Chapter - I

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Rape

One of the sex-crime widespread in the society is Rape. 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 molestated 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.

According to Indian methodology “Kamdev” is related only to sexual acts & behaviour. Indian Kings/Rajas used dasi’s as a slave girls who were compelled to satisfy sex lust as per the desire and need of the king and their Rulers. Many kings in olden days kept woman as their queen’s and case takers in many numbers in their palaces and empire. Indian civilization is one of the most ancient of all civilization during Indus-Valley civilization (3250-2000 B.C.) as evidenced from the excavations of sex power medicines like ‘Silajit’ were known. ‘Manu’ was the first traditional king and law gives in India (3102 B.C.). Vedas are most sacred literature of India and were supposed to have been written between 3000 B.C. and 1000 B.C. in which ‘Rig Veda’ is the oldest one, mention of king and administration of justice by the king regarding the knowledge of sex.1 Marriage was prohibited between brother and sister, incest and illegitimacy were known and only people having knowledge were allowed to treat patients.

Hindu is divided into four steps which is recognized by all the Religious and Culture institutions they are Brahmcharya, Grihasth, Vanprasth and Sanyas. Further the women is considered to be the source of Shakti (Power). The ethical and moral postulates in our society have given her a place of pride. Women has

been compared with the beauty of Nature in Indian literature and the sanctity of Goddess is attached to her. These values are deep rooted in the minds of the Indian people and have been accommodated in ancient laws to a great extent. The legal history of India reveals that severe punishment was inflicted upon the violators of these values. A Sloke in Smritis included a provision that 'a man – a fool who does not know himself – who violates a chaste and menstruous woman is threatened with the loss of his life.' However, the punishment for rape varied according to the cast of the culprit and of the victim.

In the text of the Narada and Manu the word ‘Strisamgrahana’ is deal with the sexual offence which means forcible carnal knowledge of a woman. Gautam’s text made an intercourse by a Sudra with a twice born woman punishable with death. The text of Apasthamba fixed the punishment as cutting off the Private organs of the culprit. Vishnu’s text made adultery with a woman of one’s own cast punishable. Manu’s text extended punishments even to other association with a woman short of sexual intercourse. The text of Narada was sensitive towards women, and the text of Katyana made a forcible intercourse a capital offence.

In all form of violence against woman rape is prominent among them. Most of the cases involving rape remain unreported due to cultural norms, Public apathy or ignorance as observed by Justice J.N. Bhatt. The worst aspect of the problem is that women today are not safe and secured even in the family and their legal care takers, inspite of existing law.

Men and women are made to coexist and to supplement each other for the survival of their lives as well as society. But this relationship that is the basic

5. Ibid, P.308.
8. Ibid, P.313.
foundation of society, unfortunately, has become the most abused aspect in social life. Woman instead of being recognized and regarded as a human being of equal capacity or rights is unfortunately seen as a commodity mean for maximum exploitation by the other sex i.e. male. This male chauvinistic approach, which is the root cause of the problem of Rape, needs to be studied and ratified in its entirety. The effect and consequences of rape are so deplorable that it shatters the confidence and soul not only of the victim but also the society as a whole. Manu, the father of Hindu Dharmasutra says about the women:

“Pita raksati kaumare bharta raksati yauvane/raksanti stharive putra na stri suatan trayanas bati.”

It means a woman is under the subjection of her father when a child, when married, under that of his husband, after her husband under her sons, and if she has no sons then to her agnostic relation, because, there is no woman what so ever who is fit to be independent.

At one time it was believed that great spiritual went was gained by donating one’s daughter to an idol. Along with this belief, there also grew up the notion that a devdassi must also actually marry a human being. This led to the conversion of the so-called holy and what came to be known as ‘temple prostitution’ Despite the spirituality and religiosity attached to the Devdasi: System it was revolting to the conscience of the enlightened, educated and Secular Hindu. Effort was made to abolish the devadasi system. Bombay now member in Maharashtra state was this earliest to pass a legislation. Bombay Devdasi’s Protection Act, 1934 and Bombay Devadasis Protection (Extension) Act, 1957; Madras Passed it in 1947 by the name of Madras Devadasis (Prevention of Dedication) Act, 1947, Andhra Pradesh

passed it in 1956 and has replaced it by a more potent legislation: The Andhra Pradesh Devadasi (Prohibition of Dedication) Act; 1988.\(^{11}\)

Accordication of women as Devdasi it mean the performances of any act or ceremony by whatever name called by which a woman is dedicated to the service of a Hindu deity, idol, object of worship, temple or other religious institution or place of worship and Indian tying tali with jakini to a woman or tying a woman by a gasland to a 'garuda khambham, dharana and deeksha.' Devadasi has been defined as any woman so dedicated by whatever name called and includes Basari, Jogini, Parvathi, Mathamma and Ghyamma.

Later it will be punished where the person who performes, promotes, lakes past in a abets the performance of any ceremony or act for dedicating a woman as Devdasi or any ceremony as act connected. These with will on conviction be punishable with imprisonment of either description for a term which may extend to three years but which shall not be les then two years and with five. Which very extend to rupees three thousand but which shall not be less then rupees two thousand. The offence is deemed to be cognizable and non-bailable. The collector or any other revenue officer is constituted as the authority responsible for the prevention of devadasi system. In case such officer comes to know hat the practice o devadasi still prevails within his jurisdiction, he will take necessary action. The Execution Majistrate is to be confessed that powers of the Judicial Majistrate to try offences pertaining to dedication of devadasis.

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

\(^{11}\) See Appendix II – for text of Andhra Pradesh Devadasi (Prohibition of Dedication) Act, 1988.
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 Rigveda12 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.13

The great Hindu law given Manu denounces sexual intercourse with wife of other man in strong terms. He prescribes heavy punishment followed by

12. Rigveda: Acharaya Charak.
banishment to such offender\textsuperscript{14} including death as well as amputation of offending limb and also by cut down the penis parade on ass after confiscation of his whole property. He gives examples of incestuous relation which is as follows:-

Sexual relation with sister by the same mother, he places sexual relation with teachers wife at the top of incestuous crime and regards it as one of the four heinous crime. While Narda holds that sexual intercourse with step mothers, mother's sisters, mother-in-law, the paternal or maternal uncle wife, father's sister, a friends of pupils wife, sister sister-friend, daughter-in-law, daughter, the wife of one's vedic teacher, a woman of the same Gotra, wet nurse or a virtuous wife or a woman of higher caste was incestuous and the punishment for this crime was the excision of penis and the consenting women was also not spared, her female organ and both breasts were to be cut off.\textsuperscript{15} Public humiliation was awarded to the woman by putting a branding mark on the head. At present the act is quite rampantly spread over the society though it is hardly reported due to social taboo. The physical abuse of women in prostitution, dancing, entertaining which are part and parcel of flesh trade, although not reported or published as at present, women folk including minor girls were sexually assaulted them. Phoolan Devi who is sexually assaulted by the Higher class of people and later on she will take revenge by joining the gang of dacoits in Chambal and also elected as Member of Parliament. A bold and different step was taken by educated village girl who had been raped by officials while on duty for literacy mission. She was pregnant owing to the incident and delivered a baby boy and left the world every, but perhaps prescience of her impending death threat after the baby's birth for she wrote in a revengeful manner- "I will give birth to this child even if I have to face the wrath of society; why should I kill this innocent child, when it is the man behind the birth of this illegitimate child, who should be killed instead." The victim wrote to her father pleading that the child should be subjected to paternity test so that culprit should be punished, she even asked her father to ask govt. for compensation for the

\textsuperscript{14} Kautalya's theory of Crime and Punishment: K.M. Aggarwal-166 pg.
\textsuperscript{15} Kautalya on Crime & Punishment p.183.
incident took place during official duty that has brought her disgrace and possibility of death.16

In our Great/Holly book “Ramayan”17 the wife of Ram is assaulted & kidnapped by the king of Lanka namely called Ravan. It also demonstrates the monkey brothers Bali and Sugriva. They had a common wives Tara and Ruma, of course Rama punished Bali for illicit relation with Ruma, and in Mahabharat18 five brothers (Pandav) adopted one women (Panchali) and in the same Kunti is sexually assaulted by the Surya and from their lions their son namely called “Karan” was born out and he faced many problem in their living and always defamed in challenging option at that time Lord Kirshna is famous for the outrage the modesty of Gopis in mathura which is now at present time if repeated by any other it will be great hurdled to do that and also it will not bear in the present society. It is nothing but a sport adorned by erotic-sex-appeal game of religion. Sex in the early time has been proved by marked painting and sculpture of which are Khajuraha (M.P.) made in 950-1050 A.D. In Chandella dynasty has number of Hindu temples including Mahadev Temple, the stone carvings on the walls depicting daily chores shows cares and inmates ecstasies of love and sex. In every form women’s representation is directly or indirectly present the sexual aspects of the women which enjoyed by the people at large mean to say that when ever every individual get suitable chance to do. Films, Television, songs, mobile, Advertisements, Sports, Educational Activities, Internet, e-mail, SMS Messages, ‘A’ Graded films and Blue films in the shape of Video-Clips, Porn websites in compuers DVD’s, VCD’s etc. Women’s representation in the above is immoral and illegal inspite of different checks and control of Govt. and Judiciary. Sexual harassment is happened at every where and at every time. Women’s position in our society is like a dead animal which is seen by vulture available in the form of Relatives and friends which picks the flesh in shape of enjoyment whenever they get suitable

17. Ramayan: Tulsidass
opportunity to do so specially when the victims is along and in the recognised custody and attitude which is reliable to be protected. Rape is crime against victim’s fundamental right under article 21 of constitution of India\(^\text{19}\) and our law is unable to take care of the social status and are inept in many respect\(^\text{20}\) Rape is a spontaneous explosion by an individual with pent-up emotion and uncontrollable lust, or planed in advance and elaborately arranged act by a single rapist. Any female who could be seized coerced, or enticed to a favourable place becomes the victim. The boundaries of her physical body are neutrally speaking violated. It destroys the entire psychology of a woman and pushes her into deep emotional crisis to the extent of committing suicide or sometimes brutally murdered after committing the Rape. In fact the offences are basically\(^\text{21}\) the criminal policy adopted from time to time by those sections of the community who are powerful or strong enough to safeguard their own security and comfort by causing the sovereign power in the state to repress conduct which they feel may endanger their position, whenever law and morals unite in condemning an act, the punishment for the act is enhanced. According to Stephen\(^\text{22}\) the relation between criminal law and morality is nor in all cases the same. The two may harmonise; there may be a conflict between them, or they may be independent. In all common cases they do, and, in my opinion, whenever and so far as it is possible, they ought to harmonise with and support one another. Everything which is regarded as enhancing the moral guilt of a particular offence is recognised as a reason for increasing the severity of the punishment awarded to it. On the other hand, the sentence of the law is to the moral sentiment of the public in relation to any offence what a seal is to hot wax. It converts into a permanent final judgment what might otherwise be a transient sentiment. The mere general suspicion or knowledge that a man has done something dishonest may never be brought to a point, and the disapprobation


excited by it may in time pass away but the fact that he has been convicted and punished in which intention is the only purpose or develop with which an act is done. It is the fore-knowledge of the act, coupled with the desire of it, such fore-knowledge and desire being the cause of the act, in as much as they fulfill themselves through the operation of the will.

An act is intentional if, and in so far as, it exists in fact, the idea realising itself in the fact because of the desire by which is accompanied.\textsuperscript{23} Intention is an operation of the will directing an overt act; motive is the feeling which prompts the operation of the will, the ulterior object of the person willing e.g. if a person kills another, the intention directs the act which cause death, the motive is the objective which the person had in view e.g. the satisfaction of some desire such as rape, revenge etc.\textsuperscript{24} In these days when offences are multiplied by various regulation and orders to an extent which makes it difficult for the most law-abiding subjects in some worry or at some time to avoid offending against the law. In an English case\textsuperscript{25} R.V. Prince justice Bramwell distinguished the act which is Mala in se and Mala Prohibita which is recognised in America where crimes have been divided according to their nature in which crimes which are intrinsically immoral or wrong in themselves (Malum in se) such as murder, rape, burglary, breach of peace, forgery and the like, secondly crimes which are comprise those acts which in the absence of statute will not be considered as immoral (Malum prohibitum), as no moral turpitude is attached to them. Instances of such acts are statutes prohibiting the enhancement of rents, removal of food grains and the like such acts are made offences in modern times to sole the house problem, food scarcity, and so on, from the evidence forth in the preceding citation and common knowledge, it is to come to conclusion that from the time immemorial and since the inception and creation of society the offence against society and sexual offence against woman have come hand in hand of which woman have suffered a lot in the area of sexual assault,

\textsuperscript{23} Salmond, Jurisprudence (11 Ed.), P.410.
\textsuperscript{24} Stephen: History of English Criminal Law, Vol. II.
\textsuperscript{25} (1857) L.R. 2 C.C.R. 154.
molestation, sexual harassment, rape and killing etc. but there have been changes in the nature of crimes and punishment which has been further explained in detail. It is also held in a case\textsuperscript{26} that every case is to be scrutinized as per its own facts and circumstances.

\textsuperscript{26} Harchand Singh v/s state of Punjab 200(2) Law Herald (P&H) 1265.