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# **AN ANALYSIS OF THE ISSUES RELATED TO SEXUAL VIOLENCE AGAINST WOMEN IN THE CONTEMPORARY INDIA.**

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## **Abstract**

In this fast growing world life changes at very fast rate, every day we feel change in our surrounding be it politically, socially, economically and these changes be it small or big become the part of our life and we adapt these changes and become part of it but some changes in our life are of such nature which we as individual cannot accept it or more specifically we never want those changes in our life as these changes mould our life in some other world where what we were in past is no more in present, one of such change which researcher is talking about is crime and violence in individual life.

Crime and violence are the wrong done by one person against another which results in physical, mental, social and economic loss and in legal terminology it is wrong against the state. State at large statutorily recognized various types of crime and violence against man, women and children but in all of these crime and violence against women is major concern of this fastest technology advanced world.

We in daily newspaper read about incidents of dowry death, rape, gang rape and murder of women and girl child and all such incident raises question in our mind is women are safe in our society? What are the main cause of this violent act against our women and girls? What about their natural and fundamental rights? Will they really get justice by punishing their accused judicially? Is punishment being real justice for what they suffer from?

In India all these above stated question are major concern of our society and law makers, many steps were taken in direction of prevention and punishment of such violence against women and girl child, Laws in the form Indian penal code 1860, Protection of children against sexual offences Act 2012, Domestic violence Act 2005, Dowry prohibition Act 1961 etc are already there but the incident of such violent act against women and girl child in not reducing on contrary its growing at fast rate.

In this research study about analysis of the Issues related to sexual violence against women in the Contemporary India researcher specifically deals with sexual violence against women and girl child, types of sexual violence, laws relating to sexual violence in India, Role of Judiciary through land mark judgments and suggestive measure along with conclusion.

## Introduction

### What constitute sexual violence

Violence against women and girls is one among the world's most prevalent human rights violations, happening a day, repeatedly over, in every corner of the world. It's serious short- and long-term physical, economic and psychological consequences on women and girls, preventing their full and equal participation in society. The magnitude of its impact, both within the lives of people and families and society as an entire, is immeasurable<sup>1</sup>.

Conditions created by the pandemic – including lockdowns, reduced mobility, heightened isolation, stress and economic uncertainty – have led to an alarming spike in violence and have further exposed women and girls to other sorts of violence, from child marriage to harassment online.

Violence against women is experienced by women of all ages and social classes, all races, religions and nationalities, across the world. it's overwhelmingly perpetrated by men<sup>1</sup>. it's the foremost pervasive violation of human rights of the world today. Its forms are both subtle and blatant and its impact on development is profound. And it's so deeply embedded in cultures round the world that it's almost invisible.

The term violence derives from the Latin word vis, which suggests force and refers to the

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<sup>1</sup> united Nations, Ending Violence Against Women: From Words to Action (2006)

notions of constraint and using physical superiority on the opposite person. Violence is mutant, because it is influenced by very different times, places, circumstances and realities. there's tolerated and condemned violence, as violence has existed on Earth if mankind, assuming different, increasingly complex and at an equivalent time more fragmented and articulated forms<sup>2</sup>.

The United Nations Declaration on Violence against Women provides a basis for outlining gender-based violence. Per Article 1 of the Declaration<sup>3</sup>, violence against women is to be understood as: "Any act of gender-based violence that leads to, or is probably going to end in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring publicly or private life"

This FAQ<sup>4</sup> provides a summary of the various sorts of violence, alongside other commonly used terms, that any gender equality activist should have in their vocabulary toolkit Sexual violence is defined as: any sexual act, plan to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by a person no matter their relationship to the victim, in any setting, including but not limited to home and work.

Coercion can cover an entire spectrum of degrees of force. aside from physical force, it's going to involve psychological intimidation, blackmail or other threats – as an example, the threat of physical harm, of being dismissed from employment or of not obtaining employment that's sought. it's going to also occur when the person aggressed is unable to offer consent – as an example, while drunk, drugged, asleep or mentally incapable of understanding things.

**World Health Organization** defines “sexual violence” as any coerced sexual act, involving: any sexual act, attempt of sexual act, sexual comments, or acts directed against a persons' sexuality using coercion, by a person no matter his relationship to the victim, in any setting, including home and work.

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<sup>2</sup> UN General Assembly Reports on Gender-Based Violence

<sup>3</sup> UN Declaration on the Elimination of Violence Against Women, 1993, Article 1

<sup>4</sup> UN Women, *Glossary on Sexual and Gender-Based Violence*

**GLOBAL SCENARIO OF GENDER BASED VIOLENCE:** Gender based violence that threatens the wellbeing, rights and dignity of girls has only recently emerged as a worldwide issue extending across regional, social, cultural and economic boundaries. consistent with state statistics, about 18% of girls are being sexually abused within the U.S. consistent with the UN Report on violence against women, the condition in other developed countries like Denmark, Germany, Spain, Switzerland, and therefore the uk etc. is not any better<sup>5</sup>.

In the U.S., the Department of Justice reported that, every year; 3- 4 million women are battered by their husbands or partners. Even in Sweden, which ranks high within the gender-related index, 66% of the 18650 reported cases of violence on women in 1996 were of domestic assault. Further 45% of 681 offences of homicide recorded in England and Wales in 1996 involved women killed by their spouses or lovers. (Joshi 2002). the info from developing countries like Antigua, Barbados, Columbia, Chile, Ecuador, Guatemala, Sri Lanka et al. reveals widespread prevalence of physical and sexual assault on women. during a study of 796 women from Japan administered by violence Group (1993) 59% reported physical abuse, 66% emotional abuse and 60% reported sexual assault <sup>6</sup>. Studies from African countries, Kenya, Uganda and Tanzania reveal that 42% women are subjected to physical abuse at their homes.

In China, a conclusive evidence of wife battering has been reported among 57% women<sup>7</sup>. The Universal Declaration of Human Rights and Convention on Elimination of all sorts of Discrimination against Women (CEDAW) do enforce certain special rights and privileges for ladies. But it's amazing that only 44 countries have laws against violence. Only 17 countries have made marital rape a criminal offence & only 27 countries have passed laws on harassment.<sup>8</sup>

### **Forms of sexual violence**

#### **➤ Assault or criminal force to woman with intent to outrage her modesty**

The word 'modesty' has not been defined within the Indian legal code we may profitably check out its dictionary meaning. consistent with Shorter Oxford English Dictionary (Third Edition) modesty is that the quality of being modest and in reference to woman means "womanly

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<sup>5</sup> WHO, *Understanding and Addressing Violence Against Women* (2012).

<sup>6</sup> WHO Multi-Country Study on Women's Health and Domestic Violence

<sup>7</sup> Joshi (2002), cited data on China

<sup>8</sup> UN Women Global Database on Violence Against Women Laws

propriety of behaviour; scrupulous chastity of thought, speech and conduct”. The word ‘modest’ in reference to woman is defined within the above dictionary as “decorous in manner and conduct; not forward or lewd; shamefast”.

Webster’s Third New International Dictionary of English language defines modesty as “freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct”.

In the Oxford English Dictionary (1933 Ed.) the meaning of the word ‘modesty’ is given as “womanly propriety of behavior; scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions”

According to **Section 354 of Indian penal code 1860 now BNS 2023 section 74.**

Whoever assaults or uses criminal force to any woman, meaning to outrage or knowing it to be likely that he will thereby outrage her modesty shall be punished with imprisonment of either description for a term which shall not be but one year but which can reach five years or with fine, or with both.

The only and therefore the major thing that constitutes the essence of a woman’s modesty is her sex. The guilty intention of the accused plays a serious role in determining the crux of the offence. In further explanation the act of pulling a lady, removing her saree, including an invitation for sexual activity, is like would be an outrage to the modesty of a lady. Also, mere knowledge of the very fact that the modesty is probably going to be outraged, is sufficient to constitute the offence and wishes no further explanation on the intention of the offender.

The ambit of Section 354 Indian legal code/ BNS section 74 is much wide. Also, it's a cognizable offence and Non- bailable also. so as to supply protection against the act of sexual abuse further sections were added. The four newly added sections are mentioned below:

• **Section 354 A /BNS S. 75- sexual harassment and punishment for sexual harassment:**

1. a person committing any of the subsequent acts-

- Physical contact and advances involving unwelcome and explicit sexual overtures; or
- A demand or request for sexual favours; or
- Showing pornography against the desire of a woman; or
- Making sexually coloured remarks.

Shall be guilty of the offence of sexual harassment.

2. Any man who commits the offence laid out in clause (i) or clause (ii) or clause (iii) of subsection

(1) shall be punished with rigorous imprisonment for a term which can reach three years, or with fine, or with both.

3. Any man who commits the offence laid out in the clause (iv) of subsection (1) shall be punished with imprisonment of either description for a term which can reach one year, or with fine, or with both.

This section clearly states that the act of harassment caused by an individual is punishable. harassment isn't only an offence against a private woman, rather it's a wrong against public morals and decent behavior. The term of imprisonment differs on the idea of the gravity of the offence.

• **Section 354B/BNS S. 76- Assault or use of criminal force to woman with intent to disrobe:**

Any man who assaults or uses criminal force to any woman or abets such act with an intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be but three years but which can reach seven years, and shall even be susceptible to fine.

This section clearly states that a person with intent to disrobe(undress) a lady , using the criminal force shall be responsible for a prescribed term of punishment. Offence under this section is additionally a cognizable offence, but Non-bailable. Cases under this section are often tried by any Magistrate.

• **Section 354C/BNS S. 77- Voyeurism:**

Any man who watches, captures the image of a lady engaging during a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by the other person at the behest of the perpetrator or disseminates such image shall be punished

on first conviction with either description for a term which shall not be but one year, but which can reach three years, and shall even be susceptible to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be but three years, but which can reach seven years, and shall even be susceptible to fine.

Explanation to the present section as provided under the Act is as follows-

1. For the aim of this section, “private act” includes an act of watching administered during a place which, within the circumstances, would reasonably expected to supply privacy and where the victim’s genitals, posterior or breasts are exposed or covered only in underwear; or the victim is employing a lavatory: or the victim is doing a sexual act that's not of a sort ordinarily done in public.
2. Where the victim consents to the capture of the pictures or any act, but to not their dissemination to the third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

This section makes a person liable if he intentionally watches or captures the picture of a lady doing private acts, which are to be performed within the utmost privacy and therefore the woman believes that she isn't observed by anyone.

Also, if a woman gives her consent to capture her image or allows to try to to any act, but not with the aim that it'll be exposed to a 3rd person. If the person shares the image or spreads it on a good scale, his act will amount to the offence under the purview of this section and shall be susceptible to punishment.

The offence committed under this section may be a Cognizable offence and bailable at the time of first conviction. However, if the offender repeats the offence, the character of the offence is cognizable and non-bail able at the time of second conviction.

In both the cases, the offence is triable by any Magistrate having the jurisdiction of the matter.

• **Section 354 D/BNS S. 78- Stalking:**

1. Any man who-

- Follows a lady and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a transparent indication of disinterest by such woman; or
- Monitors the use by a woman of the web , email or the other sort of transmission ,  
Commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the person who pursued it proves that

- It was pursued the aim of preventing or detecting crime and therefore the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
- It was pursued under any law or to suits any conditions or requirement imposed by a person under any law; or

- In particular circumstances, such conduct was reasonable and justified
2. Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which can reach three years, and also shall be susceptible to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which can reach five years, and shall even be susceptible to fine. This section clearly explains that the act of an individual, where despite the interest of a lady, if he's found continuously stalking her, using different measures, like by following, contacting, stalking her activities on internet then on, shall be liable for committing the offence of Stalking under the Indian penal code.

With reference to the acts that quantity to stalking, there are certain exceptions provided in lieu of this section. If the person was continuously doing an act in reference to prevent or detect a criminal offense, where he was bound by the law, or if he justifies the rationale for following or keeping a check on the activities of a woman, shall not be responsible for the offence of stalking.

### ➤ Rape

Rape is one among the foremost heinous crimes an individual can commit. It's not just a heinous crime but an enormous disgrace to mankind as a species. It's a sexual assault that sometimes involves sexual intercourse with an individual without their consent.

Rape has been defined under **Section 375 of the IPC (Indian penal code, 1860) / BNS 2023 Section 63** which states that rape is claimed to possess been committed when a person has sexual activity with a woman:

1. Against her will;
2. Without her express consent;
3. By obtaining her consent by force, or threatening to kill or hurt her or someone she cares about;
4. By making her believe that the person has been lawfully married to her;
5. By obtaining her consent during unsoundness of her mind, when she was intoxicated, or by providing the other substances which may affect her decision-making ability;
6. With or without her consent if she is under 16 years old, and 14 years old just in case of Manipur. This clause also states that mere penetration is sufficient to constitute sexual activity, which may be treated as rape.

## **Gang Rape**

**Section 376D/BNS Section 70(1)** prescribes punishment for gang rape and says where a woman is raped by a gang of persons, then they shall be punishable with rigorous punishment of not but 20 years, but may reach captivity, and with fine.

Provided that such fine shall be just and reasonable to satisfy the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this section shall be paid to the victim

## **Custodial Rape**

Indian penal code, 1860 contains **Section 376(2)(a), (b) and, (c)/ BNS Section 2023 Section 66,67,68** that make a new category of offence which is termed as 'custodial rape'. within the general sense, the term custody means the right to require care of something or somebody, especially children. it's the temporary possession or care of someone else's property. But within the legal sense it's the state of being imprisoned or detained, usually pending in trial.

The issue of custodial rape came into light within the late 1970s and early 1980s when endless series of incidents of rape of girls in police custody came to picture. This issue was mobilised by the women's movement.

Custodial rape generally takes place within the detention by the state via police or army or other security forces which are appointed to safeguard the lives of people but instead outrage the modesty of a woman. The concept of custodial rape not only includes security forces but also hospitals, mental institutions, shelter homes and juvenile homes where people are sent for rejuvenating their health but instead are brutally raped.

- **Domestic violence**

**Section 3 Protection of women from domestic violence Act 2005** explains the term 'domestic violence' very well. It states that an act or omission will qualify as domestic violence if it:

- Harms or injures health, safety, limbs (body organs), life or/and mental and physical wellbeing of a woman. Such abuse is often physical, sexual, economic, verbal and emotional.
- Harms, harasses, injures or endangers the aggrieved person to coerce her or any of her relations to satisfy unlawful demands like dowry.
- Causes the other physical and mental injury to the aggrieved person.

- **Child abuse**

The UN convention of the rights of a child defines a child as everyone below the age of 18 years. The World Health Organization defines child abuse as a violation of the human rights of a child. Child abuse also can be defined as an act of violation or negligence on a part of a private either adult or child which threatens the lifetime of the child or violates the essential needs. It impacts the event and affects the health and wellbeing of the child. Children's rights are often violated anywhere, home, school, playgrounds, workplaces and even online. Exploitation and violation of the rights of the child can have an everlasting impact while affecting the event of the child.

### **Legal framework on sexual offences**

Laws associated with women are classified under two major categories: -

#### **A. General laws**

##### **Indian penal code 1860/ BNS 2023**

- **Rape (Sec. 376 IPC) / BNS S. 64-** A rapist, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which can extend to imprisonment for life, and shall even be liable to fine.
- **Section 376A IPC 1860/ BNS S.66 -** Person committing an offence of rape and inflicting injury which causes death or causes the woman to be during a persistent vegetative state.

Rigorous imprisonment of not less than 20 years but which can extend to imprisonment for life which shall mean imprisonment for the rest of that person's natural life or with death. The offence is cognizable, non-bailable and triable by court of Session

- **Section 376B/ BNS S.67-** sexual intercourse by husband upon his wife during separation without her consent. Imprisonment of not less than 2 years but which may reach 7 years and with fine. The offence is cognizable only on the complaint of the victim, bailable and triable by court of Session
- **Section 376C/ BNS S. 68-** sexual intercourse by an individual during a authority or in a fiduciary relationship or a public servant or Superintendent or Manager of a jail, remand home or other place of custody or a women's or children's institution or on the management of a hospital or being on the staff of a

hospital. Rigorous imprisonment for not less than 5 years but which may reach 10 years and with fine. The offence is cognizable, non-bailable and triable by court of Session

- **Section 376 D/ BNS S.70(1)-** Gang rape: rape by one or more persons constituting a group or acting in furtherance of common intention Rigorous imprisonment of not but 20 years but which may reach imprisonment for life which shall mean imprisonment for the rest of that person's natural life and with fine to be paid to the victim The offence is cognizable, non-bailable and triable by court of Session
- **Section 376E/ BNS S.71-** Repeat offenders-previously convicted for the offence of rape Imprisonment for life which shall mean imprisonment for the rest of that person's natural life or with death The offence is cognizable, non-bail able and triable by court of Session
- **Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC/ BNS S.103/80):** Where the death of a women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her in laws or husband, for or in reference to, any demand of dowry, such death shall be called —dowry death. Whoever commits dowry death shall be punished with imprisonment of either description for a term which shall not be less than seven years, but which can reach imprisonment for life.
- **Torture, both mental and physical (Sec. 498-A IPC)/ BNS S. 84:** Husband or relative of husband of a women subjecting her to cruelty, shall be punished with imprisonment of either description for a term which may reach three years, and shall also be susceptible to fine.
- **Molestation (Sec. 354 IPC) / BNS S.74:** Whoever assaults or uses criminal force to any women, meaning to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may reach five years, and shall also be susceptible to fine.
- **Sexual Harassment (Sec. 509 IPC) / BNS S.79:** Whoever, meaning to insult the modesty of a woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such gestures or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with imprisonment of either description for a term which can reach three years, and shall also be susceptible to fine.

## **B. Special Laws**

Although all laws aren't gender specific, the provisions of law affecting women significantly are reviewed periodically and amendments administered to stay pace with the emerging

requirements. Some acts which have special provisions to safeguard women and their interests are:

- **The Dowry Prohibition Act 1961** prohibits the request, payment or acceptance of a dowry "as consideration for the marriage", where "dowry" is defined as a gift demanded or given as a precondition for a marriage. Gifts given without precondition aren't considered dowry, and are legal, per section 3(2). asking for or giving of dowry are often punished by imprisonment of up to 6 months, a fine of up to Rs. 15000 or the quantity of dowry (whichever is higher), or imprisonment up to five years. It replaced several pieces of anti-dowry legislation that had been enacted by various Indian states.

**The Immoral Traffic (Suppression) Act (SITA) (1956)** is that the primary law handling the status of sex workers.

According to this law, prostitutes can practice their trade privately but cannot legally solicit customers publicly. Organized prostitution (brothels, prostitution rings, pimping, etc.) is against the law. As long because it is completed individually and voluntarily, a woman can use her body in exchange for material benefit. especially, the law forbids a sex worker to hold on her profession within 200 yards of a public place.

Unlike as is that the case with other professions, sex workers aren't protected under normal labour laws, but they possess the proper to rescue and rehabilitation if they desire and possess all the rights of other citizens.

**The Protection of women from domestic violence Act 2005** is an Act of the Parliament of India enacted to guard women from domestic violence. Primarily meant to supply protection to the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women living during a household such as sisters, widows or mothers.

Domestic violence under the act includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would even be covered under this definition.

**The sexual harassment of women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** may be a statute in India that seeks to guard women from harassment at their place of work. The Act will make sure that women are protected against harassment in the least the work places, be it publicly or private. This will contribute to realization of their right to gender equality, life and liberty and equality in working conditions everywhere.

The sense of security at the workplace will improve women's participation in work, leading to their economic empowerment and inclusive growth.

Under the Act, which also covers students in schools and colleges also as patients in hospitals, employers and local authorities will need to found out grievance committees to research all complaints. Employers who fail to comply are going to be punished with a fine of up to 50,000 rupees.

### **Protection of youngsters from Sexual Offences Act (POCSO Act) 2012**

**Section 3 and 4** Penetrative sexual assault – (a) to any extent by penis, into the vagina, mouth, urethra or anus of the child or making the child to try to to so; or (b) by inserting any object or a part of the body into the vagina, mouth, urethra or anus of the kid or making the child to try to to so; or (c) manipulating any a part of the body of the child so on cause penetration or making the child to try to to so; or (d) applying mouth to penis, vagina, or anus or urethra of the child or making the child to try to so,

Imprisonment of either description for a term which shall not be less than 7 years but which can reach imprisonment for life and with fine.

**Section 5 and 6** Aggravated penetrative sexual assault takes place when it's committed by the subsequent persons at the or following places –

- (a) By a policeman within the premises of police station or within the course of his duties or otherwise; or
- (b) By a Member of armed forces or security forces within the areas where he's deployed or within the areas under the command of the armed forces or within the course of his duties or otherwise or where said person is known or identified as a member of security or Armed Forces; or
- (c) By a Public Servant; or
- (d) By an individual on the management or the staff of jail, remand home, protection home, observation home or other place of custody or care and protection established by and under any law, on the child being inmate of such premises; or
- (e) By a person on the management or staff of a hospital on a child in that hospital.; or
- (f) By a person on management or staff of an academic or religious institution on a child therein institution; or
  - (o) By a person within the ownership or management or staff of any institution providing services to the child; or
  - (p) By an individual in position of trust or authority of a toddler on the child within the institution of home of the child or anywhere else; or

- (n) By a relative of the kid through blood or adoption or marriage or guardianship or in care or having a domestic relationship with a parent of the child or who lives within the same or shared household with the child; or
- (g) By one or more persons of a group in furtherance of their common intention; or
- (t) By a person who has been previously convicted of getting committed any offence under this Act or any sexual offence punishable under any other law for the time being in force. Rigorous imprisonment for a term which shall not be less than 10 years but which can reach imprisonment for all times and fine

**Section 11 and 12 Sexual harassment-** with sexual intent;

- (i) Uttering any word or making any sound or any gesture or exhibiting any object or a part of " a part of "a part of body with the intention that such word or sound shall be heard or such gesture or object or part of the body shall be seen by the child or
  - (ii) Making a child exhibit his body or any part of his body so on be seen by such person or any other person or
  - (iii) Showing any object to a child in any form or media for pornographic purposes or
  - (iv) Repeatedly or constantly following or watching or contacting a child either directly or through electronic, digital or by the other means or
  - (iv) Threatening to use in any sort of media, a true or fabricated depiction through electronic, film or digital or the other mode, of any a part of the body of the child or the involvement of the child during a sexual act or
  - (v) Enticing a child for pornographic purposes or giving gratification therefor.
- Imprisonment of either description for a term which can reach 3 years and with fine

**Section 13 and 14 Use of child for pornographic purposes -** using a child in any sort of media including program or advertisement telecast by television channels or internet or the other electronic form or printed form whether or not such program or advertisement is meant for personal use or for distribution, for the needs of sexual gratification including representation of the sexual organs of a child, usage of a toddler engaged in real or simulated sexual acts, the indecent or obscene representation of a child.

- (i) within the event of second or subsequent conviction
- (ii) directly participating in pornographic act
- (iii) aggravated penetrative sexual assault while using the child for pornographic purposes
- (iv) sexual assault while using the kid for pornographic purposes
- (v) aggravated sexual assault while using the kid for pornographic purpose

Imprisonment of either description which can extend to 5 years and shall even be susceptible to fine. Imprisonment upto 7 years and with fine. Imprisonment for a period not less than 10 years but which can extent to imprisonment for all times and with fine. Rigorous imprisonment for life and with fine. Imprisonment of not but 6 years but which can reach 8 years and with fine. Imprisonment for a term which shall not be but 8 years but which can reach 10 years and with fine.

### **Role of judiciary and its land mark judgment in context of sexual violence against women**

In India judiciary is that the third pillar of the government which is an independent from remainder of the 2 pillars i.e. legislature and executive. Here judiciary plays two roles, first one is (a) to interpret laws and another one is (b) broad interpretation which suggests to travel beyond the law and use its discretionary power to supply justice to the victims. Judiciary may be a balancing wheel of the federation.

The function of the judiciary is to stay a balance between the elemental rights and social justice. Judiciaries even have an impact over the executive tribunals. Another chief function of judiciary is to line precedent for the welfare of the general public. Law requires a strong bureau to preserve its existence. Most of the days the matter arises are that how the courts interpret the consent of the victim.

In the case of **Tuka Ram v. State of Maharashtra**<sup>9</sup> there have been no signs or marks of injury on the body and it had been assumed that there was no resistance on the girl's part and Supreme Court observed that whatever went on was an affair with the mutual consent of both partners and therefore the allegations made by the girl are false.

within the case of **Mohd. Habib v. State<sup>10</sup> Delhi** Hon'ble High Court set the accused free because it presumed that the accused isn't guilty because there have been no marks of injury on his penis which may indicate there was any resistance from the opposite person.

Though the victim was minor (seven years of age) and her hymen was broken or fractured and

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<sup>9</sup> Tukaram v. State of Maharashtra, (1979) 2 SCC 143

<sup>10</sup>Mohd. Habib v. State (1989) CriLJ 137

there have been bite marks on her body the court didn't consider of these things. But within the present scenario many changes are wiped out the judiciary and therefore the judges use their own discretion to supply justice to the rape victims.

Now in accordance with the international treaties and conventions the laws are being interpreted by the courts within the territory of India. In late 1983 the clarification has been made by the SC that albeit previously the victim has been proven immoral, promiscuous or incontinent but in present situation she will deny her consent for any quite sexual activity to anybody because she isn't merely an object but a person's being who has the proper to measure with dignity.

In 1983 the primary amendment has come to the criminal law during which there was a change within the Evidence Act which stated that if the any victim suffered from rape has said that her consent wasn't there to the sexual intercourse then the court will believe it to be true afterward there was introduction of custodial rape within the Indian penal code.

In 1992 Vaisakha judgement came which became a landmark judgement during which Supreme Court for the primary time gave the definition of 'sexual harassment at work place' and therefore the landmark guidelines were laid down by the apex court. in the case of State of Punjab v. Gurmit Singh<sup>9</sup> the Supreme Court gave directions to the lower courts that albeit the woman or girl has been proven to be familiar with sexual activities, the court cannot label her to be of loose character. Another case of **State of Maharashtra v. Mdhukar N. Mardikar**<sup>11</sup> the Supreme Court held that if the character of any woman is immoral or obscene that doesn't mean that that woman is open to everybody and anyone can do whatever he wishes to try to to.

**VERDICT OF VERMA COMMITTEE-** Immediately after the Nirbhaya incident, a 3-member committee was constituted which was headed by Justice J.S. Verma the chief justice of the Supreme Court. The committee was composed to advocate amendments within the law or laws defined within the Indian penal code so on contribute for fast trials and to magnify the punishments of the accused of the crimes like sexual assault against women. The report was submitted by the committee on January 23, 2013. That report provides recommendations on the laws that are associated with rape, checkup of survivors, trafficking, sexual harassment, child sexual abuse, police. The rape is differentiated within and outside the wedding in IPC. Some main schemes or

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<sup>11</sup> state of Maharashtra v. Madhukar Narayan Mardikar, (1991) 1 SCC 57

proposals constructed by Verma committee after the brutal Delhi gang rape; It listed voyeurism, intentional touching and stalking within the category of offence.

**Ravi Khutiyare v. State of Chhattisgarh**<sup>12</sup> during this case an appeal was filed against the judgment passed by the extra Sessions Judge whereby the appellant was convicted under Sections 363 and 366(A) of the penal code, 1960 and Section 6 of the Protection of children from Sexual Offences Act, 2012. The mother of the prosecutrix had lodged an FIR stating that after returning from work, her daughter (prosecutrix) (PW-2) informed her that she was having pain in her vagina. Prosecutrix informed that the appellant took her to the dilapidated house and after laying her down on the bottom, the appellant removed her underwear and thereafter committed sexual intercourse together with her. in sight of the said incident, an FIR was lodged by the mother.

High Court noted that the prosecutrix a 5-year-old girl had deposed that the appellant took her to the dilapidated house and after laying her down disrobed her and also removed the garments of her friend Dev, a minor. Further, she stated that the appellant inserted his finger into her vagina and when she started weeping, the appellant left her. She narrated the entire incident to her mother and therefore the mother found her private part swelled and red.

Considering the definition of rape under Section 375(b) of the penal code, 1860 and also the corresponding pari materia Section 3(b) of the Protection of children from Sexual Offences Act, 2012 defining penetrative sexual abuse, as also Sections 4, 5, 5(m), 6 of the POCSO Act, it had been observed that the court after evaluating the whole evidence during a proper manner, rightly convicted the appellant under Section 363 and 366 of the IPC and under Section 6 of the POCSO Act. Hence, in sight of the above, the trial Court's decision wasn't liable to be interfered with.

**State of Maharashtra v. Sahar Ali Shaikh**<sup>13</sup>, expressing that, the sexual intention is that the state of mind, might not necessarily to be proved by evidence, such intention is to be inferred from attending circumstances of the case, M.A. Baraliya, Designated Judge under POCSO Act, 2012, held that touching bum of a girl can't be said to be without sexual intention.

The Court found that the past conduct of the accused of laughing at her then touching her manifests that it had been all with sexual intention, to grab the prospect. It was added that merely for the rationale that there have been no eyewitnesses to the incident which the friend who was with the prosecutrix had not been examined, can't be the rationale to discard and disrespect the testimony

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<sup>12</sup> Ravi Khutiyare v. State of Chhattisgarh, (2019) 4 SCC 192

<sup>13</sup> **State of Maharashtra v. Sahar Ali Shaikh** [2024] INSC 677

of the victim girl.

Accused by touching or patting on her, bums, has committed the act with full knowledge and intention to outrage her modesty and to assault her sexually.

SPP submitted that such instances of inappropriately touching the girls on a road are on high. Hence imposing the utmost sentence, will provides a message to society. Considering the age factor of the accused alongside the character of the crime, gravity of offence which he comes from a poor family a minimum sentence of 5 years with fine as provided under Section 10 POCSO Act was ordered.

**Dilip vs. State of Madhya Pradesh**<sup>14</sup> during this case the Hon Supreme Court observed that: “It is an obligation on the a part of the State authorities and particularly, the Director General of Police and residential Ministry of the State to issue proper guidelines and directions to the opposite authorities as how to affect such cases and what kind of treatment is to tend to the prosecutrix, as a victim of sexual assault requires a completely different quite treatment not only from the society but also from the State authorities. Certain care has got to be taken by the Doctor who medically examines the victim of rape. The victim of rape should generally be examined by a female doctor.

**State of Uttar Pradesh vs. Munshi**<sup>15</sup>, during this case, it had been held by the Apex Court that “even if the victim of rape was previously familiar with sexual intercourse, it can't be the determinative question. On the contrary, the question still remains on whether the accused committed rape on the victim on the occasion complained of. albeit the victim had lost her virginity earlier, it cannot certainly provide a license to a person to rape her. So whether the victim is of promiscuous character is completely an irrelevant issue altogether during a case of rape”. it's ultimately her evidence which is that the appraisal and it's held to be standing on a high pedestal than an injured witness for the rationale that the injured witness gets injury within the physical form while the prosecutrix suffers psychologically and emotionally. The incident of rape in itself causes great distress and humiliation to the victim. Therefore, she is going to never indulge into making a false allegation of rape because it will cause equal distress, humiliation and damage to her.

**Lillu @ Rajesh and Anr vs. State of Haryana**<sup>16</sup> The prosecutrix during this case was a minor

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<sup>14</sup> Dilip v. State of Madhya Pradesh, (2001) 9 SCC 452

<sup>15</sup> State of Uttar Pradesh v. Munshi, (2009) 15 SCC 174

<sup>16</sup> Lillu @ Rajesh & Anr v. State of Haryana, (2013) 14 SCC 643

girl aged of 13 years and nine months and a student of 6th standard. Her testimony within the court was found to be consistent and reliable. The medical evidence of the doctor, who conducted two finger per vagina test, showed that hymen was completely torn. conspicuous before the court, the doctor stated that the likelihood of prosecutrix being habitual to sexual activity can't be ruled out. As prosecutrix was held to be a minor, the question on whether she was habituated to sexual activities or not, was held to be immaterial to work out the difficulty of consent.

Even then, the maximum amount argument was advanced by learned counsel for appellant on the findings of two finger test and therefore the admission of the doctor that prosecutrix was habitual to sexual intercourse, Apex court felt it necessary to debate the medical evidence concerning two finger test by holding that it requires a significant consideration by the court as there's a requirement for sound standard of conducting and interpreting forensic examination of rape survivors.

After counting on its own earlier pronouncements, Apex Court held that sole testimony of prosecutrix itself is enough to record a conviction, when her evidence is read in its totality and located to be worth of reliance. it had been further held that albeit the victim of rape was previously familiar with sexual activity, it can't be the determinative question. consistent with apex court

Moreover, it's the accused who is unproved and not the victim. it had been further held that even in cases where there's some evidence to point out that the victim was habituated to sexual activity , no inference of the victim being a woman of easy virtues or a woman of loose moral character can be drawn.

**Radhu vs. State of Madhya Pradesh**<sup>17</sup> This case is of significance because during this case, the Apex Court has not only reiterated the well settled legal position that a finding of guilt during a case of rape are often supported uncorroborated evidence of the prosecutrix, but has gone a step ahead and held that the opinion of a doctor that, “there was no evidence of any sexual activity or rape”, might not be sufficient to disbelieve the accusation of rape by the victim. The facts of the case are to the effect that prosecutrix was a minor girl of 13 to 14 years. Accused, a boy of 19 years' age, dragged her inside the room, confined her during the whole night and sexually assaulted her by inserting his penis in her vagina twice. When she cried, he gagged her mouth with a bit of fabric. He freed her only within the morning on the next day. Medical evidence showed that there was no injury on her genitalia which rupture of hymen was old. The doctor who was examined as prosecution witness also stated that she couldn't express any opinion on whether a rape had been committed or not. it had been argued by defense counsel before the Supreme Court in second

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<sup>17</sup> Radhu v. State of Madhya Pradesh, (2007) 12 SCC 57

appeal that there have been discrepancies in her evidence and there was no corroboration from any source, much less, the important medical evidence.

Hence, the conviction recorded by the court and confirmed by the high court was susceptible to be set aside. The Apex Court however negated this contention and held that the testimony of prosecutrix is of paramount importance, opinion of the doctor that there was no evidence of any sexual activity or rape might not be sufficient to disbelieve her. As during this case her evidence, when read as an entire, was found to be filled with discrepancies and didn't inspire confidence and other circumstances made it highly improbable that such an event has ever taken place, Supreme Court set aside the conviction.

Thus the purpose to be stressed is that victim's testimony is of importance and not the presence or absence of medical evidence of sexual intercourse or rape.

she was on her way to relieve herself and that they unlawfully kept her during a house for a few days. one among the accused forcibly had sexual intercourse with her. He gagged and threatened her whenever she would ask him to release her. The victim was recovered by the police after almost 24 days. The conviction was reversed by the supreme court of Allahabad on the grounds that the victim was accustomed to sexual intercourse which there have been no physical injuries on the body of the victim.

The Supreme Court set aside the judgment held that "It is wrong to assume that altogether cases of intercourse with the women against will or without consent, there would be some injury on the external or internal parts of the victim. The prosecutrix has clearly deposed that she wasn't during a position to put up any struggle as she was removed from her village by two adult males. The absence of injuries on the person of the prosecutrix isn't sufficient to discredit her evidence; she was a helpless victim"

**State of Rajasthan vs. Noore Khan**<sup>18</sup> during this case the Apex Court noted that "Absence of injuries on the person of the prosecutrix has weighed with the high court for inferring consent on a part of the prosecutrix. We aren't in the least convinced. we've already noticed that the delay in medical examination of the prosecutrix was occasioned by the factum of the lodging of the FIR having been delayed. The prosecutrix was in her teens.

The perpetrator of the crime was an able-bodied youth bustling with energy and determined to satisfy his lust armed with a knife in his hand and having succeeded in forcefully removing the victim to a secluded place where there was none around to assist the prosecutrix in her defense.

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<sup>18</sup> **State of Rajasthan v. Noore Khan, (2000) 10 SCC 77**

The injuries which the prosecutrix suffered or may need suffered in defending herself and offering resistance to the accused were abrasions or bruises which might heal up within the ordinary course of nature within 2 to three days of the incident.

The absence of visible marks of injuries on the person of the prosecutrix on the date of her medical examination wouldn't necessarily mean that she had not suffered any injuries or that she had offered no resistance at the time of commission of the crime. Absence of injuries on the person of the prosecutrix isn't necessarily an evidence of falsity of the allegation or an evidence of consent on the a part of the prosecutrix. it'll all depend upon the facts and circumstances of every case.”

**B.C. Deva vs. State of Karnataka**<sup>19</sup> during this case it had been held that, “The plea that no marks or injuries were found either on the person of the accused or the person of the prosecutrix, doesn't cause any inference that the accused has not committed forcible sexual activity on the prosecutrix. Though, the report of the Gynaecologist concerning the medical examination of the prosecutrix doesn't disclose any evidence of sexual activity, yet even in the absence of any corroboration of medical evidence, the oral testimony of the prosecutrix, which is found to be cogent, reliable, convincing and trustworthy has got to be accepted.”

The Apex Court has, therefore held that, the crucial piece of evidence is her testimony. However, that doesn't mean that the importance of medical evidence is minimized in any way. Conversely, if medical evidence is out there, collected and analyzed properly, then, it clinches the difficulty, because it gives strong support to the testimony of the prosecutrix. within the absence of the other evidence or eye-witnesses on record, as offence of rape happen in secrecy, the sole piece of evidence just in case of doubt, is medical evidence. It is, therefore, very essential for Medical Officers to conduct the checkup of the victim properly and to gather and preserve such evidence carefully

In case of child-victims of sexual abuse, medical evidence acts like evidence, because it gives the proof of the incident within the nature of tear or rupture of hymen or injuries to genitals and other parts of the body. Medically it's recognized that sexual abuse / rape on the child victim is sure to result into injuries to genitals. In such cases, therefore, at times, albeit the evidence of child-victim isn't available or not of perfect nature on account of his/her tender age, medical evidence alone also can clinch the guilt of the accused.

The point, therefore, stressed is that, in cases of sexual offences, medical evidence, if available, is of important importance, though, within the situations discussed above, the Apex Court has held

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<sup>19</sup> B.C. Deva v. State of Karnataka, (1999) 8 SCC 122

that, if such evidence isn't available or can't be made available for factors out of hand, the Court shouldn't discard the case and may depend on the testimony of the victim/survivor alone. consistent with the Apex Court, moreover, 'rape' may be a legal term and, therefore, whether rape has occurred or not are going to be decided legally by the Court, but, for deciding it, the medical evidence proving sexual abuse is of relevance and importance. the subsequent decisions of the Apex Court are required to be appreciated from this perspective and to not hold that medical evidence is of no consequence.

**State of Punjab vs. Gurmeet Singh** <sup>20</sup>during this landmark decision the apex court has categorically observed the following: "The Court must, while evaluating evidence, remain alive to the very fact that during a case of rape, no self-respecting woman would come to the fore during a court just to form a humiliating statement against her honour like is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which haven't any material effect on the veracity of the prosecution case or maybe discrepancies within the statement of the prosecutrix shouldn't, unless the discrepancies are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.

The inherent bashfulness of females and therefore the tendency to hide outrage of sexual aggression are factors which the courts shouldn't overlook. The testimony of the victim in such cases is significant and unless there are compelling reasons which necessitate trying to find corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual abuse alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon an equivalent, as a rule, in such cases, amounts to adding insult to injury. Why should the evidence of a lady or a woman who complains of rape or sexual molestation be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may search for some assurance of her statement to satisfy its judicial conscience, since she may be a witness who is curious about the result of the charge leveled by her, but there's no requirement of law to insist upon corroboration of her statement to base conviction of an accused.

The evidence of a victim of sexual abuse stands almost on par with the evidence of an injured witness and to an extent is even more reliable. even as a witness who has sustained some injury within the occurrence, which isn't found to be self-inflicted, is taken into account to be a decent witness within the sense that he's least likely to shield the important culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding

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<sup>20</sup> State of Punjab v. Gurmit Singh, (1996) 2 SCC 384

Corroborative evidence isn't an important component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix isn't a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a lady or a girl subjected to sexual assault isn't an accomplice to the crime but may be a victim of another person's lust and it's improper and undesirable to check her evidence with a particular amount of suspicion, treating her as if she were an accomplice. Inferences need to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that sort of rigidity within the shape of rule of law is introduced through a replacement sort of testimonial tyranny making justice a casualty. Courts cannot hold close a fossil formula and insists upon corroboration albeit, taken as an entire, the case spoken of by the victim of sex crimes strikes the judicial mind as probable” By their very nature, sexual offences happen in privacy and are hence surrounded by secrecy.

Therefore, apart from the evidence of prosecutrix, there can normally be no other evidence of eye witness. Hence medical evidence is often of importance in such offences. However, its absence doesn't become fatal to the prosecution case. The probative value of medical evidence is simply that of corroborating nature, if in the least any such corroboration is important.

**State of Tamil Nadu vs. Raju @ Nehru** <sup>21</sup> during this case, the Court ruled that “Rape is a crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medic treating the victim. the sole statement which will be made by the medic is that there's evidence of recent sexual intercourse. Whether rape has occurred or not may be a legal conclusion, not a medical one.” that's the rationale why, even the opinion of the doctor that there was no evidence of sexual activity or rape is sometimes held to be not sufficient to disbelieve the accusation of the rape by victim.

### **Conclusion and Suggestions**

Suggestions are proposed by the researcher to cause changes within the policies, procedures and practices of the whole socio-legal system. the essential objective of this study is to impart needed services for the lady's victims of violence. If necessary changes are caused within the socio-legal support systems, it'll strengthen locally active social network and networks.

- 1) Complainants of sexual assaults should be given representation. The victim's advocate shouldn't only assist her in filing the complaint but also guide her in getting other forms of

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<sup>21</sup> State of Tamil Nadu v. Raju @ Nehru, (2006) 3 SCC 771

assistance like psychiatric and medical treatment.

- 2) Legal assistance should be provided at the police headquarters and in sight of the distressed state of mind of the victim.
- 3) Police should be under duty to tell the victim of the proper to urge representation before asking her questions and therefore the police report should state that she was so informed.
- 4) an inventory of advocates should be prepared who were willing to act in these cases.
- 5) These advocates should be appointed by the Court, but to avoid delay advocates could be authorized to act in police headquarters before permission from the court had been obtained.
- 6) A criminal injuries compensation board should be found out. Compensation for the victim should be awarded by the court on the conviction of the offender and by the criminal injuries compensation board whether a conviction had taken place.
- 7) All the suggested reformatory measures won't prove fruitful unless the political institutions become sensitive to the plight of victims of sexual assaults.
- 8) The low conviction rate in rape cases are often attributed to the shortage of coordination between the investigating officers and therefore the public prosecutors. Hence, appropriate training programmes should be conducted for the general public prosecutors and therefore the cops who investigate rape cases, in order that through proper coordination between them helps in receiving justice for the victim.
- 9) To rule out gender bias attitudes against rape victims, there should be training programs for members of Judiciary and therefore the Bar to create awareness regarding the women's plight in rape cases. it'll help to develop conducive attitudes for the effective interpretation and implementation of law.
- 10) fixing of special courts for hearing the cases of sexual abuse is strongly recommended. In these special courts, women judges should be there in order that the victim feels comfortable in narrating the small print of the sexual abuse perpetrated on her. Increasing number of means courts is an urgent need.

Special investigation units comprising predominantly women cops should be created

- 11) Investigating officers got to be trained and sensitized about the requirements and sensibilities of victims. cops and doctors got to be trained in interview techniques which generally should be conducted at the victim's home. Systems related to these cases shouldn't go only by rule but see beyond it. Doctors simply pass the book. they appear for tangible physical evidences that are listed out. If there's no physical injury, they simply pronounce the girl as not having been assaulted. This narrow legalistic interpretation must be substituted by a replacement humane perspective.

- 12) The cops must tend special training to affect the victims of sexual assault. Gender sensitization programs will help the officers to possess the specified considerate approach for rape victims. Preferably there should be women officers in every police headquarters to attend to such females.
- 13) The court handling rape cases should be sensitive towards the conditions of rape. victims. they ought to award punishments to rapists with great seriousness towards women conditions within the Indian society.
- 14) Rape Crisis Centers are found out in countries like Australia, Canada, America, UK , etc. These centers provide help through their telephonic help lines. These centers provide the rape victims with medical help, counseling, and financial help providing job opportunities etc.
- 15) The media must be sensitive to the plight of the rape victim and must not highlight the name or any inference resulting in the identification of the victim, because it are going to be counterproductive. The media must not highlight the case where the offender has been acquitted but must invariably highlight those cases where the offender has been convicted, because it will infuse the sensation of deterrence among the people.

### **Conclusion:**

Breaking the cycle of abuse would require concerted collaboration and action between governmental and non-governmental actors including educators, health-care authorities, legislators, the judiciary and therefore the mass media. Education of both men and ladies will cause change in attitudes and perceptions. it's tough to eradicate deep seated cultural value or alter traditions that perpetuates discrimination. within the end, we come to a perspective that gender violence may be a violation of human rights that must be combated more strongly by both men and ladies who believe justice for all citizens regardless of their class, caste, racial, religious and ethnic backgrounds. it's mammoth task. We are just doing bits and pieces. how ahead is obscure but in our sphere with concrete and pronounced steps.