



A Peer Reviewed International Journal of Asian  
Research Consortium

**AJRSH:**  
**ASIAN JOURNAL OF  
RESEARCH IN SOCIAL  
SCIENCE & HUMANITIES**



## **RAPE AS A HEINOUS CRIME: REMEDIAL MEASURES BY SELF, SOCIETY & LAW**

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### **ABSTRACT**

*As in other countries throughout the world, rape is common in India. Rape is a social disease. Hardly a day passes without a case of rape being reported in Indian newspapers and media. What is sad about rape in India is the lack of seriousness with which the crime is often treated. The present paper analyses the burning topic in detail and how to deal with this problem*

**Key Words: Rape, Crime**

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### **INTRODUCTION**

In ancient history, rape was viewed less as a type of assault on the female, than a serious property crime against the man to whom she belonged, typically the father or husband. The loss of virginity was an especially serious matter. The damage due to loss of virginity was reflected in her reduced prospects in finding a husband and in her bride price. This was especially true in the case of betrothed virgins, as the loss of chastity was perceived as severely depreciating her value to a prospective husband. In such cases, the law would void the betrothal and demand financial compensation from the rapist, payable to the woman's household, whose "goods" were "damaged". The rapist might be compelled to marry the unmarried woman instead of receiving the civil penalty if her father agreed. This was especially prevalent in laws where the crime of rape did not include, as a necessary element, the violation of the woman's body, thus dividing the crime in the current meaning of rape and a means for a man and woman to force their families to permit marriage.

**HISTORY OF RAPE:** The word rape itself originates from the Latin verb rapere: to seize or take by force. The word originally had no sexual connotation and is still used generically in English. The history of rape, and the alterations of its meaning, is quite complex. In Roman law, rape was classified as a form of *crimen vis*, "crime of assault unlike theft or robbery, rape was termed a "public wrong" *iniuria publica* as opposed to a "private wrong" *iniuria privata*. Augustus Caesar enacted reforms for the crime of rape under the assault statute *Lex Iulia de vi publica*, which bears his family name, Iulia. It was under this statute rather than the adultery statute of *Lex Iulia de adulteriis* that Rome prosecuted this crime. Emperor Justinian confirmed the continued use of the statute to prosecute rape during the 6th century in the Eastern Roman Empire. By late antiquity, the general term *raptus* had referred to abduction, elopement, robbery, or rape in its modern meaning. Confusion over the term led ecclesial commentators on the law to differentiate it into *raptus seductionis* (elopement without parental consent) and *raptus violentiae* (ravishment). Both of these forms of *raptus* had a civil penalty and possible excommunication for the family and village receiving the abducted woman, although *raptus violentiae* also incurred punishments of mutilation or death.

From the classical antiquity of Greece and Rome into the Colonial period, rape along with arson, treason and murder was a capital offense. "Those committing rape were subject to a wide range of capital punishments that were seemingly brutal, frequently bloody, and at times spectacular." In the 12th century, kinsmen of the victim were given the option of executing the punishment themselves. "In England in the early fourteenth century, a victim of rape might be expected to gouge out the eyes and/or sever the offender's testicles herself."

The *ius primae noctis* ("law of the first night") is a term now popularly used to describe an alleged legal right allowing the lord of an estate to take the virginity of hisserfs' maiden daughters. Little or no historical evidence has been unearthed from the Middle Ages to support the idea that such a right ever actually existed. The medieval theologian Thomas Aquinas argued that rape, though sinful, was much less unacceptable than masturbation or *coitus interruptus*, because it fulfilled the procreative function of sex, while the other acts violated the purpose of sex.

During the Colonization of the Americas, the rape of native women was not held to be a crime under Spanish Law as the persons in question were Pagan and not Christian. Until fairly recently, the criminal justice system of many countries was widely regarded as unfair to sexual assault victims. Both sexist stereotypes and common law combined to make rape a "criminal proceeding on which the victim and her behavior were tried rather than the defendant". Additionally, gender neutral laws have combated the older perception that rape never occurs to men, while other laws have eliminated the term altogether.

Since the 1970s, many changes have occurred in the perception of sexual assault due in large part to the feminist movement and its public characterization of rape as a crime of power and control rather than purity of sex. In some countries the women's liberation movement of the 1970s created the first rape crisis centers. One of the first two rape crisis centers, the D.C. Rape Crisis Center, opened in 1972. It was created to promote sensitivity and understanding of rape and its effects on the victim.

**DEFINITION OF RAPE:** is a type of sexual assault usually involving sexual intercourse, which is initiated by one or more persons against another person without that



person's consent. The act may be carried out by physical force, coercion, abuse of authority or with a person who is incapable of valid consent. The term is most often defined in criminal law. A person who commits an act of rape is known as a rapist.

Rape can occur anywhere, even in the family, where it can take the form of marital rape or incest. It occurs in the community, where a woman can fall prey to any abuser. It also occurs in situations of armed conflict and in refugee camps. Women belonging to low castes and tribal women are more at risk.

**RAPE STATISTICS IN INDIA:** As in other countries throughout the world, rape is common in India. Rape is a social disease. Hardly a day passes without a case of rape being reported in Indian newspapers and media. What is sad about rape in India is the lack of seriousness with which the crime is often treated. Official statistics 2009 point to rape as the fastest growing crime in India, even when compared to murder, robbery and kidnapping. Despite assurances from law enforcement, the federal Home Ministry's National Crime Records Bureau (NCRB) states that every 30 minutes an Indian woman is raped. Since 1971 when rape cases were first recorded officially, the NCRB has registered a 678% increase in the crime.

**TYPES OF RAPE:** There are several types of rape, generally categorized by reference to the situation in which it occurs, the sex or characteristics of the victim, and/or the sex or characteristics of the perpetrator. Different types of rape include but are not limited to: date rape, gang rape, marital rape or marital rape, incestual rape, child sexual abuse, prison rape, acquaintance rape, war rape and statutory rape.

**CAUSES OF RAPE:** There is no single theory that conclusively explains the motivation for rape; the motives of rapists can be multi-factorial and are subject to debate. Several factors have been proposed as follows:

1. Anger, a desire for power, sadism, sexual gratification, and evolutionary pressures.
2. The patriarchal mindset of the Indian male. Men are raised to believe that they are more powerful physically and emotionally than women. They feel that they are doing nothing wrong just having some fun. Women on the other hand are made to feel vulnerable and the weaker sex.
3. Rape is also the result of the frustrations suffered by a majority of youth.
4. Sometimes the men yearn for an outlet to vent their aggression and depression.
5. Many men who do not inherit good values tend to indulge in acts of Rape.
6. Gender segregation from childhood in India is also a major factor for rape as the men have no respect for females
7. Sometimes lopsided parental relationships
8. The representation of man- woman relationship in literature and popular cinema in a wrong way, all serve to affect the minds of the youth in a wrong way.



9. It may appear paradoxical that in a country like India where the mother is generally deified, the growing male child does not learn to respect the members of his mother's gender.

#### Mental and Physical damage caused by rape on the victim:

- Every woman responds differently, reactions can include feeling terribly shocked, confused, and afraid. Some women experience denial or feeling emotionally numb.
- There are serious effects on the victims. They lose self-motivation, self-confidence and self-worth.
- They also are at risk for emotional problems, like depression, anxiety, and post-traumatic stress disorder.
- The victim may feel angry and ashamed.
- Disruption of concentration, sleeping patterns and eating habits.
- They may feel jumpy or be on edge. After being raped, it is common for the victim to experience acute stress disorder such as intense, sometimes unpredictable emotions, and they may find it hard to deal with their memories of the event.
- In the months immediately following the assault, these problems may be severe and upsetting and may prevent the victim from revealing their ordeal to friends or family, or seeking police or medical assistance.
- Additional symptoms of Acute Stress Disorder include:
  - ❖ Depersonalization or dissociation (feeling numb and detached, like being in a daze or a dream, or feeling that the world is strange and unreal)
  - ❖ difficulty remembering important parts of the assault
  - ❖ reliving the assault through repeated thoughts, memories, or nightmares
  - ❖ avoidance of things, places, thoughts, and/or feelings that remind the victim of the assault
  - ❖ Anxiety or increased alertness (difficulty sleeping, concentrating, etc.)
  - ❖ avoidance of social life or place of rape
- For one-third to one-half of the victims, these symptoms continue beyond the first few months and meet the conditions for the diagnosis of posttraumatic stress disorder. In general, rape and sexual assault are among the most common causes of PTSD in women.
- Women who are raped may suffer serious health problems, such as sexually transmitted infections, stomach problems, and ongoing pain.



- Physical handicapness or even death.

Reasons for not registering the cases by the victim herself: - Sexual violence, and rape in particular, is considered the most under-reported violent crime due to the following reasons:-

- As women often are wary about the environment and its repercussion.
- Indian women do face social stigma easily in India and hence remain submissive.
- For the sake of family honor or the fading hope that everything will be okay in the end, most of the victims suffer silently.
- The strict and conservative attitudes about sex and family privacy contribute to ineffectiveness of India's rape laws. Victims are often reluctant to report rape.
- In an open court victims must prove that the rapist sexually penetrated them in order to get a conviction. This can be especially damaging.
- After proving that she has been raped, a victim is often ostracized from her family and community.
- This problem is exacerbated by the fact that rape laws are inadequate and definitions so narrow that prosecution is made difficult.
- Besides financial insecurity and social stigma does not help them to work it out.

Victim blaming:-"Victim blaming" is holding the victim of a crime to be in whole or in part responsible for the crime.

- In the context of rape, this concept refers to the Just World Theory and popular attitudes that certain victim behaviors (such as flirting, or wearing sexually-provocative clothing) may encourage rape.
- In extreme cases, victims are said to have "asked for it", simply by not behaving demurely.
- In most Western countries, the defense of provocation is not accepted as mitigation for rape.
- A global survey of attitudes toward sexual violence by the Global Forum for Health Research shows that victim-blaming concepts are at least partially accepted in many countries. In some countries, victim-blaming is more common, and women who have been raped are sometimes deemed to have behaved improperly. Often, these are countries where there is a significant social divide between the freedoms and status afforded to men and women.
- Rape victims are blamed more when they resist the attack later in the rape encounter rather than earlier (Kopper, 1996), which seems to suggest the stereotype that these women are engaging in token resistance (Malamuth & Brown, 1994; Muehlenhard & Rogers, 1998) or leading the man on because they have gone along with the sexual



experience thus far. Finally, rape victims are blamed more when they are raped by an acquaintance or a date rather than by a stranger (e.g., Bell, Kuriloff, & Lottes, 1994; Bridges, 1991; Bridges & McGrail, 1989; Check & Malamuth, 1983; Kanekar, Shaherwalla, Franco, Kunju, & Pinto, 1991; L'Armand & Pepitone, 1982; Tetreault & Barnett, 1987), which seems to evoke the stereotype that victims really want to have sex because they know their attacker and perhaps even went out on a date with him.

The underlying message of this research seems to be that when certain stereotypical elements of rape are in place, rape victims are prone to being blamed.

- However, they also state that "individuals may endorse rape myths and at the same time recognize the negative effects of rape."
- A number of gender role stereotypes can play a role in rationalization of rape. In the case of male-on-female rape, these include the idea that power is reserved to men whereas women are meant for sex and objectified, that women want forced sex and to be pushed around, and that male sexual impulses and behaviors are uncontrollable and must be satisfied. In the case of female-on-male rape, the victim may either be perceived as weak or, in cultures where men acquire status by sexual conquest, as fortunate.

Steps to be taken by the victim immediately after being raped:

- Get away from the attacker and find a safe place as fast as you can.
- Call someone you trust or a hotline.
- Protect any evidence. Do not clean any part of your body or comb your hair. Do not change clothes. Try not to touch anything at the crime scene.
- Go to your nearest hospital emergency room right away. You need to be examined and treated for injuries you may not even know you have.
- Since the vast majority of rapes are committed by persons known to the victim, the initiation and process of a rape investigation depends much on the victim's willingness and ability to report and describe a rape. Biological evidence such as semen, blood, vaginal secretions, saliva, and vaginal epithelial cells (typically collected by a rape kit) may be identified and genetically typed by a crime lab. The information derived from the analysis can often help determine whether sexual contact occurred, provide information regarding the circumstances of the incident, and be compared to reference samples collected from patients and suspects.<sup>[44]</sup>
- Ask the doctors to be screened for sexually transmitted infections (STIs)
- Ask the doctors for emergency contraception to help prevent pregnancy.
- The hospital also can collect evidence like hairs, saliva, semen, or clothing fiber that the attacker may have left behind.



- Discuss filing a police report. If you're not sure whether you want to file a report, ask hospital staff if they can collect evidence without filing a report. It is best to collect evidence as soon as possible.
- After rape, you may need a lot of emotional support. Whatever your experience, reach out to people who care about you and get help from a mental health professional.
- If someone you know has been abused or assaulted you can help by listening and offering comfort. If the person wants, you also can go along to the police station, the hospital, or counseling sessions.
- Make sure the person knows the abuse is not his or her fault, and that it is natural to feel angry and ashamed.

Preventive measures to be taken by self to reduce chances of being raped:

- Always keep your mobile handy with all emergency numbers such as nearest police station, NGO'S.
- Keep the phone no's of your neighbor's, security in-charge and relatives at hand in case you are alone in house.
- Keep your home doors locked.
- Your home doors should have a safety latch and mirror to see the person before you open the door.
- Try to avoid walking or riding alone.
- Keep your car doors also locked.
- Always have your key ready as you approach your door.
- Avoid driving alone.
- In case you are driving alone Park in a well-lit area if you are driving alone.
- Staying safe when meeting someone new
- If you are meeting someone you don't know or don't know well, you can take steps to stay safe. Try to:
  - Meet your date in a public place
  - Tell a friend or family member your date's name and where you are going.
  - Avoid parties where a lot of alcohol may be served
  - Make sure you have a way to get home if you need to leave.





- Not leaving a social event with someone you have just met.
- Make sure you don't drink alcohol, so you can keep yourself safe.
- Date rape drugs are available in markets. These are drugs that have no smell or taste that can be slipped into drinks. They are used to make it hard for a person to fight off a rape or to remember what happened. Therefore what ever you want to eat or drink get it yourself.
- Leave a relationship that is becoming unhealthy. Remember, no one has a right to pressure you into doing sexual things you do not want to do.
- An increasingly large number of college going women taking public transportation in Delhi have resorted to carrying pins, pen knives , and even daggers as a deterrent.
- Others have taken self defense classes.

Preventive measures to be taken by society to reduce chances of being raped:-

- Targeting both the potential as well as past offenders.
- Targeting both the potential as well as past victims.
- Constructive engagement of civil society, intelligentsia & media.
- Developing mechanisms for speedy support to victims.
- De-constructing patriarchal mind-set and associated practices.
- Ensuring safety of victim and prosecution witnesses.
- Orientation and training of Police staff on gender issues.
- Door to Door Awareness Campaign by women beat constables.
- Pantomime performances for sensitization of communities.
- Awareness Lectures by Police Officers for sensitization of parents.
- Psychological counseling for sensitization of girl child and teachers.
- Formation of women safety committees in the communities
- Formation of Women Safety Committees for wider dissemination of the Parivirtan Campaign and play a vital role in myriad interwoven factors that give rise to violence against women and children.
- Organizing Self Defense training programmes to empower the women and girl child to tackle the untoward situations by their own.





- Establishing of women cells at both school and college level to ensure safety and security to girl child.

**LAWS PROTECTING VICTIMS OF RAPE IN INDIA:** law needs to be more sensitive to the feelings of the victim, who has had a traumatic time and scarcely needs to be reminded of it. Often the victim is abused and humiliated. "Don't try to tell us that you didn't enjoy it." There are a few points in the law, which are open to debate. Sexual intercourse by a man with his own wife, where the wife is over 18 years of age, is not rape. Sexual intercourse in a custodial situation is deemed an offence (policemen, public servants, managers of public hospitals and remand homes or wardens of jails), even if it is with the consent of the woman. As a whole, the process of law is biased against the victim. If the victim is a minor, the onus is on the accused to prove his innocence. But if the victim is a major, it is up to her to prove her charge. Therefore, the defense finds it worthwhile to prove that the victim is a major. Also, in rape cases, unless the woman is examined medically within 24 hours, it becomes difficult forensically to prove that rape has occurred.

- ❖ The laws too are discriminatory in nature. According to Section 155 (4) of Indian Evidence Act, "When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix (victim) was of generally immoral character." Section 54 of Indian Evidence Act says, "In criminal proceedings (including rape) the fact that the accused person has a bad character is irrelevant, unless evidence has been given (by him) that he has a good character, in which case it becomes relevant." When the laws themselves carry an inherent bias, how far can the victim be assured of justice? Rape is a weapon that distorts a woman's sexuality, restricts her freedom of movement and violates her human rights. It leaves a woman feeling exposed, humiliated and traumatized. A rapist not only violates the victim's privacy and personal integrity, but also causes serious physical and psychological damage. The law must take a fresh look at itself and take positive steps to make it more difficult for an accused to get judicial reprieve.
- ❖ Section 375 of the Indian Penal Code (IPC) defines rape. Rape (from Latin rapio, to carry off, to overcome) means an unlawful intercourse done by a man with a woman without her valid consent. In certain cases, when consent is taken by fraudulent means or by misrepresentation, the act is still quite rightly- taken as rape. A rapist, for instance can put a gun at his victim's head and obtain consent. Still better, he could ask one of his goons to put a gun on her husband's head and tell her that the gun would go off if she did not relent. Consent could also be had fraudulently by giving her intoxicating or stupefying substances ( Cannabis is just one of the many stupefying drugs which can be given to achieve this). Another way of getting consent by fraudulent means is by impersonation. A rapist may slip into the bed of an unsuspecting woman in the thick of night, when the woman, taking him to be her husband not only does not resist, but actively participates in the act. These cases are rare but do occur occasionally. Finally the consent of a woman of unsound mind and of a girl below 16 are not taken to be lawful consent because it is presumed that these women are not in a position to truly understand the nature and gravity of sexual intercourse. This was the position before 1983 and on the face of it the provisions sound fair enough. Yet Ganpat managed to wriggle out of the legal consequences of his act. If a police officer apprehends a person illegally and insists he will not free the man until his wife submits to the officer, how can one prove rape if she does so? No



person in his right mind would imagine that such an act was not rape, yet the law would not recognize it so before 1983. The women had to prove she had not consented. The rapist was considered innocent unless proved otherwise.

- ❖ The change in rape laws in 1983 improved the situation to a great extent. Among other things, the punishment for rape was made more severe. Before, the punishment prescribed under Section 376 of the IPC provided for a maximum sentence of life imprisonment but there was no minimum limit. Thus, in theory a rapist could get away with a sentence of say, just one month. In 1983 although the legislature failed to increase the maximum sentence to capital punishment as was vehemently demanded by women's organizations, it prescribed a minimum sentence of seven years' imprisonment. Every rapist on being found guilty thereafter had to undergo a minimum imprisonment of seven years. Besides, an important provision - Section 376(2) - was added to the IPC. This section introduced the concept of some special kinds of rape and prescribed a minimum of ten years for these cases. Furthermore, in such cases, the imprisonment had to be of a rigorous nature only. These included rape by a police officer within the premises of a police station; rape by a public servant of his junior while taking advantage of his official position; rape by an official in a jail or remand home of an inmate; rape by someone on the staff of a hospital of a woman in the hospital; rape of a pregnant woman; rape of a girl under 12 years of age and gang rape.

Rape by persons who are in a position of authority e.g. police officers, jail wardens, hospital staff etc., is generally termed custodial rape. Gang rape is a situation when a woman is raped by one or more than one person from amongst a group of persons acting in furtherance of their common intention. The important thing is that in such situations each of the persons within the group will be deemed to have raped the woman even if each one of them did not actually have sexual intercourse with her. Thus if five men catch hold of a woman and only one ravishes her in order to, for instance, humiliate her husband because of some old vendetta, all the five men will be imprisoned for a minimum of ten years.

- ❖ It is very difficult for the victim to prove absence of consent especially in cases of custodial rape, so a special section was added to the Indian Evidence Act (IEA). According to the new provision - Section 114A of the IEA - in cases of custodial rape, gang rape and rape of a pregnant woman, if the victim states in court that she did not consent, then the court shall presume that she did not consent and the burden of proving consent shall shift to the accused. This was a major reform in the law.
- ❖ The legislature did not stop at this. There can be cases when a person in authority can get women to have intercourse with him "willingly" by offering handsome rewards in return. A superintendent of a jail can offer better living conditions to a woman prisoner if she "willingly" submits to him. Such cases will not amount to rape; nevertheless they do signify abuse of official position. For such cases four special provisions - 376A, 376B, 376C and 376D - were added to the IPC and a punishment of five years' imprisonment provided. The



Criminal Law Amendment Act has substantially changed Sections.375 and 376 of the IPC. Several new sections have been introduced therein- viz. Sections. 376(A), 376(B), 376(C), 376(D) of the IPC.

- Section. 376(A) punishes sexual intercourse with wife without her consent by a judicially separated husband.
- Section. 376(B) punishes for sexual intercourse by a public servant with a woman in custody.
- Section. 376(C) punishes sexual intercourse by superintendent of jail, remand house, etc. whereas,
- Section. 376(D) punishes sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital.
- These new sections have been introduced with a view to stop sexual abuse of women in custody, care and control by various persons- which though not amounting to rape were nevertheless considered highly reprehensible.
- ❖ In effect, if a person in authority has had sexual intercourse with women in his custody, he will firstly have to prove that the women in question had consented. If he can't prove this he will be guilty of custodial rape and shall have to undergo a minimum rigorous imprisonment often years. Secondly, even if he is able to prove that the women did consent, he may not be charged with custodial rape yet he can be imprisoned for five years under Sections 376B, 376C and 376D.

Provisions of the Indian Penal Code: In cases where the accused sexually harasses or insults the modesty of a woman by way of either- obscene acts or songs or- by means of words, gesture, or acts intended to insult the modesty of a woman, he shall be punished under Sections 294 and 509 respectively.

- ❖ Under Sec.294 the obscene act or song must cause annoyance. Though annoyance is an important ingredient of this offence, it being associated with the mental condition, has often to be inferred from proved facts. However, another important ingredient of this offence is that the obscene acts or songs must be committed or sung in or near any public place.
- ❖ Section.509 of IPC, comes into effect when there is an intention to insult the modesty of any woman by the offender by uttering any word, making any sound or gesture or by exhibiting any object, with the intention that such word or such sound be heard, or that such gesture or object be seen by such a woman, or by intruding upon the privacy of such a woman. Thus, this Section requires:

1. Intention to insult the modesty of a woman.
2. The insult is caused by:



- i) Uttering any word or gesture, or
  - ii) Exhibiting any object with the intention that such word, gesture, or object be heard or seen by such a woman, or
  - iii) By intruding upon the privacy of such woman.
- ❖ After having studied the case laws, it is necessary to also study the definition of Rape as given in the Indian Penal Code, 1860. As per Section.375 of IPC a man is said to commit the offence of rape with a woman under the following six circumstances:
  1. Sexual intercourse against the victim's will,
  2. without the victim's consent,
  3. with her consent, when her consent has been obtained by putting her or any person that she may be interested in fear of death or hurt,
  4. with her consent, when the man knows that he is not her husband,
  5. With her consent, when at the time of giving such consent she was intoxicated, or is suffering from unsoundness of mind and does not understand the nature and consequences of that to which she gives consent,
  6. with or without her consent when she is under sixteen years of age.
- ❖ Further explanation provided to the section states that penetration is sufficient to constitute the sexual intercourse necessary to constitute the offence of rape, whereas the exception leaves out marital rape altogether if the wife is not under fifteen years of age. However, the above decision of the House of Lords has not been followed in India- where marital exemption to the husband 'still exists'. Section. 375 therefore requires:
  1. Sexual intercourse by a man with a woman;
  2. The sexual intercourse must be under any of the six circumstances given in the section.
- ❖ **ATTEMPT TO RAPE:** In cases where an indecent assault is made upon the person of a woman, but where rape is not committed- the culprit is charged with Section.354 of IPC, because unless the Court is satisfied that there was determination in the accused to gratify his passion at any cost, and in spite of all resistance, such person is not charged with rape. Section 354 of the IPC prescribes punishment for anyone who assaults or uses criminal force to any woman with intent to outrage her modesty. An indecent assault upon a woman is punishable under this section. Rape is punished under Section 376; but the offence under this Section is of less gravity than rape. And also because a person who is guilty of attempting rape cannot be allowed to escape with the lesser penalty of this section. An indecent assault, i.e., an assault which right minded persons would consider as indecent- accordingly any evidence explaining the



defendants conduct, or whether any admission by him or otherwise is admissible to establish whether he intended to commit an indecent assault, as is stated under Section 21 sub clause (2) of the Evidence Act, which reads: Section 21 (2): An admission may be proved by or on behalf of the person making it, when it consists of statements of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

- ❖ In the present circumstances when offences against women are on the rise- when young girls are raped by their doctors, by presidential guards in broad daylight, the definition of rape to be of any deterrence- falls extremely inadequate. It does not address forced penetration of objects and parts of the body into the vagina and anus; and forced oral or anal intercourse.
- ❖ It also does not recognize other forms of sexual assaults- like protracted sexual assault by relatives, marital rape etc. as aggravated forms of rape. This causes grave injustice to many victims. In many cases of child rape, the child has been penetrated through fingers or by objects or been force to perform oral or anal sex; yet this is not considered rape by the Courts.
- ❖ Adding to this is Section 155(4) of the Evidence Act, which allows the victim to be questioned of her past sexual history- which the defense uses to humiliate the victim in the Courtroom.
- ❖ One of the major obstacles in delivering justice in rape cases is the poor quality of investigations. The reason behind this ranges from gender bias and corruption to the general inefficiency of the police. In many cases the police have even refused to lodge the FIR or have lodged incomplete FIR.
- ❖ The victims are not taken for prompt medical examination, because in cases of rape, or attempt to rape- medical examination of the victim and of the accused soon after the incident often yields a wealth of corroborative evidence. Therefore, such an opportunity should not be lost by the police.
- ❖ The manner in which some courts have interpreted the law or assessed the evidence has often proved to be an obstacle also. In spite of Supreme Court judgments to the contrary, lower court judges often insist on evidence of physical resistance or marks of injuries to hold that a woman has not consented. A woman's evidence without corroboration is not considered sufficient.
- ❖ The long time that is taken to complete a rape trial often by allowing senseless adjournments; and the giving of evidence by the victim in the presence of the accused and the harsh cross examination in the Court are some other major obstacles.
- ❖ Therefore rape laws in order to be of great deterrence, must have a cooperative victim, professional investigation, diligent prosecution; and an expeditious trial. For otherwise it shall not be the law, that fails, but the applicants, the process and application.



❖ Failure of law reflects the failure of the society to protect and serve humanity. In view of the above, the Supreme Court has laid down the following guidelines for the trial of rape cases:

1. The complaints of sexual assault cases should be provided with legal representation. Such a person should be well acquainted. The Advocates role should not merely be of explaining to the victim the nature of the proceedings, to prepare for the case and assist her, but to provide her with guidance as to how she might obtain help of a different nature from other agencies- for e.g. psychiatric consultation or medical assistance.
2. Legal assistance should be provided at the police Station, since the victim may be in a distressed state. Guidance and support of a lawyer at this stage would be of great help.
3. The police should be under a duty to inform the victim of her right to a counsel before being interrogated.
4. A list of lawyers willing to act in these cases should be kept at the police station.
5. Advocates shall be appointed by the Court on an application by the police at the earliest, but in order that the victim is not questioned without one, the Advocate shall be authorized to act at the police Station before leave of the Court is sought or obtained.
6. In all rape trials, anonymity of the victim must be maintained.
7. It is necessary to setup Criminal Injuries Compensation Board with regard to the Directive Principles contained under Article. 38(1) of the Constitution of India. As some victims also incur Substantial losses.
8. Compensation for the victims shall be awarded by the Court on the conviction of the offender and by the Criminal Injuries Compensation Board- whether or not a conviction has taken place. The Board will take into account pain, suffering, shock as well as loss of earnings due to pregnancy and child birth if this accrued as a result of rape.
9. The National Commission for Women is asked to frame schemes for compensation and rehabilitation to ensure justice to the victims of such crimes.

As observed by Justice Saghir Ahmad, "Unfortunately a woman in our country belongs to a class or group of society who are in an disadvantaged position on account of several social barriers and impediments and have therefore, been victims of tyranny at the hands of men with whom they, unfortunately, under the Constitution enjoy equal status."

## CONCLUSION





It would seem that enough changes have been made in the rape laws to bring it on par with that of Western countries. However, there are still some glaring deficiencies.

- ❖ For one thing, the law does not provide for separate and speedy trials for heinous crimes such as child rape.
- ❖ The definition of rape too is finite restrictive. For raping women, penile penetration must be proved. One can ravish women equally or much more violently by shoving, for example, an iron rod into her private parts. Yet such a man would not be held guilty of rape. Several such cases have indeed come to light.
- ❖ But the worst thing is the continued existence of Section 155(4) of the IEA, which provides that when a man is prosecuted for rape and if it is shown that the woman in question is of immoral character then her evidence will not be taken into account. It may be argued that this provision offers protection to the accused against false allegations of a woman whose character is suspect.
- ❖ Yet consider Section 54 of the same Act. Among other things it says that in cases of rape, the fact that the accused person is a bad character is irrelevant. In effect, for the purpose of proving that men did rape the prosecutrix, it is irrelevant to show that he has a bad character. If the bad character of the prosecutrix is considered in cases of rape, why not the bad character of the accused too? In fact, it can be argued that these provisions are unconstitutional as they contravene the equality clause under Article 14 of the Indian Constitution. Is it not highly unfair to apply different standards to the accused and the complainant only in rape cases?
- ❖ The courts and the legislature have to make many changes if the laws of rape are to be any deterrent. The sentence of punishment, which normally ranges from one to ten years, where on an average most convicts get away with three to four years of rigorous imprisonment with a very small fine; and in some cases, where the accused is resourceful or influential- may even expiate by paying huge amounts of money and get exculpated. The courts have to comprehend the fact that these conscienceless criminals- who sometimes even beat and torture their victims- who even include small children, are not going to be deterred or ennobled by such a small time of imprisonment. Therefore, in the best interest of justice and the society, these criminals should be sentenced to life imprisonment.
- ❖ However, if they truly have realized their mistake and wish to return to society, the Court and jail authorities may leave such men on parole; but only after they have served a minimum of half the sentence imposed on them.
- ❖ It is outright clear that sexual offences are to be excoriated, but if death sentence is given to such convicts- so as to deter the rest, then no doubt that the graph of rape cases will come down considerably- but it may also happen that those who commit such offences- simply to leave no witnesses or evidence, may even kill their victims and dispose off their bodies (whereas it is observed that in most cases- it is the victim who is the only source of evidence in most cases), thereby frustrating the main object of the Indian Penal Code and the legislature.





Studying the laws, the process, the application of those laws, one thing is certain- the entire structure of justice needs an over hauled.

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