be punished with rigorous imprisonment of ten years minimum, but that may extend upto life imprisonment, and shall also be liable to fine.

If any police officer, commits the offence of rape

within the area of the police station where he is appointed; or

in the place inside the station house; or

on a woman in such police officer's custody or in the custody of a police officer who is subordinate to police officer; or

Whenever a public servant commits the offences on a woman in the custody or commits inside the custody of a public servant who is subordinate to such public servant; or

Commits rape inspite of being a armed forces member who is appointed in a area by the Central or a State Government

Or anyone commits rape inspite of being the management or on the staff of a jail, remand home or other place of custody formed under the provisions of any law for certain period of its existence,

Or if anyone commits rape ,the heinous offence on any inmate of the jail,inmates of the remand home, place or institution; or or of a women's or children's shelter home for their support or being on the management or on the staff of a hospital, in that hospital; or

If anyone who is a guardian, relative or teacher or any one having authority towards the woman in the instances of communal or sectarian violence; or

commits rape inspite of knowing the fact that she is pregnant; or

Moreover commits rape, on someone who is incompetent of giving consent; or

If someone is in a position to control or regulate the works of other women, and commits rape on a woman; or commits rape who is a patient of mental or physical illness ; or

causes grievous bodily harm or maims or disfigures or endangers the life of the victim while committing the offences or

Commits rape again and again on the same person ,



shall be punished with rigorous imprisonment of ten years minimum, but that may extend to life imprisonment, as well as the person shall be liable to fine of certain amount.

Anyone who commits rape on a woman who is below eighteen years of age shall be punished with rigorous imprisonment of twenty years minimum, however that may increase upto life imprisonment and shall also be liable to fine:

But the amount of the fine must be just and reasonable so that it can fulfill the medical expenses and rehabilitation of the victim

However any fine asked by the Court to pay under this sub-section shall be paid to the victim.(7)

Section 376 A provides penalty for causing death due to the rape or leading into the Vegetative state of the victim. - Under the section, it states the period of punishment for such an act caused by the man to a woman, and that formed a situation causing severe injuries, of vegetative state or causing her to die, in such circumstances. The term of punishment in the cases of section 376 A will be at least 20 years minimum, but that punishment may be extended to imprisonment for the rest of the life of the accused. Moreover, the offence is a non-bailable as well as cognizable offence, which is triable by the Session Court.

As per Section 376 B of IPC- This section provides penalty for Sexual intercourse by the husband upon his wife during the period of separation decided by the Court, moreover, as per the principles applied in India, a husband cannot be considered as guilty of rape upon his wife. Marriage is a sacred bond between two persons that permits both, the husband and wife to exercise the marital rights. But, in the circumstances, when she is

staying separately from her husband as per the decree of judicial separation, intercourse done by husband without her consent is punishable under the section. However in these situations, sexual intercourse refers the same as provided in clauses (a) to (d) of section 375.

As per Section 376 C of IPC - punishment for Sexual intercourse by a person in authority is provided under this section, where any person, who is a public servant shall be held liable for the crime as per this section if the person in authority or misuses his power conferred upon him and takes opportunity of a helpless woman. The intercourse in that circumstances will not lead to commission of Rape but the person would be liable to imprisonment upto 5 years minimum, and that which may extend upto imprisonment of 10 years along with fine.

As per Section 376 D IPC - It confers punishment for committing Gang Rape, where there are two or more than two people are involved and with the common intention to ravish the woman. In such a situation, the offenders would be liable to imprisonment up to 20 years minimum and that may also get extended to life imprisonment.

As per Section 376 E IPC- This section provides the penalty for repeat offenders, where if anyone was already convicted in the past for committing the offence as per Sec 376 or 376 A or 376 D and again repeats the offence, then he shall be punished with imprisonment of life.

The different forms of punishment provided as per Section 376 IPC and the duration of imprisonment for committing Rape under the provisions of Indian Penal Code depend upon the circumstances, atrocities as well as the



gravity of the matter. However the least period of imprisonment in above mentioned sections is seven years. With the purpose to prevent the crime against the women, such sections of Indian Penal Code were substituted and duly amended by the Criminal Law (Amendment) Act, 2013.

THE AMENDMENT OF CRIMINAL LAW

After a controversial decision of the Apex Court, huge protest was made against the verdict across the whole nation, seeking the requirement of changing the rape laws which led to the enactment of the Criminal Law (Second Amendment) Act of 1983. After that a new Section 114A was inserted under the provisions of the Indian Evidence Act of 1872 which refers that in certain prosecutions consent was not given by the women, in several cases of rape if the victim says so, for example in case of custodial rape cases. As per Section 228A of IPC which was inserted in order to protect the identity of rape victims and punished those who disclose the identity of the person of rape. (8)

WHETHER THE LAWS ARE GENDER NEUTRAL OR GENDER SPECIFIC?

But the Indian law governing and punishing sexual offenses remains gender specific, as the definition implies by stating the offence can be committed by man. However addition of a new provision was made which added certain barrier while questioning in the cross-examination of the victim as to her general 'immoral character' in rape or attempt to rape cases. (9)

THE ANTI- RAPE LAW IN INDIA

The Criminal Law (Amendment) Act 2013, was made after the the brutal gang rape and

murder took place in Delhi on 16th December, 2012

which widened the area of definition of rape and made more stringent punishment. Based on the recommendations of Justice J.S. Verma Committee, formed to modify the criminal laws the Parliament made amendment. As per the Criminal Law (Amendment) Act 2013, it enhanced the period of imprisonment in most of the sexual assault and also provided death penalty in the incidents of death caused or put her in vegetative state due to the rape. Moreover, in case of gang rape, punishment is given with imprisonment up to 20 years minimum to life imprisonment. Moreover, it included new crimes like using criminal force upon a woman in order to harass or to injure her modesty, act of stalking and voyeurism. (10)

(5) ibid

(6) Prof. S.N. Misra, Indian Penal Code as amended by Criminal Law (Amendment) Act, 2013, (Surya Narayan Misra, Nineteenth edition, 2015) P.- 719

(7) Id 733-734

(8) Sohiban Rocky Singh, Explained: The laws on rape and sexual crimes, 2019 <<https://www.google.com/amp/s/www.thehindu.com/news/national/what-are-the-laws-on-rape-and-sexual-crimes/article30233033.ece/amp/accessed 27 June 2020>

(9) Ibid

(10) Ibid

OFFENSES AGAINST MINOR

Based on the National Crime Records Bureau, it was found that as comparison to 17 years old, now the rape vulnerability for girls or women has increased almost twice



today. As per the National Crime Record, its found that almost 75% of the rapists are married. As per World Health Organization, its found that every 54 minutes, a woman is raped moreover according to the Center for Development of Women's Statistics, its found everyday, 42 women are raped in India. As per the NCRB data, 4,15,786 rape cases were filed all over the India during 2001 and 2017, about three women had been raped every hour. Moreover, in 2001 about 16,075 cases of rape were filed all over the country, this has rose drastically to 32,559 in 2017 which is an increase of almost 103 percent. In Goa, rape cases increased as comparison to other states of the country with 12 incidents in 2001 to 76 incidents in 2017 as well as 405 per cent incidents in Uttrakand during the same period. Moreover, in Bihar rape cases declined with a fall of 283 cases in 2017 compared cases has reported in 2001. While in Tamil Nadu, Mizoram, Tripura and Nagaland, the number of rape cases has declined. National Crime Record Bureau used to collect the crime related data repository from the police stations, but the experts have put several questions regarding the NCRBs data quality. Allegations has been made by the women activists that the rape cases are reported appropriately. In fact the Police, politicians, judges, and campus administrators in India are trying to understand sexual violence as a loss of "honour" rather than as the violating of consent of other person.

In 2017, more than 32,500 rape cases were reported to the police as the government data. In India Judicial bodies disposed of about 18,300 rape cases in each year, as well as 127,800 cases are still pending at the end of 2017. (11)

JUSTICE J.S. VERMA COMMITTEE

Justice Verma Committee made recommendations regarding the amendments to the Criminal Law in order to provide system which speedy trial and increased the punishment for criminals accused of committing sexual offenses against women and at last submitted a report on January 23, 2013. A Committee was formed with three member team, under the authority of former Chief Justice of Supreme Court, Mr. Justice J.S. Verma was formed on December 23, 2012 made recommendation for the amendments of the Criminal Law in order to provide speedy trial and punishment was increased for the accused of committing sexual assault against women. The rest of the members were Justice Leila Seth who is the former judge of the High Court and Gopal Subramaniam, the former Solicitor General of India. On 23rd January, 2013 the Committee yielded a report where recommendations were made regarding the laws related to rape, sexual harassment, trafficking, child sexual abuse, medical examination of victims, police, electoral and educational reforms.

(a) **Rape:** Justice Verma Committee made recommendations regarding the scale of sexual offences that should be punished under the provisions of the Indian Penal Code, 1860 (IPC). As per the view of Committee, the members said the the sexual offenses like rape are expression of power and aggression of an individual and that should to be restrained and to be considered as a distinct crime and enhanced its limitation beyond penetration into vagina, mouth and anus and non-consensual penetration of a sexual nature is



considered as rape. However, differentiation has been made between rape within marriage and outside marriage under Indian Penal Code, 1860. As per Sec 375 sexual intercourse by a man without consent of other is prohibited. But there is an exception which states that sexual intercourse by a man husband upon a wife below 18 years of age is not rape. However, recommendation has made that exception to marital rape should be removed. (12)

(b) Sexual assault: Under Section 354 IPC, if a person uses criminal force or assaults a woman with the intention to outrage her dignity and modesty shall be punishable with imprisonment of two years, in case the forceful penetration is not clear, the offence shall be considered under this section. The Committee made recommendations regarding the sexual contact in case of non penetration where sexual assault took place that should be considered as sexual assaults and is punishable with 5 years of imprisonment, or fine, or both. punishment is conferred imprisonment of 3 to 7 years who uses criminal force to disrobe a woman. The offence of sexual assault should be defined so as to include all forms of non-consensual non-penetrative touching of a sexual nature. The sexual nature of an act should be determined on the basis of the circumstances. Sexual gratification as a motive for the act should not be prerequisite for proving the offence.

(c) Verbal sexual assault: Based on the recommendations of the Committee, now punishment is given with one year of imprisonment or with fine or with both shall be published under Sec 509 IPC, one who uses words or gestures in order to "insult a woman's modesty". The committee stated that punishment should be awarded of 1 year

of imprisonment and with fine for such acts where acts or gestures creates an threat of a sexual nature in the mind of the victim and termed as sexual assault.

(d) Sexual harassment: Certain recommendations which are presented by the Justice Verma Committee regarding the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal), 2012 in Parliament are given in the following -

Moreover Domestic workers is required to included. As per the bill the complainant and the opposite party have to go for conciliation mode. But in Vishakha vs. State of Rajasthan, the Supreme Court stated that objective is required to form a safe workplace for women. The employer is required to pay compensation to the victim of sexual harassment in their work place. Moreover, the employer is empowered to file a complaint to the internal complaints committee. While an internal committee contravenes the main objective of the Bill and there is requirement of establishment of Employment Tribunal to receive and adjudicate all complaints. (13)

(e) Acid attack: Justice Verma Committee given recommendation that the offence should not be combined with the grievous hurt under the provisions of law and punishment is awarded with imprisonment for a term of seven years with fine.

As per the Criminal Law Amendment Bill, it include provisions relating to conferring punishment of imprisonment upto 10 years or life imprisonment. The committee recommended to the central and state government for the establishment of corpus to compensate victims of offenses against women. (14)



(11)ANUSHREE FADNAVIS, Statistics on rape in India and some well-known cases, 2019 <https://www.google.com/amp/s/mobile.reuters.com/article/amp/idUSKBN1YA0UV>, accessed 27 June 2020

(12)Justice Verma Committee Report <https://www.prsindia.org/report-summaries/justice-verma-committee-report-summary>, accessed 27 June 2020

(13)Justice Verma Committee Report <https://www.prsindia.org/report-summaries/justice-verma-committee-report-summary>, accessed 27 June 2020

(14)Ibid

Offences against women in conflict areas:

The continuance of Armed Forces (Special Powers) Act (AFSPA) in conflict areas needs to be revisited. At present, the AFSPA requires a sanction is required to be provided by Central government for commencing the prosecution against armed forces personnel. The Committee made recommendations regarding the requirement of sanction for initiation of prosecution of armed forces personnel that should be specifically excluded when a sexual offence is alleged. Complainants of sexual violence must be afforded witness protection. However, there is requirements of appointment of the Special commissioners for the conflict areas in order to monitor and prosecute for sexual offences. (15)

(f)Trafficking: The Committee mentioned that the Immoral Trafficking Prevention Act, 1956 did not provide any specific definition of trafficking, however it punished the activities of trafficking for the promoting prostitution. It stated the need for amendment of certain provisions of the IPC regarding slavery in order to criminalise trafficking by use of threatening, force or inducement and suggestions were given for

criminalizing the trafficked person. The protective shelter for the vulnerable class of society that are juvenile and women is required to placed under the legal guardianship of High Courts and measures should be taken to reintegrate the victims so that they can adjust themselves in society. (16)

(g)Child sexual abuse: The Committee has given suggestions for the terms 'harm' and 'health' to be enunciated under the provisions of Juvenile Justice Act, 2000 in a manner to include mental and physical harm of health, of the juvenile. Punishment for crimes against women: Justice Verma Committee refused to accept the proposal for chemical castration as its don't have enough potential to treat the social foundations of sexual offenses or other offenses against women and made recommendation that capital punishment should be awarded for committing rape as there was evidence so show that capital punishment was not acting as a deterrence to serious crimes. .

(h)Medical examination of a rape victim:

Justice Verma Committee were against the system of the two-finger test which is conducted in order to examine the laxity of the vaginal muscles and to make decisions by the medical professionals whether rape has been committed against that person. The Apex Court stated in judgments that the two-finger test should be avoided and while determining the consent of the victim her previous sexual experience of the victim should not taken into consideration. (17)

(I)Police reforms: The Committee gave suggestions related to reformation of the police system, by composing of State Security Commissions in order to assure that state governments is not affecting the state



police. The Chief Minister or the Home Minister are the head of the Commission in the state and laid wide policy guidelines prescribing how the police should act as per the provisions of law and to decide all transfers, postings and promotions of officers was conferred upon the police establishment .(18)

(15)ibid

(16)ibid

(17)ibid

(18)ibid

(j)Reforms in management of cases related to crime against women:

In order to prevent the crime against women ,Rape Crisis Cell should be established. In fact the Rape Crisis Cell should be informed accordingly whenever any FIR is registered relating to sexual assault . Then responsibility is conferred upon it to provide legal assistance to the victim as well as CCTVs are required to be used in all police stations at the front and in the questioning room and there is now provisions of filing online complaint and the Police officers should provide assistance to victims of sexual offences irrespective of the crime's jurisdiction. The public members helping the victims should not be considered as wrong doers. The police must have to trained on order to deal properly with sexual offenses and with the increase in number of crimes the number of police personnel is required to be increased and there is need of developing Community policing in order to train the volunteers.(19)

(k)Electoral reforms: The Committee made recommendations regarding amending the provisions of the Representation of People Act, 1951, the Act don't allow the candidates

who were involved in offenses related to terrorism, untouchability, secularism, fairness of elections, sati and dowry and expressed its view that in case any charge sheet is filed or cognizance is made by the Court against the candidate ,it will disqualifies him , under the Act .

(l)Education reforms: Justice Verma Committee has given recommendations that children's experiences should not be gendered. It has given suggestion for including sexuality education as a part of education to children as that will help them to prevent or to restrain from committing crimes and to gather knowledge as well as several programmed should be conducted related to Adult literacy programs for gender empowerment.(20)

THE CRIMINAL LAW (AMENDMENT)ACT, 2013

Along with the suggestions made by the Justice Verma Committee, for reducing the violence and exploitation against women comprehensive amendments were added in the Indian Penal Code, 1860, Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 by the introduction of the Criminal Law (Amendment) Act, 2013. After the amendments certain changes were made in order to reduce violence against women and punish those violating laws with more stringent

a) Certain offences including the acid attack, sexual harassment, voyeurism, disrobing a woman, stalking have been inserted under the provisions of the Indian Penal Code and provisions relating to increasing of the penalty for several crimes like rape, sexual harassment, stalking,



voyeurism, acid attacks, indecent gestures like words and inappropriate touch etc

b) Now the term rape includes the non-penetrative sex as well along with penetrative intercourse as per Section 375 IPC.

c) Now under aggravated rape includes rape committed by a men who is in a dominant position, that includes by anyone from the armed forces deployed in an area, and the aggravated rape includes rape committed while any communal or sectarian violence or on a woman who is unable to give consent.(21)

(19)ibid

(20)ibid

(21)Global Database on Violence against Women,Criminal Law (Amendment), Act 2013,2013 <https://evaw-global-database.unwomen.org/fr/countries/asia/india/2013/criminal-law-amendment-act-2013>,accessed 27 June 2020

d) Penalty has increased for committing gang rape and leading to serious injury to the victim and the victims are in the vegetative state.

e) sentence for rape convicted has increased which includes , life-term and death sentence.

e) Adding new provisions relating to casting of responsibility on all hospitals which are administed by the Central Government or State Government in order to provide first aid or medical treatment,free of cost to victims of any offence as mentioned under Section 326, 375 ad 376 that are acid attack and rape.(22)

f)Moreover, Section 370 and 370A IPC ,states that measures ate required to be taken in order yo prevent human trafficking ,which involves trafficking of children for exploitation in any form including physical exploitation or any form of sexual exploitation, slavery, servitude, or the forced removal of organs.

THE CRIMINAL LAW (AMENDMENT) ACT, 2018

The Criminal Law(Amendment)Act,2018 was enacted by Parliament where certain changes were made in the provisions as provided under -

(a) in sub-section (1), for the words "shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine", the words "shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine" shall be substituted;

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

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

Section (3) Anyone who commits the offence of rape on a woman who is below sixteen years of age shall be punished with rigorous imprisonment of twenty years minimum, but which may extend to life imprisonment along with fine -

However, such fine should be just and reasonable enough to provide the medical expenses and rehabilitation of the victim of such crime.

Moreover if fine is required to pay as per this sub-section ,that amount shall be paid to the victim.(23)

Section 5. After the addition of section 376A IPC , the Sections inserted are as follows :—

As provided under Section 376AB if anyone , commits rape on a women of twelve years of age ,hr shall be liable to rigorous imprisonment for twenty years minimum, but that may extend up to life imprisonment which shall refer imprisonment is given for the rest of the lives of the individual and with fine.



intimiation involved in it. Many countries all over the world have considered it as an offence and criminalized rape in the marriage i.e in 1970, Sweden has enacted anti-martial rape, after that in United Kingdom, USA, Australia, Canada, Philippines, Mexico, Turkey, Poland, New Zealand, Thailand, Mauritius, France, Nepal and many other nations have passed anti-marital law criminalizing the offence. (27)

In **R Vs R**, (28) the House of Lords stated that husband would be charged as an offender for committing rape of his wife as shall be punishable under the provisions of the law, this landmark judgment has obliterated the unreasonable protection provided to a husband from prosecution under the doctrine of marital exemption. However, the exemption depends upon faith where the wife was considered as the husband's chattel.

PROTECTION OF WOMEN AGAINST POSSIBLE SEX HARASSMENT BY POLICE PERSONNEL

Police have huge responsibility to provide sufficient protection to women in order to protect the modesty and protect it from crimes, but still the crime against women are increasingly each and every day, large of instances found where there is likelihood of police personnel misusing their position and authority leading to harassing the women. In order to protect women guidelines and safeguards have been incorporated in the Criminal Procedure Code 1973, as well as the Police Acts and Rules of the States

As per Section 51(2) of Cr.P.C, it states when situation comes that any woman is, required to be searched, the search should be made along with another female personnel by maintaining decency as per the provisions of the Act.

As per Section 160 Cr.P.C, states that no male who is below the age of fifteen years or any woman shall be required to visit any area other than those place where such male person or woman stays.

As per Section 437 Cr.P.C, it states that for the purpose of release of any woman, or any ill person who is accused of non Bailable offences is required to be released on grant of bail, even in those case when the offence committed is punishable with life imprisonment or with capital punishment. (29)

(26) Prof. N.V. Paranjape,
Criminology, Penology
Victimology, (Seventeenth
Edition, 2017, CLP) P.-247

(27) *ibid* -247

(28) R V R (1992) 1 AC 599; (1991) 3 WLR 767 (HL)

(29) *id* P.-234

SENTENCING

In **Ravji Vs State of Rajasthan** (30), the Court held that while determining appropriate punishment for any offence, the gravity, nature as well as circumstances are taken into consideration rather than the criminal involved in any case, the punishment which is awarded for commission of any crime shouldn't be irrelevant but should contrive to the brutality or atrocities.

In **Dhananjay Chatterjee Vs State of West Bengal**, (31) the court reiterated that huge number of criminals remained unpublished and the rate is increasing rapidly and this encourages the offenders to commit crimes and this lead to delay in justice by weakening the system's credibility. In such a situation, by inflicting of appropriate punishment the



Court responses to the cry of the victim as,well as the society.

In **Bodhisattwa Gautam Vs Miss Subhra Chakraborty**,⁽³²⁾the Apex Court stated that though the psychological impact of rape on the mind of victim is unbearable ,but the socio - legal implications of rape ,is a crime not only against the victim but also on the society, and the rape destroys the psychology of the victim and she faces suffering from alot of emotional crisis.It violates the victims fundamental rights guarranteed under Part III of the Constitution is the Right to Life under Article 21 of Indian Constitution.

In **State of Himachal Pradesh Vs Asha Ram** ⁽³³⁾ the Apex Court stated that great importance is given to the evidence produced by a victim of sex offences,moreover the Court followed certain factors as the rationale for this rule -

- (a) The women / girls are required to be brave the whole world.
- (a) She may lose the respect and love from her matrimonial home
- (b) That may lead to mental harassment and physical suffering.
- (c) That she would always face being haunted by the acts of others.
- (d) She definitely feel embarrassed while explaining the incidents.
- (e) She always feel the fear of being neglected and ostarcised by the people outside including her family, relatives ,neighbours etc.
- (f) She wouldn't be allowed to let the matter in front of public due to fear in mind of her family name may damaged.
- (g) Moreover, if the person is unmarried, she would consider that it would be uncooperative to secure her alliance with a proper match from a family.

(h) Another fear of victim is that she would be considered to be promiscuous or not accepted by the society on the ground that she is responsible for the incident inspite of her innocence .

(i) Most of the victim gmhas the fear of facing interrogation with the council of opposite party of the case as well as to face to trial in the Court.

In the present case ,the victim ,who was the young daughter was raped by her father, which lead to the mental suffering of the victim. The incident was grave in nature where the perpetrator or criminal of the offense is a father against his daughter and that matter falls under the area of " rarest of rare case ", where strict punishment should be inflicted upon the criminal. The Apex Court, in that case, increased the punishment up to life imprisonment and fine with the amount of Rs 25,000.

⁽³⁰⁾The **Ravji Vs State of Rajasthan**,(1997) 2 SCC 175: 1996 (SCC (Cri)225

⁽³¹⁾**Dhananjay Chatterjee Vs State of West Bengal**,(1994) 2 SCC 220: 1994 SCC (Cri)358

⁽³²⁾**Bodhisattwa Gautam Vs Miss Subhra Chakraborty**, AIR 1996 SC 922

⁽³³⁾**Criminal Appeal No. 1266/1998** decided on Nov 17, 2005

QUANTUM OF PUNISHMENT

In the **State of Karnataka Vs Puttaraja**⁽³⁴⁾, in this case, the accused raped a woman who was in an advanced stage of pregnancy. The session Court confirmed the conviction with the punishment of imprisonment of 5 years. After that an appeal was made before the High Court, their sentence was given up to 96



days as already he was already in the sentence. Then, the Apex Court held that the decision of the High Court was not justified and it was disproportionate and the reason produced by the High Court can't be considered as adequate as the sentence was reduced because he was a coolie and agriculturalist of 22 years of age. The Apex Court overruled the decision and gave a sentence of 5 years which was also given by the Trial Court and stated that reducing the sentence without any reasonable ground in the case of sexual offenses is not only accepted but also against the public interest.

In the **State of Punjab Vs Rakesh Kumar (35)**, the Court held that in case minimum penalty has been provided under the provisions of the law as given under Sec 376 IPC if the Court gives punishment lesser than the prescribed period, the Court is, required to mention the reason behind taking the decision in written form and this is applicable to the Appellate Court too. In this case, no excuse or special reason that the accused and victim were having love affairs earlier can't be considered and on this ground, the punishment cannot be reduced below the prescribed minimum, and here the victim was below 16 years of age.

RELEVANT CASES

Mr. Justice S.Ratnavel Pandian of Apex Court in **Madan Gopal Kakkad Vs Naval Dubey & Another(36)**, stated that crimes of sexual offenses should be strictly as well as mercilessly punished in the severest terms, as they are the menace to the whole society and its a crime not against the victim concerned but against the society.

(34)State of Karnataka Vs Puttaraja,2004 Cri L.J. 579(S.C)

35)State of Punjab Vs Rakesh Kumar,(2009) I Cri L.J.396(S.C)

(36)Madan Gopal Kakkad Vs Naval Dubey & Another,1992(3) SCC 204

State of M.P Vs Babulal(37), in this case, a 22 years old married woman, who was a worker in his tapri was raped by the appellant, later on, the victim's husband, as well as inlaws, registered FIR, but the appellant denied all the allegations and said they are trying to put him in trouble by lodging fake case due to the failure of the victim's husband to provide advance money when demanded was found to be untenable. Later on, the Session Court awarded his a sentence up to 7 years of imprisonment along with a fine of Rs.2500/-, after filing an appeal the High Court reduced the punishment after that Supreme Court of India held that the High Court has given the wrong decision that leads to a miscarriage of justice and stated that there is no reasonable ground observed to reduce the punishment less than what prescribed under Section 376(1) IPC and the Court upheld the order of conviction and punishment given by the Session Court.

The Apex Court in **Deepak Gulati Vs State of Haryana(38)**, held that intercourse occurred and under the false promise to marry the person is considered as rape, in the case the accused has no earlier intention to marry the lady and that can't be considered as consensual sex.

(37)State of M.P Vs Babulal, AIR 2008 SC 582

(38)Deepak Gulati Vs State of Haryana, AIR 2013 SC 2071

CONCLUDING OBSERVATIONS

Rape is the act of expressing violence by using sexual means, with the increasing rape



cases much more stringent punishment is required to award in order to prevent such incidents. The Court bears great responsibility while trying an accused on the charge of rape. It is required to emphasize the vital function of various law enforcement agencies including police, the magistracy, the advocates, as well as the rehabilitation centers in reducing sex criminality. Moreover, apart from the provisions of law governing sexual offenses, other effective measures should be ensured, moreover, there is a need for motivating the people by educating people and aware of them regarding the seriousness of consequences ensuing therefrom.

