

A Dissertation On
A study of judicial trends in India from
Victimological perspective with special reference to Rape Victims

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LL.M Degree

Under the Guidance of

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Declaration

I, Amulya Nigam declare that the work entitled “A study of judicial trends in India from Victimological perspective with special reference to rape victims” being submitted to Institute of Law, Nirma University as a dissertation work for the partial fulfilment of the requirement of the LL.M degree is my own work and wherever it is required the source of the authenticate books, articles or websites are appropriately cited to the best of my ability and knowledge.

Date:

Place:

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Certificate

This is to certify that the thesis entitled “A study of judicial trends in India from Victimological perspective with special reference to rape victims” has been prepared by Amulya Nigam under my supervision and guidance. This thesis has been completed after careful research and analysis of the data available in previous work and judicial pronouncements.

The appropriate reference of the sources has been cited in this research work to the best of my knowledge. The thesis is of the standard expected from the candidate for dissertation work for LL.M degree and I recommend that it be send for evaluation.

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Date:

Amulya Nigam

List of Abbreviations

| | |
|--------|------------------------------------|
| AIR: | All India Reporter |
| Cr.PC: | Code of Criminal Procedure, 1973 |
| Cri: | Criminal |
| EEA: | Indian Evidence Act, 1872 |
| Edi: | Edition |
| Eg: | Example |
| i.e: | that is |
| IPC: | Indian Penal Code, 1860 |
| JILI: | Journal of Indian Law Institute |
| JT: | Judgment Today |
| NCB: | National Commission for Woman |
| Para: | Paragraph |
| RLW: | Rajasthan Law Weekly |
| S.C: | Supreme Court |
| SCC: | Supreme Court Cases |
| Sec: | Section |
| UK: | United Kingdoms |
| UDHR: | United declaration of human rights |
| UN: | United Nations |
| UOI: | Union of India |
| VCS: | Victim Compensation Scheme |

List of Cases

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A.N. Mukhejee v. State

Akhtar v. State of U.P

Ashok Kumar v. State of Haryana

Abhoy Pradhan v. State of West Bengal

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Chapter 1

Introduction

1.1 Overview

Women have also been the victim of male dominance and power. Being weaker in this male dominating society, she had been targeted. Rape is a clear violation of Article 21, Right to life and Personal liberty and basic human rights.

The word 'rape' has been derived from the term 'rapio', which means to seize. Rape is, therefore, forcible seizure, or the ravishment of a woman without her consent, by force, fear or fraud. It involves a coercive, non-consensual sexual intercourse with a woman. Rape can be viewed as an act of violence of the private person of a woman, an outrage by all means. It is the ultimate violation of the self. The Supreme Court of India has aptly described it as deathless shame and the gravest crime against human dignity¹. Sexual violence, apart from being a dehumanizing act is also an unlawful intrusion of the sanctity of a female. It is not only a blow to her supreme honor, but also offends her self esteem. Rape is not merely a physical assault, but is also destructive of the whole personality of the victim. It shatters the entire social fabric, destroys the poise of the milieu and ruins the harmony of the atmosphere.

Primarily the woman is victimised with the offence of rape and secondary victimisation is done by social institution like family, friends, hospital, police etc. It is impossible to undo a victimization. At least help for victims should include the promise that they will not be violated again, but pledge is equally impossible².

¹ Bodhisattwa Gautam v. Subhra Chakraborty AIR 1996 SC 922

² J L Barke

1.2 Research problem

Rape can safely be termed as a ‘burning problem’. It continues despite measures to curb its occurrence. According to the Crime in India, 2016 compiled by the BRPD³, rape cases have reported 39068 rape cases in 2016. Madhya Pradesh reported the highest number of cases (4882), contributing to 17.6% of total cases reported in the country, followed by Uttar Pradesh (4816), Maharashtra (4184), Rajasthan (1051) and Bihar (1040).

The above-mentioned data is a sad reflection of the state of affairs when it concerns violations of human rights of victims of sexual offences. While much of the cases go unreported, those, which find the light of day, meet even dreadful plights. The insensitive and callous attitude of the investigation, prosecution and finally the judiciary, sometimes leave the victim more traumatized and insecure than the incident itself.

1.3 Object of the study

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

- 1) To identify the causes of victimization
- 2) To study the victimological dimensions of rape.
- 3) To study the judicial approach concerning in cases of rape.

1.4 Hypothesis

Whether judiciary is sensitive enough towards rape victims?

³ <http://www.bprd.nic.in/>

1.5 Research Questions

What have been the Legislative and Judicial trends in India as regards the Offence of Rape and how far has the problem been addressed from victimological perspectives?

1.6 Significance of study

Rape victims are basically human beings. They can't be treated as animals. The rape victims are entitled to have the basic human rights and constitutional rights which are denied by the patriarchal society. Rape is abuse of power. It is an offence of showing gender inequality and superiority over woman by man.

Rape victims are victimised by the offence of rape and then revictimization of rape victims is done by the police, medical staff, family, friends, society. They are seen as impure and with shameful eyes. Police do not lodge FIR; Doctors do two finger test which is very painful. The study is focussed on the condition of rape victims and the judicial attitude towards them. The role of judiciary in facilitating rape victim in society by compensation, rehabilitation and fast track court.

1.7 Scope

In country like India where woman is called Lakshmi they are worshiped and respected as goddess. Ironically she is not safe in her own house. They are subject to sexual harassment and rape. India is most unsafe country for woman. There are laws related to rape; there is capital punishment for rape still the menace of rape is not declining. The object of rape laws is empowerment and protection of woman. By providing compensation and rehabilitation and eliminating victimisation, judiciary plays a very important role in it.

1.8 Methodology:

The objective of this study has been to find out the attitude of the judiciary towards rape and its victims and as such it is a fact-finding investigation of the laws of India and judicial decisions of the higher courts.

The method of the study is doctrinal or arm chair method of library research. In analysis of the cases, this research has used all law reports and journals specially relating to Criminal Law and Justice. After review of the relevant judgments, the researcher has analysed the attitude of the judiciary in victimological perspective. Finally, on the basis of studies of relevant laws and cases studies, the researcher has made a critical analysis of the present scenario with stress on future initiatives, keeping in mind the international developments.

1.9 Literature review:

1) Ahmed Siddique book on 'Criminology', published by eastern book company, fifth edition. In this book. The researcher has referred the victims of crime and typology of victims.

2) Flavia Agnes book on 'woman and law in India' published by oxford university press, UK edition. The researcher has referred the victimological dimension of victims of rape and cases.

3) Kalpana Kanabiran book on 'Woman and law- critical feminist perspective' published by Sage publication, third edition. The researcher has referred to Victims right in globalized world and position of woman in Indian society and the trauma faced by her after the offence of rape.

4) T.Kirchengast book on 'The Victim in Criminal Justice System' published by Palgrave Macmillan, fourth edition. The researcher referred the judicial attitude towards rape victims and the changing trend with time.

1.10 Summary and Chapterisation

1. The Chapter is an overview of whole research thesis. It gives an exact idea what the researcher is trying to put forward through this research study. As in introduction part, researcher defines the basic problem and brief of research work.

The researcher has defined the necessity and limitation of research study, methodology of research and its limitation. It also tries to find out the answers of research question. It also reflect the belief and thought of researcher in form of hypothesis and the review of literature on which this research is based on.

2. The second chapter named as ‘Conceptual framework’, describes firstly the definition of rape given by different dictionary and judicial decision. It also states the condition of rape in ancient times and present time. It clearly mentions about the present law of rape and rights of victim and role of judiciary in eliminating victimization of rape victim, rehabilitation and providing compensation to the rape victims.

3. The third chapter named as ‘Victimological framework’ described the victimological dimension of the victim of rape and attributes attached with the offence of rape in India. It also describes the current rights of victims and clarify the meaning of victimology by different jurist and the changing definition case by case in present times. It mentions victims right under Indian Criminal Justice System and Right of victims of rape in other countries.

4. The fourth chapter named ‘Approach towards rape victim’, describes the legislative and judicial approach towards rape victim in India. With time the changes came in the legislation of rape laws and judicial attitude and latest trends followed by judiciary towards victim of rape in India.

5. the fifth chapter named ‘ Conclusion and suggestion’, describes the whole research study by defining the research finding and suggestion made as per the knowledge acquire by the research.

Chapter-2

Conceptual Framework

2.1 Rape: Definition

Rape is an act of sexual assault usually sex without the consent of the victim. It is a heinous crime usually committed by man forcibly against the will of the victim. The word 'rape' is derived from the Latin term 'rapio' which means 'forcible seizure'.⁴ Sexual intercourse with a woman by a man without her consent and chiefly by force or deception is generally known as rape. It may also be described as forcible carnal knowledge of a woman without her consent. Rape is many things. It is an instrument of torture. Rape is the means of proving masculinity.⁵ To some feminist rape is a mental perversion,⁶ a psychological assault,⁷ a symbol of masculine power or dominance, the ultimate violation of women's self. It is also considered as the invasion upon a woman's physical or bodily privacy and outrageous to the dignity of a woman.⁸ Some contemporary feminist critiques of law perceive rape as an extension of the patriarchal control over female.⁹ Generally rape may be classified in to the following¹⁰:

⁴ K. D. Gaur, "Criminal Law-Cases and Materials," 3rd Edition, (Butterworths, London, 1999), p. 498.

⁵ Katharine K. Baker, "Once a Rapist? Motivational Evidence And Relevancy in Rape Law," Harvard Law Review, vol.110, no.3, (1997) at p.563.

⁶ Giriraj Shah, "Rape: A Mental Perversion," Encyclopaedia of Crime Police and Judicial System Series, vol.2 151 Edition, (Anmol Publication Pvt Ltd, 2000), p.415.

⁷ Meenu, "Rape-A Psychological Assault," (2000) 2 SCC (J), at p.46.

⁸ Debasree Lahiri, "Dignity of Women and Offence of Rape-Law and Reality," in Dr. N.K Chakraborty & Dr.Shachi Chakraborty (ed.) Gender Justice, (R Cambray & Co Pvt Ltd, 2006), at p.31

⁹ K. I. Vibhuti, "Rape And the Indian Penal Code at the Crossroads of the New Millennium: Between Patriarchial and Gender Neutralist Approach," Journal of the Indian Law Institute, vol. 43: 1, (2001), p~SM.

¹⁰ For details pertaining to the kinds of rape see, <http://www.healthyplace.com/Cmmunities/Abuse/liski/guilt-sjame.htrn>.

- Statutory Rape or, child Rape: Sexual intercourse with a female who is below the statutory age of consent. This is also known as child rape.¹¹
- Stranger Rape: Where the assailant was unknown to the victim.
- Acquaintance Rape: The victim knows her attacker, although he is not a close friend or family member. In other words, it is a rape where the victim and the assailant knew each other casually¹².
- Intimate Rape: Where the persons concerned were in a relationship or even married.¹³
- Date Rape: The victim is dating the person who rapes her.
- Multiple Rape or Gang rape: The victim is raped by more than one man.
- Marital Rape: The victim is raped by her husband.¹⁴
- Custodial Rape: Where a person commits sexual intercourse with a woman who is under his custody.
- Incest Rape: When a person commits sexual intercourse with a woman falling within the prohibited degrees of consanguinity or affinity¹⁵.

Indian judiciary defined rape as- Sexual intercourse is heterosexual intercourse involving penetration of the vagina by the penis. If the hymen is ruptured by inserting a finger, it would not amount to rape¹⁶. To constitute the offence of rape it

¹¹ Out of 18239 rape victims during the year 2004 fifteen percent that is total 1,622 were girls under the age of 15 years. Whereas eleven percent that is 2,004 were teen aged girls between 15-18 years of age.

¹² During the year 2004 out of 18,233 cases of rape the offenders were known to the victims in as many as 15,619 cases. This means 85.6% of rape fell under the category Acquaintance Rape.

¹³ Terry\ Thomas, "Sex Crime: Sex Offending and Society," 152 Indian Reprint, (Lawman India Ltd, 2003) ~.57. . . 8 In s

¹⁴ In some jurisdiction this is regarded as an offence.

¹⁵ As compared to .15.0% increase in overall rape cases, Incest cases have increased by 26.5% from 399 in 2003 to 505 cases in 2004.

¹⁶ Sakshi v Union of India. (200-115 SCC 518: In this case a PrL was filed by an NGO Sakshi for enlarging the meaning and definition of rape. The court held that giving a wider meaning to section 375 will lead to serious confusion in the minds of prosecuting agencies and courts. which instead of achieving the object of expeditiously bringing a criminal to book may unnecessarily prolong the legal proceedings and would have an adverse impact on the society as a whole. and therefore. it will not be

is not necessary that there, should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda with or without emission of semen or an attempt at penetration is quite sufficient for the purpose of law¹⁷. In other words, to constitute the offence of rape, penetration, however slight, is sufficient.¹⁸

According to Black's Law dictionary, rape means – 'The unlawful carnal knowledge of a woman by a man forcibly and against her will.'¹⁹

Definition of Rape by Merriam Webster dictionary- 'unlawful sexual activity and usually sexual intercourse carried out forcibly or under threat of injury against a person's will or with a person who is beneath a certain age or incapable of valid consent because of mental illness, mental deficiency, intoxication, unconsciousness, or deception; an outrageous violation; an act or instance of robbing or despoiling or carrying away a person by force'.²⁰

As per Oxford dictionary, Rape means, 'The crime, typically committed by a man, of forcing another person to have sexual intercourse with the offender against their will.'²¹

2.2 Rape : Concept of rape in ancient times

Concept of rape originated to protect the interest of male in woman, to acquire property rights not to protect women. Law tried to prevent the evil of ravishment of virgins, to protect family pride and honor, thus, were compromised into marriage with their predators. Mosaic Laws bear testimony to this fact. The early Vedic age, characterized

in the larger interest of the state or the people to alter the definition of rape by a process of judicial interpretation.

¹⁷ Madan Gopal Kakkad, . NaYal Dubey. (1992) 3 SCC 204, at para 37, p.222.

¹⁸ Ranjit Haz. arika, . State of Assam. (1998) 8 SCC 635.

¹⁹ <https://thelawdictionary.org/rape>

²⁰ <https://www.merriam-webster.com/dictionary/rape>

²¹ <https://en.oxforddictionaries.com/definition/rape>

offences with a view to protect the dignity of women. Offence of rape was regarded as Fundamental violation of self. 'STRISANGRAHANAM' was the word used to describe the offence of rape. The Dharmashastras like Katyana Smriti and Brihaspati Smriti specified the offence of rape and impose severe penalty for the same. Narada Smriti also recognized "APARADHAS"(crime)-as forceful intercourse by a man not being the husband of the woman who causes pregnancy of the woman as the crime of rape. In the later Vedic period, the situation was totally different to that of the western world where women are owned entity and are under full control of either their male relatives or husband and any outraging of her body or soul was viewed as an unlawful infringement of the rights of the owner. Women here was treated as property and male who controls woman was the owner of that property, so harm suffered here is by the owner of the property.

2.2 Present Position

With change of time, the concept of rape has changed. Today. The offence of rape is defined as the sexual violation of woman. It is an infringement of the bodily integrity and honor of women- clear violation of fundamental right to life and personal liberty (Article 21) of woman. Sections 375 and 376 of the Indian Penal Code, 1860, deal with the offence of rape. The former describes the offence while the latter is a punitive section.

Justice Krishna Iyer in the case of *Rafiq v. State of U.P.*²² made a remark that, "a murderer kills the body, but a rapist kills the soul". The Parliament by means of Amendment Act, 2013 has enlarged the ambit of rape by making certain non-penetrative act as offence amounting to rape.

²² *Rafiq v. State Of U.P.* 1981 SCR (1) 402

Section 375 – Under the new section, a man is said to commit rape if there is:

- Penetration of penis into vagina, urethra, mouth or anus of any person, or making any other person to do so with him or any other person;
- Insertion of any object or any body part, not being penis, into vagina, urethra, mouth or anus of any person, or making any other person to do so with him or any other person;
- Manipulation of any body part so as to cause penetration of vagina, urethra, mouth or anus or any body part of such person or makes the person to do so with him or any other person;
- Application of mouth to the penis, vagina, anus, urethra of another person or makes such person to do so with him or any other person;
- Lastly, touching the vagina, penis, anus or breast of the person or makes the person touch the vagina, penis, anus or breast of that person or any other person.

The 2013 Act expands the definition of rape to include oral sex as well as the insertion of an object or any other body part into a woman's vagina, urethra or anus.

Section 376 of IPC lays down the punishment for rape which is seven years at the least and may extend up to life imprisonment. Any man who is a police officer, medical officer, army personnel, jail officer, public officer or public servant commits rape may be imprisoned for at least ten years. A punishment of life imprisonment, extending to death has been prescribed for situations where the rape concludes with the death of the victim, or the victim entering into a vegetative state. Gang rape has been prescribed a punishment of at least 20 years under the newly amended sections.

The Criminal law amendment of 2013 defines 'consent', to mean an unequivocal agreement to engage in a particular sexual act; clarifying further, that the absence of

resistance will not imply consent. Non-consent is a key ingredient for commission of the offence of rape. The definition of consent therefore is key to the outcome of a rape trial and has been interpreted systemically to degrade and discredit victims of rape.

However, one aspect, which has continued to bother the legislators and common man, is the increased occurrence of the offence. The Nirbhaya rape case of Delhi had shaken the country from its root and led to Criminal law amendment act 2013 still the numbers continue to rise in spite of efforts by the legislators to tighten the laws. Kathua rape case, Unnao rape case and Surat rape; there is an unending list which led to Criminal law amendment ordinance 2018.

The Criminal Law (Amendment) Ordinance laid down death penalty for rapists of girls below 12 years and provides punishment of rigorous imprisonment for the rest of their life or 20 years or death penalty in case of gang rape with a girl below the age of 12 years.

2.3 Victims position in justice process

In the criminal procedure, role of victim is not as much as victim have substantial interest of participating in criminal proceedings. The phrase "Access to Justice" generally means individual who has suffered harm or his legal heir get convenient justice. The neglecting effect by the institution changed the meaning of phrase "Access to justice" into "Access to Injustice". Indian Criminal Justice System is not victim oriented but accused oriented. Indian Criminal justice system treats the accused as a privileged person and provides with lots of rights, including a defense counsel at the cost of the State. A number of constitutional protections are also available to an accused under Articles 20, 21 and 22 of the Constitution of India; but, unfortunately, very few legal provisions are there in our Criminal Law and Constitution to provide succor to the victim. In the public mind, the interests of the offender seem to have greater attention

than the interests of the victims. Hence, a strong wind in the form of Victimology is blowing in the area of Criminology, the focus of which is placed on restitution or compensation to victims and their dependants.

In the landmark case of *State of Punjab v. Gurmit Singh*²³ -judicial sensitivity towards victim was noticed. This case raised a very pertinent question- why should the evidence of a girl or a woman who complains of rape or sexual molestation be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of the accused.

Dr.A.S.Anand and Saghir Ahmad JJ. made some revolutionary and ground breaking observations-

- Delay in lodging FIR is not material when properly explained
- Testimony of prosecutrix (victim) in cases of sexual assault is vital and unless there are compelling reasons which necessitates looking for corroboration of her statement, the Court should find no difficulty in convicting the accused on her testimony alone.
- Trial of sexual offences should be in-camera and invariably by lady judges, wherever available.
- The Court must share responsibility and restrain from making loose observations about the character of the prosecutrix.
- The Court is under an obligation to ensure that the prosecutrix is not unnecessarily harassed and humiliated in cross-examination in case of rape trial.

2.4 Compensation to Victims

²³ AIR 1996 SC 1393.

The 7th United Nations Congress on Prevention of Crime and Treatment of Offenders came out with a declaration of Basic Principles of Justice of Victims of Crime and Abuse of Power²⁴, which was later adopted by the U.N. General Assembly. In the declaration, the U.N. defined the “Victims of Crime” as follows:

1. Victims means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws prescribing criminal abuse of power.
2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term ‘victim’ also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.
3. The provisions contained herein shall be applicable to all, without distinction of any kind, such race, color, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin and disability.

With these core guidelines, the Indian Judiciary has laid down guidelines for victims of rape in the Delhi Domestic Working Women’s Forum v. Union of India²⁵-

(1) The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well-acquainted with the

²⁴ www.un.org/documents/ga/res/40/a40r034.htm

²⁵ (1995)1 SCC 14

criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in Court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counseling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represents her till the end of the case.

(2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

(3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

(4) A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

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

(6) In all rape trials, anonymity of the victim must be maintained, as far as necessary.

Victim Compensation Scheme-Section 357 A Criminal Procedure Code-

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

Chapter 3

Rape: Victimological Dimension

3.1-Understanding Victimology

The concept of 'victim' originated with ancient cultures and civilizations like ancient Hebrews. The meaning of the word 'victim' is rooted in the idea of sacrifice. With time the word 'victim' got new meanings. In 1940's, Victimologists such as Mendelson, Yon Hentig, and Wolfgang, tried to define the word 'victim' as helpless puppy who instigated their own victimizations. Feminists in the 1980's attacked this meaning and gave new definition to it as 'victims is anyone caught up in an asymmetric relationship or situation. "Asymmetry" means anything unbalanced, exploitative, parasitical, oppressive, destructive, alienating, or having inherent suffering. In this view, victimology is all about power differentials. Any person who experiences injury, loss or hardship due to any cause is a victim in today's world. Today there has been categorization of the word victim; e.g., cancer victims, holocaust victims, accident victims, victims of injustice, hurricane victims, crime victims, and others. One thing is common in all these categories is that 'someone who has suffered injury and harm by forces beyond his or her control'²⁶.

Any person, group, or entity who has suffered injury or loss due to illegal activity is called 'crime victim'. The harm can be physical, psychological, or economic. The legal definition of "victim" typically includes the following:

²⁶ <http://faculty.ncwc.edu/toconnor/300/3001ect0l.htm>(Visited on Jan., 2018).

“A person who has suffered direct, or threatened, physical, emotional or pecuniary harm as a result of the commission of a crime; or in the case of a victim being an institutional entity, any of the same harms by an individual or authorized representative of another entity.”

Victimology is new emerging area of specialization under the subject of Criminal law. Criminology is a broad field of study that encompasses the study of law making, law breaking, and societal reactions to law breaking²⁷. Victimology is the scientific study of crime victims and of their relationship with offenders and wider society. It examines not only the physical, emotional and financial harm suffered by the victim and society as a result of their victimisation, but also public and media reaction to the victim, the criminal justice system’s treatment of the victim, and the victim’s recovery and reparation²⁸.

Andrew Karmen²⁹ broadly defined victimology as:

"The scientific study of victimization, including the relationships between victims and offenders, the interactions between victims and the criminal justice system — that is, the police and courts, and corrections officials — and the connections between victims and other societal groups and institutions, such as the media, businesses, and social movements."

From this definition, we see that victimology encompasses the study of:

- victimization
- victim-offender relationships
- victim-criminal justice system relationships
- victims and the media

²⁷ Sutherland & Cressey, Principles of Criminology (J.B. Lippincott Co., 6th Edn., 1960) p.3.

²⁸ Supra., n.l.

²⁹ Andrew Karmen, Crime Victims: An Introduction to Victimology (Wadsworth Publishing Company, 1990).

- victims and the costs of crime
- victims and social movements

Mendelsohn and Von Hentig, are considered the "fathers of the study of victimology." These new "victimologists" began to study the behaviors and vulnerabilities of victims, such as the resistance of rape victims and characteristics of the types of people who were victims of crime, especially murder victims. Mendelsohn (1937) interviewed victims to obtain information, and created a typology of six types of victims³⁰ with only the first type, the innocent, portrayed as just being in the wrong place at the wrong time. The other five types all contributed somehow to their own injury and represented victim precipitation³¹.

Von Hentig (1948) studied victims of homicide and said that the most likely type of victim is the "depressive type" who is an easy target, careless and unsuspecting. The "greedy type" is easily duped because his or her motivation for easy gain lowers his or her natural tendency to be suspicious. The "wanton type" is particularly vulnerable to stresses that occur at a given period of time in the life cycle, such as juvenile victims. The "tormentor," is the victim of attack from the target of his or her abuse, such as with battered women. Von Hentig's work provided the foundation for analysis of victim- precipitation that is still somewhat evident in the literature today.

The emergence of Victimology as a distinct field of study made way for the Victims Rights Movement in the 60s, 70s and 80s. The movement brought increased social and political attention to the poor treatment of crime victims by the Criminal Justice System and challenged the treatment of victims by the system. It recognized that

³⁰ Ahmad Siddiqui, *Criminology: Problems & Perspectives* (Eastern Book Co., 4th Edn.) p. 505.

³¹ *Supra n.l*; See, Mawby, R.I., Walkate, S., *Critical Victimology*, £ Sage Publications, 1994); Mendelsohn, B., *The Origin of Victimology*. Excerpta Criminologica, Vol 3, (1963).

the success of the CJS depends to a large extent on victim participation and community's input.³²

3.2-Indian Criminal Justice System vis-à-vis victims right

In the criminal procedure, role of victim is not as much as victim have substantial interest of participating in criminal proceedings. The phrase "Access to Justice" generally means individual who has suffered harm or his legal heir get convenient justice. The neglecting effect by the institution changed the meaning of phrase "Access to justice" into "Access to Injustice". Indian Criminal Justice System is not victim oriented but accused oriented. Indian Criminal justice system treats the accused is as a privileged person and provides with lots of rights, including a defense counsel at the cost of the State. A number of constitutional protections are also available to an accused under Articles 20, 21 and 22 of the Constitution of India; but, unfortunately, very few legal provisions are there in our Criminal Law and Constitution to provide succor to the victim. In the public mind, the interests of the offender seem to have greater attention than the interests of the victims. Hence, a strong wind in the form of Victimology is blowing in the area of Criminology, the focus of which is placed on restitution or compensation to victims and their dependents.

In the landmark case of *State of Punjab v. Gurmit Singh*³³ -judicial sensitivity towards victim was noticed. This case raised a very pertinent question- why should the evidence of a girl or a woman who complains of rape or sexual molestation be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is

³² Long K., Community input at sentencing: victim's right or victim's revenge? 1995 75 B. U.L. Rev. 187; See also, Katharine K. Baker, Sex, Rape, And Shame 19 B.U.L Rev. 663

³³ AIR 1996 SC 1393.

a witness who is interested in the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of the accused.

Dr.A.S.Anand and Saghir Ahmad JJ. made some revolutionary and ground-breaking observations-

- Delay in lodging FIR is not material when properly explained
- Testimony of prosecutrix (victim) in cases of sexual assault is vital and unless there are compelling reasons which necessitates looking for corroboration of her statement, the Court should find no difficulty in convicting the accused on her testimony alone.
- Trial of sexual offences should be in-camera and invariably by lady judges, wherever available.
- The Court must share responsibility and restrain from making loose observations about the character of the prosecutrix.
- The Court is under an obligation to ensure that the prosecutrix is not unnecessarily harassed and humiliated in cross-examination in case of rape trial.

Victim Compensation Scheme-Section 357 A Criminal Procedure Code-

- Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who, require rehabilitation.
- Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in subsection (1)
- If the trial Court, after the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal

or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

- Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
- On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
- The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

3.3 Victims right in Globalized world

The important step towards the safeguards of victim is taken by the United Nation by passing a Declaration of Basic Principles of Justice for Victims of Crime and abuse of power in 1985. Under this declaration basic norms and minimum standard in international law for the protection of victim of crime set-up. The United Nation recognized four major components of the rights of victim of crime:

- a) Access to justice and fair treatment
- b) Restitution
- c) Compensation
- d) Assistance

This declaration is the magna carta of the rights of victims globally. It also deals with the suggestions of problem some of these are:-

- a) Proper assistance to the victim must be there in legal process
 - b) Fair treatment of victim with respect and dignity at each mechanisms of justice
 - c) Timing, progress and disposition of case information to be given to victim
 - d) Views and concerns of victims to be allowed
- e) Protection of privacy, assurance of safety, avoiding unnecessary delay. Above mentioning suggestions are the needs and expectations of the victim in criminal proceedings.

Position in United Kingdom

In U.K, Criminal Justice Act 1988 provide for compensation and special provision under the Criminal Injuries Compensation Board. Here it is also interesting to note that for the purpose of special care of Victim Expectation provisions is made in the “The Code of Practice for Victim of Crime” which set out the service which are expected by the victim such as protection, practical support, and information from Police or the Crown Prosecution Service. Even there is also Victim Ombudsman/Commissioner who takes special care of victim throughout the proceedings as well as even after the proceedings. That’s why U.K provides an advanced provision to victim.

Position in United States of America

While in U.S a separate enactment of law for the victim is there. Many states in U.S enacted Victims Bill of Rights in 1980 and at federal level, the Victims’ Rights and Restitution Act was adopted in 1990. There was also the Crime Victim Fund which was established by the Victim of Crime act 1984 and serves as major funding source for victim’s service. Every state in U.S administers a victim compensation program

Position in Europe

It is interesting to note that European system of criminal justice assigned a very active role to the victims in criminal proceedings. The council of Europe has recommended every state to incorporate rights of victim in every stage of criminal proceedings thereby here victim can assist in trial stage which is of great help in search of truth even he may suggest question to the court, he can also supplant the prosecution evidence. In Europe it is to be note that not in trial stage itself even in investigation stage also he may assist as they become parties from the investigation stage itself.

CHAPTER – IV

APPROACH TOWARDS RAPE VICTIM

4.1-Legislative approach

Section 357, Criminal Procedure Code, 1973, empowers a Court imposing a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, in its discretion, inter alia, to order payment of compensation, out of the fine recovered, to a person for any loss or injury caused to him by the offence. Sub-section (1) of the section reads:

When a Court imposes a sentence or fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied

- (a) in defraying the expenses properly incurred in the prosecution;
- (b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;
- (c) when any person is convicted of any offence for having caused death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855³⁴ entitled to recover damages from the person sentenced for the loss resulting to them from such death;
- (d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating or of having dishonestly assisted

³⁴ Act 13 of 1855.

in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensation any bonafide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

The Supreme Court of India while discussing the scope and object of Section 357 Criminal Procedure Code 1973 in *Hari Krishnan and State of Haryana v. Sukhbir Singh*³⁵ observed: “It is an important provision but the courts have seldom invoked it, perhaps due to the ignorance of the object of it. It empowered the courts to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of the accused. It may be noted that this power of the Court to award compensation is not ancillary to other sentences but is in addition thereto. This power was intended to do something to reassure the victim that he/she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is indeed a step forward in our criminal justice system.”

It further opined: “The payment by way of compensation, must however, be reasonable. What is reasonable may depend on the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the crime, the justness of crime by victim and the ability of the accused to pay. If there are more than one accused, they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary, by instalment, may also be given. The Court may enforce the order by imposing sentence in default.”

However, Section 357 (1) is subject to some limitations as may be stated below:

³⁵ AIR 1988 SC 2127.

1. Compensation to victims can be awarded only when substantive sentence is imposed and not in cases of acquittal.
2. Quantum of compensation is limited to the fine levied and not in addition to it or exceed the fine imposed.
3. Compensation can be ordered only out of fine realized and if no fine is realized, compensation to victim cannot be directed to be realized.
4. In very rare cases under Indian Penal Code, the maximum amount of fine is imposed. Moreover, the maximum fine as prescribed in Indian Penal Code about 150 years back is now inadequate in terms of real losses to victims.
5. Compensation to victim under this section can be allowed by the Court if it is of the opinion that the compensation is recoverable by such person in a Civil Court³⁶.

The right to compensation has also been recognized as an integral part of right to life and liberty under Art. 21 of the Indian Constitution. As early as in 1983, the Supreme Court recognized the petitioner's right to claim compensation for illegal detention and awarded a total sum of Rs. 35000 by way of compensation. In delivering the judgment, Chandrachud C.J. observed: "Art 21 which guarantees the right to life and liberty will be denuded of its significance content if the power of this Court were limited to passing orders of relief from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Art 21 secured is to mullet its violators in the payment of monetary compensation.

In *Sebastian Hongray v. Union of India*³⁷ two women filed a writ of habeas corpus to produce their husbands who were, missing and alleged to have been murdered. The

³⁶ *Supra*, n.% at pp. 9-10

³⁷ AIR 1984 SC 1026.

authorities failed to produce them and the Court directed the respondents to pay Rs. 100000 to each of the wives of the missing persons. In several cases thereafter, the apex court has repeated its order, making compensation an integral aspect of right to life³⁸.

In *Saheli v. Commissioner of Police, Delhi*³⁹ - Kamlesh Kumari and her husband, Inder Singh, along with their three children were living in one room on the ground floor of a house. Another lady, Maya Devi has also been living in another room of the same house on the ground floor with her husband and children. The husbands of both Kamlesh Kumari and Maya Devi were truck drivers and they often remained away from their home. There was a dispute over the ownership of the house. However, the new owner was evicting all the tenants from the said premises illegally. In their attempt, they succeeded in evicting all the tenants except the two tenants named Kamlesh Kumari and Maya Devi. They tried all methods to do away with them but failed. Then they resorted to pressure tactics with the help of the local police. They beat Kamlesh Kumari, tore her clothes and molested her. Her nine years old son clung to his mother to protect her. He was taken and forcibly thrown on the floor. Kamlesh Kumari was dragged away to the police station and a criminal case was imposed upon her of trespass. She was sent to Tihar Jail and her lawyer got her released. Kamlesh Kumari, on her release, came back and found that her child, Naresh was in a very bad condition. Naresh was admitted to Ram Manohar Lohia Hospital where he subsequently died.

On the basis of these facts, the Court directed the Delhi Administration to pay compensation to Kamlesh Kumari, mother of the deceased, Naresh a sum of Rs.

³⁸ See also, *Bhim Singh v.. State of Jammu& Kashmir* (1985) 4 SCC 577 ; *People's Union for Democratic Rights v.. State of Bihar*, 1987 (1) SCR 631; *People's Union for Democratic Rights Thru. Its Secy. v. Police Commissioner, Delhi Police Headquarters*, (1989) 4 SCC 730 ; *Arvinder Singh Bagga v. State of UP.* (1994) 6 SCC 565 ; *Dr. Jacob George v. State of Kerala* (1994) 3 SCC 430 ; *Paschim Bangal Khet. Mazdoor Samity v. State of West Bengal & Os.*(1996) 4 SCC 37 and *Mrs. Manju Bhatia v. N.D.M.C.* (1997) 6SCC 370 .

³⁹ (1990) 1 SCC 422.

75,000/- within a period of four weeks. The Delhi Administration was asked to take appropriate steps for recovery of the amount paid as compensation or part thereof from the officers who will be found responsible.

*Nilabeti Behra v. State of Orissa*⁴⁰ is another case wherein the apex court granted compensation within the Public Law domain. Suman Behera, the victim, was taken from his home in police custody at about 8 a.m, on 1-12-1987, by the Assistant Sub-Inspector of Police in connection with the investigation of an offence of theft and detained at the Police Outpost At about 2 p.m. the next day on 2-12-1987, the petitioner, Smt. Nilabeti Behra, came to know that the dead body of her son Suman Behera was found on the railway track near a bridge at some distance from the Jaraikela railway station. There were multiple injuries on the body of Suman Behera when it was found and obviously his death was unnatural, caused by those injuries. The allegation made was that it was a case of custodial death, since Suman Behera died as a result of the multiple injuries inflicted to him while he was in police custody; and thereafter his dead body was thrown on the railway track. The prayer made in the petition was for award of compensation to the petitioner, the mother of Suman Behera, for contravention of the fundamental right to life guaranteed under Art. 21 of the Constitution.

The apex court while ordering payment of compensation opined⁴¹: “This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the

⁴⁰ 1993 2 SCC 746

⁴¹ *ibid*

damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course, has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law — through appropriate proceedings. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have molded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental rights of a citizen under Article 21 is Hence, a total amount of Rs. 1,50,000/- would be appropriate as compensation to be awarded to the petitioner in the present case. concerned.” As regards the quantum of compensation, the Court held, the deceased Suman Behera was aged about 22 years and had a monthly income between Rs. 1,200/- to Rs. 1,500/-.

The Law Commission of India, expressing its concern for crime victims, has suggested a few proposals, substantive as well as procedural, for reforms. The Fifth Law Commission of India, in 1971, thought it felt ‘unwise’ to create a legal right in favor of victims of crime to join criminal proceedings as a third party⁴² and failed to see any ‘great advantage’ in providing for ‘duty to make amend for the harm caused’ or ‘payment of compensation’ to them as an additional punishment, favored the payment of compensation, presumably provided under sec. 545 of the then prevailing Criminal Procedure Code of 1898, to crime victims out of fine imposed on the offender⁴³ With a view to giving prominence in the Indian Penal Code 1860 (IPC) to

⁴² Law Commission of India, Forty- Second Report: Indian Penal Code, p. 52.

⁴³ *ibid*

the payment of compensation out of fine imposed and to conferring substantive powers on trial Courts to this effect, it recommended insertion in IPC of the following substantive provision:

62. Order to pay compensation out of fine to victim of offence -

Whenever a person is convicted of an offence punishable under Chapter 16 [Of Offences affecting the Human Body, ss. 299-377], Chapter 17 [Of Offences against Property, ss. 378-462], or Chapter 21 [Of Defamation, ss. 499-502], of this Code or of an abetment of such offence or of a criminal conspiracy to commit such offence and is sentenced to fine, whether with or without imprisonment, and the Court is of opinion that compensation is recoverable by civil suit by any person for loss or injury caused to him by that offence, it shall be competent to the Court to direct by the sentence that the whole or any part of the fine realized from the offender shall be paid by way of compensation to such person for the said loss or injury. Explanation Expenses properly incurred by such person in the prosecution of the case shall be deemed part of the loss caused to him by the offence.⁴⁴ However, Justice R. L. Narasimham, a distinguished member of the Commission, doubting efficacy of the compensatory scheme provided under the old Criminal Procedure Code (1898) suggested deletion of sec. 545 from the old Criminal Procedure Code and insertion of the following clause in Indian Penal Code:

70A. (1) In the case of conviction for an offence against the human body, and offence against property, defamation or an offence against privacy, the court may direct that the person convicted shall pay compensation to the person mentioned in sub-section (4).

(2) Such compensation need not necessarily be monetary and it may be in any form which the court considers to be a sufficient recompense to the injured party. But while

⁴⁴ ibid

passing the order for compensation, the court shall estimate its monetary value for the purpose of execution of the order.

(3) -----

(4) An order under sub-section (1) may be made-

(a) in addition to any other punishment to which the person convicted may have been sentenced;

(b) in substitution of fine, where the offence, not being a capital offence, is one punishable with fine.

(5) The compensation under this section may be directed to be paid

(a) to any person who has incurred expenses in prosecution, for defraying expense properly incurred;

(b) to any person for any loss or injury caused by the offence, when compensation is, in the opinion of the court, recoverable by such person in a civil court;

(c) in the case of a conviction of any offence for having caused the death of another person or of having abetted the commission of such an offence, to the persons who are, under the Fatal Accidents Act, 1855, entitled to recover damages from the person sentenced, for the loss resulting to them from such death; or

(d) in the case of a conviction for any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, to any bona

fide purchaser of such property, for the loss of the same, if such property is restored to the possession of the person entitled thereto,⁴⁵

The Indian Penal Code (Amendment) Bill 1972, modeled on the recommendations made by the Fifth Law Commission in its 42nd Report, had a provision (cl. 19), premised on the majority view of the Law Commission, for payment of compensation. The 1972 Bill, for nearly four and half years, was scrutinized by a Joint Parliamentary Committee. The Committee, though it revised the Indian Penal Code (Amendment) Bill, 1978, also proposed the insertion of sec. 74B in EPC. The proposed sec. 74 B provided for the payment of compensation, in addition to any other punishment, by a person convicted for committing an offence punishable under Chapter XVI (offences against human body), Chapter XVII (offences against property) or Chapter XXI (defamation) of the Penal Code. Further, clause 18 of the 1978 Bill, substituting existing sec. 53, IPC, (dealing with ‘punishment’), also, probably influenced, to some extent, by approach of Justice R, L. Narasimham, suggested that the payment of compensation, inter alia, be made a new form of ‘punishment’ provided under (sec.53) EPC. But unfortunately, the 1978 Bill could not become effective as it, though was passed in the Rajya Sabha in November 1978, was not passed in the Lok Sabha due to dissolution the Lok Sabha in 1979⁴⁶.

The Fourteenth Law Commission in 1997 in its 156th Report on the Indian Penal Code, recalling its earlier recommendation made in 1996 in its 154th Report on the Code of Criminal Procedure for framing a Victim Compensation Scheme by the respective State Governments and realizing that the payment of compensation not only requires an inquiry into a variety of circumstances but also a few cases may not warrant

⁴⁵ id (Emphasis supplied). Clauses (5) and (6) of the proposed section is almost verbatim at literatim of ss. 545 (1) (a) to (c) and 546 of the Cr.P.C, 1898 respectively. Also compare with s. 357 (1) (a) to (d) of Cr.P.C of 1973.

⁴⁶ K.I. Vibhute, *Compensating Victims of Crime: An Indian Perspective*

compensation by way of punishment, however, opined that it is not appropriate to include order of payment of compensation in sec. 53, IPC, by way of punishment.⁴⁷

The proposed Section 357 A suggested by the Fourteenth Law Commission in its 154th Report on Cr.P.C. suggested a comprehensive victim compensation scheme to be administered, on recommendations of a Trial Court, by the Legal Services Authorities constituted at the District and State levels under the Legal Services Authorities Act, 1987.

However, the Law Commission desires the District and State Legal Services Authorities to have special considerations while compensating victims of custodial crimes, & of child abuse; rape victims, and physically and mentally disabled victims of crimes. The recommended sec. 357A, which devises the proposed 'Victim Compensation Scheme' and which is self-explanatory, runs as under:

Section 357A-Victim Compensation Scheme'

(1) Every State Government in co-ordination with the Central Government shall prepare a Scheme for providing funds for the purpose of compensating the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Under the Scheme the District Legal Services Authority at the district level and the State Legal Services Authority at the State level shall decide the quantum of compensation to be awarded whenever a recommendation is made by the trial court to that effect.

(3) If the trial court, at the conclusion of the trial, is satisfied, that the compensation awarded under Section 357 (3) is not adequate for such rehabilitation, or where the

⁴⁷ Law Commission of India, One Hundred and Fifty Sixth Report on the Indian Penal Code (Government of India, New Delhi, 1997), para. 2.16. For text of the clause 18 (draft sec. 53, IPC) see para. 2.11.

cases end in acquittal or discharge and the victim has to be rehabilitated, it may recommend to the District Legal Services Authority if the compensation in its view is less than Rs.30,000/-, or to the State Legal Service Authority if the compensation is more than Rs.30,000/-.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place it is open to the victim or his dependents to make an application under subsection (2) to the District Legal Services Authority at the district level and the State Legal Services Authority at the State level for award of compensation.

(5) On receipt of such recommendations or on the application under subsection (4), as the case may be, the District Legal Services Authority or the State Legal Services Authority, as the case may be, shall after due enquiry award adequate compensation by completing the enquiry within two months.

(6) District Legal Services Authority or the State Legal Services Authority, as the case may be, to alleviate the suffering of the victim may order immediate first aid facility or for medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the Officer-in-Charge of the police station or a Magistrate of the area concerned or any other interim relief as the appropriate authority deems fit.⁴⁸

However, like other suggestions of the Law Commission, the proposed compensation scheme has been given effect by Criminal Procedure Amendment Act 2008.

⁴⁸ *ibid.*, Victimology, para 17. It is further pertinent to note that the Supreme Court of India also urged the National Commission for Women to prepare a Compensation Scheme for compensating rape victims. It, against the backdrop of Art 38(1) of the Constitution, also pleaded for setting up of Criminal Injuries Compensation Board for the purpose. See *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 SCC 14 and *Bodhisattwa Guatam v. Subhra Chakraborty*, AIR 1996 SC 922. For comments, see *infra*. K. I. Vibhute, *Victims of Rape and their Right to Live with Human Dignity and to be Compensated: Legislative and Judicial Responses in India*.

4.2-Judicial approach towards rape victim

With time judiciary realized that our criminal justice system is accused oriented but victim is integral part of criminal justice administration, she is the only one who suffers primary with the offence of rape and secondary victimization is done by hospital, family, society, friends and other institution. Rape causes an unliquidated damage which can't be compensated but still judiciary took steps not by merely punishing the accused but by giving monetary compensation to rape victim so that she can start a fresh life and think about her future.

The entire shift of judicial approach with time has been divided into two phase- before 2000 and after 2000.

Phase one- Before 2000

In **Siddheswar Ganguly v. State of West Bengal**⁴⁹ the accused, Secretary of Nari Kalyan Ashram was charged with rape on two girls, Sudharani and Narmaya. The former was found to be below 16 years of age and the accused found guilty of statutory rape. But with respect to Narmaya, the Court said that⁵⁰ “Narmaya may well have been above 16, and that, therefore, the accused could not be convicted for rape on her.”

In **A. W.Khan v. State**⁵¹, where medical evidence established the age of the victim to be below 16 years and the chemical examiner's report showed presence of spermatozoa in her vaginal canal, rape was held to have been clearly proved and the accused was sentenced to 5 years rigorous imprisonment.⁵²

The case of **Gopi Shanker v. State of Rajasthan**⁵³ needs to be briefly elaborated in order to extract the judicial attitude towards rape. The prosecutrix,

⁴⁹ AIR 1958 SC 143

⁵⁰ ibid

⁵¹ AIR 1962 Cal. 641

⁵² Roshcm Lai v. State 1971 Cri.L.J. 922; KartickKundu v. State 1967 Cri.L.J.1411; Arathan Sadasivan v. State of Kerala 1966 Cri.L.J. 210.

⁵³ 1967 Cri.L.J. 922

Draupadi, was a married woman who along with her husband had gone to the market to purchase some cloth. The victim had only two months earlier given birth to a child. On that fateful day, they found the market crowded and postponed the purchase. While returning they chanced to meet a friend, Gopal who took them for a film and thereafter to Agra Hotel for tea. The three sat in the family cabin waiting for tea which was not served to them. Soon thereafter, Gopi Shanker and Mahesh arrived at the family cabin with bottles of wine and soda and the four men consumed liquor. The victim's husband, Aijun, and Goral felt some intoxication and went downstairs leaving the victim in the company of the two strangers. The latter joined by two other men, the, made the woman naked and forced her to sexual intercourse. Gyanandra Kumar who had his house adjacent to the hotel heard the cries of Draupadi and alerted the police. When they arrived at the hotel, the woman was thrown from the family cabin to the hall in a naked condition. The medical evidence found injuries on the genitals of the woman and other parts of her body and also confirmed that she had sexual intercourse several times, indicating her alleged charge of rape.

The trend of judicial brutalism evident in this period, attained its heights in the **Mathura Rape Case**⁵⁴. In the absence of definite and adequate legislative guidelines to meet the offence of rape in the changed socio-economic circumstances, the judiciary had begun to evolve its own hypothesis. In this case, Mathura, a tribal girl, had eloped with her lover, Ashok. On a complaint lodged by her brother, she was brought to the police station and her statements were recorded. At about 10.30 p.m., when they were about to leave, Ganpat and Tukaram, two police constables asked Mathura to wait and directed the others to move out. Immediately thereafter, she was taken into the rear side of the police station and raped by Ganpat. Tukaram, too, would have raped her but

⁵⁴ Tukaram v. State of Maharashtra AIR 1979 SC 185

being in an inebriated condition, he contented himself by merely molesting her. Meanwhile, her relatives began to grow suspicious. They went to the rear side of the building and started shouting for Mathura. Tukaram informed them that the girl had already left but a few minutes later, Mathura emerged and stated that she had been raped.

Mathura was examined 20 hours after the incident. The medical report revealed no marks injury on her body and no trace of semen in her vagina and that she was habituated to sexual intercourse. Her age was estimated to be between 14 and 16 years.

The learned Sessions Judge found that there was no satisfactory evidence to prove that Mathura was below 16 years, an age which renders consent immaterial to the offence of rape. He admitted that the girl may have had sexual intercourse but it could not be equated with rape. In fact, according to the Court, the girl willingly had sexual intercourse with the accused and in order to sound virtuous before her relatives, especially her lover Ashok, she cooked up the story of rape. The judiciary, therefore, branded her as a "shocking liar" whose testimony "is riddled with falsehood and improbabilities ". On examining the same facts, the Nagpur Bench of the Bombay High Court, reversed the order of acquittal and convicted Tukaram under Sec. 354 IPC (indecent assault) to rigorous imprisonment for one year and Ganpat under Section 376 IPC (rape) to rigorous imprisonment for 5 years. The High Court accepted the lower court's

contention that there was a world of difference between sexual intercourse and rape, but it pointed out that the latter had erred in appreciating the difference between consent and submission. In the words of the Court⁵⁵, "Mere passive or helpless surrender of the body and its resignation to the other's lust induced by threats or fear cannot be equated

⁵⁵ supra

with the desire or will, nor can furnish an answer by the mere fact that the sexual act was not in opposition to such desire or volition." Mathura was alone in the police station in the dead hour of the night. A complaint had been lodged against her lover in the same place by her brother. Being in a strange atmosphere in the company of strangers, it would be highly improbable that she would make any gestures to attract the attention of the police constables. On the contrary, it was possible that the latter might try to take advantage of the helpless condition of the tribal girl, who would surrender due to awe and fear. But such helpless surrender, the court felt, could not be equated with 'consent'. Moreover, the girl's subsequent conduct in making a statement immediately, not only to her relatives, but also to the members of the crowd, convinced the High Court that the offence committed was rape and not a mere sexual intercourse.

The High Court, by adhering to the established legal and judicial propositions, tried to do away with the gross injustice perpetrated by the lower court, but this was not to be, for soon thereafter the highest Court set aside the conviction and acquitted the accused constables.

The Court held that since Mathura had not raised any alarm, her allegations of rape were untrue. Her conduct in meekly following Ganpat and allowing him to have his way with her indicated that the 'consent' in question was not a consent which could be brushed aside as 'passive submission'. The Supreme Court said that the High Court had not given a finding that the fear was shown to be of death or hurt (as was required under Sec 3751PC) and in the absence of such finding, the alleged fear would not vitiate the consent. So the Court concluded that the sexual intercourse was not proved to amount to rape.

The Apex Court throughout disbelieved the story of the victim girl. In fact, her previous conduct in eloping with her lover and being habituated to the act of sexual intercourse

might have influenced the mind of the orthodox judges (comprising Jaswant Singh, P .S. Kailasam and A.D. Koshal, JJ), so much so, that though these facts had no bearing on the case in issue, they declined to accept the veracity of the statements put forward by the ravished, devastated victim. But the questions which keep lingering in the rational mind are that -Is the purity of an Indian woman so important? Does association with any male, either before or after marriage, make a woman so dissolute that she can be invaded by anybody? The judiciary should be aware that the days of Sita and Savitri have long been left behind. The society, as well as its culture, have marched ahead and in the modern era it is wrong to conceive of a woman as a property of males. She enjoys her freedom at par with the opposite sex and her rights and liberties are to be accepted and respected by the entire mankind. Just as a man, who has deviated from the path of morality, is not considered a liar or scoundrel; so also a woman having a past sexual history is not to be regarded as a prostitute who will willingly have carnal relations with any stranger. The notion that a easy going woman is accessible to all or will make herself accessible for all is wholly wrong. It is only a patriarchal way of viewing femininity, as the entire stress is on the chastity of the woman. Such an ideology must be changed, rather discarded, like an age-old formula, which no longer serves any purpose. Coming back to the instant decision, we find that, while the chauvinistic judges rejected the story of the poor girl, as a 'concoction on her part', they found no fault with the activities of the constables. The fact that she was detained in the police station in the late hours of the night, the fact that one constable remained a mere spectator to the act of intercourse being done by the other, as if it were a pornographic theatre being staged, the fact that the constable falsely informed the anxious relatives that the girl has left the place and the fact that they were heavily drunk while on duty, were all immaterial to the cause of justice. What was material being the facts that the

girl did not offer adequate resistance so as to have severe injuries on her body, she did not raise alarm to draw the attention of her relatives and lastly, that she was habituated to sexual intercourse. The conclusion one can draw without much hesitation is that the judges were gender biased, they were prejudiced against the victim, but greatly inclined in favor of their male counterparts.

This decision sparked off serious protests from every section of the society and a nation-wide struggle was launched to undo the wrong which had been done to the entire womenfolk of the country. Accordingly, a review petition was filed by the Bharatiya Mahila Federation and the Women Lawyer's Council. The petition came up before a Bench headed by the Chief Justice, who directed it to the same bench which had delivered the judgment. Justice Untwalia (who had replaced Justice Jaswant Singh) held that women's organization had no locus standi to file a review petition. He strongly criticized the demonstrations and categorically stated that the Courts would not be "cowed down by rallies and slogan shouting"⁵⁶.

Howsoever, stem and rigid, might have been the attitude of the judiciary in the Mathura episode, it certainly realised its follies and sought to rectify them in some later day judgments. Thus, in **Rajiq v. State of Uttar Pradesh**⁵⁷, the Court clarified that the absence of injuries on the person of the girl may not be fatal to the prosecution and corroborative evidence may not be an imperative component of judicial credence in rape cases. Corroboration as a condition for judicial reliance on the testimony of a prosecutrix is not a matter of law, but a guidance of prudence under given circumstances? Indeed, from place to place, from age to age, from varying life styles and behavioral complexes, inferences from a given set of facts, oral and circumstantial,

⁵⁶Flavia Agnes, *The Anti Rape Campaign: The straggle and the setback in Chhaya Datar (ed.), The struggle against violence* (Calcutta: Stree, 1993) pp. 111-2.

⁵⁷ (1980) 4 SCC 262

may have to be drawn not with dead uniformity, but realistic diversity lest rigidity in the shape of rule of law in this area be introduced through a new type of precedential tyranny. The same observation hold good regarding the presence or absence of injuries on the person of the aggressor or the aggressed. The Court cannot cling to a fossil formula and insist on corroborative testimony, even if, taken as a whole, the ease spoken of by the victim strikes a judicial mind as probable.

The apex court made recommendations in Delhi **Domestic Working Women's Form v. UOI and Ors**⁵⁸ and outlined the broad parameters to assist the victim. If these guidelines were followed, conviction rates would have gone up. The guidelines are:

- The complainant of sexual assault cases should be provided with legal representation.
- Legal assistance will have to be provided at the police station.
- The police should be under a duty to inform the victim of her right.
- A list of advocates willing to act in such cases should be kept at the police station for victims who do not have a particular lawyer in mind or whose own lawyer was unavailable.
- The advocate shall be appointed by the court upon application by police at the earliest convenient moment.
- In all trials anonymity of the victims must be maintained, as a necessity.
- To set up Criminal Injuries compensation Board.
- Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place.

⁵⁸ 1996 AIR 922

The Supreme Court reasserted these parameters in **Bodhisattwa Gautam v. Miss Subra Chakraborty**⁵⁹, case but the enforcing agencies turned a deaf ear to the guidelines of the apex court.⁶⁰ Again the guidelines laid down in **Vishakha's case**⁶¹ in 1997 has not been followed fully till this date.

In January 11, 1994, judgment upholding death penal for security guard **Dhananjay Chatterjee**⁶², who raped and murdered a school girl in a Kolkata apartment in 1990, Justice Anand had ruled, "Punishment must depend upon the atrocity of the crime committed, the conduct of the criminal and the defenseless state of the victim".⁶³ The history of rape law shows changes have followed public outcries⁶⁴.

In the case of **Gudalure M.J. Cherim v. Union of India**⁶⁵, a compensation of two lakhs fifty thousand rupees was awarded to the victims of rape. In this case, some miscreants had entered a convent and committed rape on nuns. The case was investigated in a perfunctory manner and vital clues and evidence was lost. The Supreme Court, while ordering the government to suspend the police officers and initiate disciplinary action against them, also directed it to pay compensation to the victims.

In **Bodhisattwa Gautam v. Subhra Chakraborty**⁶⁶ - Subhra Chakraborty was a student of Baptist College, Kohima, where the accused, Shri Bodhisattwa Gautam was a lecturer. The accused often used to visit Complainant's

⁵⁹ 2000 AIR 988

⁶⁰ AIR 1996 SC 922

⁶¹ AIR 1997 SC 3011

⁶² Aditi Tondon, Cry for Freedom, The Tribune, 30 December, 2012

⁶³ AIR 1979 SC 185

⁶⁴ <https://www.lawctopus.com/academike/rape/>

⁶⁵ 1995 SCO (Cr) 925

⁶⁶ AIR 1996 SC 922

residence, as a teacher. He was respected by the complainant as well as all the members including her parents. In course of such visits once in the month of Nov. 1989 the accused voluntarily told the complainant that he was already in her love. Thus, there developed a love affair between themselves since 1989. The accused gave false assurance of marriage to the innocent complainant and thereby the accused dishonestly procured sexual intercourse with the complainant. The accused often used to induce the complainant to have biological contact with him, but whenever he was approached by the complainant to complete the marriage ceremony, the accused very tactfully used to defer the marriage sometimes saying that he was waiting for his parents' formal consent and sometimes saying to cooperate with him till he got a Govt Service. In course of continuation of the affairs between the complainant and the accused, the complainant got pregnant twice, once in the month of September, 1993 and secondly, in the month of April, 1994 out of her cohabitation with the accused person. The complainant being worried about her said pregnancy created pressure upon the accused to marry her immediately and to save her from being ruined, but the accused on the plea of his parents' permission went on deferring the marriage. As a result there was a quarrel, in between the complainant and the accused, where after the accused lastly opined for secret marriage to avoid social gathering as he was waiting for his parents' permission. The complainant being pregnant was placed in a very awkward position, and agreed to the said secret marriage. Accordingly the accused on the 20th September. 1993, married the complainant in front of God by putting Vermilion (sindur) on the complainant's forehead and accepted the complainant as his lawful wife and thus the complainant was consorted and consoled. But the complainant faced further corporal punishment, as the accused kept on insisting the complainant to be refrained from giving birth to the baby and was pressurizing her to undergo operation/ abortion despite her refusal for the same.

The accused with fraudulent intention to deceive the complainant proposed the said abortion on the plea that birth of the baby would be a barrier to convince his parents to accept the complainant as their daughter-in-law and such event would lead the complainant to a path of unhappiness. The complainant being an innocent lady failed to understand the accused's wicked and mischievous plan whereby the accused succeeded and dishonestly motivated the complainant for abortion and compelled the complainant to undergo operation in the Putonou Clinic, Kobima and aborted in October 1993. The complainant was forced to undergo abortion even second time in the month of April 94, in the Carewell Nursing Home at Dimapur with the pretext that if the complainant gave birth to any child before the accused could convince his parents she would never be accepted by Bodhisatta's parents and relatives. Further their marriage being a secret one, the developed stage of the complainant would hamper the dignity of her own parents and other paternal relations irreparably and thus taking the privilege of complainant's innocence the accused exploited the complainant in a very pre-planned way. The accused even furnished a false name in the said Nursing Home and signed the consent Register/Paper as BIKASH GAUTAN concealing his real name BODHISATTA GAUTAM which fact was unknown to the innocent complainant until the 2nd week of February, 1995 when the complainant went to obtain a certified copy of the abortion consent paper of the accused. On hearing the message that the accused would go to Silchar, the complainant on 4th Feb. 95 went down to Dimapur and visited the accused to take the complainant permanently with the accused to Silchar as he was going to Silchar to join as a lecturer in a Government College named Cachar College which both of them actually waited for. But the wicked accused forgetting the consequences of his all fraudulent activities in total disregard of their marriage and their relationship refused

to accept the complainant as his wife and abandoned the complainant asking her to forget all her dream. A complaint was registered against him when he abandoned his wife, under Sections 312, 420, 496 and 498A IPC. These were mainly offences relating to marriage.

But, in its judgment, the Supreme Court equated the plight of the woman to that of a victim of rape and gave an eloquent exposition of the heinousness of the offence and the need to assist the victim to overcome the physical, psychological and financial loss suffered by her. In its opinion, rape is a crime against the entire society. It shatters the equilibrium of the social order. At the same time, it is a devastating experience for a woman and pushes her into deep emotional crisis. It is of paramount importance to rehabilitate the woman who has suffered such a trauma in rape. Referring to the decision in **Delhi Domestic Working Women's case**⁶⁷, the Apex Court pointed out that⁶⁸ "This decision recognizes the right of the victim for compensation by providing that it shall be awarded by the court on conviction of the offender subject to the finalization of Scheme by the Central Government. If the court trying an offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the court the right to award interim compensation which should also be pervaded in the Scheme. The jurisdiction to pay interim compensation shall be treated as part of the overall jurisdiction of the court trying the offences of rape which ...is an offence against the basic human rights as also the fundamental right of personal liberty and life."

⁶⁷ Supra, n. 26, at p.928

⁶⁸ 1996 AIR 922

Similarly, in **Jarnail Singh v. State of Punjab**⁶⁹ where the appellant was convicted under Section 376 IPC, for raping a girl below 16 years, the Apex Court directed him to pay an amount of twelve thousand rupees as compensation to the victim.

In yet another landmark decision, **Chairman Railway Board v. Chandrima Das**⁷⁰ a Bangladeshi woman was raped by some railway officials in the railway yatri niwas. The apex court asked the railways to pay Rs. 1000000 as compensation for the infringement of her right to life under Art. 21 of the Constitution. In the opinion of the Court- “Smt. Hanuffa Khatoon, who was not the citizen of this country but came here as a citizen of Bangladesh was, nevertheless, entitled to all the constitutional rights available to a citizen so far as "Right to Life" was concerned. She was entitled to be treated with dignity and was also entitled to the protection of her person as guaranteed under Article 21 of the Constitution. As a national of another country, she could not be subjected to a treatment which was below dignity nor could she be subjected to physical violence at the hands of Govt, employees who outraged her modesty. The Right available to her under Article 21 was thus violated. Consequently, the State was under the Constitutional liability to pay compensation to her.”

Phase II- Post 2000

In **Brijesh v. State of Haryana**⁷¹ where a 18 year old girl was gang raped by three young men, the High Court ordered compensation to the tune of Rs. 50000. In the words of the Court, since, the Fundamental Right of the prosecutrix- Nisha under Article 21 of the Constitution of India, i.e. right to life which included right to live with

⁶⁹ (1998) 8 SCC 629

⁷⁰ MANU/SC/0046/2000

⁷¹ MANU/PH/0482/2003

human dignity, has been violated, so it will be in the fitness of the circumstances, if a sum of Rs. 50,000/- is awarded as compensation to Nisha which shall be shared jointly and severally by all the 3 appellants.

In **Chandradevi Kamalananiha & others v. State of Tamil Nadu**⁷² a sensational news item appeared in the Indian Express which captured the attention of its readers. It spoke of the rape of 13 minor girls by the Swami of an ashram. Subsequently on investigation, the case came up before the court and it was revealed that Swami Premananda, who was running an orphanage in the name of Boopalakrishna Ashram, Mathalai at Sri Lanka, came over to India in the year 1984. About 12 young Tamil girls and a few women, who were in the ashram in Sri Lanka, were also brought to Tiruchy through Rameswaram and Vedaranyam by boat. Initially, Swami Premananda set up an ashram in a rented building at Tiruchy and then shifted and constituted it into a big institution at Fathima Nagar in the year 1989 in a sprawling space spread over nearly 150 acres. The ashram had in itself laid out areas for residence, eating place, press, school, etc. Admittedly, about 100 girls and 100 boys, mostly orphans, were staying in the ashram. During the period between 1990 and October 1994 Swami Premananda (A-1) committed rape on 13 girls. A-1 used to commit rape immediately sometime after the girls attained puberty while they were put on guard duty during nights and at other odd hours and places. The Court ordered life imprisonment in addition to payment of fine. It opined, “While imposing the fine amount on A-1, the learned Sessions Judge has taken into consideration the age of the victim girls, the trauma which they have undergone and the damage which they have suffered and hence ordered a fine of Rs.5,00,000/- on A-1 to be paid as compensation to each of the victim girl. We find that the fine imposed is commensurate with the crime

⁷² MANU/TN/2335/2002

and the capacity of A-1 to compensate. It is not in dispute that A-1 is holding a Joint Account... to a tune of Rs.89,00,000/- and the operation of this account had been frozen under the orders of the court. Though an attempt had been made by a third party to represent that this amount represents the amount of a Trust and that it cannot be utilized by A-1 for paying the fine ordered to be paid by him, we have no hesitation in rejecting such a representation made without any pleading and records. It only fortifies our apprehension that the appellants are trying to see that the fine amount is not recovered and thereby deprive the victim girls of their due compensation. As the amount in the bank is in the joint account of A-1, the said amount is liable to be utilized for payment of the compensation. Therefore, we direct the concerned, including the Bank and the Revenue Authorities, to permit and release the fine amount of Rs.61,30,000/- (Rs.61,20,000/- + Rs. 10,000/-) and the compensation as ordered by the court, viz., Rs.5,00,000/- be paid to each of the victim girls.

In the landmark case of **Om Prakash Vs Dil Bahar (2006)**- It was held that a rape accused could now be convicted on the sole evidence of the victim, even if medical evidence did not prove rape.

Case: The victim, six months pregnant, was in court because her husband was facing *challan* proceedings. The accused was a relative and had come to attend the same. Finding her in isolation outside the Zilla Parishad, the accused tried to rape her. However, she raised an alarm and the accused was assaulted by the locals and handed over to the police. Although no evidence of rape was found, the accused was given a seven-year sentence based on the statement of the victim and eyewitness accounts. A statement from the court read, "It is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case even if the doctor

who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In normal course a victim of sexual assault does not like to disclose such offence even before her family members much less before public or before the police. The Indian woman has the tendency to conceal such offence because it involves her prestige as well as the prestige of her family. Only in few cases does the victim girl or the family members have the courage to go before the police station and lodge a case. In the instant case, the suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. There was no apparent reason for a married woman to falsely implicate the accused after scuttling her own prestige and honour.”⁷³

The ruling had both positives and negatives. Rapists deserve the worst of the law, and the ruling meant that escape for them has become more difficult. The ruling was based on the fact that the victim of the rape is not an accomplice to the crime and her statement should be relied upon. The need for corroboration arises only in cases where the court cannot place implicit reliance on the statement of the prosecutrix. While this may hold true, one must also understand that the law can be wrongly misused with terrible consequences. The fact that a person can be convicted even if medical reports suggest otherwise makes it that much easier for false cases to be lodged. The judges of the Supreme Court also simply assume that the Indian woman is pure and noble and can do no wrong.

That being said, it is still a necessary and progressive step forward in a nation where women have borne the pain brunt of victimization for far too long. This might be considered a tipping of the scales in favour of a community who have had them

⁷³ <https://homegrown.co.in/article/8723/11-landmark-judgments-by-the-indian-supreme-court-in-recent-times>

tipped against them for far too long, so perhaps it is about restoring a balance for the court. Besides which, it's clear rapists in this country (and plenty of educated people too) need their thinking on this issue rewired.⁷⁴

The Nirbhaya Case (2012) The Supreme Court held that, 4 out of 5 rape accused received the death sentence and as a result of this case the rape law was amended to go beyond penile-vaginal intercourse. The new definition penalizes penetration of any orifice of the woman with any part of the man's body or with any object.

Case: This hardly requires retelling given the freshness of it in the nation's collective consciousness, but here it is anyway. A young girl was returning home with a male friend after watching a movie. They boarded a bus and soon figured out that something was wrong. The six people on board, including the driver knocked the boy unconscious with an iron rod and then raped her one at a time. They shoved an iron rod in her vagina, severely damaging her intestines, abdomen and genitals. Finally, they threw the boy and the woman out of the bus, and drove away. The woman was rushed to the hospital and the men were arrested within 24 hours. Eventually, the woman succumbed to her injuries, and the men immediately went on trial. While on trial, one of the accused committed suicide in jail. The remaining five were subsequently charged for rape and murder. The four adults were granted a death penalty, while the minor was sent to a reform facility for three years.

Court Verdict: The case received media coverage like none other. The aftermath was that six new fast track courts were created to hear rape cases, which means that the rape cases do not remain stagnant in courts for far too long. Various laws were passed and

⁷⁴ *ibid*

amendments were made, which included a mandatory minimum sentence of 20 years in case of a rape as well as the widening of the definition of rape.

Unfortunately, for Criminal law amendment act 2013, two women had to undergo the same fate as the 23-year-old had to, for her brutal rape on the night of 16 December, 2012, in the national capital, which has once again triggered a nation wide demand for faster legal processes and stringent laws to deal with sexual crimes against women.⁷⁵

A rapist not only violates the victim's privacy and personal integrity, but also inevitably causes serious traumatizing nailing of the victim for no fault of her. Rape is not merely a physical assault, but it is often destructive of the whole personality of the victim. A murder destroys the body, but a rapist degrades the very soul of the helpless female."⁷⁶

Thus, it is observed that Judiciary being the third pillar of the Constitution has played a vital role in finding the proper solution in rape cases. Sometimes through wide interpretation of provisions of various legislation and Constitution and sometimes by laying down landmark judgments where there are no specific laws, the judiciary has tried to strike a balance and equilibrium in the society. The judiciary has tried to fulfill the gap between fast changing society and rigid laws (because of the long and time taking procedure of enactments of laws by legislature, its not easy to amend these laws with the fast changing society). Nirbhaya's case has once again raised the question of inadequacy and lack of proper implementation of the laws, however, Anti-rape Bill-Criminal Law (Amendment) Bill, 2013 has been passed. The laws relating to rape victim's has been enacted after much public cry or through judicial intervention only.

⁷⁵ <https://www.lawctopus.com/academike/rape/>

⁷⁶ 2000 AIR 988

This Amendment Bill also came after loosing Nirbhaya and mass protests. It has rightly been observed by the judge in Nishan Singh's case that Court can only lay down the guidelines but important role has to be played by the society in its implementation.⁷⁷

Landmark Judgement By Supreme Court-

Tuka Ram And Anr vs State of Maharashtra, AIR 1979 SC 185 (Mathura Case)

Facts of the case:

In Mathura rape case, a young tribal girl named Mathura was allegedly raped by two policemen while she was in custody. It was the incident of custodial rape, took place on March 26th, 1972, where the girl was raped in Desai Gunj Police Station in Maharashtra.

Issues raised:

This case raised so many issues in the context of Indian rape laws that were earlier existed in prevalent Criminal law like the issue of consent, the question of burden of proof, the reference to two-finger test and the reference to the girl's sexual history.

What was held?

Sessions Court passed the judgment in favor of defendants and held them not guilty. It was held that Mathura gave her consent voluntary as she was habituated to sexual intercourse. Learned Sessions Judge found that there was a major difference between "sexual intercourse" and "rape" so, it was a case of sexual intercourse in which she had consented voluntary and not rape. Thus, Case was further appealed in the Bombay High Court which took note of all the findings arrived during the trial in Sessions Court. High Court appreciated the observation given by the learned Sessions Judge that there is a

⁷⁷ <https://www.lawctopus.com/academike/rape/>

major difference between sexual intercourse and rape but they forgot to observe that there is a world of difference between “consent” and “passive submission”. On the ground of such observations, the court held that the defendants were guilty of rape and the consent given was not voluntary and it was due to serious threats by policemen. It was held that:

“Mere passive or helpless surrender of the body and its resignatess to the other’s lust induced by threats or fear cannot be equated with the desire or will, nor can furnish an answer by the mere fact that the sexual act was not in opposition to such desire or volition.”

Later, the case went to the Supreme Court, where court acquitted the accused and set aside the judgment passed by the Bombay High Court. The Court stated that no marks of injury were found on the person of the girl, there were no signs of any struggle, any resistance, also from the shreds of evidence it can be shown that the girl had not been put in fear of death or hurt so the consent would be considered as free or voluntary. Also, the girl was habituated to sex so, it may be possible that she might have incited the cops. So, it was concluded and held by the Supreme Court of India that the sexual intercourse which was in question in the given case is not proved to amount to rape.

Legal Changes brought in the Indian rape law:

Due to such rationale behind the judgment, so many protests and huge public outcry took place which ultimately led to the amendment in Indian rape law. At the time when Mathura rape case did take place, the rape laws in our country were heavily biased towards rapists. The main question which was raised after this judgment was regarding the concept of consent because earlier it was so difficult for women to prove that she had not consented to any sexual intercourse. So, after the judgment of this landmark

case, the Criminal Law (Second Amendment) Act, 1983 came which brought so many changes in the Indian rape law like:

- Criminal Law (Second Amendment) Act, 1983 inserted section 114(A) in the Indian Evidence Act, 1872 which states that in a prosecution for rape where it has been already proved that the sexual intercourse by accused did take place, if the victim says that she had not consented to the sexual intercourse then Court shall presume that she did not consent as a rebuttable presumption of law.
- Section 376 of Indian Penal Code, 1860 underwent a change in which sections 376(A), 376(B), 376(C) and 376(D) were added which were further amended by Criminal Law Amendment Act, 2013.
- Act added the provision for “custodial rape” under section 376(2) of Indian Penal Code, 1860 for the offenses which take place when a victim is in the custody of the state.
- The Person liable under section 376(2) shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine.
- Act amended the idea of burden of proof which always lies on the prosecution. After the amendment, in cases of rape where sexual intercourse was already established, the burden of proof will lie on the accused.
- The Act introduced section 228A in the Indian Penal Code, 1860 which prohibits any publication regarding the identity of rape victims and any matter through which victim’s identity could be known, subsequently amended by Criminal Law Amendment Act, 2013.

So, Mathura rape case was monumental in context of both social and legal perspective which sparked huge protests and public outcry for the very first time in India for the cases of rape at a very large level and which further led to so many reforms in the Indian rape law via the Criminal Law (Second Amendment) Act, 1983.

2. Vishaka vs. State of Rajasthan and Ors., JT 1997 (7) SC 384 (Bhanwari Devi Case)

Facts of the Case:

This was a landmark case regarding the protection of women against sexual harassment at workplace. It was the incident of 1992 where a lower caste social worker for the women's development programme in Rajasthan named Bhanwari Devi who was trying to stop a child marriage in her village was allegedly gang-raped by five men of the upper-class community. She went to the police station to lodge a complaint against the offenders but no thorough investigation was launched.

Issue raised:

This landmark case raised so many questions in the context of sexual harassment which take place at a workplace. The Issue raised whether the employer has any responsibility in cases of sexual harassment by its employee or to its employees at a workplace?

What was held?

To get justice, she took her case to the Trial Court where Court acquitted the accused for the reason of lack of the medical shred of evidence and other reasons. Due to which so many women's groups and organizations went for appeal against the judgment. The result of which, a public interest litigation was filed in the Supreme Court of India on the issue of sexual harassment at the workplace. This judgment had its basis in so many international treaties which had not been adopted in the municipal law.

Supreme Court held that the sexual harassment of a woman at a workplace would be violative of her fundamental rights of gender equality and right to life and liberty under Articles 14, 15, 19 and 21 of the Indian Constitution. The court concluded that such Act would be considered as a violation of women's human rights.

Legal changes brought after the case:

After this verdict, a statutory vacuum was observed which proposed the route of judicial legislation in the context of sexual harassment at workplace. The case laid down so many guidelines and requirements which need to be fulfilled by the employer as well as other responsible persons or institutions:

- For preventing the acts of sexual harassment in the workplace, it should be the duty of the employer or any other responsible person to prescribe for procedures and settlements.
- Formation of a complaint committee at all workplaces.
- Such committee has to be headed by a woman employee only and should have NGO or third-party participation.
- Half of the members of a committee should be comprised of women only.
- All complaints regarding sexual harassment of a woman employee would be dealt by this committee only, appropriate action in this regard shall be initiated by the employers in accordance with the concerned law.
- The committee would advise and recommend to the victim for the further course of action.
- Provides for the definition of sexual harassment which includes any:

“Unwelcome sexually determined behaviour & demands from males employees at workplace, such as: any physical contacts and advances, sexually colored remarks, showing pornography, passing lewd comments or gestures, sexual demands by any

means, any rumors/talk at workplace with sexually colored remarks about a working woman, or spreading rumours about a woman's sexual relationship with anybody.”

So, these guidelines were the first of its type which created for the gender equality rights of women, which should be free from harassment in both public and private employment. This judgment led the Indian Government to enact the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 which came into force from 9 December 2013. This Act superseded the Vishaka Guidelines for prevention of sexual harassment introduced by the Supreme Court of India.

3. Mukesh & Anr. vs. State for NCT of Delhi & Ors.,

Facts of the case:

A 23-year-old trainee physiotherapist woman was brutally got raped repeatedly by five adult men and a juvenile on the night of 16th December 2012 onto a moving bus in the capital of our country. She got attacked with an iron rod due to which she had her intestines pulled out. Later, in spite of receiving all the possible treatments, she died in the hospital in Singapore.

What was held?

One accused hanged himself in the jail while other four adults were sentenced to death. A Bench of Justices Dipak Mishra, R Banumathi, and Ashok Bhushan were unanimously passed the judgment of Death penalty to all the accused except juvenile. The juvenile who was equally involved in the incident and raped the woman was convicted and sentenced to three years in a reformation center. Such an incident where

humanity is treated with irreverence, which created a shock in the collective conscience sparked nationwide revulsion and various legislative reforms in rape laws.

Aftermath:

After the incident, a panel was set up under the chairmanship of JS Verma (former Chief Justice of India) for analyzing criminal laws and to suggest all the possible amendments which can be made to enhance punishment in case of assault of extreme nature and brutality against women in criminal law. Within a month, the panel was ready with its report consisting of so many recommendations for changing India's rape laws.

As per the recommendations of the Justice Verma Committee, Criminal Law (Amendment) Act, 2013 has passed which provides for the amendment of Indian Penal Code, 1860; Code of Criminal Procedure, 1973, Indian Evidence Act, 1872 and Protection of Children from Sexual Offences Act, 2012 in relation of sexual offences related laws. Act widened the scope of rape's definition and provided for capital punishment in rape cases that cause the death of the victim or leave her in a permanent vegetative state. Act also provides for several new offenses to make laws more stringent.⁷⁸

⁷⁸ <https://blog.ipleaders.in/landmark-judgments-on-sexual-harassment/>

AMENDMENTS TO THE INDIAN PENAL CODE, 1860

| Sr No. | Provision | Pre-amendment | Post-amendment |
|-------------------|---|---|--|
| 1. | Amendment of section 354 w.r.t assault or criminal force to woman with intent to outrage her modesty. | punishment: max of 2 years or fine or both. | Punishment: of 1 year to 5 years and fine. |
| 2. | Insertion of new section 354A (Sexual Harassment and punishment for sexual harassment). | | <p>(Act of sexual harassment)</p> <p>Any Physical contact and advances involving unwelcome and explicit sexual overtures, a demand or request for sexual favors, showing pornography against the will of a woman.</p> <p>Punishment: Rigorous imprisonment of max. 3 years or fine or with both. or making sexually coloured remarks.</p> |

| | | | |
|----|--|--|---|
| | | | Punishment: Rigorous imprisonment of max. 1 year or fine or with both. |
| 3. | Insertion of new section 354B (Assault or use of criminal force to woman with intent to disrobe). | | Punishment: min of 3 years and max. Of 7 years and fine. ⁷⁹ |

Kathua Rape case 2018- The **Kathua rape case** refers to the abduction, [rape](#), and [murder](#) of an 8-year-old girl, Asifa Bano, in Rasana village near [Kathua](#) in the [Indian state](#) of [Jammu and Kashmir](#) in January 2018. A [chargesheet](#) for the case has been filed, the accused have been arrested and the trial began in Kathua on 16 April 2018.⁸⁰ The victim belonged to the [nomad Bakarwal](#) community. She disappeared for a week before her dead body was discovered by the villagers a kilometer away from the village.⁸¹ The incident made national news when charges were filed against eight men in April 2018. The arrests of the accused led to protests by the [Panthers Party](#), along with other local groups.⁸² One of the protests, in support of the accused, was attended by two ministers from the [Bharatiya Janata Party](#), both of whom have now resigned. The rape and murder, as well as the support the accused received, sparked widespread outrage.⁸³

⁷⁹ *ibid*

⁸⁰ [Jump up to: ^a ^b "Accused seek narco test as Kathua rape-and-murder trial begins - Times of India". *The Times of India*. Retrieved 2018-04-19.](#)

⁸¹ ["The brutal crime that has Kashmir on edge". *BBC News*. 12 April 2018. Retrieved 12 April 2018](#)

⁸² ["Out of Cabinet, Lal Singh goes vitriolic against CM". *The Tribune*. 18 April 2018](#)

⁸³ https://en.wikipedia.org/wiki/Kathua_rape_case

Unno Rape case 2018- The **Unnao rape case** refers to the alleged rape of a 17 year old girl on 4 June 2017. Two separate chargesheets have been filed in the case so far. The first chargesheet was filed by the [Central Bureau of Investigation](#) on 11 July 2018 naming [Kuldeep Singh Sengar](#), a [Member of the Legislative Assembly](#) of [Uttar Pradesh](#) as an accused in the alleged rape of a 17 year old girl.⁸⁴ The second chargesheet was filed on 13 July 2018 and named Kuldeep Singh Sengar and his brother, three policemen and five other people for allegedly framing the Unnao rape survivor's father.⁸⁵

The rape survivor attempted to [immolate herself](#) in front of the residence of [Yogi Adityanath](#), the [Chief Minister of Uttar Pradesh](#), on 8 April 2018. Her father died in [judicial custody](#) shortly afterwards. These incidents led to the rape being widely reported in the national media in April 2018.⁸⁶ The Unnao rape case and the [Kathua rape case](#) received national attention during the same period, leading to joint protests seeking justice for both victims⁸⁷

Aftermath of UNNO and KATHUA rape case-

On 13 April 2018, the Prime Minister of India, [Narendra Modi](#), as well as the [Supreme Court of India](#), made statements condemning the incident and said justice would be ensured.⁸⁸ [United Nations](#) Secretary-General [Antonio Guterres](#) stated that the "guilty must be held responsible" and described the incident as "horrific". The United Nations also expressed hopes that authorities will bring perpetrators to justice.⁸⁹

⁸⁴ Rashid, Omar (2018-07-11). "[Unnao gang rape case: BJP MLA Kuldeep Singh Sengar named in CBI charge sheet](#)". *The Hindu*. ISSN 0971-751X. Retrieved 2018-07-15.

⁸⁵ "[Unnao case: CBI files charge sheet against MLA, 9 others for criminal conspiracy](#)". *Hindustan Times*. 2018-07-14. Retrieved 2018-07-15.

⁸⁶ "[Unnao rape case: Here's everything you need to know](#)". *The Indian Express*. 14 April 2018. Retrieved 14 April 2018

⁸⁷ https://en.wikipedia.org/wiki/Unnao_rape_case

⁸⁸ "[Narendra Modi Breaks Silence on Kathua, Unnao Rapes, Promises Justice - The Wire](#)". *The Wire*. Retrieved 13 April 2018.

⁸⁹ Team, BS Web (13 April 2018). "[Kathua, Unnao rapes: Modi ends silence, assures 'complete justice': updates](#)". *Business Standard India*. Retrieved 13 April 2018.

A number of celebrities and prominent politicians voiced anger over the incident.⁹⁰ On 12 April 2018, a candlelight march was held at [India Gate](#), New Delhi. It was attended by [Indian National Congress](#) leaders including [Rahul Gandhi](#), [Sonia Gandhi](#), [Ghulam Nabi Azad](#), and [Priyanka Gandhi](#).⁹¹ An FIR has been filed against lawyers protesting in support of Hindu Ekta Manch.⁹² Vishnu Nandakumar, an assistant manager working for [Kotak Mahindra Bank](#) in Kerala, generated outrage on social media for condoning the rape on [Facebook](#), and stating "it is better that [Asifa is] killed now otherwise she would have been a bomb tomorrow". He was later fired by the bank.⁹³ Due to the Kathua rape case and [Unnao rape case](#) incidents coming to the limelight in the national discourse at the same time, joint protests for both the incidents were carried out together in various parts of the country such as [Mumbai](#), [Chennai](#), [Kolkata](#) and [New Delhi](#).⁹⁴

It led to Criminal Law amendment ordinance 2018 which is:

The Criminal Law Amendment Ordinance, 2018

The Criminal Law (Amendment) Ordinance, 2018 was promulgated on April 21, 2018. It amends certain laws related to rape of minors. The amendments are as follows:

- Amendments to Indian Penal Code (IPC), 1860:
- **Enhanced punishment for rape:** Under IPC, 1860, the offence of rape is punishable with a rigorous imprisonment of at least seven years up to life

⁹⁰ "[Sania Mirza's patriotism 'questioned' for speaking on Kathua gang rape case, here's her reply](#)". *Hindustan Times*. 12 April 2018. Retrieved 13 April 2018.

⁹¹ "[Kathua rape case: FIR filed against lawyers trying to block chargesheet; bar association calls for Jammu bandh today - Firstpost](#)". *www.firstpost.com*. Retrieved 14 April 2018.

⁹² *ibid*

⁹³ "[Good she was killed, says Kerala man of Kathua rape victim; case filed](#)". *The Tribune*. 14 April 2018. Retrieved 14 April 2018

⁹⁴ https://en.wikipedia.org/wiki/Kathua_rape_case

imprisonment, along with fine. The minimum imprisonment has been increased from seven years to ten years.

- New offences: The Ordinance introduces three new offences relate to rape of minors, and increases the penalty for one:
- **Table 1: New offences under the IPC, 1860**

| Age Group | Offence | Punishment |
|------------------|----------------|---|
| Below 12 years | Rape | Rigorous imprisonment of at least 20 years extendable to life imprisonment, along with fine to meet medical expenses and rehabilitation cost of the victim, <i>or</i> , death. |
| | Gang Rape | Life imprisonment, along with fine, to meet medical expenses and rehabilitation cost of the victim, <i>or</i> , death. |
| Below 16 years | Rape | Previously, the punishment for rape was imprisonment of ten years extendable to life imprisonment, along with fine. This has been enhanced to a minimum rigorous imprisonment of at least 20 years, extendable to life imprisonment, along with fine, to meet medical expenses and rehabilitation cost of victim. |

| | |
|-----------|---|
| Gang Rape | Life imprisonment, along with fine, to meet medical expenses and rehabilitation cost of victim. |
|-----------|---|

- Sources: Indian Penal Code, 1860; The Criminal Law (Amendment) Ordinance, 2018; PRS.
- Amendments to Protection of Children from Sexual Offences Act (POCSO), 2012: Under the POCSO, 2012, for rape of minors (below 18 years), the punishment is at least seven years or life imprisonment, along with a fine. For rape of minors below the age of 12 years or for gang rape of minors, the punishment is rigorous imprisonment of at least ten years or life imprisonment, along with fine. The Ordinance amends the POCSO, 2012 to state that for all such offences, the punishment which is higher between the POCSO, 2012 and IPC, 1860, will apply.
- Amendments to Code of Criminal Procedure (CrPC), 1973:
- **Time-bound investigation:** The CrPC, 1973 states that an investigation into rape of a child must be completed within three months. The Ordinance reduces the time for completion of investigation from three months to two months. Further, the Ordinance extends this timeline to all offences of rape (including rape, gang rape, and rape of minors under the age of 12 years and 16 years).

- **Appeal:** The Ordinance states that any appeal against a sentence related to rape cases must be disposed of within six months.
- **Anticipatory Bail:** The CrPC, 1973 lists conditions for grant of anticipatory bail. The Ordinance makes the provision of anticipatory bail not applicable to rape and gang rape of minor girls below 12 years of age and below 16 years of age.
- **Compensation:** The CrPC, 1973 provides that all rape victims will be given free medical treatment and compensation by state government. This provision has been extended to cover rape and gang rape of minor girls below 12 years and below 16 years of age.
- **Prior sanction:** The CrPC, 1973 states that prior sanction is required for prosecution of all public servants, except for certain offences, like rape. This provision has been extended to cover rape and gang rape of minor girls below 12 years and below 16 years of age.

Amendments to Indian Evidence Act, 1872: Under the Evidence Act, in determining whether the act was consensual or not, the past sexual experience or character of the victim is disregarded. This provision has been extended to the rape and gang rape of minor girls below 12 years of age and below 16 years of age⁹⁵.

⁹⁵ <http://www.prsindia.org/billtrack/the-criminal-law-amendment-ordinance-2018-5232/>

Chapter V

Conclusion and Suggestion

The researcher at the earlier developed the hypothesis that:

Whether judiciary is sensitive towards rape victim?

In some states compensation is awarded to rape victim but some don't. As by Criminal law amendment act 2008, Criminal procedure code was amended and section 357 A was added to which is Victim Compensation Scheme which gives directives to every state to make compensation scheme still there is no uniform victim compensation scheme; State legal service authority decide the compensation amount.

In many cases judiciary has played their role very well in awarding compensation to rape victim. The High Court has played an appreciable role in awarding compensation as to ensure justice to a woman even in the case the accused was not convicted. But still there are many cases where compensation is not awarded to victim. There should be speedy justice that the rape victim doesn't suffer the trauma for a long time and victim should be made a party to the proceeding and the meaning of 'access to justice' should not be 'access to injustice'.

In the opinion of researcher rape is the most cruel and traumatizing act so judiciary should try to be sensitive with the rape victim and should make every effort so that secondary victimization of rape victim is not done by medical institution, society, police and other.

Now the researcher explains the answer of research question on the basis of above research study.

The first research question is: **To identify the causes of victimization?**

Rape is one of the most heinous crimes against mankind. No other crime includes all the costs i.e. transaction cost + social cost + psychological cost in one. A victim of rape suffers social stigma as well as psychological trauma. Primarily the rape victim is victimized by the offence of rape. Secondary victimization of rape victim is done by the institute and society; police, medical hospitalities, attitude of individual like family and friends; which is termed as “second rape” which causes mental trauma as this is the stage where victim need assistance. Society itself re-rape the rape victim by the abuse of power. In the criminal procedure, role of victim is not as much as victim have substantial interest of participating in criminal proceedings. The phrase “Access to Justice” generally means individual who has suffered harm or his legal heir get convenient justice. The neglecting effect by the institution changed the meaning of phrase “Access to justice” into “Access to Injustice”.

The second research question is, to: **Study the victimological dimensions of rape?**

For every crime committed, there are at least two victims: society, which suffers a violation of its laws, and the actual victim who suffers an injury to body or property. The former regards a criminal act as essentially disturbing the equilibrium of social order and harmony and therefore takes on it the responsibility of restoring peace by punishing the criminal and/or reforming him. It, therefore, occupies the center stage in the criminal justice system. The second victim, the ‘principal affected’ in terms of loss of life or limb or property, is relegated to a secondary status with little or no role to play in the complex process of dispensation of justice. He is merely transformed to a witness to watch the entire play being enacted by the accused and the State as the protagonists.

Victim is a forgotten party to the Criminal Justice System. While the entire focus of the law is on the offender, to protect his rights, to punish him and thereby bring

about his reformation and rehabilitation, with all the resources and goodwill available through courts and other agencies, the victim, more often, is left to fend for himself with little or no assistance coming his way. The violation of his rights, the invasion of his dignity, the actual losses incurred by him do not constitute matters of concern for anyone but himself. Strange, but true, justice fails to redress the wrong perpetrated by the offender on the victim; on the contrary, it aggravates the injustice by focusing solely on the offender, sidelining the victim's minimum needs and requirements.

This apathy of the system towards the victims of crime attracted the attention of intellectuals. They argued that the distancing of the victims from the system has vexed them; it has destroyed their belief in the efficacy of the same. "The victims themselves have become increasingly dissatisfied with a process that denies them a prominent role in bringing the accused offender to justice. They show their dissatisfaction by removing themselves from the system: they fail to report crimes; they fail to appear in court...Victim withdrawal from the criminal justice process creates a public impression that the system is inefficient and unresponsive, and thus exponentially increases the likelihood that more victims will be deterred from reporting crimes and testifying in court" Efforts were therefore on to modify the criminal justice system so as to integrate the victim as a part of the system.

Andrew Karmen⁹⁶ broadly defined victimology as:

"The scientific study of victimization, including the relationships between victims and offenders, the interactions between victims and the criminal justice system — that is, the police and courts, and corrections officials — and the connections between victims

⁹⁶ Andrew Karmen, *Crime Victims: An Introduction to Victimology* (Wadsworth Publishing Company, 1990).

and other societal groups and institutions, such as the media, businesses, and social movements."

From this definition, we see that victimology encompasses the study of:

- victimization
- victim-offender relationships
- victim-criminal justice system relationships
- victims and the media
- victims and the costs of crime
- victims and social movements

The third research question is: **To study the judicial approach concerning rape?**

2018 witnessed a new awakening so far as victims of rape are concerned. The judiciary seemed to have realized the fact that the victim is an integral part of the criminal justice system; it is she who suffers most and therefore, her cry for justice must be adequately met, not by merely punishing the accused, but by compensating her, to enable her to start life afresh.

Landmark Judgement By Supreme Court-

Tuka Ram And Anr vs State of Maharashtra, AIR 1979 SC 185 (Mathura Case)-

In Mathura rape case, a young tribal girl named Mathura was allegedly raped by two policemen while she was in custody. It was the incident of custodial rape, took place on March 26th, 1972, where the girl was raped in Desai Gunj Police Station in Maharashtra.

Issues raised:

This case raised so many issues in the context of Indian rape laws that were earlier existed in prevalent Criminal law like the issue of consent, the question of burden of proof, the reference to two-finger test and the reference to the girl's sexual history.

What was held?

Sessions Court passed the judgment in favor of defendants and held them not guilty. It was held that Mathura gave her consent voluntary as she was habituated to sexual intercourse. Learned Sessions Judge found that there was a major difference between "sexual intercourse" and "rape" so, it was a case of sexual intercourse in which she had consented voluntarily and not rape. Thus, Case was further appealed in the Bombay High Court which took note of all the findings arrived during the trial in Sessions Court. High Court appreciated the observation given by the learned Sessions Judge that there is a major difference between sexual intercourse and rape but they forgot to observe that there is a world of difference between "consent" and "passive submission". On the ground of such observations, the court held that the defendants were guilty of rape and the consent given was not voluntary and it was due to serious threats by policemen. It was held that:

“Mere passive or helpless surrender of the body and its reignites to the other's lust induced by threats or fear cannot be equated with the desire or will, nor can furnish an answer by the mere fact that the sexual act was not in opposition to such desire or volition.”

Later, the case went to the Supreme Court, where court acquitted the accused and set aside the judgment passed by the Bombay High Court. The Court stated that no marks of injury were found on the person of the girl, there were no signs of any struggle, any resistance, also from the shreds of evidence it can be shown that the girl had not been put in fear of death or hurt so the consent would be considered as free or voluntary.

Also, the girl was habituated to sex so, it may be possible that she might have incited the cops. So, it was concluded and held by the Supreme Court of India that the sexual intercourse which was in question in the given case is not proved to amount to rape.

Legal Changes brought in the Indian rape law:

Due to such rationale behind the judgment, so many protests and huge public outcry took place which ultimately led to the amendment in Indian rape law. At the time when Mathura rape case did take place, the rape laws in our country were heavily biased towards rapists. The main question which was raised after this judgment was regarding the concept of consent because earlier it was so difficult for women to prove that she had not consented to any sexual intercourse. So, after the judgment of this landmark case, the Criminal Law (Second Amendment) Act, 1983 came which brought so many changes in the Indian rape law like:

- Criminal Law (Second Amendment) Act, 1983 inserted section 114(A) in the Indian Evidence Act, 1872 which states that in a prosecution for rape where it has been already proved that the sexual intercourse by accused did take place, if the victim says that she had not consented to the sexual intercourse then Court shall presume that she did not consent as a rebuttable presumption of law.
- Section 376 of Indian Penal Code, 1860 underwent a change in which sections 376(A), 376(B), 376(C) and 376(D) were added which were further amended by Criminal Law Amendment Act, 2013.
- Act added the provision for “custodial rape” under section 376(2) of Indian Penal Code, 1860 for the offenses which take place when a victim is in the custody of the state.

- The Person liable under section 376(2) shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine.
- Act amended the idea of burden of proof which always lies on the prosecution. After the amendment, in cases of rape where sexual intercourse was already established, the burden of proof will lie on the accused.
- The Act introduced section 228A in the Indian Penal Code, 1860 which prohibits any publication regarding the identity of rape victims and any matter through which victim's identity could be known, subsequently amended by Criminal Law Amendment Act, 2013.

So, Mathura rape case was monumental in context of both social and legal perspective which sparked huge protests and public outcry for the very first time in India for the cases of rape at a very large level and which further led to so many reforms in the Indian rape law via the Criminal Law (Second Amendment) Act, 1983.

Vishaka vs. State of Rajasthan and Ors., JT 1997 (7) SC 384 (Bhanwari Devi Case)- This was a landmark case regarding the protection of women against sexual harassment at workplace. It was the incident of 1992 where a lower caste social worker for the women's development programme in Rajasthan named Bhanwari Devi who was trying to stop a child marriage in her village was allegedly gang-raped by five men of the upper-class community. She went to the police station to lodge a complaint against the offenders but no thorough investigation was launched.

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This landmark case raised so many questions in the context of sexual harassment which take place at a workplace. The Issue raised whether the employer has any responsibility in cases of sexual harassment by its employee or to its employees at a workplace?

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To get justice, she took her case to the Trial Court where Court acquitted the accused for the reason of lack of the medical shred of evidence and other reasons. Due to which so many women's groups and organizations went for appeal against the judgment. The result of which, a public interest litigation was filed in the Supreme Court of India on the issue of sexual harassment at the workplace. This judgment had its basis in so many international treaties which had not been adopted in the municipal law.

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- The committee would advise and recommend to the victim for the further course of action.
- Provides for the definition of sexual harassment which includes any:

“Unwelcome sexually determined behaviour & demands from males employees at workplace, such as: any physical contacts and advances, sexually colored remarks, showing pornography, passing lewd comments or gestures, sexual demands by any means, any rumors/talk at workplace with sexually colored remarks about a working woman, or spreading rumours about a woman’s sexual relationship with anybody.”

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Aftermath:

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Unno and Kathua rape case- Minor girl was gang raped and killed and it led to massive protest in the country. Finally Prime Minister Narendra Modi passed Criminal

⁹⁷ <https://blog.ipleaders.in/landmark-judgments-on-sexual-harassment/>

Law Amendment ordinance 2018 and laid down 20 years of punishment and lifetime punishment for rape with a minor girl.

Suggestion- The whole research study resulted in many flaws in the system and legislation and here are few suggestions for it.

1. There should be a uniform compensation scheme throughout India.
2. Marital rape should be recognized in law.
3. The law should provide reason for providing and not providing the compensation to the rape victim.
4. There should be a gender-neutral approach as to the victim of rape.

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Annexure I

Criminal law Amendment Act 2018 further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012.

The ordinance providing the death penalty to rapist of girls below 12 years age and others. The Criminal Law amendment ordinance 2018 amend Indian penal code, Indian evidence act and Protection of children from sexual offences.

Salient features of the ordinance:

- Minimum punishment for rape has been made 10 years.
- Minimum punishment of 20 years to a person committing rape with a girl below 16 years of age.
- Minimum punishment of 20 years to a person committing rape with a girl below 12 years of age.
- Fine imposed should be just and reasonable for the rehabilitation of rape victim.
- Police officer committing rape anywhere shall be awarded minimum 10 years rigorous imprisonment.
- No anticipatory bail will be granted to a person accused of rape of a girl below 16 years of age.
- Appeal in rape cases to be disposed of in six months.

Amendment to IPC Section 376 IPC

- Minimum Punishment for Rape has been made Ten Years. It was Seven Years earlier. The Maximum punishment remains the same, i.e. Life imprisonment.
- A new clause (3) has been added to Section 376, which prescribes the Minimum punishment of twenty years to a person committing rape on a woman under Sixteen years of Age.
- No Anticipatory bail can be granted to a person accused of rape of girls of age less than sixteen years.

- New Sub Section has been added to Section 439 which mandates presence of informant or any person authorized by him at the time of hearing application for bail to a person accused of rape of girls of age less than sixteen years.

Amendment to POCSO Act and Evidence Act

Section 42 of the POCSO Act has been also amended to include newly inserted IPC provisions section 376AB, section 376DA, and section 376DB. Section 53A of the Evidence Act that deals with evidence of character or previous sexual experience not relevant in certain cases and Section 146 of the Act that deals with evidence of character or previous sexual experience not relevant in certain cases, has also been amended to include newly inserted IPC provisions section 376AB, section 376DA, section 376DB.

AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1973

Amendment of section 26

In the Code of Criminal Procedure, 1973 (hereafter in this Chapter referred to as the Code of Criminal Procedure), in section 26, in clause (a), in the proviso, for the words, figures and letters "section 376A, section 376B, section 3750. section 376D", the words, figures and letters "section 376A, section 376AB, section 37613, section 376C, section 376D, section 376DA, section 376DB" shall be substituted.

Amendment of section 154.

In section 154 of the Code of Criminal Procedure, in sub-section (1),- (i) in the first proviso, for the words, figures and letters "section 376A, section 376B, section 3760, section 376D,", the words, figures and letters "section 376A, section

37.6AB, section 37613, section 376C, section 376D, section 376DA, section 376DB," shall be substituted;

(ii) in the second proviso, in clause (a), for the words, figures and letters "section 376A, section 376B, section 3760, section 376D,", the words, figures and letters "section 376A, section 376AB, section 376B, section 3760, section 376D, section 376DA, section 376DB," shall be substituted.

In section 161 of the Code of Criminal Procedure, in sub-section (3), in the second proviso, for the words, figures and letters "section 376A, section 376B, section 376C, section 376D,", the words, figures and Letters "section 376A, section 376AB, section 37611, section 376C, section 376D, section 376DA, section 3761313," shall be substituted.

In section 164 of the Code of Criminal Procedure, in sub-section (5A), in clause (a), for the words, figures and letters "section 376A, section 376B, section 376C, section 376D,", the words, figures and letters "section 376A, section 376AB, section 376B, section 3760. section 376D, section 376DA, section 376D8," shall be substituted.

In section 173 of the Code of Criminal Procedure,

(i) in sub-section (1A), for the words "rape of a child may be completed within three months", the words, figures and letters "an offence under sections 376, 376A, 376AB, 3768, 376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code shall be completed within two months" shall be substituted;

(ii) in sub-section (2), in clause (i), in sub-clause (h), for the figures, letters and word "376A, 376B, 376C, section 376D", the figures and letters "376A, 376AB, 37613, 376C, 37613, 376DA, 376DB" shall be substituted.

In section 197 of the Code of Criminal Procedure, in sub-section (1), in the Explanation, for the words, figures and letters "section 376A, section 376C, section

376D", the words, figures and letters "section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB" shall be substituted.

In section 309 of the Code of Criminal Procedure, in sub-section (1), in the proviso, for the words, figures and letters section 309, "section 376A, section 376B, section 376C: or section 37613 of the Indian Penal Code, the inquiry or trial shall, as far as possible", the words, figures and letters "section 376A, section 3 76AB, section 376B, section 376C, section 376D, section 376DA or section 376DB of the Indian Penal Code, the inquiry or trial shall" shall be substituted.

In section 327 of the Code of Criminal Procedure, in sub-section (2), for the words, figures and letters "section 376A, section 376B, section 376C, section 376D", the words, figures and letters "section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB" shall be substituted.

Amendment to section 357B

In section 357B of the Code of Criminal. Procedure, for the words, figures and letters "under section 326A or section 376E1 of the Indian Penal Code", the words, figures and letters 'under section 326A, section 376AB, section 3761 , section 376DA and section 376DB of the Indian Penal Code" shall be substituted.

Amendment to section 357C

In section 357C of the Code of Criminal Procedure, for the figures and letters "376A, 376B, 376C, 376D", the figures and letters "376A, 376AB, 376B, 376C, 376D, 376DA. 376DB" shall be substituted.

Amendment of section 374

In section 374 of the Code of Criminal Procedure, after sub-section (3), the following sub-section shall be inserted, namely:-(4) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 3760, section 376D, section 376DA, section 376DB or section 376E of the 'Indian Penal Code, the appeal shall be disposed of within a period of six months from the date of filing of such appeal."

Amendment of section 377

In section 377 of the Code of Criminal Procedure, after sub-section (2), the following sub-section shall be inserted, namely:-

"(3) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code, the appeal shall be disposed of within a period of six months from the date of filing of such appeal.

Amendment of section 438

In section 438 of the Code of Criminal Procedure, after sub-section (3), the following sub-section shall be inserted, namely:-

"(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA and section 376DB of the Indian Penal Code."

Amendment of section 439

In section 439 of the Code of Criminal Procedure,-(a) in sub-section (1). after the first proviso, the following proviso shall be inserted, namely:-

"Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.";

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376A or section 376DA or section 376DB of the Indian Penal Code."

In the First Schedule to the Code of Criminal Procedure, under the heading -I.- OFFENCES UNDER THE INDIAN PENAL CODE" -

- Against section 376-

(i) for the entry under column 3, the following entries shall be substituted, namely:-

| 1 | 2 | 3 | 4 | 5 | 6 |
|---|---|---|---|---|---|
| | | "Rigorous imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine" | | | |

(ii) The following entries shall be inserted at the end, namely:-

| 1 | 2 | 3 | 4 | 5 | 6 |
|---|---|---|------------|--------------|------------------|
| | "Persons committing offence of women under sixteen years of age | Rigorous imprisonment for a term which shall not be less than 20 years but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and with fine | Cognizable | Non-bailable | Court of Session |

(b) alter the entries relating to Section 376A, the following entries shall be interested, namely: -

| 1 | 2 | 3 | 4 | 5 | 6 |
|--------|--|--|------------|--------------|------------------|
| "376AB | "Persons committing offence of women under twelve years of age | Rigorous imprisonment of not less than 20 years but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and with fine or with death | Cognizable | Non-bailable | Court of Session |

(c) after the entries relating to section 376D, the following entries shall be inserted, namely:-

| 1 | 2 | 3 | 4 | 5 | 6 |
|---|---|---|---|---|---|
| | | | | | |

| | | | | | |
|--------|--|---|------------|--------------|------------------|
| "376D | Gangrape on a woman under sixteen years of age | Rigorous imprisonment of life which shall mean imprisonment for the remainder of that person's natural life and with fine | Cognizable | Non-bailable | Court of Session |
| 1 | 2 | 3 | 4 | 5 | 6 |
| "376DB | Gangrape on a woman under twelve years of age | Imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine or with death | Cognizable | Non-bailable | Court of Session |

CHAPTER V AMENDMENT TO THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 24. In section 42 of the Protection of Children from Sexual Offences Act, 2012, for the figures and letters "376A, 376C, 376D", the figures and letters "376A, 376AB, 376B, 376C, 376D, 376DA, 376DB" shall be substituted.