Chapter – VII

CONCLUSION AND SUGGESTIONS
Whenever, a sexual intercourse is forcibly done by a man with a woman or with a minor or married and unmarried female against her will or without her consent, it is known as the offence of 'rape.' A rapist not only violates the victim's privacy but also her personality and such person does not deserve any sympathy. It is a serious blow to her supreme honour and dignity, the honour of a woman has to be protected. This is the general sense of the society. It is an irony that while we are celebrating woman's right in all spheres we show little or no concern for her honour, it is a sad reflection on the attitude of indifference of society towards the violation. We must remember that a rapist inevitably causes serious psychological as well as physical harm towards the victim. Rape is not merely a physical assault it is often destruction of the whole personality of the victim. A murder destroys the physical body of the victim, a rapist degrades the very soul of the helpless female along with the peace of the society at large. It is the difference in the physical construction and capacity between man and females, the females are generally of tender and delicate body and of very shy nature who are kept in the strict discipline since their childhood. They are taught the lessons of religion and normality by their guardian specially regarding the character and harassment of women in outside the purview of our society, on the other hand, man are physically solid and sound, they can not only express their sex desire and even fulfill in whenever they get suitable opportunity for the same.

The crime of rape has been known to us through all ages of our civilization. It is as old as our civilization. The truth of this observation can still be verified when we come in close contact with the races of mankind. In Indian History women molestation is not a new concept in olden days God and Goddesses were indulging in Raslila in the form of entertainment and refreshment. In these way they wanted to gratify their sexual impulse with the beautiful ladies (Apsara) while
they perform their programme through dancing and singing and they were in between sexually teased with physical touching and sexual remarks towards their acting and sexual emotions. The woman who were molested by the man at olden time known by different names like:- Tawaif, Randi, Kanachani, Devdassi etc. They were sexually assaulted in the form of Rape. They were indulging due to poverty, custom, helplessness or under compulsion and duress. Due to poverty and ritual ceremony parents were dedicate their daughters to the God and Emperors in order to live according to the wishes and desire of their Rules to fulfil the illegal sexual impulse and passion.

Sex is a natural call as it is a universal phenomena and nobody can stop sexual desire. In modern days, fashion, style of living, obscene songs and acts, adult film and also tendency of adopting the western culture in night clubs, beauty parlours, dance floors etc. are lowering down the morality and ethical norms among the people in which a number of college student and girl run away from their homes in the influence of obscene and yellow cheap literature which encourage them to lead loose and heavenly life. Sex criminals sometimes commit other illegal acts like kidnapping. Attempt to commit suicide etc. and any obstruction is created in their satisfaction of their lust, they do so in unlawful manner. The quantum of punishment prescribed in Indian penal code in not fixed. It depends upon the nature, habit or character of the accused and the different circumstances of cases. While awarding punishment for their offence all these factors are taken into consideration by the court. There can hardly be a society in which these types of offences are not committed. At present, the commission of crime is not placed on the shoulder of criminal but it is examined with reference to the social economic and environmental condition of the criminal. Elements of immorality and harmful nature of the act are generally found in the offence of rape. Sexual offence reflects the inner feelings and external behaviour of man because it is directed by various feelings like hate, greed, jealousy, love affection etc. When the rape is committed it is not only causes injuries or damages to the victim but also creates fear in the society. Human being is a social animal, he cannot survive
without society as such in order to live properly he owes some duties and responsibilities towards his family as well as towards society, the reason is that society is nothing but a collective form of people and the criminal comes out from such people. Methods of communication and entertainment like press, radio, television, cinema etc. have great significance in today's world. The stories of the most of the pictures are based on ‘Sex and Crime’ to gain more and more money and cheap popularity. The news of rape cases, published in news papers in a very interesting manner create sex instincts and excites to attract other to do sex crimes. The heroine of the film and extras are shown in very attractive and sexy dresses and also the advertisements shown in T.V. Television programmes based on the story of crimes, murder, rape, dacoity in which sexy scene and rape scenes in pictures attracts people to commit sex crimes. Now a days, minor children and major students of different fields also take advantage by seeing ‘A’ graded pictures in the Cinema Halls. By reading yellow pages which is made of obscene and vulgar stories are also down loaded through internet sites in computer, CD’s, E-mail, SMS, Cable channels, Mobile with camera and latest options which is available to present generation in the form of entertainment of common mass in which they develop unhealthy thoughts in their mind, thinking and act of the people to create criminal feelings. Some of them adopt the criminal path only after knowing the above methods. Western culture has totally spoiled the ancient culture of India. New generation of India is totally with few exception, is under the influence of western thinking, living and culture. The effect of this culture is seen in the increase of fashion. Love marriages and divorce cases, drinking, smoking, half nude dresses of women in high socio-economic societies in India is the effect of western culture. The norms of morality like simple living, honesty and good character is becoming a bookish record because of modernization, development has ruined the ambitions and living standard of people in which our moral values become downgraded. The methods and techniques of committing crime is changing very rapidly. Sexual intercourses is a lust or sexual desire it has no eyes, it can be born or develop anywhere at any time. It is a desire of fulfillment of.
sexual satisfaction. Sexual intercourses or rape is more serious as compared with other sex crimes like, adultery, incest, homosexuality, abortion, unnatural intercourse. Sex relation of wife and husband duly married are well recognised by the society but sometimes married women of spoiled character keep relations with other persons to enjoy sex. The illegal sex relations are developed between some male and female members of family. They befool their family members and enjoy sex pleasure whenever they got suitable opportunity. When a victim of rape goes to police authorities she further humiliated by the Police during the story or incident of rape in the form of investigation and further during medical examination. During criminal proceeding in the court victim is further harassed by the defence lawyer by putting cross questions on their part and sometimes by irrelevant questions like have you ever enjoyed sexual intercourses before the rape, to whom, legal or illegal etc.

In Indian society crime against women is not only limited to being a social problem but more and more it is being taken into difficulty by our legal policies & law related to the safety for women in our culture. Rape is the serious blow and hurt to the victim privacy in which their personality become downgraded in the eyes of than known persons and in society she resides. At this negative stage the victim of Rape far helpless to then private rights which have a great meaning and value in the society having internal respect towards their future aspects and victims faith on the other persons. In our modern life we feel happy by using the luxurious items in order to show the status in their living mode in different manner on the other it will be negative on the woman part. Every where there is two aspects of quality on the same track and platform in which positive aspect create a message other and highly appreciated by the society but in negative aspect the same thing in misused and molested with special reference to woman's which is available to discriminate in the form of sexual harassment on the account of several social barriers and obstacles. Women’s position is in hands of merciless wrong doers who is recognised by the society for the safety and precautions to the victim. Sex-impulse is one of the most primitive impulses of not only for human beings, which
one assume as the most civilized animal, but also for all creatures. It is as old as “Creation” itself. Even God and goddesses are not free from such impulses. The study of Vedic and Puranas depicts that sex is pleasure or a game among the people at that time. Pramours and concubines abounds in the society. The love charm are designed to win the love of person of the opposite sex or to restore lost love. In Rigveda it contains incestuous overtures of the sister to her brother reflects the social aspect of the time, incestuous relation between father and the daughter and also refers to the illicit sexual relation between brother and sister. This has given a proof that our ancient society was not free from sexual crime against woman. It has been pointed out that human beings are not only virtuous but also adorned vices.

Rape is the act of sexual intercourse which is committed upon the force towards a woman to have sexual intercourse. There are six situations in which rape can be said to have been committed. There was no sexual intercourse against her will, therefore, no sexual intercourse without her consent. No sexual intercourse with her consent which was obtained by putting her in fear of death or of hurt and all the evidence shows that she was not un-willing for the sexual intercourse. In a case rape of blind give of absence of violence or stiff resistance may even suggest helpless surrender due to sheer timidly and would not amount to consent. To constitute rape there must be some penetration of the female genital track by the penis and if there is no penetration by the penis, then the charge of rape is not brought out.

Section 375 of Indian Penal Code defines rape as under:-

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

1. Rigveda: Acharaya Charak.
3. Rabinarayan Das v/s State, 1992(1)Crimes 462 (Orissa).
First – Against her will

The faculty of conscious reacted in negative attitude repulsing the act of others. A sort of opposite in nature, contrary direction to the positive decision of the attacker, aggressor or accused rather a negative attitude by victim against the positive attitude of the accused. Referring the first clause “Against the Will”, the phraseology has never been defined by the Act, except to assume the meaning there from after taking the meaning of “Will” and against”, where will is the faculty of conscious and particularly of deliberate action, the power of control of mind over its own action or proper exercise of one’s volition in making a decision. The word “will” literally means power of choosing or determining, volition or determining or choice and the expression. “Against the will” as appended u/s 375 IPC firstly refers to a woman (who is) in full sense or full possession of her sense and reason or who in other words, is fully conscious normal and reasoning accompanied with deliberation, after mind has weighed, as in a balance, the good and evil on each side, with the existing capacity and power to withdraw the assents according to one’s will or pleasure⁴ where the prosecutrix protested vehemently against the out-rageous demand but, under pressure from victim’s (own) husband, the victim was induced to surrender her charity to the accused and almost died immediately after the offence, the vehement protest to her husband’s doman to surrender before the accused would fall under the clause first of S. 376 IPC - Against the Will. In a case the witnesses having been attracted by the cries of the ravished woman and she having shortly afterwards thrown herself into the Well out of shame, and her demeanour on hearing her cries came back and plunged into the Well and rescued her. The complainant was of higher caste in the social status and the family could not persuade the daughter to come forward and destroy her reputation and prospects of getting husband by bringing false accusation of rape against the demeanour. Court after hearing these witnesses came to conclusion that “the feeling of shame so overcome her that she threw herself in (the Well to

commit suicide). The act of accused was against her Will and she was not a willing party to the act held by the court. A lone house of one room set was located near a football playground. A match being played on that ground, and accused was witnessing the match, a twelve years old girl was also witnessing the match when accused lured her into the house on the pretext of giving a sweet to her. When she entered the house, accused closed the door and removed his underwear and that of the prosecutrix, and slept over her and had sexual intercourse with her. She resisted and told him to get away and as she started crying and shouting accused gagged her mouth with hands. She was let out after the act was over. The resistance afforded by and her cry before she was gagged amounts to unwillingness to the act and falls under the phraseology of against the will of the girl. Where two victims were dragged by four accused in front of three witnesses, when objected to by the witness the four accused shown daggers, then the two girls were separately dragged in different direction and forcibly raped by the accused, the act of the accused amounts to the act against the will of girl. But every act done against the will of a person; no doubt, is done without her consent; but an act done "without her consent" of a person is not necessarily against her Will which expression imports that the act is done in spite of the opposition of the person to the doing of it. A victim's struggle and protest against the offenders clearly proves commission of rape against her was against her will. Therefore clause firstly of section 375 IPC- Against her will evidently intended to refer a fully conscious normal person, one who is in full possession of her sense and reason and is capable of exercising her own volition. The terms Will and consent would ordinarily refer to the same act of the mind. They are both functions of volition, but as the term consent is susceptible of some variation in construction, and may include a subsequent consent which the word 'Will' necessarily exclude, the legislature has

5. 1904(1) Cri. L.J.R. 900: King Emperor v/s Patta Kala (SC 337-1903-04).
8. AIR 1933 Rangoon 98 : 34 CrL J. 698 : Khalilur Rehman Vs. State. 1859 : 1859(8) Cox CC 131 :- R Vs. Fletcher
though fit to couple it with the word ‘Will’ which is that faculty or power of the mind by which we determine either to do or not to do something. It implies consciousness, cognition and mental determination\textsuperscript{10}. But such conscious cognition and mental determination will not be able to determine in case of a child of age 2 to 5 or 6 years. When such a child is raped by rapist and pedophilic (pedophilia), the minor and tender age victims are not expected to know about the sexual intercourse and its consequences\textsuperscript{11}. The barbarous act of rape committed against such innocent and tender aged minors who are not expected to know good or bad consequences of sexual intercourse is totally against her will where such conscious cognition and mental determination does not come to play at all. A person who ravished a woman while she is asleep is therefore unconscious and having sexual carnage knowledge with her would fall under the category of against her Will—therefore he would be guilty of rape, though she on waking up may consent to the act already consummated. It could be in the same stage where a consent is obtained when she was in the state of insensibility from liquor or otherwise of which the accused was aware of, which, in fact was administered by him with the object of exciting her\textsuperscript{12}. But the Penal Code draws distinction between an act done “against the Will” of a person and an act done without the consent\textsuperscript{13} of a person. In view to this distinction between the two phraseology “against the Will” and “without the consent”, Section 90 IPC helps us in distinguishing the two concepts therefore “every act done against the Will” of a person is an act of doing a thing or an act done with out his consent, but an act done “without the consent of a person is not necessarily done against his Will, which expression imports that the act is done in spite of the opposition of the person to the doing of it.\textsuperscript{13} While the term “Will” refers to the previous or concurrent consent, the second clause-without the consent—may include also a subsequent consent. There may, moreover, arise a case where

\textsuperscript{10} Penel law of India by Dr. H.S. Gaur P. 3227.
\textsuperscript{11} 1992 JCC 17 (Delhi) : Partap Singh Vs. State.
\textsuperscript{13} AIR 1933 Rangoon 98: 34 Cri. L.J. 698: Khalitur v/s Emperor.
the consent may not be vitiated by any of the reasons contemplated in Section 90 of the Penal Code still the act may be rape, because it was against the Will of a woman ravished.\textsuperscript{14} Rape of tender aged person between 2 months to 7 years old would amount to rape against her will while rape of girl between 7 to 8 years to above but below 16 years would amount to rape against her will and as well as without the consent of the victim, in view of Section 375, 376, sixthly for with or without consent is immaterial in case of the girl below 16 years of age. I have classified it considering present sexual knowledge of girls of 8 years and above at urban and rural areas of present century. An 18 years old girl was referred to a magnetic therapeutic treatment for her health. She visits him daily for days together. Four-and-half month afterwards she discovered that she was pregnant on which she complained to the authorities against the magnetiser. She was medically examined and the medical inspector was satisfied that the period of pregnancy as complained did falls within the period of therapeutic treatment. The reports include that a person in magnetic sleep is insensible to every kind of torture and sexual intercourse might have taken place with the young woman without the participation of her Will and without her being conscious of the act and consequently, without her being able to resist the act consummated on her (Tylor's jurisprudence-447)\textsuperscript{15}. The fact will be entirely different if the act of crime or the offence is committed against a tender age of those who fall within one years to seven years, even according to IPC, the age is 16 years below, where they are not expected to understand the consequences of sexual intercourse, of course due to environmental factor, in some category those who are between 12 to 16 years of age are able to understand, due to biological teaching in the school still they are quite immature to understand the perfect result of sexual intercourse. Hence the age prescribed by legislation is to protect those classes from such sexual crime. In this view the other enactments related to the age of prosecutrix also have taken into consideration. Thus the age prescribed by the Penal Code and consent as

\textsuperscript{14} Penal Code Dr. H.S. Gaur P.3228.
\textsuperscript{15} Penal Code Dr. M.S. Gaur P.3228.
defined under section 90 IPC are not a mere one but after taking into consideration of Indian Society. Hence when rape is committed against a under age and below 16 years of age, the consent becomes immaterial. Section 375 clause sixthly says that a man is said to commit rape who except in the case hereinafter excepted, has sexual intercourse with a woman "with or without her consent, when she is under 16 years of age. The question of consent is immaterial where the age of the victim girl is below 16 years of age\textsuperscript{16} so also a woman who is asleep cannot give consent\textsuperscript{17} for a consent must be free and willing and if she consents and willing partner prior to penetration, no matter how tardily and reluctantly, the act is not a rape.\textsuperscript{18} Where the prosecutrix went out to ease herself out a little after dark one night when the accused came up to her and one of them put his hand on her mouth and other threatened her with knife. She was then taken to the house of one of the accused in a neighbouring village and kept there for some time. She was after that, taken by the two men to another place where the accused raped her. The medical evidence given by the Civil Surgeon who examined her was that there was no sign of recent injury on her private parts and that she was used to sexual intercourse, in the circumstances, High Court held that: "even if it be taken that the appellants did have intercourse with the girl, there is nothing to support her allegation that they did so against her Will, and it is at least possible that she was a consenting party. If, of course, it were certainly proved that she was at the time under the age of fourteen, her consent would have been immaterial, but she was over sixteen, as court has held on the basis of the medical evidence, that she may have been, the appellant would not have been guilty of the rape by the mere fact of having sexual intercourse with her. In the absence of any corroborative evidence that the appellants had sexual intercourse with the girl, and that if they did so, the intercourse was without her consent, the appellants ought not to have been

\textsuperscript{17} 12 Cox 311 (Mayers) reposted in Penal Code RV Ragu-P. 991.
\textsuperscript{18} 1973 Cri. L.J. 824 : Jainail Singh Vs. State Rajasthan.
Secondly— Without her Consent

Every act done "against the will" of a woman, is done "without her consent" but an act done "without the consent" of a woman is not necessarily "against her will". The expression against her will imports that the act is done inspite of the opposition of the woman to the doing of it. Consent is generally inferred from the attendant circumstances of the case. Where the girl was taken to the forest and was kept throughout the night it suggest that she was not a consenting party. Where the occurrence took place in open field in broad daylight and the victim suffered injuries on her body, it was held that there was no consent. The word consent has not been defined by the Penal Code but its meaning has been gathered from the facts and circumstances of the commission of the offence. Under Civil Law-Consent has been defined and it says that where "two or more persons are said to consent when they agree upon the same thing in the same sense. The Law further defined "free consent" as where a consent is said to be free when it is not caused by coercion, undue influence, fraud misrepresentation and mistakes. While dictionary meaning of consent is to agree in sentiment, permit or approve, acquiescence. Consent is an act of reason, accompanied with deliberation, the mind weighing, as a balance, the good and evil on each side. Therefore you can not consent to a thing unless you have knowledge of it. It is an agreement of opinion on the part of all concerned. The Crux question of consent is by far the most important in the case of offence like rape. Such consent may be express or implied. Where it is an express consent, the case "till be seldom taken to the court. If it is taken to the court it will have to consider if such consent was likely to have been given by the prosecutrix. Excepting, of course, the case of prostitute and others mercenaries women are seldom prone to translate their

20. Babu v/s State 1984 Cri. L.J. 74 (Raj)
thoughts in these matters into words. They usually leave the matters of consent to tacit understanding. In such circumstances and cases, consent becomes a matter of inference to be made from evidence of previous or contemporaneous acts and conducts and other surrounding circumstances. Referring to Section 375 IPC, a woman can be said to have consented to the act only when she has submitted herself willingly and freely, while in free and unconstrained possession of her physical and moral power to act in a manner she wanted, therefore consent implies the exercise of a free and untrammeled right to forbid or withhold what is being consented to; it always involves a voluntary act and conscious acceptance of what is proposed to be done by another and concurred in by the former. It (consent) means agreement; community of feeling and opinion; unanimity; to agree not to resist or prevent; to acquiesce in; agree to; permit; to be willing to undertake; agree to do; hence obviously it (consent) involves no denial, no resistance. It can not be equated to inability to resist out of helplessness. In view to the word inability to resist out of helplessness, reading thirdly, fourthly and fifthly of Section 375 of IPC, it is further relevant to take another Section 90 IPC while considering the word “consent”. As said earlier IPC does not define the word consent but section 90 IPC gives indirect referable meaning thereof so far it relates to the word consent as contemplated in Sec. 375 IPC. Section 90 IPC reads as consent known to be given under fear or misconception-A consent is not such a consent as is intended in the Code, if the consent is given by a person under fear of injury or under misconception of fact, and if the person doing the act knows or has reason to believe, that the consent was given in consequence of such fear or misconception; thus when a person makes an adult girl to submit for sexual intercourse on a promise to marry her, it is found that the person making this offer really had no intention to marry her but only for sexual pleasure, he made such a false promise and lured to be his pray, the consent of girl for sexual intercourse was on a

misconception that she would be his wife at a further day and in such conditions section 90 IPC attracts in making offence u/s 376 IPC. Clause second of Section 90 consent of insane person-if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; last clause where consent of child unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age are relevant section attracting in making offence under Sections 375, 376 IPC. Where, in a case, a girl of 18 years old was referred to magnetiser therapeutic for her treatment and she visits daily. After 4½ months she discovered herself pregnant, on which she complained against the magnetiser to the Medical Authority. Her medical examination and the medical Inspector was satisfied that the pregnancy did not extend further back than the period complained of by her. They reported that the person in magnetic sleep is insensible to every kind of torture and sexual intercourse might have then taken place with the young woman without the participation of her Will and without her being conscious of the act and consequently without her being “able to resist” the act consummated on her, therefore offence u/s 375, 376 would attract section 90 when the offence so committed are under such circumstances of insensibility. Where a girl 0: 2C ears who brought two mugs of coffee has been sent back by the accused who is very friendly to her and her family to fetch a glass of water and during her absence he dropped some narcotic drug in her coffee; she on drinking felt dizziness and became unconscious, and in between accused committed rape without her consent while she was in the state of unconsciousness would attract section 90 in making offence u/s 375, 376 IPC.

In case of rape, consent if any, given by the victim must be voluntary. A mere act of helpless resignation in the face of inevitable compulsion, acquiescence, non-resistance or passive giving in, when volitional faculty is either crowed by fear

26. Tylor’s Medical Juriprudence P 447 (reported in Gaurs--3223)
27. 1991 Cri. LJ. 939 : Swati Lodha Vs. State of Rajasthan

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or vitiated by duress cannot be deemed to be consent. A consent on the part of a woman, as a defence to an allegation of rape, requires voluntary participation after having fully exercised the choice between resistance and assent. The question of consent or compulsion is to be judged on a careful consideration and scrutiny of the evidence of the victim and from other corroborative evidence if available and the attendant circumstances proceeding, accompanying or following, the act of sexual intercourse. Where a victim is aged more than 18 years, she is competent to give consent within the meaning of section 375 IPC. Consent is an act of reason accompanied with deliberation after the mind has weighed, as a balance, the good and the evil on each side and it denotes an active Will in the mind of the person to permit the doing of the act complained of the state of mind which is agreeable or accordable to that of other in the act of coition hence consent by itself means voluntary agreement or in the context of voluntary participation in the act of intercourse, and any absence of above willingness in participation would amount to without consent.

As pointed out earlier consent has not been defined in relation to that of crime against human being like sexual offence, and the same has to be gathered from the circumstances taking into account the value of section 90, 375 and 376 IPC and other relevant sections closely associated with are Sec. 34, 149, 354, 363, 366, 368, 51i read with Evidence Act Sections 3, 8, 114, 114A, 118, 157 etc. besides reported cases and dictionary meaning of consent given therein. In rape cases, the first and foremost circumstance generally expected is the resistance from the victim and an unwilling victim is expected to receive injuries on her person while absence of such injuries on the body of prosecutrix gives an inference that she was consenting party to the coitus. But where virginity is the most precious possession of an unmarried Indian girl which could not be expected to part away

29. 1982 Cri. L.J. NOC 172 (Orissa : N. Goudu Vs. State & Ors.)
30. 1982 Cri. L.J. NOC 172 (Orissa : N. Goudu Vs. State & Ors.)
easily, even a married woman too will never willingly part away the proudly and precious dignity that she possessed after the marriage. Where a girl more than 16 years had sexual intercourse on a number of occasions as a result of which she conceived and that she consented to such sexual intercourse as she was given to understand by the accused that he would marry her. It was held that a full grown girl consented to the act of sexual intercourse on a promise of marriage and continued to indulge in such activity until she became pregnant, it was an act of promiscuity which indicates that such promiscuity leading to pregnancy could have been avoided if the prosecutrix have not consented to the sexual intercourse on the promise to marry her, so also no woman consenting to be a party to sexual intercourse would like her hand to be held by another person during the sexual intercourse, and no physical force against her would welcome. Therefore where a person is charged with the offence of having committed rape, the question for determination is whether the woman was or was not a consenting party, and in this connection her testimony without any independent evidence in support thereof that she was not a consenting party is insufficient for a conviction, and the first and foremost circumstance that can be looked for in cases for this kind is the evidence of resistance which would naturally be expected from a woman unwilling to yield to sexual intercourse forced upon her. Such a resistance may lead to tearing of clothes, the infliction of personal injuries even injuries on private parts including those on the accused on his face, neck or bite mark on nose and nail mark. Where the clothes of girl and her petticoat was much stained with semen, shows that there was sexual intercourse, it is very difficult to point whether the victim had willingly consented or not. While there are no satisfactory indications of unwillingness or of resistance by her, on the other hand there are confusion and contradiction in victims' evidence, such as would only arise if she then consented and afterwards

34. 1987 Cri. L.J. 1541: Vinod Kr. v/s State of M.P.
attempted to protest innocence, for there was no struggle mark, no cry when she was approached, no cries until two strangers arrived, the cries occurred towards the end or close or in the middle of final act of intercourse, and it all occurred only when complainant realised that strangers were present, all are indicative of consent to the sexual intercourse. The charge of rape must depend on the statement of the prosecutrix but a mere statement of the girl (prosecutrix) that accused had raped her should not be treated as sufficient for conviction, hence need to see circumstances and surroundings whether the act of sexual intercourse was forcible or rape was done with or without consent and under what circumstances and as to why and on which ground allegation was made against the accused. Where a grown up married woman and a refugee with some hard experience of life went with a man to his house at night though she could have stayed on platform or waiting room (of railway) where she was lodged. She should know that all men are not saint and the Ticket Collector who were utter stranger to her, were not likely to put themselves out so much for a mere passenger, without some ulterior motives. When she reached the man’s house (TC), she found no woman or children and did never bother to ask where were the families that petitioner had spoken for earlier. The room into which she was conducted had two windows and the door opening into the street, but she never tried to open anyone of them to call for help and she was taken back from this house back to Railway Station well before 11.00 P.M. in the month of August when many shops might have been opening. She never complained to anyone even after reaching the railway platform except that which she made to military police which was more or so in an confessional adultery than a complaint of rape. Even if it is assumed that there has been a sexual intercourse, the circumstances mentioned above tend to show that it was not without consent of the ravished woman. Where the prosecutrix a mother of four children alleged to

37. 1913 (14) Cr. L.J. 149 : Fatima Vs. Captain Mr. Cormic

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have been raped against her consent, but evidence shows that she voluntarily took some liquor before the alleged rape, and medical evidence showed that she was suffering from gonorrhoea and syphilis-veneral disease, ulcers in genitals with no evidence of her struggling to get rid of the accused person shows that coitus was consensual and accused was not guilty.40 Where the appellant had indulged in sexual intercourse for over a year as a result of which the prosecutrix became pregnant, twice had abortion therefore, to be effected, of which the first sexual act was done when the prosecutrix was of 17 years old, it was held that the constant sexual intercourse between the appellant and the prosecutrix was not without her consent hence accused appellant was set at liberty.41 In rape cases court should look at all the circumstances and decide as to their conduct and intention apart from their own explanation and is never and should not consider itself bound by the explanation, because the accused may be well too ashamed to confess to their lust and even if they were not too ashamed to so, the court must at least realize that the accused probably think that such a grave admission would be fatal to their own case and therefore refused to take risk to telling the actual truth. Where there were no satisfactory indication of un-willingness or of resistance by the ravished woman, whilst there was confusion and contradiction in her evidence such as would only arise if she then consented and afterwards attempted to protest innocence, this sort of act on the part of prosecutrix would amount to consent on her part in the same way where a subsequent consent after forcible sexual intercourse would not excuse the accused from the offence of rape. So a consent must be to the actual act where both parties are willing to act of free Will and without any force, duress and deceit. But a mere act of helpless resignation in the face of inevitable compulsion, acquiescence, non-resistance or passive giving in, when volitional faculty is either clouded by fear or vitiated by duress, cannot be deemed to be consent as understood in law.42 When the prosecutrix was obviously

41. 1985 (1) Crime 963 (Del.) : Arjun Kumar Vs. State.
found to have surrendered her body to the accused under fear and duress, the sexual intercourse with the appellant-accused was not found to be the one with her consent and willingness. The pathetic nature showing helpless resignation in the face of inevitable compulsion, non-resistance of passive giving in, in a lonely and strange environment when her volitional faculty was either completely clouded by fear and which was vitiated by duress by the accused has to be looked in. Her non-violent and non-resistant conduct to submitting to the lust and passion of accused cannot be deemed to be consent for commission of sexual intercourse by the accused. Under such circumstances submission of her body either under influence or due to threat and to secure life out of fear of death, or terror is not consent. The victim or prosecutrix is forced to give up resistance before a superior force and power and “has to concede unwillingly” to the forceful sexual intercourse or surrender her person before the accused or submission or submit, to give up or yield to the superior force of the accused. If three persons attack 20 years old girl; of which two hold her and one commits rape on her inspite of her resistance, her all power of resistance would be overpowered by the combine force of the three accused. Hence there would be nothing sort of injury on the part of prosecutrix due to holding her by other, rather she was forced to surrender her body to the effectively combine force of the accused, such unwilling participation due to helpless resignation before accused would amount to submission or surrender. Therefore circumstances under which consent given must be understood, for every consent involves submission but it by no mean follows that mere submission involves consent means mere submission or surrender of a girl to the carnal knowledge or carnal assault, she being over-powered by a strong man is not consent. Every consent involves a submission but the converse does not follow and a mere act of submission does not involve consent. Consent of girl in order to relieve an act of a criminal character, like rape must be an act of reason accompanied by deliberate, after the mind has weighed in a balance, the good and

43. 1990 Cri. L.R. (MP) 88 : Ram Avtar Singh Vs. State M.P.
bad on each side, with existing capacity and power to withdraw the assent according to One's will or pleasure.\textsuperscript{45} Therefore while the offence of rape is a rape when it has been committed against a minor below 16 years of age according to clause sixthly of section 375 of the Penal Code, the offence committed against those of 16 years and above comes under the clouds of consent or surrender or submission, taking others clauses together, hence there is a difference between consent and submission.\textsuperscript{46}

Thirdly – with her, when her consent has been obtained by putting her or any person in whom she is interested in fear of deaths or of hurt.

Third clause relates to consent which has been obtained by purring her in fear of death or of hurt either to herself or to one she is interested in, it is rape. Consent of a woman over eighteen years of age to sexual intercourse obtained by putting her in fear of death or hurt was, therefore, held to be not a valid defence\textsuperscript{47} but when the fear to which the woman is subjected is neither of death nor of hurt, but of being arrested, when as a matter of fact, there is no warrant of arrest against her, the consent though obtained by fraud, is nonetheless consent, for she is willing to allow sexual intercourse for a price, which is a fictitious one because there is no warrant of arrest against her.\textsuperscript{48}

Section 375, clause thirdly states that a man is said to commit rape when he has sexual intercourse with her consent when (such) her consent has been obtained by putting her in fear of death or of hurt. Such fear might be put to any person in whom she (the prosecutrix) is interested. Unless you surrendered your body to the sexual intercourse with the accused your (prosecutrix) son will be killed is a threat or a fear of death or of hurt in whom she is interested. While Penal Code defines, death under Section 46 and hurt under Section 319 IPC, the Code does not define what amounts to “FEAR”. It means a distressing emotion aroused by an impending

\textsuperscript{45} AIR 1958 Pun 123 : R. Harmanrain Singh Vs. State.
\textsuperscript{46} Supra.
\textsuperscript{47} S. Ibochouba Singh v/s Manipur Adminstration, 1972 Cri. L.J. 395.
\textsuperscript{48} Motiram Krishnarao v/s State of M.P. AIR 1955 Nagpur 121. 1955 Cri. L.J. 819.
pain and danger and evil and a specific instance of such a feeling or something of which one is afraid of or that causes fright or apprehension. With reference to above example that unless she surrenders her person the accused might kill her son is an apprehension or fear of death.

Fourthly – With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fourth clause relates to the question of concealment of ‘Identity’ of an individual. The prosecutrix given her consent under a mistake of fact or misconception for sexual acts. The accused expressly or impliedly conceals his identity with a dishonest intention. Besides at times obtain the consent recklessly.

The fourth clause gives that he whoever induces a woman to have sexual intercourse with him by personating as her husband commits rape. Thus the fourth clause of Section 375 IPC says if the consent under misconception of the facts has been obtained or when the consent is obtained by impersonating her husband, the offence under the section has been committed and punishable u/s 376 IPC. It is called as disgusting clause for the clause gives offended taste of moral sense of Indian Woman. May I ask, “How is Possible For a woman to be Mistaken. A Stranger For Her Husband”? It could be possible only when a magician took the figure of her husband by magical power. This type of contingency is conceivable where a man approaches the victim during sleep or in the dark or under circumstances when recognition is impossible, but she could detect by voice, in the circumstance the ravisher might intend to go further by using force to complete the act even in spite of resistance and after detection. Two things are possible (a) If she discovers the mistake before consummated and does not resist, the act would probably cease to be a rape for consent can be inferred from the non-resistance. (b) If detected after the consummation, of course, the man approaching her is guilty of such imposition for he intended to pass for her husband. Under such situation consent given by a woman to a man under misconception of facts that he
was her husband was, of course, no consent at all. But it would be very difficult to put such hypothesis to assume a stranger to be her husband and have a sexual intercourse willingly. How embarrassing to conceive such illogical on character of an Indian woman, even a declared prostitute would not consent such moral character.

Fifthly – With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, who is unable to understand the nature and consequences of that to which she gives consent.

It related to the consent which is given by a woman of unsound mind or an intoxicated woman is no defence. When a man made a girl of 13 years quite drunk and whilst she was insensible violated her person, it was held to be a case of rape.49 In a case a medical practitioner had sexual intercourse with a girl of 14 years who had gone to him for medical advice under a bonafide belief that the doctor was treating her medically.50 Rape can undoubtedly be committed on woman while she is in a state of unconsciousness which might have occurred in an ordinary course or as a result of administration of Narcotic, Intoxicating or Anesthetic drugs. It is accepted fact that it is very difficult, unless over-powered, to rape a healthy woman in full sense. She is bound to offer resistance and a struggle is invariably followed, as a result of which injuries are bound to be found on the body of victim, on her person and even on the part of the accused. But in case of unconscious state of mind due to administration of drug or any other stupefying things of unwholesome substance and where she is unable to understand the nature and consequences thereof, there is likelihood of absence of violence or any evidence of struggle in committing the offence of rape as the victim has been incapacitated by the administration of narcotic drugs and consent obtained under such incapacitated

49. Camplin (1845) 1 Cox 220.
50. William's Case (1850) 4 Cox 220.
circumstances is no consent and the offence u/s 375 is said to have been committed against her. Accordingly a man is said to commit rape of woman where her consent is obtained when at the time of giving such consent, she is unable to understand the nature and consequences of that to which she gives consent by reason of unsoundness of mind or intoxication or the administration by him personally or through another or any stupefying or unwholesome substance.

Sixthly – With or without her consent when she is under sixteen years of age.

Under sixth clause sexual intercourse with a woman with or without her consent when she is under 16 years amounts to rape. In a case\(^{51}\) victim left her mother’s house and joined the accused because her mother has turned down the proposal of her marriage with the accused on the ground that she was too young. While she was with the accused he had sexual intercourse with her against her will. The act of intercourse with the prosecutrix will be covered by this clause. It was held in Dilip v/s State of M.P.\(^{52}\) that where the age of victim of Rape is proved to be below 16 years, it would be futile to suggest in a case of prosecution under section that the sexual intercourse was committed with the consent of the girl because consent of a woman below 16 years furnishes no defence. In such a case medical evidence showing that the girl was habituated to sexual intercourse and that there were no signs of rape would also be of no help if intercourse by the accused with the girl is proved and thus consent is immaterial\(^{53}\) where the consent of the lady was obtained by giving false promise of marriage and the victim was below the age of 16 years, then her consent will be no consent in the eyes of law.\(^{54}\) This is one of the important clause under the section and enacted with the view to protect minor girl of the society. The clause simply declares that an act even though with the consent of a child then under 16 years of age would be a rape; her

\(^{51}\) Mana Ramchandra Jadhav v/s State of Maharashtra 1984 Cri. L.J. 852 Bom.
\(^{52}\) Dilip v/s State of M.P. 1987 Cri. L.J. 212 (M.P.)
\(^{53}\) Bishny Dayal v/s State AIR 1981 SC 39.
\(^{54}\) Sehibabu v/s State 1994 Cri. L.J. 1420 (AP)
consent had precocity being both immaterial. The fact that such a girl can discriminate between right and wrong and had invited the accused to the act are both wholly irrelevant, for the policy of the law is to protect children of such immature age against sexual intercourse.\textsuperscript{55} Both Section 375 and 376 IPC specifically used the word "when she is under sixteen years of age". When she is "under twelve years of age" which attracts the word child and minor. The word child as defined as a person who, if a male, has not completed 21 years of age, and if a female, has not completed 18 years of age\textsuperscript{56} and minor means a person of either sex who is under 18 years of age (section 2(d) of Child Marriages Restraint Act 1929). Under this clause various factors like custom, tenets and prevailing factors have been taken into consideration, hence various States have their own amendments under the clause. In Manipur, the word 'sixteen' had been substituted by word 'fourteen' and the word 'fifteen' under exception had been replaced by the word 'thirteen', so as the other States show such amendments according to the custom and environment of the area. But the Penal Code being a Central Act has kept up the same standard which had been raised twice earlier prior to present standard. 'The age limit was raised from 10 years to 12 years by the Indian Criminal Law Amendment-Act X of 1891 for the reasons:- The limit at which the age of consent is not fixed (i.e. ten years) favours the premature consummation by adult husbands of marriages with children who have not reached the age of puberty, and is, thus, in the unanimous opinion of Medical Authorities, productive of grievous suffering and permanent (suffering) injury to child-wives and of physical deterioration in the community of which they belong (Statement of Objects and Reasons to Bill No.3 of 1891, Gazette of India, 1891, Part V, Pg. 5). It was (again) raised from twelve to fourteen by the Indian Penal Code (Amendment) Act of 1925, Sec. 2. Books of Medical Jurisprudence established the fact that the age of puberty in India is attained by a girl upon her reaching the age of fourteen.

\textsuperscript{55} 29 Cri. L.J. 12 (1927) Emperor Vs. Asad Ali. 34 Cri. L.J. 100; AIR 1932 All 580 : Abdul Vs. Emperor.

\textsuperscript{56} Vide S.2 (a). Child Marriage restraint and 1929 Sub. by Act 2 of 1978, Sec. 2 w.e.f. 2-10-78.
Even though puberty may be reached at the age, it is obvious that girls are unfit for sexual cohabitation till they are older and more developed in physique and strength. The appalling infant mortality in the country is partially ascribed to early marriage and the consummation which follows with immature girls. It is, therefore, not only for the protection of minor girls as also of their progeny that the age of consent should be raised at least fourteen years (Statement of Object and Reasons to Bill No. 12 of 1924. Gazette of India. 1924 Part V at pg. 49). The age limit at present is sixteen by an Act of XLII of 1949. The limit raised in age is to protect children from pre-mature cohabitation and prostitution in view of our society which is afforded by other Sections of IPC. Taking the definition of minor under Child Marriage Restraint Act where minor has been defined as person of “both sex” under 18 years of age (Sec. 2(d) of the Act), reading with section 2(a) - child-if male person who has not completed 21 years of age and if female, who has not completed 18 years of age, it is suggested that, considering economy, social status, sex ability, puberty and population, and where Government has declared marriageable age as 21 years and since the age prescribed under Section 375 and 376 IPC are not in consonance with those of other section and enactments, like Law of Contract, Child Marriage Restraint, Act 1929. The Children Act 1960, the Juvenile Justice Act, 1986 etc. So far offence of rape is concerned the age as prescribed under Section 375 and 376” must be raised with either 17 or 18 at par with other enactments in India. It had already been pointed out in IPC (Amendment) Bill No. 12 of 1924, that though puberty may be reaiced at the age (of 12, now 16 years), it is obvious that a girl is unfit for sexual cohabitation till they are older and more developed in their physique and strength. At present more advertisement an these aspects have been circulated through TV, and other visual media, and this circumstance lend support from both social, economy and physical ability of girl specially, while her male partner also is not excluded. The present is quite different from those period where the recommendation of 14 to 16 years were made, hence Government need to look into this matter which is a national aspect of progress.
Essential Ingredients:-

(i) Sexual intercourse by a man with a woman.

(ii) The sexual intercourse must be under circumstances falling under any of the six clauses of Sec. 375.

(iii) Penetration is sufficient to constitute the offence.

Explanations:- The word “man” denotes a male human being of any age; the word “woman” denotes a female human being of any age. A female child of seven and half months or of six years is a woman within the meaning of this section. To constitute penetration it must be proved that some part of the virile member of the accused was within the labia of the pudendum of the woman, no matter how little. If penetration is proved it is not necessary that the hymen should be ruptured on it is ruptured partially. Penetration is sufficient to constitute the sexual intercourse necessary to the offence rape. Where a girl of 8 years was raped and according to the medical evidence there was abrasion on the medical side of Labia Majora and readiness around Labia Minora with white discharge but hymen was intact. It was held that even slightest penetration of Penis into vagina without rupturing the hymen would constitute rape. The sexual intercourse means act of inserting penis into female organs of generation. So penetration of a bodily orifice by penis or other part of body or by an object does not fall within the meaning of words sexual intercourse and penetration. The word ‘Penetrate’ means in the concise Oxford Dictionary ‘find access into or through, Pass through.’

60. Abdul Majid v/s State AIR 1927 Lah. 735; Ghanshyam Mistri v/s State 1957 Cri. L.J. 469.
Types of Rape:-

(i) Gang Rape  
(ii) Custodial Rape  
(iii) Rape on Pregnant Woman  
(iv) Rape and Murder  
(v) Dacoity and Rape  
(vi) Sexual abuse of children  
(vii) Rape on the Pretext of False Promise to Marry  
(viii) Attempt to Commit Rape  
(ix) Marital Rape

Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section. "Women’s or children’s institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow’s home or by any other name, which is established and maintained for the reception and care of women or children. “Hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

Section 376 A – Intercourse by a man with his wife during separation.

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

Section 376 B – Intercourse by Public servant with woman in his custody.
Whoever, being a public servant, takes advantage of his official position and induces or reduces, any woman, who is in his custody as such public servant or in the custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

**Section 376 C – Intercourse by Superintendent of Jail, remand home, etc.** – Whoever, being the Superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman’s or children’s institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine but no arrest shall be made without a warrant or without an order of a Magistrate. Superintendent in relation to jail, remand home or other place of custody or a woman’s or children’s institution includes a person holding any other office in such jail, remain home, place or institution by virtue of which he can exercise any authority or control over its inmates. The expression “Woman’s or children’s institution” shall have the same meaning as in Explanation 2 to sub section (2) of section 376.

**Section 376 D – Intercourse by any member of the management or staff of a hospital with any woman in that hospital.** Whoever, being on the management of a hospital or being on the staff of a hospital take, advantage of his position and has sexual intercourse with any woman is that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to
fine. The expression “hospital” shall have the same meaning as in explanation 3 to sub-section(2)of section 376.

Courts works under the codified penal code (IPC) and their procedure (Cr.P.c.) with effect to other laws and enactments in which judiciary authorize to conduct their work in disposal manner with special effect to Rape cases or other sexual offences in which important findings are to be short act by way of Burden of proof, witnesses, investigation conducted by the police, powers of the court to punish the accused quantum of sentence, probation and punishment including rarest of rare cases as to admissibility of evidence in personal relation with the accused person and their adverse inference towards the prosecution story which differ from case to case. According to the version of the victim of rape in court as an evidence court looks and compare with other evidences also which is further in the way of continuity of chain to prove the prosecution version and evidence available on record. ‘Corroboration’ is a type of evidence which confirms or supports or strengthens other evidence, in short it is the evidence which renders other evidence more probable. The essence of corroborative evidence is that one creditworthy witness confirms what another credit-worthy witness has said. In a case where the victim reported the incident to her mother and their wearing apparel were also found to be blood stained it is held that these facts were corroborative of the offence of Rape witness who can prove that is the woman (victim) and the conviction for such offence of rape almost entirely depends upon the credibility of the woman so far as the essential ingredients are concerned, the other evidence being merely corroborative. Her testimony is vital in case where the woman is married one and the medical evidence is no way corroborates the charge of rape. Circumstantial evidence is probable and has a great weight in those cases where victim is not available for evidence due to gruesome of murder and in cases of child witness or any other reliable witness which are not of fatal nature to throw out an reliable prosecution case and discretions are required to be exercised with

65. Abdul Sattar v/s State of Assam 1982 Cri. L.J. NOC 160 (Guhati).
great caution and only when the exigency of Justice is required.⁶⁷ In everyday morning the frontline of the newspaper is related to the child rape news. In most cases these offenders are usually well known, friends, relatives or neighbour of the child. Children are facing the dangerous acts like rape or sexual molestation and their rapid increasing data day by day. Even four months young baby raped by the accused and murdered and later dispose the dead body of child by throwing into a well as in the case titled as Siddik Singh v/s State of Maharashtra.⁶⁸ Thus when such children of immature age are involved in a rape case question of legality of their version comes and it plays very important part in conviction unlike those victims of above age of maturity as the child herself becomes a witness to the prosecuting proceedings. According to Indian Evidence Act, 1872, so far it relates to the rape case, the presumption as to consent in certain prosecutions for rape as in Section 114-A.⁶⁹

Regarding child witness Hon’ble Supreme Court of India held contradiction and inconsistencies in deposition if the victim is child and held that discrepancies cannot attracted to minor discrepancies and held as under in the case.⁷⁰

1. By the large a witness cannot be expected to possess a photographic memory and to recall the detail of an incident. It is not as if a video tape is replayed on the mortal screen.

2. Ordinarily it so happens that a witnesses is over taken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties, therefore, cannot be expected to be attuned to absorb the details.

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⁶⁸. 1993(1) CCR 1671.
RCR (Criminal) 863 (Karnataka) (DB).
3. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss it image on one person’s mind. Whereas it might go unnoticed on the part of another.

4. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport the conversation. It is unrealistic to except a witness to be a human tape recorder.

5. It regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

6. Ordinarily a witness cannot be excepted to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

7. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fell up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnesses by him — Perhaps is a sort of psychological defence mechanism activated or the spur of the moment.

8. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses, therefore, cannot be annexed with undue importance. More so when the all important ‘Probabilities factor’ echoes in
favour of the version narrated by the witnesses 1983(2) RCR (Criminal) 192 (SC) relied.

Indian laws dealing with sexual offences not specifically mentioned child sexual abuse. A form of sexual abuse is not cover under the IPC. Just as the law makes a distinction among rape, gang rape and custodial rape, in needs to differentiate between sexual abuse by parents or relatives of a child and also it needs to punish the accused in serious manner because of the permanent scar on the psyche of the victim child. In fact, child sexual abuse exists in India on a comparable scale to the rest of the world.\(^71\) In a case\(^72\) father of the victim child sexual abuse their daughter and the mother also submitted that the father had been sexually abusing their daughter from the age of three while they were in the united state, after the medical examination the girl revealed a wide vaginal opening which is wider than expected of their age group, hence abuse by a parent or relative needs to be treated as a more serious offence, mostly by a person who has a position or have a duty/authority over the protection of their child for the bright future of our next generation. In rape cases absence of injury on the victim body sometimes become fatal as to punish the accused and there adverse benefit goes to the wrong does which victim of rape give rise to an inference that she was commenting party. If the woman is unwilling to have sexual intercourse it is expected that she will receive injury on her person during the struggle. The absence of injury on her generally give rise to an inference that she was commenting party but if the victim received multiple injury on her person it will indicate that she offered resistance when she was subjected to sexual intercourse and it would not surrender willingly for her virtue and virginity which is the precious possession, therefore she will never gave a free consent to a rapist as in a case titled as Babu v/s State, and Madanlal v/s J&K.\(^73\) It was held\(^74\) that assuming consent of the victim in absence

\(^71\) See the article of Pinki Virani on “Institution of a listing child abuse”, Published in The Pioneer dated 6.11.1996, P.7.
\(^72\) Satish Mehra v/s Delhi Administration (1996) 9 SCC 766.
\(^73\) 1984 Cri. L.J. 74 NOC (Raj), 1997(4) RCR (CCI) 89 (SC).
\(^74\) Idan Singh v/s State 1977 Cri. L.J. 556 (Raj.)
of injury would amount to leaving the unprotected girls at the mercy of the society. The victim may frightened or unnerved or for fear of being assaulted she might had not resisted it will not amount to give free consent as held in Mahbood Case. If injury was not found on the private parts of the victim it cannot be said that the sexual intercourse was committed with consent as held in Bhanwaria case and where the girl had attained the age of puberty injury on the private parts are not necessary.

In every criminal case essential ingredients of the criminal offence is always on the part of the victim or suffer or it is an exception. The rule is that if any general exception contained in the Indian Penal Code is pleaded by the accused and evidence is given to support such a plea, but such evidence fails to satisfy the court affirmatively of the existence of circumstances of the case within the exception the accused is entitled to be acquitted under Section 105 it is described as “when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, XLV of 1860, or within any special exception or provision contained in any other part of the same code, or any law defining the offence is upon him, and the court shall presume the absence of such circumstances. It was held in a case that court can partly reject and partly accept the evidence of the witness. The Supreme Court of India in K.M. Nanavati Case observed that as in England so in India, the prosecution must prove the guilt of the accused, it must establish all the ingredients of the offence with which he is charged, the general burden of proof is upon the prosecution and if on the basis of the evidence adduced by the prosecution or by the accused, there is a reasonable

75. State v/s Mahbood 1987 (Cri: L.J. 940) (Kant.)
76. Bhanwaria v/s State 1994 Cri. L.J. 3742 (Raj.)
77. Gulam Mohd Khan v/s State 1989 Cri. L.J. 1203; Pillai v/s State 1990(1) Crimes 261 (Ker).
78. Sec. 105: Indian Evidence Act, 1872.
80. K.M. Nanavati v/s State of Maharashtra, AIR 1962 SC 605, 618.
doubt whether the accused committed the offence, he is entitled to the benefit of doubt. In Indian Criminal Law, if an accused pleads an exception within the measuring of section 80 of the Indian Penal Code, there is a presumption against him and the burden to rebut that presumption is on him. In a Case\textsuperscript{81} Supreme Court held that burden is on the prosecution to prove each and every ingredient of offence, absence of consent being one of them. The question is to whether in case of rape, the misconception of fact contemplated by S. 90 has a wider application so as to include circumstances not enumerated by S. 90 has a wider application so as to include circumstances not enumerated in S. 375 was held not necessary to be considered herein and accused was found not guilty of rape.

Every woman have a reputation and also every woman is respected their nature and living standard. Brave woman's always shout their problem without any fear and delay. In the famous case of Rupan Deol Bajaj\textsuperscript{82} in which she was raezi the objection against the bad act of Sr. Police Officer K.P.S. Gill and later punished by the Supreme Court of India. In a Case\textsuperscript{83} accused is acquitted by the lower court and acquittal of accused was held liable to be set aside on the ground that Bad character of victim is not relevant to draw conclusion that she had given her consent if evidence of victim was corroborated by evidence of her father and mother and also with medical evidence. In every criminal offence Medical report, Medical Legal Report (MLR), Post Mortem Report (PMR) which is played the main role in the case of injury through MLR and in death case through PMR of the victim who suffered the consequences. When the victim of Rape complaint about the offence to police, the doctor will be requested by police to examine the alleged victim and also the accused. Such a request is officially requested and a written requisition produced by the police, which given all the details of the alleged victim and the prosecution version. Medical reports are admissible in the court as an

\textsuperscript{81} Udai v/s State of Karnataka, 2003(2) RCR (Criminal) 99 (SC)=(2003) 4 SCC 46.
\textsuperscript{83} Public Prosecutor, High Court of A.P. v/s Badana Ramayya, 2004 Cri. L.J. 3510 (A.P.)
evidence according to our legal system. Medical reports on pregnancy, recent parturition, sexual assaults, common assaults etc. according to the version of the victim which was prepared by the doctor observation and examination to all as the doctor is concerned in the following way:

The medical examination /observation report should be written as early as possible with truthfulness and according to the medical norms and ethics it must be observed with the short span of the time and not so long afterward that details and signs have become forgotten or vague.

The language of the report is with in the medical terms according to the prescribed style of preparing the report with full details of the victim as well as patients about the physical sufferings and basic facts of the case. The doctor should give relevant information in positive as well as negative manner so that a later date it can readily be seen whether certain medical injuries were present or were not present and also their approximate time with the looks of the injury at that particular time. The doctor should write their report on the printed Performa, such as in many government medical certificates & documents they should be filled in completely and clearly and no ambiguous terms used or parts of the form left blank. That regarding the value and importance of the medical doctor their evidence is an opinion who corroborates the direct evidence as held in the case84 where the Hon’ble Supreme Court observed that:

"Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence make use of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye witness". Medical aspects is not only controlled by the legislatory actions through statute law but there is another controlling influence of medical practitioners known as "Medical Ethics",


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which is code of behavior imposed by the profession itself and voluntarily accepted by doctors. The word ethics which means study of character it is normative science of the human conduct which studies moral judgment about conduct in the terms of right or wrong, good or bad and duty or non-duty in the light of the supreme goal of life. Medical aspects is of a specialized knowledge of definite department of things for example study of living beings is known as zoology and study of plants is known as botany. It is proved knowledge as established by the authorities which is accepted by the scholar’s, simple knowledge is based on the personal experience it is not based with the certified thing but science is certified if applied to the victim with courteous, sympathetic, truly friendly and helpful manner along with the duty of care in the administration of the treatment and examination they, therefore owe their patients the duty in assigning supervision to the nurses or subordinate staff properly as held in P.P.Ismail case and Ahluwalia case. The duty may create vicarious liability; one person may be liable for the wrongful acts or omissions of another

According to the Indian Evidence Act, 1872 the term evidence means and includes:-

1. All statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry.

   Such statements are called oral evidence;

2. All documents produced for the inspection of the court; such documents are called documentary evidence. The word document means any matter expressed or described upon any substance by means of letters, figures or marks, or by

86. P.P.Ismail v/s Mrs. K.K.Radhia, Delhi 377, 1997 (2) CPC.
87. Harjot Ahluwalia (minor) through parents v/s Spring Meadows Hospital & others Delhi 593, 1997 (2) CPC.
88. Sec.3: Indian Evidence Act,1872.
more than one of those means, intended to be used or which may be used for the purpose of recording that matter. e.g. – writing is a document divided into direct evidence and circumstantial evidence. In which direct evidence relates to the existence or non-existence of a fact or fact in issue and circumstantial relates to the inference arrived at from the direct evidence. It was held in many cases where the circumstantial evidence is with in the circumstance be conclusive in nature as well the facts of the case which is in state of things or relation of things, capable of being perceived by the senses and also depend upon the mental condition of which any person is conscious secondly, the conclusion of the evidence is fully proved and thirdly the chain of circumstance must be so linked that there must not be any gap in it as held in the cases 89.

The work of medical doctor in, at all the stage of observation processing of data analysis and inference is of a highly specialized nature but it is not accepted without legal or judicial scrutiny. It was held in the case 90 that medical aspects is related to biological science with all the variability in biological matters more so with and it is difficult for the doctor to say with precision and exactitude about the injury was caused during a particular time. The medical witness is there to arrive at the correct and at the truthfulness about the duty towards the judiciary or to the people who were faith on it. The doctor in the witness box should appear to be a man of professional standard and integrity. The doctor should speak up in a clear voice according to the examination and self observation, preparation is the key to being a good medical witness and the doctor should know every thing that is in her statement, disposition or notes before entering the witness box. A medical witness may, while under examination refresh his memory by referring to any writing made by him self it was held in Gogur Sheikh Case 91. The witness may also refer to any such writing made by any other person, and read by the witness within the

time aforesaid, if when he read it he knew it to be correct. There are many circumstances like reputation of the family and other factors in which the victim of rape examined by the doctor as soon as commission of offence. The delay in the medical examination is prove satisfactorily to the concerned court then it will not give much importance and condoned accordingly. In a case medical examination of prosecutrix after 3 days of rape, No semen was found in the swab or clothes of prosecutrix. It was held that if some weakness of victim not sufficient to acquit accused when statement of victim/prosecutrix did not suffer from any basic infirmity from the evidence of medical men, inferences are drawn as to the truth or otherwise of the criminal case, and truth. In this process the medical evidence plays a very important and crucial role to continue or corroborate the case. Medical witness is completely immune from actions for defamation for anything he says in the witness box during trial to other witnesses. This must be so; otherwise the court of justice would be frustrated because witnesses would hesitate to say everything that they know for fear of some later legal action. This applies to medical witnesses and with the provision that he tries to avoid any breach of professional secrecy, the doctor or medical witness cannot be taken to task later for anything he may say about a patient or his medical witness is called in as an expert he is not a witness of fact. Medical evidence of an expert is evidence of opinion, not of fact. Where there are alleged eye-witnesses of physical violence which is said to have caused the hurt, the value of medical evidence by prosecution is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence, or any medical evidence which the defence might itself choose to bring, is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Therefore, you must remember the particular point of view that if you believe the eye witnesses, then there is no question of having it supported by medical evidence, unless the medical evidence again in its turn goes so far that it completely rules out all possibility that such injuries could take place in the manner alleged by the prosecution and that is a point which you should bear
in mind, because if you accept the evidence of the eye witness, no question of further considering the medical evidences arises at all. The only question in that case when you consider the medical evidence is to test the eye-witnesses version as to whether any of the particular injuries shown in the report can be caused in the manner alleged by the prosecution but if you don’t believe the eyewitnesses, then consideration of the medical evidence in any manner, becomes unnecessary.

Where the opinion of a medical witness both of whom are equally competent to form an opinion, the court should accept the evidence of the medical witness whose evidence is corroborated by direct evidence as held in Piara case\(^92\). It is held in the case\(^93\) where there is conflict in the opinion of two medical witnesses; the pinion of that medical witness which supports the direct evidence is ordinarily to be accepted. Notwithstanding the conflict between the ocular testimony of eyewitnesses and medical evidence, it would be open to the court to accept the eyewitness account, if it is otherwise unshakable\(^94\). This is the general tendency of the judicial decision of rape cases. In rape cases medical evidence shows the minority of the age, the medical opinion is tendered to establish the offence of rape. The medical evidence adduced by the prosecution, has great value. It proves that the injuries could have been caused in the sexual part of the body or other parts and also death could have been caused by the injuries, so that the prosecution case being consistent with matters verifiable by medical science, there is no reason why the eyewitnesses should not be believed. In Mayur v/s State of Guj. case\(^95\) the Hon’ble Supreme Court observed – we think this is not a case which should have been summarily rejected by the learned single judge and moreover we do not think the learned judge was right in observing that our courts have always taken the doctors as witness of truth. Even where a doctor has deposed in court, his evidence has got to be appreciated like the evidence of any

\(^{93}\) Purna Paladi v/s State AIR 1987 Cri.L.J. 1406 : 1987(2) crimes 257 (Orissa)(DB).
\(^{94}\) State of Mah. v/s Vittal, 1985 Cri.L.J 664 (Bom) (DB).
\(^{95}\) Mayur v/s State of Gujarat, AIR 1983 SC 66.
other witness and there is no irrebuttable presumption that a doctor is always a witness of truth. The opinion of the doctor who is an expert must be supported by reasons and it is the reasons which are of importance in assessing the merit of the suggestion & opinion. In this case\(^96\) the opinion written was in the form of a reply to certain queries made by the sub-inspector of police. The doctor report was rejected as it did not contain reasons. The medical evidence by the doctor must be always maintaining the highest standard of their work and conduct\(^97\).

It is matter of prudence or to know the knowledge and injuries affected the victim so that further it cannot be improved or exaggerated in the court. In Shyama case\(^98\) medical examination shows that victim suffered injuries to their private parts, other parts of the body, seminal stains on her clothes and on the clothes of the accused. The injuries in private parts are lacerated labia minora and vaginal wall near the orifice, recent tears of hymen with bleeding edges, coupled with definite opinion of recent penetration which could be male organ (penis), corroborate the testimony of the victim and it is held that she had been raped. Some cases in which medical examination is not corroborating with the offence of rape, in Ganga Ram case\(^99\) the medical report showed that there were external marks of injury, but the hymen was red and inflamed and torn posteriorly with blood coming out from the torn part of it, but according to the medical opinion such injuries could have been caused also by insertion of a finger, stick or some other foreign body, the accused was acquitted as the medical opinion did not corroborate the story of rape. In Partap Mishra case\(^100\) the prosecutrix is a pregnant lady, was alleged to have been raped by three persons, successively one after the other, with force and violence the abortion which should have been immediate, however took place after four or five days, hence it does not corroborate rape. In rape cases delay of medical examination is due to many reasons in the way of

\(^{96}\) Poleriswamt v/s State AIR 1968 Bom. 127.
\(^{97}\) Dr. P.C.Dikshit: Medical Jurisprudence and Toxicology, page no 74.
\(^{100}\) Pratp Mishra v/s State of Orissa, AIR 1977 SC 1307.
absence of senior member of the family, or male person, permutation & honor of the family, illiteracy, backwardness, threatened by the accused or in cases where the accused is the near relative or caretaker of the victim, victim may be in traumatic state of mind, and others in which the delay is caused. The main purpose of medical examination of the rape victim and their value is depend upon case to case, the basic fact of the law is to provide the version of the victim and their harassment with the signs and other things corroborated by the medical expert used to sexual intercourse. It is held that in such a case version of prosecutrix that she was raped can not be said to be disproved due to lack of medical evidence.

In State of Karnataka v/s Manjana case\textsuperscript{101} medical examination is not conducting on the ground that case was not referred by police. The refusal of some government hospital doctors, particularly in rural areas, where hospitals are few and far between, to conduct any medical examination of rape victim unless the case of rape is referred to them by the police is not proper such a refusal to conduct the medical examination necessarily results in a delay in the ultimate examination of the victim, by which time the evidence of the rape may have been washed away to complainant herself or be otherwise lost. It is expected that the stat/ appellant will ensure that such situation does not recur in future.

The approach required to be adopted by courts in cases of rape has to be different. The cases are required to be dealt with utmost sensitivity, courts have to show broader probabilities are required to be examined and the courts are not to get swayed by minor contradictions or insignificant discrepancies which are not of substantial character. The evidence is required to be appreciated having regard to the background of the entire case and not in isolation. The ground realities are to be kept in view that every defective investigation need not necessarily result in the acquittal. In defective investigation, the only requirement is of extra caution by courts while evaluating evidence. It would not be just to acquit the accused solely


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as a result of defective investigation need not necessarily lead to rejection of the case of prosecution when it otherwise proved\textsuperscript{102}. Trial court must show careful attention and greater sensitivity, evidence should be appreciated on broader probabilities and not to be carried away by insignificant contradiction\textsuperscript{103}.

In the definition of rape the word 'consent' is also decide in the trial of the case during the commission of forcible sexual intercourse if the major female does not arise any objection regarding the act and in compromise position then there is no offence but on the other if the girl is below sixteen years gives her consent then his consent will not save the accused from the clutches of criminal law. In the case of rape the onus lies upon the prosecution to prove that the sexual intercourse was without the consent or against the will of the woman. It would not be necessary for the defence to prove that the sexual intercourse was without the consent or against the will of the woman. It would not be necessary for the defence to prove that the sexual intercourse was with the consent of the woman. In rape cases medical person is required to give evidence in the court regarding the facts observed by him at the time of issuing certificate and the opinion so formed by him if the doctor has not brought any scientific knowledge to bear upon his opinion as to age, his statement does not amount to legal proof. The expert opinion of the doctor as to age is a relevant and important piece of evidence, although it is a different matter, what weight the court will attach to it in its assessment. The age presumed or assessed by the medical doctor is an expression of opinion based on clinical examination. The doctor should have reasons in support of the conclusion by an examination of teeth, height, weight etc.\textsuperscript{104} He should place before the court an analysis of these factors showing what normally is to be expected at the age given by him, what is the margin of error permissible and when approximately these


\textsuperscript{104} Bernard Knight : Chapter 5, Medical Jurisprudence and Toxicology sixth edition 1992.

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factors or any of them would present a different picture so as to make out a reasonable probability that the age cannot be far removed from the approximate age given by him.

There are acts which is related to sexual illegal acts which is against the order of the nature and which is not come with in the definition of rape like adultery, sodomy, bestiality, etc. In such types of offences sexual intercourse committed against the order of nature which is permitted for sexual intercourse men and women. But if the man had intercourse with a woman except with the natural course or man with a man or animal or women with women or animal etc shall guilty of the offences like sodomy, bestiality, homosexuality or other names like masturbation & tribalism. The law permits only natural intercourse between man and woman as provided by nature. Above illegal sexual acts was not come with in the preview of the offence rape. In India offences which is against the natural course of sexual behaviour or against the order of nature or in unnatural manner. Problem of unnatural crime is not only in our country India but also in the whole world it is many names and also punished under various laws and enactments according to their laws. It does not confine amongst human being only this types of offences are present in various forms also and have been occurred since the inception of society. Such un-natural offences occur in school, college, hostel, military barracks and specially in jail where the prisoners confined for a long time separated from their legal partners (wife) . It includes bestiality, coitus per os, homosexual, sodomy, tribalism or lesbianism (female homosexual). For traditionally and from the old time general requirement of legally and socially valid sex relationships are:

a) The element of consent must be present, violation of which results in the offence of rape.

b) The two parties to the sex must be human beings of the opposite sex and they have enjoy positively with the norms and codes maintained
in our society and law. The two parties must be married to each other according to law.

c) The sexual act must be legitimate and must be private setting and authorised by the government in some state and in metropolitan big cities by license.

But from the above requirement of valid sex relationship in unnatural offences following ingredients are must be there:-

➢ there must be a carnal intercourse with man, woman or animal.

➢ Must be against the order of nature.

➢ It was done voluntarily.

➢ there was penetration.

Penetration is sufficient and essential as is in the case of rape, this crime is different from the offence of rape as consent is here wholly immaterial, both the parties are equally liable as an abettor.

Adultery is punishable offence in the Indian Penal Code.\textsuperscript{105} It is a ground of divorce in matrimonial aspect. If the husband proves this offence towards his wife he can seek divorce on the ground. In this offence a married woman allows sexual intercourse with other man who is not her husband for sexual intercourse. This is called the offence of Adultery. It runs under the section 497 IPC. For the offence of adultery, the following essentials are necessary under this section.

1. A man does sexual intercourse with a woman.

2. He knows or has reason to believe her to be the wife of another man.

\textsuperscript{105} Sec 497 IPC, 1860.
3. He does sexual intercourse without the consent or connivance of her husband.

4. Such sexual intercourse does not amount to rape.

Adultery may be committed by the married wife or the husband. The complainant should prove that the accused not only did sexual intercourse with his wife but also without his consent. If a Hindu lady changes her religion to Mohamadanism, the marriage between her and her husband does not dissolve ipso facto. Anybody having sexual intercourse with that lady is guilty of adultery. In adultery sexual intercourse is committed by the man with married woman who is not his wife with her wishes or consent but in Rape it is a forcible sexual intercourse with any woman married or unmarried minor or major against her wishes.

In this connection the interest of our contemporary society and particularly the influence of the book on it must not be overlooked.

A vulgar writing is not necessarily obscene. It is a feeling of disgust, revulsion and boredom where as the obscenity has the tendency to deprave and corrupt those whose minds are open to such immoral influences. A novel written with a view to expose evils prevailing in society by laying emphasis on sex and use of slangs and unconventional language did not make it obscene.

In Uttam Singh v/s Delhi Administration the accused appellant was arrested and prosecuted u/s 292 for selling of playing cards along with the printing of pornographic sexual postures. The trial court convicted the accused. The High Court affirmed the conviction as well as sentence of six months, rigorous imprisonment and a fine of Rs.500/- in default of which a further rigorous imprisonment for three months. In the special leave before the Supreme Court, the

106. Ghulam Mohammad v/s Emperor, 289.
argument for the appellant was that the sentence was very severe and that he was entitled to be released on probation under section 4 of the Probation of Offenders Act, 1958. Regarding this it is described that the intention of the legislature is, therefore, made clear by an amendment in 1969 in dealing with this type of offences which corrupt the minds of the people to whom these objectionable things can easily reach and it need not be emphasized that the corrupting influence of these pictures is more likely to be upon the younger generation who has got to be protected from being easy prey to these libidinous appeals upon which this illicit trade is based. We are, therefore, not prepared to accept the submission of learned counsel to deal with the accused leniently in this case.

In Andhra Pradesh Case110 the accused is mere a spectator of the blue film and it was not alleged that he had intentionally exhibited or arranged exhibition of the blue film so as to reflect complicity of the accused in the exhibition of the same, this interposition as a mere spectator to the exhibition of a blue film without any further complicity cannot be taken to be amounting to abetment of the main offence.

In Indian law it is not specifically specified about the types of unnatural sexual offences but only cover in the term of “unnatural offence.” According to Kautilya111 where he had sexual relation with beasts, with another male person, where he knew a woman carnally in any part of the body other than the female organ, who misbehaved with the images of Gods, when a woman violated either herself or another woman is said to be unnatural offence. The existence of opposite sex was thought necessary for the existence of world or Universe by the God. In Raju Case112 the accused dragged the nine years old girl into the bush and committed sodomy. The evidence of prosecutrix and her uncle who was eye witness were found reliable further the same was corroborated by the medical evidence un-natural acts may also happen between husband and wife which is not

reported and unseen as they are wedded legally but it is a ground of divorce\textsuperscript{113} and if one does so the act is against the order of nature.\textsuperscript{114}

Taking into account of both past and present history of India, our Law prohibits carnal intercourse of any sort which is against the order of nature. This type of inclination of achieving sexual gratification is against the law of nature and usually takes the form of violent instinct and considered to be anti-social and hence punishable under the law of the land. For traditionally and from time immemorial the general requirement of legally and socially valid sex relationship are:

a) The element of consent must be present, violation of which results in the offence of rape”

b) The two parties to the sex must be human beings of opposite sex.

c) The sexual act must be legitimate and must be private setting.

d) The two parties must be married to each other according to law.\textsuperscript{115}

e) must be authorised Red Light Area as provided by Government (in some State by licence).

Such un-natural offences occur in school, college, hostel, military barracks and specially in Jail where they are confined for a long period separated from their legal partners (wife). This is one of the most dangerous and heinous crime known among sexual offences. It includes bestiality, coitus per os, homosexual, sodomy, tribalism or lisbianism (female homosexual).

According to Section 377 IPC it includes:

a) Carnal intercourse through anus of another human being, be it male or female (sodomy).

\textsuperscript{113} See 1990(4) Crime 515: Legal analysis by Srikanta Mishra.
\textsuperscript{114} 1817 Russ L.J. Ry 331 (Jacob’s): Ref. Penal Law of India Dr. Hari Singh Gaur.
\textsuperscript{115} 1990 (3) Crime 515.
b) Carnal intercourse with animal – Bestiality.

c) Carnal intercourse through the mouth of another human being may it be male or female (coitus per-os).\textsuperscript{116}

While penetration is sufficient and essential as is in the case of rape, this crime is different from Section 375-IPC as consent is here wholly immaterial, both the parties are equally liable as an abettor. The offence is committed when the male organ is penetrated per annum however slight. In India coitus per-os is held to be punishable under the section, though punishment need not be so severe as is in the case of the sin of sodomy.\textsuperscript{117} Where the accused was proved to have had carnal intercourse by placing his penis into the nostril of the bullock, it was held that the accused was guilty of the offence under the Section.\textsuperscript{118} Putting the male organ into the mouth of a boy constitutes an offence under section 377 IPC.\textsuperscript{119} Thus by a simple reading of the section it gives the following ingredients that:

(a) there must be a carnal intercourse with man, woman or animal.

(b) must be against the order of nature

(c) it was done voluntarily.

(d) there was penetration.

The satisfaction of sex in fact is a psycho-biological urge which needs the satisfaction must be through a pacified and legitimate means. This has been provided by nature or God or by Natural Science. The existence of opposite sex was thought necessary for the existence of World or Universe by the God. Hence God created Man then Woman. In order to see what is the order of nature one has to go into the Genesis in human history, of such genesis the institution of Marriage is the one through which one can have legitimate sex. The illegitimate sex could

\textsuperscript{116} 1992 (II) CCR 1528 : C. Francis Vs. State
\textsuperscript{117} AIR 1925 Sind 286 : 26 Cri. L.J. 945 : Khanu Vs. Emperor.
\textsuperscript{118} AIR 1934 Lah 261 : 25 Cri L.J. 1096 Khandu Vs. Emperor.
fall under rape case. To have sex after a proper arrangement, like marriage is not against the order of nature. What a person thought of against the order of nature is sodomy, insertion of phallus to the anus it may be to a woman or a man or a boy or a girl. The creation and existence of female organ and its object is to receive male organ in order to give biological reproduction for further existence in the world-which is quite but natural. When a person insert his male organ otherwise than to the female organ, than the act would fall against the nature, for the object of female organ as understood is only to receive male organ as gifted by nature. Hence existence of the institution of marriage is an indirect support that a man can have legitimate sexual enjoyment through only legitimate way and not by way of or through un-natural way. Thus male human being with opposite female human being, dog to female dog (bitch), sparrow to she-sparrow are natural pair gifted by nature. While animal could not do so such un-natural act, the human-being as a most sensitive figure of creation could do so and as such Section 377 IPC could be applicable to human-beings only (either male or female). Thus an intercourse with his female partner through anus would amount to un-natural offence irrespective of consent inspite of her being legally wedded wife, because the act is against the order of nature. In case of unnatural offence u/s 377 IPC conviction can safely be based on the un-corroborated testimony of the victim, if it is not otherwise doubtful. It was held by Patna High Court in Biren Lal Vs. State of Bihar that even if the prosecution fails to establish that an offence was committed but if it is proved that the accused concerned had attempted to commit that offence with the help of section 511 of the Indian Penal Code such an accused can be convicted, of course the sentence in such a situation cannot be extended to more than half of the period prescribed for commission of the offence itself. While un-natural offence differs from the offence of rape in the legal situation, there are many similarities in respect of Medical Evidence in both cases. Where victim under 14 years of age u/s

375, consent is immaterial, but for an offence u/s 377 IPC, both parties are guilty equally. The consenting party or passive agent is as guilty as the active agent or principal party except where the offence has been committed under bestiality. The Anatomical examination, like anus, and penis are interesting point to look at; the tightness of the anus sphincter must be inspected carefully as the sphincter anus is much greater tighter than that of vaginal sphincter, deep of buttocks, mark of violence,

   Problem of sex crime is not a new concept but as old as our society born. Sex crime is outcome of physiological necessity of any living being to satisfy their sexual urge and gratification our law prohibits carnal intercourse of any sort which is against the order of nature but it is not specified it differs from case to case and considered to be anti-social, anti-culture and hence punishable under the law of the land. under the unnatural offence.122

   Sex between Human being and any other living creature like dog, bitch, snake, cow, buffalo, she-ass, mare are comes under the term bestiality. The basic principle is aimed at providing contact of the accused with the animal irrespective of sex so that the urge of lust is gratified by that sexual act either through anus, nostril, Vagina or any orifice on the body of the animal. In India there is no case which is decided by the judiciary in favour of homosexuality. A film called 'girl friend' directed by Mahesh Bhatt which is criticized by all the social organization as per the news123 published in the newspaper. A brave effort was made by Punjab University students by making a documentary film in which on attempt is to made to deal with this problem in future titled as “Homosexuality in Veil”.124 In western countries like Britain, USA such act of sexual urge is not offence, but it is not universally accepted behaviour Hon’ble Delhi High Court dismissed a PIL (Public Interest Litigation) filed by the Naaz foundation (NGO) saying that as there was no

cause of action, a petition could not be filed just to test the validity of the legislation further in the defence taken by the union government it is submitted that if the relevant section (377) IPC deleted, it would open the floodgates of delinquent behaviour and be misconstrued as providing it an unbridled licence. Supreme court observed that even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes she is entitled to protect her person if there is an attempt to violate it against her wishes. In this case departmental proceeding was initiated against a police inspector who committed the sexual intercourse with the victim Banubi in their hut by force she gave a complaint but the police officer took the defence that the woman was of easy virtue and he had simply raided the house for illicit liquor. In Gurmit Singh case it is held that a woman of easy virtue also could not be raped by a person for that reason.

In a case Supreme Court in order to safeguard the honour and prestige of rape victim has laid down the following guidelines:-

1. The complainants of sexual assault should be provided with legal representation. It is important to have someone who well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies. For example, mind counseling or medical assistance it is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interest in the police station represent 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 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 the victims who did not have a particular lawyer was unavailable.

5. The advocate shall be appointed by the court upon application by the police at the earliest 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.

7. It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal injuries compensation board, rape victims frequently incur substantial loss some for example, are too traumatized to continue in employment.

8. Compensation for victim shall be awarded by the court on conviction of the offender and by the criminal injuries compensation board whether or not a conviction has taken place. The board will take into account pain, suffering and shock as well as earnings due to pregnancy and the expenses of child birth of this occurred as a result of rape.
It was also directed that the National Commission for women to ask to frame schemes for compensation and rehabilitation to ensure justice to victims of such crimes. The union of India shall then examine and take necessary steps to implement them at the earliest.

Under the Medical Termination of Pregnancy Act\textsuperscript{127} confers the women to bear or not to bear the child. Under sec.3(4)\textsuperscript{128} of the act no pregnancy can be terminated without her consent. For termination of pregnancy husband’s consent is not necessary\textsuperscript{129}. The doctor doing operation is under a duty of confidentiality to his patient and should not inform her spouse about it against her wishes.

In Madras High Court case\textsuperscript{130}, an application for direction in a writ of habeas corpus preferred by the father of a minor girl aged 16 years to terminate the pregnancy of the girl on the ground of her having been kidnapped and made pregnant and the girl resisting the father’s application and pleading for normal continuance of pregnancy until delivery. The Madras High Court held that the fundamental rights can be enjoyed even by a minor and therefore the minor girl under Article 21 has a fundamental right to decide about her pregnancy. The court further held that it is the girl’s fundamental right to have child having become pregnant.

Indian constitution is the supreme law of the land. It is the basic structure which defines the powers of the state and its organs, as well as the rights and duties of the citizens. In which independent judiciary is the most essential attribute of law and is indispensable to sustain democracy. Independence and integrity of the judiciary in a democratic system of government is of the highest importance and interest not only to the judges but to the people at large who seek judicial redress against perceived legal injury. The courts should not interpret the provisions of the constitution as to whittle down the powers of the states though the constitution provides more powers to the central government, the states in their sphere are

\textsuperscript{127} M.T.P. Act, 1971.
\textsuperscript{128} Sec. 3(4) MTP Act, 1971.
\textsuperscript{129} Sec. 4 of MTP Act 1971.
\textsuperscript{130} V. Krishnan Vs. G. Rajan alias Madipur Rajan (1994) 1 Mad. L.W 89.
supreme as held in S.R.Bommai case\textsuperscript{131} the constitution through its preamble, fundamental rights and directives principles created a secular state based on the principle of equality and non-discriminating, striking a balance between the rights of the individuals and the duty and commitment of the state to establish an egalitarian social order. It is necessary and expedient for employers in workplaces as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of woman and given below directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field in Vishaka's case\textsuperscript{132}

1. Duty of the employer or the other responsible persons in workplaces and other responsible persons in workplaces and other institutions: it shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for restitution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition: For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

(a) Physical contact and advances.
(b) A demand or request for sexual favors.
(c) Sexually-colored remarks.
(d) Showing Pornography.
(e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

\textsuperscript{131} S.R.Bommai Vs. Union of India, (1994) 3 SCC 1.
Where any of these acts is committed in circumstances where under the victim of such conduct has a reasonable apprehension that in the relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government public or private enterprise such conduct can be humiliating and may constitute a health and safety problems. It is discriminating for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. Preventive Steps :-

All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment without prejudice to the generality of this obligation they should take the following steps:

(a) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.

(b) The rules/regulations of government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(c) As regards private employers step should be taken to include the aforesaid prohibition in the standing orders under the Industrial Employment (standing orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards woman at workplaces and no woman

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employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. **Criminal Proceedings:**

Where such conduct amounts to a specific under the Indian Penal Code or under Any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should ensure that Victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. **Disciplinary Action:**

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. **Complaint mechanism:**

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint mechanism made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints.

7. **Complaints Committee:**

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a complaints committee, a special counselor or other support service including the maintenance of confidentiality. The complaints committee should be headed by a woman and not less than half of its members should be women. Further to prevent the possibility of any
under pressure influence from senior levels, such complaints committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment. The complaints committee must make an annual report to the government department concerned of the complaints and action taken by them. The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the complaints committee to the government department.

8. **Workers initiative:**

Employees should be allowed to raise issues of sexual harassment at workers meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meetings.

9. **Awareness:**

Awareness of the rights of the female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. **Third-party harassment:**

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The central state governments are requested to consider adopting suitable measures including legislation to insure that the guidelines laid down by their order are also observed by the employers in private sector.

12. There guidelines will not prejudice any rights available under the protection of Human Rights Act, 1993.
“By the terms ‘life’ as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.”

Above statement approved in our country by Supreme Court\textsuperscript{133}. In a case\textsuperscript{134} by the statement “that any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within article 21 further it was held by Justice Bhagwati.

“We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing with fellow human beings.”

Parliament in the fifty first year of the Republic of India for the purpose to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronics communication generally referred as “electronic commerce”. In this act u/s 67-publication of information which is observe in electronic form. The term electronic form is define u/s 21( r ) “electronic form” with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, microfilm, computer generated micro fiche or similar device under this whoever publishes or transmits or causes to be publishes in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt person who are likely, having regard to all relevant

\textsuperscript{133} Kharak Singh Vs. State of U.P, AIR 1963 SC 1295,1301,1305; Sunil Batra Vs. Delhi Administration (1978)
circumstances, to read, sec or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

When pregnancy arises from a sex crime like rape on humanitarian ground it can be terminated under the act be registered medical practitioners at any place specified is Sec.4 in good faith specially in which pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman with their consent. termination of pregnancy (abortion) is a crime but in avoid to keeping the indecent attitude it is positive towards victim lady at her negative juncture in which she is physically as well as psychologically disturb. In this regard to save the pregnant women’s health strength and sometimes life the act is introduced by the Indian parliament which is very much appreciated by the society which is coated by legal guard.

The National Commission for Women was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 (Act No. 20 of 1990 of Govt. of India) to:

- review the Constitutional and Legal safeguards for women;
- recommend remedial legislative measures;
- facilitate redressal of grievances and
- Advise the Government on all policy matters affecting women.

In keeping with its mandate, the Commission initiated various steps to improve the status of women and worked for their economic empowerment

135 Sec. 4 : The Medical Termination of Pregnancy Act, 1971
THE Commission has been receiving a large number of complaints and acted suo-moto in several cases to provide speedy justice to women. The commission has also taken up the issue of child marriage, sponsored legal awareness programmes, Parivarik Mahila Lok Adalats and reviewed laws such as Dowry Prohibition Act, 1961, PNDT Act 1994, Indian Penal Code 1860 and the National Commission for Women Act, 1990, to make them more stringent and effective. The commission has also been instrumental in proposing new legislations such as the protection of women from domestic violence Act, the sexual harassment of women at workplace Bill etc. It organized workshops/ consultations, constituted expert committees on economic empowerment of women, conducted workshops/seminars for gender awareness and took up publicity campaign against female foeticide, violence against women, etc. in order to generate awareness in the society against these social evils.

In the developed countries the very atmosphere is electrified by loud claims of feminism and here in our country, our hearts are full to the brim with enthusiasm for the cause of woman. But it must be said that when a woman is seduced or raped, the legal position as it exits today is that there is no civil remedy available to her. She faces complete holocaust and devastation. In India in spite of all the trends of welfare legislation about women, legislations have left barren this field. Perhaps it has escaped their notice. So in the law of torts the sexual wrong against woman and other wrongs like theft, dacoity, murder, robbery have failed to get tortuous remedy of damages or compensation. Our law of torts derives its rules and principles from the feudal and medieval England, where woman was treated as part of the personality of man. Woman and man were one in the eye of law. She had no independent right to sue, to enter into contract and to own property in her own name. It is only through the courts of equity that the law relating to woman was developed and restoration took place but in the matter of seduction and rape the woman still has no right to sue, rather rape is not recognised as a tort. If a woman is raped, the law of tort allowed remedy before 1970 to a parent or a master for the loss of services which would have been rendered by the victim of rape.
There is no rule that woman can claim compensation for the wrong suffered by her. This is in itself preposterous (unnatural) and violation of the principle of equality and the very spirit of democracy.

The law of torts is a vital limb of social and individual security. It is going towards social insurance and social welfare. In appropriate cases it imposes strict liability independent of fault and negligence for the protection of our social and public interests. It has abolished the rule that death extinguishes the liability by enactment of statues and evaluation of law, it allows remedy in case of death by virtue of Acts like Fatal Accidents Act, 1855 and principles like expectation for life, pain and sufferings before death. It has extended remedy in case of negligence by translating the principle of ‘love thy neighbour’ into law which directs do not injure your neighbour. It has recognised indirect injury or nervous shock and is developing the principles of law in deceit, liability for mis-statements, negligence of hospital authorities etc. There seems to be no reason to deny remedy of damages in the case of rape which has emerged a vital threat to a woman’s personality, otherwise there would be the violation of the very spirit of our Constitution which ensures dignity of the individual. It is often objected that awarding of compensation is adding insult to the injure to the wronged women but this objection seems to be verbal and unsubstantial. We can find no reasonable justification in denying this remedy which is an economic relief to the wronged woman as well as a penal burden upon the wrongdoer. It will prove an eye opener as well as deterrent punishment for him. If there is any linguistic blame or insult in the word ‘damages’ or ‘compensation’, the word ‘relief’ can be substituted for it.

If a woman is raped by a person and remedy of compensation is allowed according to the gravity of the wrong it will certainly reduce the occurrence of rape. We allow maintenance to a deserted or separated wife throughout her life. If maintenance is allowed to a raped woman on a monthly basis the whole romantic euphoria of the youthful mind may be washed off and the potential rapists may be compelled to lead a moral life. While our society is educated to purge itself of the fetish of false purity and becomes quite ready to reclaim and rehabilitate the
wronged woman with all dignity and honor, the law should take the bold initiative and effective lead by the desired reform and amelioration.

Compensation in many of the cases arising out of the Criminal proceedings and the injustice due to the crime done to the victims, the compensation in such cases become there right and move over it is the duty of the state to provide for the compensation to the victims in our country where the compensation is payable by the prospectus or the convict as the case may be according to the judgment of the Hon’ble Courts. The victim of criminal offence 'Rape' and other sexual offences needs compensation as there life style is disturbed or interrupted and she become down graded in the eyes of their society and relatives. But in our country there is no specific act and legislation in which all the victim should be legally compensated as there were different modes like domestic violence, motor vehicles, matrimonial, physical and emotional Injury etc. In India under Criminal Procedure Code\textsuperscript{136} U/S 357 of Cr.P.C. compensation may be given to the victim which is as under :-

1. When a Court imposes a sentence of fine or a sentence (including a sentence of deaths) 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 the death of another person or of having abetted the commission of such an offence, in paying compensation to the person who are, under the Fatal

\textsuperscript{136} Cr.P.C., 1973
Accidents Act, 1855 (13 of 1855) entitled to recover damages from the person sentenced for the loss resulting to them from such deaths.

d) When any person is convicted of any offence which includes theft, criminal m is appropriation, criminal breach of trust, or cheating, or of having dishonesty received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bonafide purchases of such property or the loss of the same if such property is restored to the possession of the person entitled there to.

2. If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented before the decision of the appeal.

3. When a court imposes a sentence, of which fine does not form a part, the court may, when passing judgment, order the accused person to pay, by way of compensation such amount as may specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

4. An order under this section may also be made by an appellate court or by the High Court on court session when exercising its powers of revision.

5. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section.

In T.A. Krishnan V. Chithran & others137 Hon'ble Kerala High Court in above can interpret section 357 Cr.Pc and held that criminal court may award compensation to the victim either under sub-section (1) (b) or under sub-section


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(3). When the court imposes a sentence of fine or a sentence of which fine forms a part, the court may award compensation to any person for any loss or injury caused by the offence under clause (b) of sub-section (1) of section 357 if in the opinion of the court compensation is recoverable by such person in a civil court. Even when the fine does not form part of the sentence, the court may award compensation to the victim, payable by the accused person, as per sub-section (3) of section 357. It is provided in sub-section (3) of section 357. It is provided in sub-section (3) of section (3) of section 357 that the person to whom compensation is to be awarded must be a person who could recover such compensation in a civil court, as is the case in clause (b) of sub-section (1) of section 357 of the code of criminal procedure. Sub-section (4) provides that the appellate court or the Revisional Court may also pass an order under section 357. Therefore, it is contended that the victim could wait till the disposal of the criminal case and his right to file a civil suit for compensation could be reckoned from the date of disposal of the criminal case.

Supreme Court in the case of Smt. Nilabati Behera alias Lalita Behera V. State of Orissa & Others138 held as under that a claim in public law for compensation for contravention of human rights and fundamental freedom, the protection of which a guaranteed in the constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to the remedy in private law for damages for the tort resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation. Which contravention of fundamental rights guaranteed by the constitution, when that is the only practicable mode of redress available for the

contravention made by the state or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the constitution by resource to Articles 32 and 226 of the constitution.

Apprehending police torture and gang rape she jumped from the second floor of the police station building and was grievously injured and admitted to hospital. Her case was taken up before the commissioner of police, Mysore and Lokayukpta. The National Human Rights Commission was also approached by the victim which is allowed by the Hon’ble Court with the tune of Rs.2,00,000/- in which Rs.1,50,000/- is directed to be deposited in a nationalised bank at Mysore, for a period of 5 years with high yielding interest in fixed deposit and victim is entitled to withdraw with in four weeks of passing the order, and a sum of Rs.5000/- to Samatha Vedlike, a processing women’s organization for taking the matter with interest to authorities and the court by the state government towards legal expenses, along with there it is described by the Hon’ble Apex Court that rule of law is the basic foundation of the democracy it can survive only with the active assistance of police. The Higher Authorities should have taken much more care to see that the law protectors are not to become law breakers. Law breaker is to be properly punished to protect law, further giving directions to the Director General of Police to get hold of the entire records of the departmental proceedings and have a second look in the light of this order and take remedial action in accordance with law to maintain purity and dignity of police department.

The Hon’ble Supreme Court in order to protect and safeguard the honour and personality of a rape victim in its landmark judgment in case of D.D.W.W.F.139 has laid down the following guidelines.

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

the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from the 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 interest in the police station represent 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 will be in 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 question 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 the victim 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 trails anonymity of the victim must be maintained as far as necessary.

7. It is necessary, having regard to the directive principles contained under article 38 (1) of the constitution of India to set up criminal Injuries
Compensation Board, Rape victims frequently incur substantial loss. Some, for example are too traumatized to continue in employment.

8. Compensation for victims shall be awarded by the court on conviction of the offender any by the criminal injuries compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of rape.

The Hon'ble Supreme Court in another sensational rape case140 observed "Judges who bear to sword of justice should not hesitate to use that sword with almost severity to the full and to the end if the gravity of the offence so demand". In this case, the accused Medical Officer was convicted for 7 years R.I. and fine of Rs.25000/- was ordered to be paid as a victim compensation.

In Cr.Pc. though there is provision of compensation still in the present juncture to compensation victim women, law to be changed as victim - oriented for women welfare rather than offender oriented. Not only in our country but in whole universe woman position is very poor on account of several social barriers and impediments under the constitution of India they are equal and have equal right, still they are discriminated and subjected to inferior treatment. Nevertheless the government of India as per its commitment towards gender justice revises its laws time to time for protection of women from various negative aspects in form of Criminal Offence. In India citizen learn about the life and these styles from Holy books, reports, news, periodical from very beginning of the life by their care takers and relatives, what had happened to certain folk during a particular period of History. The offence of rape is Committed in our society in the post, at present and if the position and adopted phenomena is same it could be carry to future also. The rape laws do not unfortunately, take care of the social aspect of the matter and are

inept in many respects as held in Bodhisattwa Gautam case. Now a days the position of the female child is so poor that the Doordarshan made a advertisement to celebrate the birth of the female child to encourage the female body and their position in our society. When a male baby is born their family distributes sweets and celebrates birthday exquisitely irrespective of their financial status and economic capacity on reaching expectation that the boy would fetch a huge amount of money when the gets married, he is shining star of the family after the father which is absolutely absent in case of female baby. In view of this both are partners and they are the two faces of one coin in which our social life will stand and service as it is an evident from our natural law. Dealing with sociological and philosophical aspect of the matter, the Hon’ble Supreme Court in a case has observed as under:

Of late crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman’s rights in all spheres, we show little on no concern for her honor. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim’s privacy and personal integrity, but inevitably causes serious psychological as well as physical harm is the process. Rape is not merely a physical assault it is often destructive of the whole personality of the victim. A murdered destroys the physical body of the victim; a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with almost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradiction or insignificant discrepancies the statement of a prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of prosecutrix inspires confidence, it must be relied upon without

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seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence, which may lend assurance to her testimony, short of corroboration received in the case of an accomplice, the testimony of the prosecutrix must be appreciated in the back group of the entire case and the trial court must be alive to the responsibility and be sensitive while dealing walk cases involving sexual molestations.

Suggestions

➢ Forcible penetration, pencil /oral, Pencil/anal, object or finger/vaginal and object or finger/anal should be made a separate chapter of offence under the Indian Penal Code along with the full commentary and appropriate punishment of the offence.

➢ Provision for death sentence if the accused committed rape after rape and also habitual in the above and commutation or remission of sentence should not be sanctioned or given to the accused.

➢ No suitable provision should be made requiring the offices investigating the complete investigation of cases of rape and other sexual offences on priority basis and requiring the court to dispose of such cases specialty in short period.

➢ Specialized training should be imported to the magistrate in regard to trial of cases of rape and other sexual offences to instill in throw sensitivity to the feelings, image, dignity and reputation etc. of the victim.

Government and Social welfare depts. & Organization should take necessary measures for protecting them and also rehabilitate them so that the victim of rape may lead a life with dignity of person. They should be provided opportunity for education, financial support. If possible then marriages may be
arranged so that the problem of child prostitution can be eradicated. Marriage would give them real status in society.

- Union Government and state government make a scheme to study the matter in deep from time to time and on the basis of its study, effective direction be given to the implementation of the schemes.

- Active vigilance checking by the police particularly, in busy streets, markets, railway station, local trains, bus-stands, schools, colleges, Cinema houses, Public gardens, fairs etc.

- Using of intoxicants such as liquor, drugs etc. becomes a habitual status symbol with most of the persons, in public places government should impose restriction in public places.

- Scenes of wearing dress and undress of clothes and undergarments in advertisements movies and Cinema should be banned. The cosmetics used by modern women and the fragrance of scent, essence, perfumes and other cosmetics should be restricted up to the age of 18 years. Sometimes it also results into unmarried motherhood.

- Pornography and obscenely and provide a fertile ground for sex-stimulation. It is hard to come across any newspapers and magazine, posters advertisement showing top models and actor/Heroine in semi nudity alluring postures depicting live display of vulgarity. In which adverse affect on the minds of many persons particularly adolescents and teenagers should be stopped as early as possible so that innocent children will not become slaves of their desires giving ascendancy to the pendulum of sex related crimes.

Sex education must be given to the young boys and girls. But in our country still a matter of problem that what should be the legal and moral ways of teaching the particular education and also their negative aspects in
the form of vulnerar disease like AID’s, HIV, Syphlsis etc. specially when
the maturity taken place and they are undergo biological changes in their
physical features. Valid sexual relationship should be prescribed. In their
study material or teaching with some electronic media or teaching with
some electronics media such like telefilms and advertisement.

According to the Right of Privacy in many cases accused try to take
defence that the victim is of an easy virtue women as them was no law
and prohibition in order to protect the safeguards and constitution right.
It must be restricted or there is a need for making new law or
amendment in existing law.

Punishment of gang rape should be imposed more than the punishment
of rape because of the victim helplessness and in some cases even
murder is committed. In there types of criminal cases where the victim
went to the suffering of death of commit suicide should be punished
with long period.

Outraging the modernity of women should be amended upto the
definition of attempt to rape because in the way of outraging the
modesty of woman or the earlier acts of the offence of rape is same
hence both should be punished accordingly in the offence of attempt to
commit rape. An attempt to commit crime is an act done with intent
to commit that crime and forming part of a series of acts, which would
constitute its actual commission if it were not interrupted. The point at
which such a series of act begins cannot be defined minutely by the
victim. It depends upon each and different circumstances of particular
cases. Because in attempt in some cases the commission of an offence
and the attempt to commit it are dealt with in the same section and the
extent of punishment is also the same for both. In a case\textsuperscript{143} it has been observed that attempt begins where preparation ends.

\begin{itemize}
\item Special judicial courts were made to the victims of rape or other sexual offences along with lady judges and other presiding officers of the court with the choices of advocate to the victim.
\item There is no rule of law in which corroboration is essential before there can be a conviction solely on the testimony of the victim but in some cases it is found that corroborative evidence is produced as that this rule or prudence must be present in the mind of the judge, and there is no principle or law for the judge to apply the mind in favour of the victim.
\item Circumstantial & corroborative evidence should be look only in those cases where the victim is not available for evidence due to gruesome of murder and specially in child witness or any other reliable witness which are not of fatal nature to throw out an reliable persecution case with great caution and only when the exigency of justice is required as held in Harman Singh Case.\textsuperscript{144}
\item The power of observation differs from person to person. What one may notice, another may not. An object or movement might emboss it image on one person’s mind. Whereas it might unnoticed on the part of another so there is no law and enactment in which investigating agency and judiciary be found down their personal understanding with reason to do so or not because. It is very difficult for all of us to recall a conversation of sexual offence and reproduce the very words used by the accused or heard by the victim in rapid succession or in a actual sequence as the cross questioning may confused or mixed up.
\end{itemize}

\textsuperscript{143} Abhayananda Misra v/s State of Bihar, AIR 1961 SC 1968
\textsuperscript{144} Harnam Singh v/s M/S Bhushan Metallics Ltd. 2007 (2) Law Herald (P & H) 1272
In rape cases it seems that psychological assault is more dangerous than physical injury because the latter has the property of healing but the former does not. In case of rape, the victim suffers from body aches, headaches, injury, uncontrollable crying, etc. It may also result in suicide, separation from family, loss in concentration in study, and have the tendency to forget the things in future or past. Government and NGO's should open the Assistance Programme throughout the country to manage and control over the suffering of the rape victim.

Indian laws dealing with sexual offences do not specifically mention child sexual abuse. A form of sexual abuse is not covered under the IPC. Just as the law makes a distinction among rape, gang rape, and custodial rape, adultery, etc., it needs to differentiate between sexual abuse by parents or relatives of a child and also it needs to punish the occurrence in a serious manner because of the permanent scar on the psyche of the victim child.

The court acts with a firm hand in awarding the punishment while dealing with the cases and the court should not be carried away by some decision or other which may suggest leniency on the part of accused by imposing less punishment. Showing leniency by courts in rape cases is nothing but encouraging the culprits to commit one more rape and spoil one more life of an innocent girl. It is like a bad habit of smoking and drinking wine or alcohol in which the enjoyer enjoys the bad acts whenever they get the suitable opportunity. Even in the cases where the prosecutrix has been involved in her sexual behaviour earlier, she refuses to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone.
In all the rape cases previous anonymity of the victim or their relative must be maintained and explained as far as necessary by investigating agency.

Financial help to victim shall be given by the accused and from their property and there is need to set-up of criminal injuries compensation board/tribunal on the account of pain, suffering and mental shock as well as physical loss of health and personality in pregnancy and the expenses of child birth or abortion as required to be justice and protection of the victim of rape.

Strict rules should be implemented and regulated by the Government and Public Sector bodies relating to conduct and discipline should include rules of prohibiting sexual penalties in such rules against the accused. The victim of sexual harassment should have the option to seek transfer of the station for their own transfer.

The central government as well as state government adopt suitable measures according to the law to insure that the implementing agency follow the law or not. Procedure lay down by the statute or law of the state and should be strictly followed as held in cases.\(^\text{145}\)

The law relating to woman was developed and restoration took place but in matter of seduction and rape the woman still has no right to sue as in India still law of tort is not codified and till now does not recognized as a tort. There is no rule that woman can claim compensation for the wrong suffered by her. This is itself unnatural and violation of the principle of equality and the very spirit of democracy.

Sexual molestation which was published in investing manner regarding eve-teasing is the daily occurrence, the youth of women is subjected to

fraud and blackmail in our social life. The absence of remedy in itself is an abetment or encouragement to wrong doer against woman, and the crime of rape becomes a romantic and victorious adventure. If there are effective checks the wrong does may scarcely think of committing the folly again.

Interim compensation/maintenance should be given to Rape victim as given in Hindu Marriage Act or under section 125 Cr.P.C.

Whole law of tort cannot be codified but at least special legislation should be made for protecting the modesty of woman by making provision for aggravated and penal damages incase of sexual wrongs against women. Parliament represents the will of the nation to come forward to make legislation awarding full economic relief to the raped. Woman, if it is done the incidents of rape are found to be minimized and there should be provision for social insurance and vicarious liability of the state in the case in which the accused is in govt. servant.

If the victim of rape suffers conception by the illegal act, what will happen to her; who will maintain her illegitimate child; which law will allow her maintenance; where is social insurance for her; who will rehabilitate her? Our present legal system answers all these questions with a big ‘No’. There is a need of a major change in the perspective of our civil law in order to provide adequate justice in the court as a matter of right, according to the gravity of the offence as in United States of America and Britain.

The Higher authorities should have taken much more care to see that the law protectors are not to become law breakers. In those cares in which the victim approach to higher authorities and a direction to remedial manner in accordance with law to maintain purity and dignity of police department.
The insulation of police from extraneous pressures; and ensuring independence like that of the judiciary;

Separation of the investigation wing from that of prosecution.

Strategies for reducing the huge backlog of criminal cases in courts.

Adoption of a system of Honorary/Special Magistrate;

Adoption of system of compensation for crimes on the analogy of criminal injuries compensation;

Promoting NGO’s for victim assistance and service and for protection of witnesses in collaboration with the police system.

Framing and implementation of appropriate pre-service and in-service training programmes for the judges at all levels;

Better case management techniques by improving court administration through computerization.

A fresh look at the provisions for selection and appointment of judges at all levels including constitution of National Judicial Service comparable with the best service in the executive branch to attract the best available talent.

Proper utilization of full court working hours on each working day by judges and confining absenteeism only for unavoidable reasons.

Increase in working hours of the courts and reduction in holidays to extent feasible, keeping in view the nature of judicial work.
Following issues were needed more interpretation & research regarding the offence of rape:-

1. The age of the consent in rape law should be uniformly raised to 18 years. The definition of rape needs to be widened to cores other forms of sexual assault.

2. The facts of earlier prosecution or conviction against sexual offence be considered in present decision.

3. Marital rape exception clause needs to be deleted.

4. Statutory provision to provide for compensation to the rape victim, needs incorporated.

5. Counseling/ legal aid should be provided to the victim.

6. Proceeding delay must be reduced.

7. Punishment needs to be enhanced where accused ‘knowingly’ transmits HIV to the victim.

8. Death Penalty is not recommended. Certainty of punishment is needed without justice being delayed.

9. Non-availability or delay of availability of women doctors for medical examination of the victim.

10. The medical report should not mention ‘habitual intercourse’ as the same goes against the victim. Medical examination at times is extremely inhuman and barbaric.

11. The trial should be held preferably by a woman magistrate.

12. Enhanced punishment should to provide for gang rapes.
13. The definition of Public servant should be amended to include Members of Parliament, Members of Legislation Assemblies, Persons having authority or colour of Sub-section 2 and Sub-section 3 of Section 376 of the Indian Penal Code.

14. Meaning of word ‘Consent’ should be given wide coverage keeping in view the Indian Social Culture and it should be redesigned.

15. Suggestion to provide physical training at school and college level such as Marshal Art, Judo, Kumfoo & Karante etc.

16. The definition of Rape should be widened and not be restricted to vaginal penetration.