CONCLUSION & SUGGESTIONS
Crime against women is one of the most important issue today. It has become a global phenomenon attracting the attention of the jurists, legislators, criminologists and social workers. Crime against women mainly manifests itself in various forms, out of which, rape happens to be one of the worst forms of crimes against the woman.

In Indian society, rape is an example of degradation to the women. Rape victim and her family members suffer from continuous ruined trauma and social humiliation. Due to social stigma they make every possible efforts to conceal the event if there is no witness to it. Our society is so conservative that the chances of marriage of such girls are completely ruined and they are treated like outcastes. They are hated by their own near and dear ones. Relatives think that she is polluted and don’t extend family or moral support to her.

Thus, the condition of Indian women is very much shocking. The social, economic and political conditions are surely responsible for the women’s oppressions in almost every walk of life. They are the victims of the circumstances which have been created due to gender discrimination which persists in India from cradle to grave.

According to the World Health Organization one rape is committed every 54 minutes in India, out of which only 10% rape cases are reported. According to the Centre For Women’s Development Studies, one rape takes place in every 35 minutes in India. It means per day 42 women become the victim of rape in India.1

Only in this year (i.e. 2003) 382 cases of rape were reported only in Delhi, out of them 8% reported rape cases were concerned with gang rapes till October 2003. Now, it appears that the Capital of India has been transformed into ‘Rape Capital’.

---

1 See The Denik Jagran on 1 November 2003.
Conclusion

In the Metropolitan Cities of Mumbai 108, in Channai 26, and in Calcutta 15 cases of rape were reported till October 2003. In 2000, 16496 cases and in 2001, 15265 cases of rape were reported in all India. There are various views about rape cases in India. In 95% rape cases, the accused is known to the victim. Most of the rapes are committed by persons with no criminal past. Most of the accused are 18 & 25 years of age. Most of the accused were the victim's neighbours.

Now the question arises that who is to be blamed for the offences of rape. Undoubtedly, the answer is that it is our society and male gore that romanticizes sexuality which is responsible for such crimes. We have failed in our duties because we are not loyal sincere and honest towards our duties. If we are really sincere and honest towards our duties it is earnestly hoped that within a short span of time we would be able to check this crime to a larger extent.

The ordeals of rape victims start as soon as she reports a rape, suffers at each stage i.e., after reporting to the police, during the investigations and trials. The witness of the crime also suffers harassment, humiliation, financial loss, loss of time and all these result in mental pain and suffering to the devastated victim and her witnesses. The criminal justice system does not take into account all these factors. The courts are satisfied with the apprehension, trial, and punishment of the offender the judicial system does not adequately compensate the victim of rape for the pain, suffering, lose of earning etc. In the end, even if the offender is punished, the victim does not actually gain substantial compensation. Psychiatry and the helping professional have little to offer to the rape victim. There is no scheme to rehabilitate and treat the victims. An unsympathetic legal system is a further stumbling block in the way of a victim for seeking justice.

Only a few alleged rapists get actually convicted. An abysmally low rate of conviction is mainly due to inadequate DNA testing facility. There is a perverse

---

2 Ibid.
3 Quoted from Political and Law Times, January, 2003.
Conclusion

social attitude and apathy towards the victims in the society. In most of the cases the accused get frequently acquitted as either the complain out turns hostile or becomes untraceable. Another point in the low conviction of the rapists is that the victim withdraws the case due to the social stigma attached to being a rape victim and the prolonged court battles only compound to the victim’s woes. Similarly it becomes difficult for victim to answer the humiliating questions asked by the pleader of the defender in the court of law to prove the act of law. This sums up the plight of the victims.

Whether rapists should be punished with death sentence or not is a debatable issue today. There are many persons including Deputy Prime Minister Hon’ble Mr. L.K. Advani who advocate for the death sentence to the rapists but on the other hand, various experts and also Justice Malimath Committee’s report opine that there must not be death for the rapist.

According to the researchers opinion, after weighing the pros & cons of the award of death penalty in rape cases, it appears death penalty is not the answer of the problem. We are focusing to some extent to the wrong part of the problem i.e., punishment. We should be worried about how to handle the rape cases effectively in this country. We have already a severe punishment in our penal code. Is it not enough? Therefore the need is the proper implementation of the laws with utmost sincerity.

Moreover a death sentence to the rapist means a death sentence for the victim also, because of his fear of being identified later and putting to death, in such circumstances he would tend to eliminate the evidence by killing the victim. Moreover, even then naturally he shall try to take chance for escape by eliminating evidence.

Thus, if we give the death penalty to the rapist, the victim may probably be killed and the case would be fit one for “rarest of rare” and to judge the case as the rarest of rare will take a long time. Mercy petition will pour in and conviction rate will decrease subsequently. So the hanging does not provide solution. The
Conclusion

worrying aspect is not that we don’t punish rapists severely enough but is that we don’t catch them, we don’t convict them and the whole process is so long, painful and discouraging that the victim feels that she has been raped over and over again all through the trial.

Thus the best way to prevent incidences of rape is not to make dramatic statements about castrating rapists or to keep blaming the police. The answer is that all of us have to follow what- in American police circles- they call “zero tolerance” which means “don’t wait till a man rapes a woman”. The moment you come across an incident of eve-teasing-throw the book on eve teaser. If you hear about a man who groped women in a bus, lock him up. Zero tolerance policy is adopted in America and has resulted very useful in controlling rape crime in the city like New York in comparison with the last decade. So, to check the crime against women there must be the establishment of special courts and must hold speedy trials to ensure that any man who insults a woman’s sexuality is punished quickly and adequately. The cops can’t alone do this rather the, laws must be changed, and above all, the public perceptions must change. Instead of ignoring eve-teasers and then getting self righteous when rapes occur, we must all ensure that anybody who abuses a woman or who violates her sexual dignity is not just sent to Jail but also boycotted from the society. But will we do all this?

But in certain cases it becomes essential to do justice against crime and the award of death penalty must be considered in the following cases:

(1) In case of gang rapes because it is the pre-planned and pre-mediated act of crime;
(2) Death must be given in case of murder committed after raping the girl;
(3) Death must be given in case of child rapes. That’s why death sentence is essential in such certain cases to do justice against the crime. To create deterrence in the minds of the like minded people and to instill confidence in the society at large.
Conclusion

"The proposed mandatory death sentence for rapists is not a viable solution in order to tackle problems of rape. It would be better if the statements of rape victims are recorded, wherever possible, by female investigating officers whose members are unfortunately negligible in India. It is not as if judiciary has its hands tied because of insufficient legislation but in the contrary, India has a tradition of over-legislation, but what we are lacking is the true will to interpret and implement these laws in favour of women. The restructured and reformed penalties for rapists must be rigorously and systematically enforced by the courts and the other law enforcement agencies. Strictly implemented harsh laws would surely be helpful in curbing the crime against woman in general and rape in particular. This must be complimented with social awareness. Crime against women should be considered as a social evil and hence all concerted efforts must be made to wipe out this evil from the society forever. Besides it, there is an urgent need for setting up more ‘Family Courts’ to tackle this sensitive issue of violence against women and the victims are to be encouraged to be bold and frank instead of remaining a dumb and silent spectators. They must be sympathised and emotionally supported by the family members and the society at large. The police and women personnel must be throughly trained and well equipped in dealing with such cases. Moreover, there is an urgent need for sufficient education of women so that they may also become conscious of their rights and status and consequently become an active member in social cultural and political life of the society. The state must develop a social defence mechanism to help victims of rape cases. Thus, a suitable legislation is the need of the hour under which the state will have to pay compensation to the rape victims like advanced countries. There is an urgent need of establishing ‘Rape-Crises Centres’ in each districts of India on the Pattern of U.K. and U.S.A. In order to deal with the situation, of course the Non Governmental organisations and other social service
Conclusion

Agencies are doing a commendable job in the process of supporting counseling and rehabilitating the rape victims who are in dire need of such help.”

The effective legal system is the need of the hour. If the government really wants to do something about rape, then answer does not lie only in new laws and penalties, but it lies in creation of special courts that promise speedy trials, creating the confidence that ultimately, the rapist shall be convicted. Only then people will believe that law does protect them.

We should not just blame the cops and Judges. Fifty per cent trauma, (if not more) faced by a rape victims does not come from the authority but from society; itself. Would you allow your son to marry with a rape victim? The answer is a big NO. Let’s be honest. All of us are a part of the same system. Nothing will really change until the society recognizes that rapists do not come from another planet they come from among us. They commit offences but we humiliate the victims. A large section of legal experts disfavoured capital punishment for rapists. They maintain that death sentence would not have deterrent effect. Instead, the emphasis should be on strengthening the present system of investigation and conducting of trials which is fraught with loopholes.

There is an urgent need to initiate a witness protection programme in rape cases, the victim is the main witness and her statement is of utmost importance to nail the accused but in 90% cases, the allegations against the accused are dropped because the victim retracts from her statements. The victim is either threatened or bought over or is herself fed up with trial procedures dragging for years and once the victim turns hostile, there is little left for conviction. Medical tests are mostly conducted by junior doctor, who are not experienced enough. Often vaginal swabs are not sent for the forensic laboratory for months due to the delay, the samples purified and test negatively.

---

Conclusion

The Lok Sabha, on December 9, 2002, passed a Bill seeking to bar rape victims from being cross-examined to establish their moral character. The said Bill observed that unrestrained questioning of the rape victim could damage her reputation and self-respect, and that there is no reasonable connection between the offence of sexual assault and the victim's character. It further said that the National Commission for the Women (NCW) had observed that the defence counsel usually refer to the sexual conduct of the victim and thus tarnish her reputation.

It is also worth mentioning here that very recently National Human Rights Commission (NHRC) has demanded to redefine rape laws. The Pioneer under the title of "Child Victims Left out of Legal Ambit"? writes:^5

There is an urgent need to redefine rape in legal terms. This was one of the conclusions reached at the recently - concluded workshop organised by National Human Rights Commission (NHRC) on child abuse and rape.

According to the National Commission of Women (NCW), the existing definition of rape is "too restrictive". "Only one form of rape is considered to be fit for proceedings under Section 375 of Indian Penal Code i.e. a complete act. Any other form of sexual assault, either by a stick or anything else, is not considered to be rape under existing law," says the NCW paper.

The other Criminal Acts pertaining to sexual assault, "which are not less offensive and serious, are not criminalised as rape. Such acts of criminality might lie within the definition of Section 354 of the IPC which includes the offence resulting in "outraging the modesty of woman". And under this provision maximum sentence prescribed for the offender is two years, which is considered to inappropriate, considering the ill-effects of such acts on the victim. The ill-effect includes physical injury incurred by the victim accompanied with shock and a long term mental trauma.

Conclusion

Another lacunae found in the existing law is that both the adult and child victims are treated under Section 375 I.P.C. The Penal Code doesn't have special provisions for the child victims, which often crops up as a major hurdle for the investigating agencies as well as courts. Hence, there is a reasonable demand for a separate law on child abuse. During the workshop NHRC Chairman Justice J.S. Verma also conceded that the absence of a clear-cut law was a major hurdle in dealing with cases of child sexual abuse and rape. ‘He had emphasised that the definition of child abuse should be made clear and the punishment for such crimes should be strict.’

We need a vigilant and responsive legal system. Due to growing incidents of child abuse and domestic violence, there is an urgent need to legally recognise "caste rape" and 'caste violence" as especially humiliating forms of abuse. Over the past three decades, there has been a rapid rise in rapes of lower caste women (often in front of family members) who are becoming assertive of their rights and dignity (for instance, Banwari Devi). Recently, in Gujarat, a Dalit woman was disrobed and beaten for fetching water from a common well, as a result of which her husband committed suicide. No civilized society can tolerate such crimes, and as the prevailing law is obviously inadequate and unequal to tackle such offences, so new laws are the need of the hour.

Most western countries define rape as forced intercourse that includes both psychological coercion and physical force. We differ in India. Rape laws are covered under section 375 and 376 of the IPC. Under these sections rape is seen only in terms of penile vaginal penetration. It does not include, for instance, anal or oral penetration. It also does not include penetration by objects. It certainly does not include the rape of boys and men. There is no concept of marital rape. As a result of these loopholes very often, judges find themselves trying ‘rape’ cases under more watered domain section outraging the modesty of a woman for instance.6

"There is no point in talking about increasing penalties for rape. Its very definition is flawed" says Leena Menghaney, a lawyer who has been working on issues of sexual abuse. "What we need to do is widen the definition of rape."

In an ongoing case, an eight year old girl was sexually abused by her father and his colleagues the mother found out and lodged a complaint when the case came up for trial in the lower court the judges ruled that he could not try it under sections 375 and 376 (which carry a punishment of 10 years). The girl had been penetrated by a figure she had therefore, under the law, not been raped. The case is now pending in the Supreme Court. The petitioners have asked the judges for a review of the definition of rape. It is not as if women's groups or even the governments are not seized of the inadequacies in the law. In 2000, in anticipation of Women's Empowerment Year 2001 the Planning Commission set up a task force with the brief to review existing legislation related to women and children.

It has made four recommendations: the most significant of which related to the need to change rape laws, asking that the definition of rape be broadened to include all forms of sexual abuse. A Law Commission report is also asking for a wider definition of rape.

Section 375 (Definition of rape) Indian Penal Code needs amendment the consent of girl under 16 years of age is immaterial for rape. The age is to be raised to 18 years at least immediately if not 20 years. Similarly given in the exception 15 years ought to be changed to 18 years. These two amendments are long over due since 1978 when the marriage age has already raised to 18 from 15. There is another bias against women in relation to marital rape consent is taken for granted in most marriages. Marital rape is neither considered rape nor is punishable as an offence of anykind in India.

Now we can sum up that where are the loopholes?

a) In very definition of rape

---

7 Ibid.
8 See Hindustan Times, on October 19, 2003.
9 Ibid.
Conclusion

b) in rules of evidence
c) in procedural laws
d) a hostile police
e) gender-blind judiciary
f) public taunting

The consequences of death sentence:

i) victim may be killed,
ii) the case must be a fit one for “rarest of rare”,
iii) it will take a long time,
iv) mercy petition will pour in,
v) conviction-rate will decrease.

Women need to stand up unitedly and make every little incident of molestation an open issue to discussion at every forum available till it sinks into the consciousness of the males that each of them needs to fight this menace. A better police force will reduce the incidences. Let NGO’s gain entry into schools to educate the kids. We have to stop ignoring little acts of eve-teasing as “too much of a bother”.

Rape is the result of uncontrolled pent-up lust of the rapist which cannot be deterred by capital punishment. Have we been successful in curbing these offences for which death sentence may be awarded? If no, then how death sentence can check rape? If the death sentence has potentiality to curb a heinous offence, then murder must have been controlled a hundred years ago but it is continuously on the rise.

SUGGESTIONS

1. Laws must be implemented and observed strictly.
2. The women police force should be better utilized.
3. Training of girls in self-defence must be made mandatory in schools. It will help in developing self-confidence in a girl.

5. Rape is committed with a sick mind, which may arise accidentally or through a crafty calculation. The fear of immediate detection, however, will make him slink away. In this respect, rape is preventable through the practice of self-defence measures, the avoidance of lonely places and intense policing.

6. Besides, a mere enhancement of the mode of punishment will not be of much help if the rate of detection remains as unsatisfactory as at present. So, the basic police investigative work must be improved to send the message among the criminals that their all escape-routes are sealed. For this purpose, police must have close touch with the social groups at all levels, high or low so that a rapist cannot find refuge easily. But for this purpose too, the police must have the image of trust worth force.

7. Legal definition of rape does not recognize sexual assault, marital rape, and penetration with various objects. The present legal definition of rape should be made more comprehensive.

8. In majority of cases, the courts have demanded the proof of resistance by the victim showing tell-tale physical signs. If the accused shows under section 155(4) of Indian Evidence Act that the victim had an immoral or sexually promiscuous history there is an assumption that she is lying. The rule is used as a means to attack her credibility and ultimately to prove that she must have consented to the sexual act willingly. Hence, clause (4) of Section 155 Indian Evidence Act, need to be deleted.

9. A Special Compensation Fund and Compensation Boards should be established at Central, State and District Level, to provide relief to the victims of rape.

10. Compensation to the victim under Section 357, Cr.P.C. should be made compulsory instead of discretionary to the victims of rape.

11. Interim compensation should be provided to the victims of rape in all cases.
Conclusion

12. Capital Punishment to be awarded to the convict in a rape case involving a infant girl child. It can be tackled meaningfully only by framing strict law, with no case for lenience.

13. Death must be given in case of murder after raping the girl.

14. Death penalty must be given in case of gang rape because it is the pre-planned and pre mediated act of crime.

15. Government should provide facilities to the victim to live their life by giving them loans/employment, so that they became independent and self sufficient.

16. Victims should be allowed to live in working hostels and rehabilitation centres etc., on preferential basis.

17. Rather than clubbing all minors under a single statute, the law should classify the rape into rape of infants (0-9 years), minors (9-13 years), minors (13-18 years), and of adults.

18. Social behaviour towards a woman is responsible for the degradation of women values, so a proposed national council for women should be set up expeditiously with a view to maintaining the implementation of recommendations of New as well as giving broad policy advice, guidance and direction.

19. Appropriate measures have to be suggested and to ban the stereotyped advertisements in the media and in the films projecting women as mere sex symbols.

20. Develop programmes and procedures to eliminate sexual harassment in all work places. This can be better achieved by including compulsory training to officials of all organizations in human rights and humanitarian law along with duties, education especially, police legal, medical, social and educational authorities.

21. Promote research to collect data and statistics regarding rape case, we must promote research to know the intensity of the problem and to seek solutions.
Conclusion

22. Adequate funds: should be provided for community based education through seminars, conferences and training programs to raise awareness about sexual offences as a violation of women’s enjoyment of their fundamental and human rights.

23. Teaching of humanitarian norms and human rights should be made compulsory at all levels of education.

24. Proper methodology: has to be devised in undertaking complaints of sexual offences so as to ensure that illegal complaints would be detected easily.

25. Prescribe dress codes: for women in work places, colleges and universities. This is necessary to prevent women from wearing clothes revealing the body and tempting men to commit offences.

26. An Air Hostess Vilma Franandis who faced the sexual harassment says-“One Swallow does not make summer and one judgement alone does not transform the world or even the judiciary.” Meaning thereby everyone should co-operate in eliminating crime against the women.

27. To make a woman aware towards her rights adequate arrangement shall be made for providing legal education. Audio visual resources like T.V., Cinema etc. should be utilized to spread the legal literacy. The media should given publicity to the laws that are enacted to protect the women.

28. India has declared itself to be a welfare state and therefore it owes a duty to provide justice to those who get it. One of the ways to achieve this object is to provide legal aids for those who on account of various reason are not able to get justice. There are so many women who are not able to deal with these matters. The legal aid can be provided by organizing Lok Adalat by approaching the High Court and Supreme Court by way of Public Interest Litigation.

29. The Legal profession owes certain moral and social obligation to woman of our society. Every member of this profession including the busy senior member should make a rigid role to do certain no. of cases of poor women every year.
**Conclusion**

Under Article 39 of Legal Aid Services Authorities Act 1987 provides free legal aid and competent legal services to the weaker section of the society.

30. Effective and beneficial policies related to working women should be implemented by the government.

31. To look after legal and social aspect of protecting the rights of women and children to appoint a woman commissioner on district and state levels is a nice step taken by the government immediately.

32. More female police personnel should be inducted so as to be available in situations relating to the crime against women and to avoid hesitation among women to come-forth to make a complaint against the culprit.

33. Speedy and quicker trial will be much helpful in enforcement of laws. These speedy trials will maintain the effectiveness of laws and their implementation. To avoid the sluggish image of judiciary and legislature the law need to adequately sensitize the victims of rape cases.

34. The women consultancy and legal aid centre should be instituted at the grass root level in rural area where the labour class women are also very much exploited.

35. Psychological counselling should be provided to the rape victims to overcome their mental and physical stress.

36. Considering the gravity of the problem, the government should open 'Crisis Management Centres' that can respond immediately to the rape victims.

37. Proper educational training should be provided to the girl students in school, college and universities to tackle any situation relating to sexual assault.

38. Reformation in the existing rape law is required which can provide justice to the rape victims.

39. Professional and educated police force is necessary to deal with rape crime cases.

40. Penalties for rapists be rigorously and systematically enforced by the courts and other law enforcement agencies.
Conclusions

41. A need to restructure the entire investigation process is essential, so that those dealing with cases of rape receive special training and are taught to show a greater degree of sensitivity.

42. Judiciary can play a vital role in handling the cases of rape and increasing the rate of conviction against those who are involved in rape crimes.

43. Role of N.G.O.’s and social workers could be of a great help in the rehabilitation of the rape victims, who have been discarded by their family members and relatives.

Even if legislation is passed, there is a need for change in the attitude of women. Because, as the saying in India that ‘women are the enemies of women’ till date in majority of the cases most of the women haven’t come forward to help a victim of rape and to fight out the injustice caused to her.’ It is time for women to join together forgetting their personal differences and ego clashes to fight for the protection of their legal rights. It is they who have to decide what they want. At least in future, if any unwanted incident is reported against a woman, all the women of the particular organization at least should join together to extend their support morally, ethically, legally and stand by her side to achieve justice, instead of leaving it to the fate of the victim. Even the women’s organizations should focus their attention on this issue and train their counterparts in various sectors especially in the unorganized sector. Until and unless women show determination to protect themselves, any number of legislations passed by a legislature or verdicts delivered by the judiciary will remain only on paper.
Some precaution knowing a rapist's intention

A Brief Anti Rapist Kit-

(1) Stay alert to your environment: A woman was spotted on a deserted road, speaking on her mobile phone. She was so engrossed she did not notice some boys on a motor cycle stop nearby and appraise her. It essential to know what's happening all around.

(2) Never ignore intuition: If you sense that something is fishy, then it probably is. Always rely on your intuition, no matter how trustworthy the person you are with seems. After all, most rapes are committed by persons known- and often trusted-by the victim.

(3) Walk Against Traffic, No with it: If you are walking in the same direction as the traffic, it is easy for a car to stop besides you and drag you in. It is better to walk facing on coming traffic, for a car will pass you by before screeching to a halt enough to alert you to the danger.

(4) Always seek help from a woman- With regards to children instead of telling them not to talk to strangers, they should be taught to seek help from an elderly/woman, whose maternal instincts immediately take over when it comes to kids. Asking a man for help after elicits a laid back or dismissive response.\(^{10}\)

\[^{10}\text{See Hindustan Times, October 19, 2003.}\]