CHAPTER-2: RIGHTS OF WOMEN AND CHILDREN: REVIEW AND ANALYSIS OF LITERATURE

Several institutional mechanisms, international as well as national, which are basically meant to provide justice to girl children form the springboard on which their rights emerge. "Both at a conceptual as well as at a political level, rights and law are quite distinctly connected" (Menon, p. 264). A study of the existing structures and covenants, their strengths and weaknesses would not only facilitate an objective understanding of the existing structures, but also initiate thinking about the impact that they have been able to make, especially in the context of delivering gender justice and juvenile justice. Besides these, this chapter also looks into the published and unpublished literature available on the subject. Though there are several general books on the subject, there is complete scarcity of researched volumes focused on the subject under study.

2.1 International Instruments
The first International Congress on the Prevention and Repression of Crime was held in London in 1872, where professionals from various countries discussed methods of improvement of prisons, alternatives to imprisonment, handling juvenile offenders, promoting extradition treaties, and also the methods of repressing the "Crime Capitalist". The International Prison Commission (IPC) was constituted after the London congress. This commission was to promote penal reforms and hold international meets. The IPC was renamed as International Penal and Penitentiary Commission (IPPC) in 1935. However when the United Nations was formed, the affiliation with IPPC got delinked. In 1950 the General Assembly absorbed the IPPC and took over its functions. The Charter of the United Nations Organisation, which came into force on 24 October 1945, states in its preamble that the UN mandate includes "faith in the dignity and worth of the human person, in the equal rights of man and woman". One of the purposes of existence of the UN is to "promote respect for human rights and for fundamental freedoms of all without distinction as to race, sex, language or religion". Article 55 of the UN casts responsibility to promote "universal respect for and observance of human rights and fundamental freedoms". Accordingly the Economic and Social Council (ECOSOC) was setups which, in turn, setup the Commission on Human Rights. This commission created two sub-commissions in 1946. viz.,
Commission of 'prevention of Discrimination of Protection of Minorities' and the Commission on 'Status of Woman'.

The Universal Declaration of Human Rights (UDHR) adopted by the UN General Assembly on 10 December 1948 laid down standards of international human rights and the hold of various agencies and stakeholders in preserving human rights across the world. The UDHR observes that "the disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of man kind", and that "the recognition of the inherent dignity and indivisibility of all members of the human family is the foundation of justice and peace in the world". Several treaties have been brought into force to transform the moral standards into binding legal principles. Among them, the following ones are important from the context of the rights of the girl child.

- International Agreement for Suppression of White Slave Traffic, 1904.
- The International Covenant on Economic, Social and Cultural Rights, 1966
- The International Covenant of Civil and Political Rights, 1966 (ICCPR)
- Convention on the Elimination of all Forms of Discrimination against Women, 1979 (CEDAW)
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.
- Universal Declaration of Human Rights

The International Covenant on Economic and Social and Cultural Rights has 31 articles that lay down the various rights and principles in the field. The rights recognized under the covenant relevant to the context of understanding the rights of the girl child are as follows:
• Equal right of men and women to enjoy all economic, social and cultural rights
• Right to work including the right to enjoy justice and favorable conditions of work
• Right to social security
• Right to family, including the right to protection of motherhood and childhood
• Right to adequate standard of living and to continuous improvement of living conditions.

The international covenant on civil and political rights has two Protocols. The first Optional Protocol which was adopted in 1966 provides special jurisdiction of the Human Rights Committee to entertain complaints from individuals on the human rights violations by the state. The second Optional Protocol, adopted in 1989, which suggests abolition of death penalty, is yet to be adopted by many countries including India. Among the rights recognized under the covenant the following are relevant:

• Freedom from discrimination on ground of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
• Right to effective remedy for violations of rights committed by persons in authority.
• Equal right of men and women to enjoyment of civil and political rights.
• Right to life.
• Freedom from torture, or cruel, inhuman or degrading treatment.
• Right to liberty and security of person.
• Right to human dignity.
• Right to a fair trial.
• Right against ex-post facto criminal law.
• Right to recognition as a person before law.
• Right to privacy.
• Right to freedom of thought, conscience and religion.
• Right to freedom of opinion and expression.
• Right to peaceful assembly.
• Right to family life.
• Rights of the child.
• Right to equality before law and equal protection of laws.
• Minority rights.
• Right to legal representation.
• Right of silence.

The UN Commission of Prevention of Crime at the 7th UN Congress at Milan, Italy, in 1985 had adopted a Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Under this Declaration, victims have been defined as “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within states, including those laws proscribing criminal abuse of power.”
The declaration provides the victim the following rights:

✓ A right to the victims of crime to be a party to the criminal proceedings against the accused.

✓ Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress.

✓ Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible.

✓ Offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims, their families of dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

✓ In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

✓ When compensation is not fully available from the offender or the sources, States should endeavor to provide financial compensation to:
  ➞ Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes
  ➞ The family, in particular dependents of persons who have died or become physically or mentally incapacitated as a result of such victimization.

✓ Victims should be informed of the availability of health and social services and other relevant assistance, and be readily afforded access to them.

The UN Convention Against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, which came into effect in December 2000, is a landmark step undertaken by the international body to deal with transnational organized criminal activities involving in trafficking of women and children. The Convention and its protocol address several issues in the field of prevention, prosecution and protection, as well as the related issues of corruption and other conspirotorial criminal activities. Specific action plans have been brought about for promoting and facilitating international cooperation in dealing with the criminals involved and for seizure of profits made out of such organized crimes.

United Nations Decade for women 1976-1985: The UN proclaimed this period as the decade for women for facilitating the women's movement across the world. One of the important fallout of the activities during this decade is the birth of the Convention on the Elimination
of all forms of Discrimination against Women. This, in turn, established the Committee on the Elimination of Discrimination Against Women (CEDAW) so as to ensure the implementation of the principles of gender equality and empowerment of women. The CEDAW is composed of 23 independent experts and is functional since 1981.

The Convention on the Rights of the Child (CRC) 1989: Articles 34 & 35 of CRC direct the state parties to “Take all appropriate functional and bilateral measures to prevent the abduction, sale or trafficking of children for any purposes or in any form”. CRC specifically directs the signatories to ensure protection of children from sexual exploitation and abuse. The Convention has set up the Committee on the Rights of the Child (CRC), with 10 independent experts who monitor the implementation of the Convention on the Rights of the Child since 1991.

Beijing Declaration and Platform of Action: This has 362 Declarations aimed at expediting the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women. Equality between women and men is a matter of human rights and a condition for social justice and a fundamental prerequisite for equality, development and peace.

The major UN documents, which deal with the Human Rights of women, especially girl children, could be summed up as below:

- Universal Declaration of Human Rights.
- International Covenant on Economic, Social, and Cultural rights.
- International Covenant on Civil and Political Rights.
- Convention on the Elimination of All Forms of Discrimination against Women.
- Declaration on the Elimination of Violence against women.

2.2 The Constitution of India

The Preamble, Fundamental Rights and Directive Principles of the Constitution of India uphold the rights of women. The preamble declares to secure to all its citizens justice, liberty and equality, and fraternity by ensuring the dignity of the individual.

The fundamental rights of the citizens cast a clear set of duties, obligations and responsibilities on the state, the failure of which attract judicial intervention to restore the
same. Therefore fundamental rights are justiciable. Among the fundamental rights the following are important in the context of girl child.

- Right to Equality (Article 14 to 16). Article 14 provides equality before law and equal protection of law. Article 15 forbids discrimination on grounds of sex. Article 16 guarantees equal opportunity for public employment. Article 15 also creates special provision for women and children.

- Right to Freedom (Articles 19 to 22). Article 20 provides protection in respect of conviction for offence. Article 21 provides protection of life and personal liberty and article 22 provides protection against arrest and detention. Article 22 is more relevant to the context as it specifies the rights of accused and arrested that she has right to be informed of the grounds of arrest, right to consult and seek advice by a lawyer and the right to be produced before a magistrate within 24 hours.

- Right against Exploitation under articles 23 and 24. The right against exploitation includes protection against trafficking in human beings and right against all forms of servitude like bonded labor, forced labor etc. Article 23 is important with respect to girl children, as it provides protection of their rights against child labor and commercial sexual exploitation. No child below 14 years can be employed in factories, hazardous industries etc.

- Right to Constitutional Remedies. Article 32, 33, 34, 35 facilitate citizens of the country to move the Supreme Court for enforcing their rights, in case of any infringement or violation of the same. The Constitution also provides powers to the parliament to enact laws so that fundamental rights could be properly implemented.

- Religious and minority rights. Article 25 to 30 deals with special rights of minority communities on grounds of religion, culture, ethnicity etc. These articles cater to the specific interest of women belonging to religious and minority groups. For example, these rights facilitate religious groups in managing civil matters and in the implementation of “Personal Laws”.

Fundamental rights under the constitution normally accrue to the citizens of the country. However, in consonance with the principles of international human rights, the Indian
constitution guarantees certain fundamental rights to all persons, whether citizen or not. These rights are as follows:

- Article 14 – Equality before law and equal protection of all laws
- Article 21 – Rights against convictions in certain cases
- Article 22 – Rights against arrest in detention and certain situations
- Article 25 to 28 – Religious freedom and other special rights

The Directive principles of State policy enshrined under Article 36 to 51 in part-IV of the Constitution provide directions to the state government on matters of public policy. However, Article 37 states that these directive principles are ‘fundamental in the governance of the country’ and that states should ‘apply these principles in making laws’. The Directive Principles lay down several guidelines with respect to gender issues. For example, it provides equal pay for equal work, duty to provide work, education, equal justice, free legal aid etc.

The Fundamental Duties under Article 51A cast a duty on the citizens that while exercising their rights they must respect the rights of others too. The duties also envisage compliance of the article 29(1) of Universal Declaration of Human Rights, which stipulates that everybody has a duty to the community so that the free and full development of each personality is possible. Thus, under the Indian Constitution, duties of citizens and rights of women are complimentary to each other.

2.3. Laws of the country

One of the major instruments of ensuring human rights in India is The Protection of Human Rights Act, 1993. The National Human Rights Commission and State Human Rights Commissions have been set up under this Act. The Commission has suo moto powers of inquiry on any allegations of human rights violation. Investigation of such matters can be entrusted to anybody. It can recommend to the government or concerned authority for initiation of proceedings for prosecution or such other action as deemed fit. It can also award compensation to the victims of human rights violations.

Going by the publication ‘Crime in India’, compiled by the National Crime Records Bureau, Crimes against women have been grouped under (a) offences under the Indian Penal Code
and (b) offenders under special laws. The offences and related laws listed out in this publication are as below:

a) The crimes identified under the Indian Penal Code (IPC)
   - Rape (Sect. 376 IPC)
   - Kidnapping & Abduction for different purposes (Sect. 363-373 IPC)
   - Homicide for Dowry, Dowry Deaths or their attempts (see 302/304-B IPC)
   - Torture, both mental and physical (Sect 498-A IPC)
   - Molestation (Sect 354 IPC)
   - Sexual Harassment (referred in the past as 'Eve-Teasing') (Sect 509 IPC)
   - Importation of girls up to 21 years of age (Sect 366-B IPC)
   - Sale (S.372) and purchase (S.373) of children under 18 years of age.

b) The Special Laws (SLL) which bring about punishable offences against women are as follows:
   - The Employees State Insurance Act, 1948
   - The Plantation Labour Act, 1951
   - The Family Courts Act, 1954
   - The Special Marriage Act, 1954
   - The Hindu Marriage Act, 1955
   - The Hindu Succession Act, 1956
   - Immoral Traffic (Prevention) Act, 1956
   - The maternity Benefit Act, 1961 (Amended in 1995)
   - Dowry Prohibition Act, 1961
   - The Medical Termination of Pregnancy Act, 1971
   - The Contract Labour (Regulation and Abolition) Act, 1976
   - The Equal Remuneration Act, 1976
   - the Child Marriage Restraint (Amendment) Act, 1979
   - The Criminal Law (Amendment) Act, 1983
   - The Factories (Amendment) Act, 1986
   - Indecent Representation of Women (Prevention) Act, 1986
   - Commission of Sati (Prevention) Act, 1987

With specific reference to children, the publication 'Crime in India' recognizes the following offences:

(a) Crimes punishable under the Indian Penal Code (IPC):
   - Feticides under section 315 & 316 IPC
   - Infanticide under section 315 IPC
   - Abetment of suicide (Abetment of suicide of children by other persons) Section 305 IPC
   - Exposure & Abandonment (Crime against children by parents or others to expose or to desert him with the intent to abandon) Section 317 IPC
   - Kidnapping & Abduction:
     - Kidnapping for ransom (Section 360 IPC)
     - Kidnapping from lawful guardianship (Section 361 IPC)
     - Kidnapping for ransom (Section 364 read with Section 364 IPC)
     - Kidnapping a minor for begging etc. (section 363-A IPC)
     - Kidnapping for murder (Section 364 IPC)
     - Kidnapping for illegal confinement (Section 365 IPC)
(b) Crime Against children which are punishable under 'Special and Local Laws' are:

- Immoral Traffic (Prevention) Act, 1956
- Child Marriage Restraint Act
- Child Labor (Prevention) Act
- The Goa Children’s Act, 2003

Besides the above, there are several social legislations enacted by the legislature with a view to protect children from violations of their rights and abuse. These legislations, normally grouped as protective legislations are listed below:

- The Child (Pledging of Labour) Act, 1933
- The Plantation Labour Act, 1951
- The Mines Act, 1952
- The Factories Act (Amended), 1955
- Hindu Adoption and Maintenance Act, 1956
- Hindu Minority and Guardianship Act, 1956
- The Merchant Shipping Act, 1958
- Probation of Offenders Act, 1958
- The Orphans and Other Charitable Homes (Supervision & Control) Act, 1960
- The guardianship and wards Act, 1930
- The Apprentices Act, 1961
- The Bowls and Cigar Workers (Condition of Employment Act) 1966
- The Bonded Labor (Abolition) Act, 1976
- The Child Marriage Restratiion Act (Amended) 1979
- The Child Labor (Prohibition and Regulation) Act, 1986
- The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply & Distribution) Act, 1992
- The Medical Termination of Pregnancy Act, 1971
- The Pre-Natal Diagnostic Technique (Regulation, Prevention & Minita) Act, 1994
- The persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1996
- The Cinematographic Act, 1952
- Young Persons Harmful Publications Act, 1955
- Indecent Representation of Women (Prohibition) Act, 1986
Though there are specific provisions to deal with specific offences in the various statutes mentioned above, there is some uniformity with respect to the definition of the word child. Various statutes define child in different ways. Therefore, the law enforcement agency has to keep this in mind while implementing the concerned law.

- Juvenile justice act, 1986 defines girl child as one below 18 years of age and boy child below 21 years age. However, JJ Act, 2000 makes a common definition keeping 18 as the cut-off age for both girls and boys.
- Child Marriages Restraint Act 1928 specifies 18 years as the cut-off mark for restraining child marriage.
- Under Section 375 IPC, the mental age to decide the issue of rape is 15 years because consent is immaterial if the girl child is under 16.
- U/s 376 IPC, the punishment is severe, if the 'wife' is below 12 years. Probably it presumes the existence of wife below 18, despite the fact that the marriageable age of women is 18 under the Child Marriages Restraint Act 1928.

The procedural laws prescribe the powers and responsibilities of various law enforcement agencies. In this context, Section 160 CrPC is relevant, wherein the police officers summon victims and witnesses to the police station, etc., for recording their evidence. This section has an express provision that no male under 15 years of age or any woman of any age shall be required to attend at any place other than the place in which such person resides. Therefore, a female victim, of any age, can decide where the police should meet them. It is not mandatory at all that they go to the police station at any point of time.

2.4 Court rulings and precedents

There are several landmark decisions by the Supreme Court of India and many High Courts in respect of crimes against girl children. The decisions by the Supreme Court of India form the law of the country by way of judicial precedence. The decision by High Courts will have the strength of law within the jurisdiction of the High Court. It is, therefore, essential that the law enforcement agencies are not only aware but also comply with these rulings.

The basic rights that accrue to the victim are:

- Right to representation by a well-wisher.
- Right to legal representation.
- Right to counseling.
- Right to redressal.
- Right to fair trial.
- Right to be traced.
- Right to compensation.
- Right against revictimisation.
- Right to child-friendly ambience and procedures.
- Right to anonymity.
- Right to privacy.
The child victim can be represented by the parents or guardian, if they are not accused or accomplice. Courts can order *guardian ad litem*. Right to legal representation starts from the Police Station itself. Right to redressal of grievances is an undesirable right. Fair trial requires that not only the accused version but also the victim's version is heard, appreciated and a fair, objective decision taken thereafter. The statement of child victim is trustworthy even to the extent of not requiring corroboration, if it is truthful. Compensation includes not only monetary recoupment, but also exemplary damages and further assistance in the form of medical help, rehabilitation etc. Victim has a right not to be forced to speak what she does not want to. In this context her questioning and examination should be such that she is not revictimised or retraumatised. Efforts should be made so that she does not have to relive the trauma again and again. As per the provisions of S.160 CrPC the victim has a right to summon the police to a place of her choice. As a corollary the place where she is summoned should be such that it is in her best interest. A child friendly ambience should be ensured. The Apex Court has stressed this aspect in its judgment dated May 26, 2004 in *Smt. Sudesh Jakhu vs. Narendra Verma*. Right to anonymity is a legal right in S.327 I.P.C. and S.21 D Act. The provisions of in-camera trial in S.327 I.P.C. have been extended by the Supreme Court of India to all crimes of sexual abuse and exploitation of children. This is a landmark decision. Right to privacy demands that the dignity and honour of the victim is respected. Words and gestures, which are cruel or degrading, do violate the dignity and privacy of the victim. Some of the important decisions by the Apex Court, relevant in the context of girl child, are listed below.

- On Corroboration: Held in *Punjab Vs. Giyani Singh (AIR 1996 SC 1309)* that unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The decision was similar in *Himachal Pradesh Vs. Raghunath Singh (1993, 2 SCC 622)* and *State of Rajasthan Vs. Ram Narain & Others (1996, 8 SCC 64)*. The rape victim was a small girl between 15-17 years of age. Held that her statement inspired
confidence for acceptance and, therefore, corroboration of evidence was not
needed. There is no legal compulsion to look for corroboration of the evidence
of the prosecutrix before recording an order of conviction. Evidence has to be
weighed and not counted (Uttar Pradesh Vs. Raghuraj Singh). There is no
rule of practice that there must in every case be corroboration before a
conviction can be allowed to take place. [Rameswar Vs. Rajasthan. AIR 1952
SC 554]

> **No Doctor’s Report:** Rampal Vs. State of Haryana, 1994 Supp (3) SCC 656:
Conviction was based on the sole testimony of the prosecutrix who was raped
during the night. Though the doctor did not find any visible injuries there was
no reason to suspect the testimony of the victim. Conviction was upheld.

> **On Reliability:**
  - Held in Punjab Vs. Gurmeet Singh that the evidence of a victim of sexual
    assault stands almost on par with the statement of an injured witness and to
    an extent is even more liable. The evidence of a victim of sexual offence
    is entitled to a great weight. Absence of corroboration notwithstanding.

  > Maharashtra Vs. Chandras Prakash Kewalekand Jain (AIR 1990 SC 658):
The Apex Court observed “A woman who is a victim of a sexual assault is
not an accomplice to the crime, but is a victim of another man’s lust and,
therefore, her evidence need not be tested with the same amount of suspicion
as that of an accomplice. Therefore, the rule of prudence that her evidence
must be corroborated in material particulars has no application”.

> **On discrepancy in the statement of victim/witness:**
  - Held in Punjab Vs. Gurmeet Singh (AIR 1996 SC 1393) that in cases involving
    sexual molestation, supposed considerations which have no material effect
    on the veracity of the prosecution should not, unless the discrepancies are
    such which are of fatal nature, be allowed to throw out an otherwise reliable
    prosecution case.

  > Held in State of Andhra Pradesh Vs. Gangula Saiya Murthy (ST 1999(10) SC
    5560) that the court should examine the broader probabilities of a case and
    not get swayed by minor contradictions or insignificant discrepancies in the
    statement of the witnesses, which are not of a fatal nature to throw out the
allocation of rape. Court must appreciate the evidence in the totality of the background of the entire case and not in isolation.

- On the Character and Antecedents of the Victim:

  - State of Punjab Vs. Gurmit Singh, (AIR 1996 SC 1393) : Even in cases where there is some acceptable material on record to show that the victim was habituated to sexual intercourse no such inference like the victim being a girl of “loose moral character” is permissible to be drawn from that circumstance alone. Even if the prosecutrix, in a given case, has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse with anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. No stigma should be implied against such a witness by the Courts. “After all it is the accused and not the victim of sex crime who is on trial in the Court”.

  - Maharashtra Vs. Medhukar Narayan Mardikar (AIR 1991 SC 207): The Supreme Court overruled the verdict of the High Court and said “we express our strong disapproval of the approach of the High Court and its casting a stigma on the character of the deceased prosecutrix. Even if the Court formed an opinion, from the absence of hymen that the victim had sexual intercourse prior to the time when she was subjected to rape by the appellant, she had every right to refuse to submit herself to sexual intercourse by the appellant as she certainly was not a vulnerable object of rape for being sexually assaulted by anyone”. Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate her person as and when he wishes.

  - In Shekh Zafir Vs State of Bihar (1983 (4) SCC 10) the Apex court held that the antecedents of the victim has no consequence. This was further affirmed in State of Haryana Vs Premchand and others (1990 (1) SCC 749) and held that the conduct of the victim is irrelevant. The character or reputation of the victim has no bearing or relevance. Such factors are wholly alien to the
very scope and object of s.376 and can never serve either as mitigating or
exculpating circumstances for imposing the sub-minimum sentence.

- **Prosecutrix is not an Accomplice: Gurcharan Singh Vs. State of Haryana (AIR 1972 SC 2661):** The Supreme Court observed that the prosecutrix cannot be
considered as an accomplice and, therefore, her testimony cannot be equated
with that of an accomplice in an offence.

- **When Victim is no more: State of Karnataka Vs. Mahabaleshwar Gaurya Naik
(AIR 1992 SC 2043):** Even if the victim of rape is not available to give evidence
on account of her having committed suicide, the prosecution case cannot be
thrown overboard. In such a case, the non-availability of the complainant will
not be fatal and the court can record a conviction on the basis of the available
evidence brought on record by the prosecution.

Cr LJ 3845):** The Supreme Court observed ‘merely because the victim-girt is
not examined this can never be a ground to acquit an accused if there is evidence
otherwise available, proving the criminal act of the accused concerned. The
non-examination of the prosecutrix is not very much material.

- **Legal Representation: In Delhi Domestic Working Woman’s Forum Vs. Union
Of India (1995 (1) SCC 14):** it was held that the complainant of sexual assault
should be provided with legal representation. Legal assistance will have to be
provided at the police station. The police should be under a duty to inform the
victim of her right to representation before any questions were asked of her and
the police report should state that the victim was so informed. The role of the
advocate is not only to explain to the victim the nature of the proceedings, to
prepare her for the proceedings in the investigation and trial but also to provide
her with guidance as to how she could obtain help of various agencies. The
court has a duty to appoint the advocate, on application by the police, at the
earliest convenient time.

- **Anonymity:** In the trials and investigation processes of rape cases, anonymity
is a legal right of the victim. s.327 Cr.PC and s.21 Jj Act have specific
provisions to ensure the same. In Supreme Court of India in its judgement dated
Narendra Verma and others has extended the scope of S.327 CrPC to all crimes of sexual abuse of children, including offences under 354 and 377 IPC also. Therefore this is a landmark judgement from the point of view of child rights and women’s rights. The prosecutors across the country should take initiative in this regard and move the court for ensuring the privacy of the victim in the trial of all such crimes.

- **Vicarious Liability:** In *Chairman, Railway Board and Others Vs. Chandra Hem Das* (2000) (22 SCC 465) it was held that in a case of rape by railway officials at the railway station, the Railway Board was vicariously liable to pay compensation for the rape which took place in the premises which is under its control. The tortious liability being extended to a case of rape opened up new vistas in the delivery of justice to victims.

- **Victims’ Locus in Court Proceedings:** The right of the victim to be consulted before trial and the victim’s right to project her version during the trial proceedings has been brought out in the *Delhi Domestic Women’s Forum Vs. Gov.* where the court had directed that the legal assistance should be provided at the police station and has thus brought out a new chapter in the criminal jurisprudence by flagging the right of the victim to assert herself in the process of justice delivery.

- **Delayed Reporting of the Case:** If reasonable explanation is given for the delay, it will not affect the case. In *Harpal Singh Vs Himachal Pradesh* (1991) (12 SCC 580) it was held that even 10 days delay in registering the FIR is not fatal to the case as the delay has been explained.

- **Compensation:** Section 357 CrPC has provisions for compensation to the victims of crime. In *Arjunan Vs. State* (1997) *Cri L.J. 2327* it was felt that the quantum of compensation may be determined by taking into account the nature of the crime, the manner in which it has been committed, the injuries suffered by the victim and the ability of the accused to pay. The object of Section 357(3) is to provide compensation to the victim and to recover the damages from the person sentenced even though fine does not form part of the sentence. In *Buddhisingha Goswami Vs. Sushra Guhekar* (1996) (1 SCC 490), it was held that the Supreme Court has the jurisdiction to pass orders compelling the accused to
pay maintenance to the victim during pendency of the criminal case. The Apex Court, under Article 32 of the Constitution, has the power to award compensation for the violation of a person's fundamental rights. For the exercise of this jurisdiction, it is not necessary that the person who is the victim of violation of his fundamental right, should personally approach the Court, for the Court itself can take cognizance of the matter and proceed *suo moto* or on a petition of any public-spirited individual. In *Delhi Domestic Working Women's Forum v. Union of India* (1995) 1 SCC 44, the Apex Court held that if the court tries an offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the court the right to award interim compensation which should be provided in the scheme.

- **Compensation even Without Conviction:** In *Delhi Domestic Working Women's Forum v. Union of India* the court decided that a Criminal Injuries Compensation Board be set up and compensations awarded to the victim irrespective of conviction. The Board will take into account the 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. It is, therefore, imperative that the investigating agency bring out all these facts on record, by causing in-depth investigation and by involving appropriate experts, viz., psycho-social experts to opine on the trauma and harm suffered, medical experts to speak about the physical disabilities, discomfort problems, etc.

In *P. Rathsame V. GOI* (1989 Supp (2) SCC 716) the Apex Court granted interim compensation to the victim while the trial was pending. The court also held that the victim can apply for more compensation, if required.

- **Doubts in Assessing Age:** At times it is not possible to assess the actual age, even by medico-legal methods. More often the age is estimated and put in a bracket of 2-3 years. In *State of Karnataka V. Majamma* it was held that even if the prosecution had not proved that the girl was less than 16 years, her own statement could not be disbelieved and therefore to be trusted and accepted. Moreover if the age assessed by the doctor is not specific, but is put in a bracket,
the benefit of doubt should go to the victim concerned and, therefore, the lower age in the bracket, which is in favour of the victim, should be accepted.

2.5. The Criminal Justice System: the criminal justice administration of the country includes the following agencies of the government:
- Police
- Prosecutors
- Judiciary
- Jails
- Welfare Homes and Rehabilitation agencies
- The administrative/executive agencies concerned.

Each agency has been assigned with specific, specialized tasks in combating crimes against women, enforcing law and protecting women's rights. There is a complementary role among the agencies; even though in practice there are several gaps in the functioning.

2.6. Police: Police in India is the principal law enforcement agency in matters relating to crimes against women and violations of women's rights. The role of the courts and judiciary come into operation only when police files a report before the jurisdictional court on completion of investigation. Of course, the victim is free to file a complaint before the Magistrate or invoke the writ jurisdiction of High Court or the Supreme Court. But these are, in practice, exceptional situations. Normally action is initiated by the police when information about a criminal offence is reported to the police station and thereupon First Information Report (FIR) is registered u/s 156 CrPC. This entails a mandatory requirement on police to submit to the court concerned the final reports of investigation u/s 173 CrPC. However, during the intermediary stage of investigation police would be submitting several reports to the courts on miscellaneous interlocutory matters, viz., remand of accused/suspect, judicial custody or police custody, or opposing the bail petition moved by the accused/suspect, opposing anticipatory bail petitions, seeking warrants of arrest, search etc. Even during investigation, police can get the statement of the victim or witnesses recorded by a judicial authority under section 164 CrPC. Thus the role of police in law enforcement is crucial manifold and multidimensional. For an ordinary Indian citizen, especially hailing from rural settings, police is the embodiment of the entire criminal justice system. Their expectations from the police man are much more than what it would be in a cosmopolitan situation. The villager often visualizes policeman as the repository of all powers and authority and, therefore, would expect him to be available on call, at any point of time and
for all services, even transcending the vocational protocols and prescriptions as well as duties assigned to or expected of a police officer. Therefore, it is essential that the police perform its role with a ‘service’ motto and not confine themselves as a ‘force’. In the urban settings too, the traffic policeman or the patrol policeman is the visible symbol of the entire government and administration. It is, therefore, natural that the public expects the police to be a friend in need, being available for any help any time. Moreover, it is expected of him to deliver the goods and services with prompt response and efficiency. It will not be appreciated if the policeman turns down the request by saying that the demand made by the public is not within the portfolio or the mandate of the police. Even if the policeman would like to get out of the situation, he is expected to hear, listen and advise the public appropriately as to how to go about, which agency to contact and where help can come from. Therefore, the policeman on the street, more than anybody else, is expected to be the repository of all the information and available for all types of service which the public would look forward to.

Another dimension to the police functioning accentuates the public expectations on police. Police is the only agency in the country, which is legally duty-bound to be practically available round the clock, the only exception being an emergency medical service or a hospital which would be far and few in the vicinity. Round the clock availability of the police enhances the public expectation of their being serviceable all the time and on call. There are situations where the policeman would be continuously on duty for days and nights together. When the western developed countries have an average strength of approximately 1000 plus policeman per one lakh population, the average figure for the whole of India is 126 policemen per one lakh population. This again varies from state to state within the country. For example Bhur has only 86 policemen per one lakh population. Orissa has only 98 policemen per one lakh population. (Source: Crime in India). Obviously the work pressure on police would be very high and delivery will be relatively less. There is definitely a strong need for augmenting the police strength, vis-à-vis the population, especially at the grass-roots level.

There is another dimension with respect to the strength of police. The “Teeth to tail ratio” is an important figure to be reckoned with. This ratio speaks bout the proportion of the officers from the rank of Director General of police to the Assistant Sub Inspector of police.
in proportion to the constabulary, which includes Head Constables and Constables, who form the lowest rung in police. In western countries this proportion would be almost 1:1 whereas in India, the all India ratio is 1:8. “Crime in India”, reports that against an average of 15 lakhs policemen, the strength of constabulary is almost 12 lakhs. It is a fact that more often, the constabulary is given a very negligent role in maintaining law and order and still less, or rather nil, role in the investigation of crimes. They are mostly utilized on traffic duties, security duties and beat patrol. Investigation, detection, prosecution and prevention, especially on crimes against women, are mostly handled by the officers and not the constabulary. There is definitely a strong case for altering the “tooth to tail ratio” making it more prospective and practical, especially when one talks about “proactive policing” and “sensitive policing”.

A word about women in police. The proposition of ‘Women Civil Police’ to the total ‘Civil Police’ in 1958 was a meager 1:49. Considering the sensitivity involved in law enforcement on crimes against women there is a genuine cause and requirement for enhancing the percentage of women in police. Ideal situation would be to augment the strength commensurate with the population ratio. Considering the issues of gender sensitivity of police and gender-orientation expected by women victims, there is an urgent need to enhance the strength of women in police, especially in the civil police outfits.

In the context of the role of agencies, including police, in the delivery of justice, it has to be understood in no uncertain terms that the functioning of the systems decides the efficiency and effectiveness of the very systems, structures and institutions. However pristine the legal provisions may be, they become invalid if not implemented properly. In the context of delivery of justice the ‘means’ adopted are, therefore, more important than the ‘goals’. “The means adopted have been correct and lawful. Though goals or objectives are unambiguous and emphatic, the cluster of ‘means’ to be adopted to reach those goals is at times specific and, at times, it is implied. But, keeping the basic value of the Constitution of India which does not countenance any action which is in accordance with the law of the land, and also the fact that the dignity of the human being is of paramount consideration, it naturally follows that the police will have to keep the ‘means’ as the main planks for their work effective”. (Krishnamurthy, 2003, p 8)
Rights of women victims vis-a-vis police

Law enforcement, in its very nature, has two distinct manifestations. On the one side, police enforces the law against the offender, the accused or the suspect. On the other side, it amounts to protection, preservation, assertion, confirmation and guarantee of the rights of the victim. Therefore, any discussion on law enforcement should presuppose an analysis of the rights. Law enforcement becomes effective and appropriate when the victim is not only aware of the rights, but asserts the same. As a corollary, a law enforcement official should be well aware of the victim’s rights so that his/her functioning is meaningfully oriented, legally sound and socially acceptable. The specific rights that accrue to a female victim in matters relating to crimes against women are as follows:

- The victims / the complainants have a right to demand that the First Information Report (FIR) be recorded and registered in the Police Station, where it is reported to, (under Section 156 CrPC). Even if the police station has no jurisdiction over the scene of crime, police are duty bound to register the FIR and thereafter forward the FIR to the concerned police station.
- She has a right to take an accompanying person to the police station for filing the FIR.
- She has a right to study the FIR and make corrections, if she feels so, before signing the same.
- If she cannot read, she has a right to demand that the FIR be read out to her in such a way that she understands what is written and ask for amendments if it is, according to her, factually incorrect. Only after such amendments are carried out by the police officers, she needs to sign the FIR. She can refuse to sign the FIR if and when the FIR is factually incorrect. If she cannot sign, it is enough she allows her thumb impression to be affixed.
- She has a right to remain as a witness and not be a complainant in the FIR. FIR can be lodged by any body having access to the facts in issue.
- She has a right not to sign a blank FIR, an incomplete FIR and an FIR which is not a true version of what she spoke or gave in writing.
- She has a right to receive a copy of the FIR free of cost.
- She has a right to approach senior police officials if she has any grievances.
• She has a right to approach the Judicial Magistrate if the police refuses to register FIR or compels her to file or sign a wrong FIR.
• She has a right to move a writ in the High Court (under Article 226 of the Constitution) or the Supreme Court (under Article 32) to seek intervention of the Court in law enforcement, including direction to the police to register FIR, take up investigation, expedite investigation, to be fair in action etc.
• The female complaint/witness cannot be detained in the police station especially after sunset.
• Interview of the witness should be carried out during day time. In case of emergency where she has to be examined at night, there should be adequate light and mandatory presence of an accompanying female.
• Interview of the female, even during day time, should not be held in a closed room, if the interviewer is a male police official. It should be in a open room and in the presence of a female police official or an accompanying person.
• The officer in-charge of police station is duty bound to intimate the victim of rape that she is entitled to have legal counsel before any questions are asked of her, as per the Supreme Court decision in "Delhi Domestic Working Women's Forum Vs. Union of India". The officer-in-charge of the police station is duty bound to maintain a list of advocates who would be willing to take up such cases. Obviously the list should include only such persons who are sensitive to the problems of women victims. No doubt the list should contain names of female advocates too. The officer in-charge should make the list available to the victim and notify her right to select the advocate of her choice, who can be her legal counsel. This right of the victim, emanating from this ruling of the Supreme Court is a landmark aspect in preserving the rights of women victims.
• This is a case where the Apex Court has intervened to ensure that the law enforcement machinery is not only responsive to the special needs and, more so, to the Human Rights of the woman victim, but also upholds the finer principles of criminology in ‘keeping the best interest of the victim’ as the focus of all steps in law enforcement.

During interviewing of the victim/complainant/witnesses, the police officer should take adequate precautions to ensure, respect, and protect the privacy of
the female person. For example the male police officer should not venture into
the examination of the private parts of the victim of rape, even for preparing
injury report. This should be done by a female police officer and in her absence
by a responsible woman to be summoned by the police to carry out this task.

- Medical examination of the victim should be carried out by a lady medical
  officer. Therefore the police should refer her to a lady doctor. However, in the
  absence of a lady officer a male doctor may do this job, but it should be in
  presence of an accompanying woman.

- Police should not question the victim regarding her previous sexual relations and
  acts which are not relevant to the context.

The rights of female accused/suspect vis-à-vis police

Though the focus of study is on the rights of victims, it is not out of place to have an
understanding of the women suspects. There are instances where suspects turn out to be
victims and vice versa after investigation. Therefore the rights of female suspect with
reference to police have been studied and are listed as follows.

- Female detainee has to be provided with a lock-up which is distinct and away from
  that of male lock-up, and without any scope for future movements between the
  two.

- Privacy of the detainee in respect of basic requirements like separate toilet, wash
  etc should be provided for.

- Lock-up should be ventilated and with adequate light

- No male member including policemen can enter the female lock-up unless there
  is a grave emergency or medical requirement etc.

- A female should not be detained in the police station lock-up beyond sunset

- She has a right not to be handcuffed (as per the Supreme Court guidelines in DK
  Basu Vs. State of Bengal). If police thinks handcuffing is essential, the same can
  be carried out only after written permission of a magistrate is obtained.

- She has a right to be specifically informed that she has been arrested and the
  grounds of arrest so that she comes to know at what point of time, where and
  why she is being arrested.

- She has a right to know as to where she is being taken to, after arrest.
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- Lock-up should be ventilated and with adequate light
- No male member including policemen can enter the female lock-up unless there is a grave emergency or medical requirement etc.
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- She has a right to be specifically informed that she has been arrested and the grounds of arrest so that she comes to know at what point of time, where and why she is being arrested.
- She has a right to know as to where she is being taken to, after arrest.
and Additional Solicitors General also form part of the higher formations at the Centre. Their services are being utilized by the Government only for conducting trial of selected cases, mostly in appeal matters and other important litigations in the Supreme Court and the High Courts. Considering the fact that the law enforcement in certain instances of crimes against women emanate from the Public Interest Litigations being filed in the Supreme Courts and High Courts, these top law officials have an enhanced role to play, unless the Advocate General himself is the accused in the crime against women, as witnessed in a case of Orissa, reported in 1997. Nevertheless it is a fact that majority of the crimes against women are being handled by the prosecutors at the field level who attend to the trial courts which include courts of Judicial Magistrates, Sessions Judges and Addl. Sessions Judges.

Prosecution was an integral part of police till the amendment of CrPC in 1973. Thereafter it has been declared independent of the police. In most states, Directorates of prosecution have been setup which is usually headed by non-police officials. However, the system existing in the Central Bureau of investigation and the special investigation cells of some other states are little different where the prosecutors are still under the administrative control of the executive police officers. In the CBI the executive police officers do monitor the day-to-day progress of trial in the courts and have an effective control and command over the prosecutors who handle the cases. The daily court diary to be submitted by the prosecutors to the executive police officer is an important tool of proactive prosecution work, as it facilitates not only monitoring of the work done but also helps to prepare specific plan of action to be undertaken to expedite disposal and ensure fair trial of the cases. Moreover this provides a proper orientation of the prosecutor in keeping the best interest of the victim in focus and, at the same time, ensuring the human rights of the accused.

Rights of Women Victims vis-a-vis Prosecutors

The prosecutors who conduct the cases in the trial courts on behalf of the state are expected to look after the interest of the victims. As a corollary the victims do have certain rights vis-a-vis the prosecutors. These rights are listed below.

- The prosecutor appointed by the government conducts the trial on behalf of the state. Once the case is registered with the police and the police file a chargesheet in the court, the state takes over the responsibility of fighting the case on behalf of the victim. The victim's duty gets subsumed into that of the state. Therefore,
the prosecutor represents the victim before the court. It is his bounden duty to protect the interest of the victim. He should stand by the victim's version of the crime and cannot adopt a different approach or stand. Moreover the victim has no financial liability or obligation towards the prosecutor, as the latter has been appointed by the state to discharge these functions.

The prosecutor cannot place any demand whatsoever on the victim except that she should appear in the court as and when required for evidence. However she need not appear in the court till she receives summons from the court. The prosecutor is required to brief the victim in advance so that the victim is oriented towards court procedures and acclimatized to the court scenes. It is a duty of the prosecutor to prepare the victim to the court proceedings.

When law provides in-camera trial u/s 327 CrPC. the prosecutor is duty bound to conduct the trial in-camera. He should move the court and solicit the orders of the court and ensure that the trial is held accordingly. Such proceedings are barred for public access. Only the accused and his defence lawyer / lawyers are entitled to be in the court besides the witness, prosecutor and the presiding officer of the court as well as the court staff. Any other person wanting to attend the court need to have the prior permission of the court, for which concurrence of the prosecutor is called for. The prosecutor is duty bound to keep the best interest of the victim in mind and cannot take any step which would jeopardize her interest. Therefore the victim has a right to demand 'in-camera trial' and insist that any person other than those mentioned above should not be allowed inside the court during trial.

The Supreme Court of India, in the case "Delhi Working Women's Forum vs. Union of India" has ruled that victim should be provided a legal counsel even from the stage of reporting of the crime to the police station. A duty has been cast on the police stations in the country to keep in readiness a list of lawyers who are sensitive to gender issues and who can be summoned for help by the victim. As an extension of this order of the Supreme Court, the victim does have a right to continue to utilize the services of this counsel even during trial. Question arises about the locus standi of this counsel vis-a-vis the prosecutor of the state. Since the Criminal Procedure code enjoins the prosecutor to argue the case in the court on behalf of the victim, the legal counsel who is helping out the
victim would only be secondary or subsidiary to the government prosecutor. This advocate can attend the court, watch the proceedings and facilitate the state prosecutor in presenting the case properly. He can address the court through the prosecutor. If the prosecutor fails in his duties, the victim does have a right to bring it to the notice of the court through her counsel.

Section 301(2) CrPC facilitates the victim to appoint her counsel to prosecute any person in the court, but this counsel can act only under the state prosecutor. This counsel can, however, present his written arguments with the permission of the court.

Since the prosecutor is appointed by the state to defend the victim, the victim has a right to seek change of the prosecutor if he/she is acting against her interest. The victim should take it up with the officers controlling the prosecutors (The Directorate of Prosecution or the Controlling authority, whoever he/she is). The victim can also take-up the matter with the trial court through her counsel, appointed under section 301(2) or under the provisions of the Supreme Court judgment cited earlier.

The prosecutor is duty bound to seek maximum penalty for the accused in the event of conviction. He should bring to the notice of the court the antecedents of the accused including prior convictions if any, and request for enhanced punishment.

On conviction, the prosecutor should pray the court for adequate compensation under section 357 CrPC. Since no specific yardsticks have been laid down under the statutes on the quantum of compensation, the prosecutor is duty bound to seek maximum compensation. In case of multiple rapes by a self-styled ‘godman’ in Tamil Nadu, the trial court awarded a compensation of Rs.5.5 lakhs per victim. The total fine imposed on the accused was 65 lakhs, having been convicted for raping 13 girls. No doubt the compensation needs to be exemplary keeping in view the paying capacity of the accused and the trauma suffered by the victim. Therefore, the victim has a right to demand that the prosecutor seek the intervention of the court for awarding maximum compensation. As stated in para 3.4, the Apex Court has ruled that courts can award compensation even before the case is convicted.

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The victims of rape and custodial sexual assault, has a right against publicity under section 228A CrPC and JJ Act. The prosecutor and others handling the case are duty bound to maintain secrecy about the court proceedings and also avoid publicity of any sort. The victim can move the court and seek directions of the court to anybody who publishes or attempt to publish anything adverse against the victim.

If the case was taken up by the court on a complaint made to the court by the victim, she enjoys a right to legal representation, and also the right to appeal u/s 378 CrPC. Similarly the victim complaint has the right to invoke the High Courts' power of revision u/s 401(1) CrPC. However the victim has no right of appeal by herself if the case was taken up by the court on a police report. In such a situation, the victim can certainly approach the police department and solicit their intervention for filing appeal/revision etc.

2.8 Rights of Women victims vis-à-vis Judiciary

Judiciary plays a pivotal role in the criminal justice system and is perceived to be not only the custodian of protection and preservation of the rights of the individual, but also the epitome of all virtues and powers in this direction. In India judiciary is bestowed with not only legal powers and authority but also a moral responsibility to ensure the protection of the rights of the victims. This gets accentuated in the context of increasing allegations of blatant violations of human rights by the law enforcement agencies. Judiciary is called upon to play the role of ombudsman. In this paradigm, the woman victim/complainant/suspect/accused does enjoy certain rights vis-à-vis judicial authority too. They are as follows.

- The accused has a right for expeditious trial. Supreme Court has emphasised this aspect in several judgements. Speedy trial is an essential ingredient of reasonable, fair and just procedure guaranteed by Article 21 [Mameka Gandhi Vs. State (1978) 1 SCC 248]. It is the constitutional obligation of the state to devise such a procedure as would ensure speedy trial for the accused [Sheela Barse Vs. Union of India, (1986) 3 SCC 632]

- In Rajdev Sharma Vs. Bihar, the Supreme Court has laid down the yardstick for completion of the trial process. In graver offences, the trial should be completed within 3 years from the date of appearance of the accused, provided
The delay is not due to the accused. This is a right against prosecution delay, but at the same time, it is a right against judicial delay too. A duty is cast on the presiding officer of the court to ensure that unwarranted adjournments are not allowed. Thus, it provides a right to the victim to demand and arrest the benefit of the same.

- The victim of rape and custodial sexual assaults has a right, under section 228-A IPC, to maintain anonymity. Whoever prints or publishes her name, or anything which would disclose the identity of the victim, has violated the law and can be imprisoned. However, the law provides that such publication is possible by, or with the authorization in writing of, the victim. If the victim is minor, the guardian can authorize. The investigating police officer can also authorize in writing, provided it is in good faith and is for purposes of investigation (refer section 228-A(2) IPC). If it relates to any matter in relation to any proceeding before the court, the publication cannot be carried out without the prior permission of the court (refer section 228-A(3) IPC). The law provides an onerous responsibility on the media and a corresponding authority on the law enforcement agencies, more so on the court. Since the FIR is pending before the court, even during investigation, court can step in if any unwanted publicity has been authorized by the investigating police officer or the guardian under section 228-A(2) IPC. The right of the victim to remain anonymous and not be dragged into any publicity is sacrosanct. A tendency has crept in where crimes are made known after the victim and not against the offender. This needs to be deprecated and put down. This can be carried out by the court and, therefore, the victim has a right to demand the same from the concerned judicial forum. The right to anonymity has been underscored in *Delhi Domestic Working Women's Forum Vs. Union of India [1993] I SCC 14*.

- The victim of rape and custodial sexual assaults enjoys the right to have in-camera trial, under section 327 CrPC. The Supreme Court has extended its scope to other crimes of sexual assaults on children (refer discussions in para 3.4). The inquiry into and trial of such offences shall be conducted in camera. Persons who are not directly concerned with the trial proceedings are allowed only if the trial Judge thinks it to be fit and allows the same, on an application made by
either of the parties. The trial court has been entrusted with a responsibility of in-camera trial, so as to protect the interest of the victim from undue criticism, publicity and public glare. Consequently, the victim enjoys a right to demand and avail this right from the courts concerned.

- **Provision of free atmosphere:** In *Nakshi Vs. Union of India and others* [WP(Crl) 33 of 1997] the Apex Court in their judgment dated May 26, 2004 observed that "The whole inquiry before a court is to elicit the truth. It is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. Section 273 Cr.P.C merely requires the evidence to be taken in the presence of the accused. The Section, however, does not say that the evidence should recorded in such a manner that the accused should have full view of the victim or the witnesses. Recording of evidence by way of video conferencing vis-à-vis Section 273 Cr.P.C has been held to be permissible in a recent decision of this Court in State of Maharashtra Vs. Dr. Pramal B Desai 2003 (4) SCC 6081. There is major difference between substantive provisions defining crimes and providing punishment for the same and procedural enactment laying down the procedure of trial of such offences. Rules of procedure are hand-maiden of justice and are meant to advance and not to obstruct the cause of justice. It is, therefore, permissible for the Court to expand or enlarge the meanings of such provisions in order to elicit the truth and do justice with the parties. The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused. Often the questions put in cross-examination are purposely designed to embarrass or confuse the victims of rape and child abuse. The object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain acts committed by the accused. It will, therefore, be better if the questions to be put by the accused in cross-examination are given in writing to the Presiding Officer of the
Court, who may put the same to the victim or witnesses in a language which is not embarrassing. There can hardly be any objection to the other suggestion given by the petitioner that whenever a child or victim of rape is required to give testimony, sufficient breaks should be given as and when required. The provision of sub-section (2) of section 327 Cr.P.C should also apply in inquiry or trial of offences under Section 354 and 377 IPC.

- **No direct questions on the incident:** In *Sakshi vs Union of India*, quoted above, the Apex Court ruled that in holding trial of child sex abuse or rape, the questions put in cross-examination on behalf of the accused in so far as they relate directly to the incident, should be given in writing to the Presiding Officer of the court who may put them to the victim or witness in a language which is clear and is not embarrassing.

- **Recess during trial:** In *Sakshi vs Union of India*, quoted above, Supreme Court held that the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

- The victim enjoys a right for being represented by a legal counsel of her choice as per the Supreme Court decision in "*Delhi Domestic Workers' Forum vs Union of India"*. This right of having own counsel, starting with the registration of the crime in the Police Station, continues till the matter reaches its logical conclusion. Even if the prosecutor steps in to defend the victim on behalf of the state, the right of the victim to have her own counsel, cannot be taken away from her, as it is a right accruing from the orders of the Supreme Court of India. Apex Court rulings, by precedent, become law of the country unless amended by the court or legislated upon. A duty is cast upon the court to facilitate such legal representation.

- The female victim has a right to change her counsel if the counsel / prosecutor is not properly defending her case. The court has a duty to examine her request on merits and, accordingly, the victim has a right to demand the same.

- The victim has a right to demand change of the court if there is a genuine ground on questions of integrity, insensitivity, etc. It is a fact that such eventualities are very seldom, all the same the right of the victim does exist.
The victim has a right to demand that the court orders exemplary punishment and fine on the accused, on his being convicted. It is, in fact, a fact that the Indian jurisprudence does not reckon any right of the victim in deciding the punishment of the offender. The state prosecutor can pray the court for enhanced punishment on grounds of the antecedents of the convicted person. However, the victim cannot be a mute spectator of the offender, on being convicted, walks away with trivial punishments, as it can lead to serious complications. Retribution is important to prevent recidivism. Exemplary punishment, especially in serious offences, will vindicate the honour and dignity of the victim. Therefore, the victim has a right to agitate against minor punishments being meted out to the convict. The victim can agitate through her counsel or through the state prosecutor or through the executive police officers who, in turn, should take up the matter through the prosecutor.

Victim has a right for due compensation u/s 357 CrPC. Though there is no statutory law on the quantum of fine to be imposed on the accused, or the compensation to be awarded, the victim does have a right to put up her case through the prosecutor. Projecting facts which could convince the court regarding the sound financial background of the accused can facilitate the court to take decision to allow higher compensation. Therefore victim has a right to demand maximum compensation and accordingly the court becomes duty bound to honour this right of the victim, if it is meritorious.

Victim complainant has a right to be heard before the magistrate takes a final decision on a closure report submitted by the police. If, after investigation, police finds that the case is false, or mistake of law/fact or that evidence is insufficient to proceed further, a closure report under section 173(2) CrPC is submitted by the police to the concerned court. The presiding officer needs to consult the victim complainant and hear her before the disposal of the matter. This gives an opportunity to the victim to see if the police has missed out on facts or if there is any malafide in their action. In such situations the court can direct further investigation by a different investigating agency. Several cases entrusted to the CBI for further investigation, after the state police submits their final report, arise from the intervention of the victim complainant alleging that the earlier
investigation has been tardy, perfunctory or vicious. The right of the victim complaint in this regard is a matter to be appreciated and honoured by the courts concerned.

2.9. **Rights of Women Victims vis-à-vis Rehabilitation Agencies / Welfare Homes:**

The rehabilitation agencies, welfare homes, shelter homes, remand homes, drop-in centers, etc., which care to the neglected and abandoned girl children, as well as women in distress have specific duties under the special laws, like Juvenile Justice (Care and Protection of Children) Act 2000, the Immoral Traffic (Prevention) Act 1956 etc. By far these agencies and homes are run by government. However JJ Act 2000 specifically provide involvement of NGO’s and private institutions, where juveniles including delinquents, those in conflict with law, neglected children and those needing care and attention etc. could be accommodated. Section 15 of ITPA authorises State Governments to notify NGO’s as part of the state law enforcement machinery to combat trafficking in women. These NGO’s have to perform specific duties and functions. They are duty bound, thanks to their declared and pronounced mission, to provide special care to the victims in distress. As a corollary, such victims of crime who are being lodged in these institutions, or are being attended to by the NGO’s, enjoy the following rights vis-à-vis the NGO’s.

- Right to physical security, especially from the threat by parties inimical to them.
- Right to secure stay, free from worry and anxiety, especially in matters of food, shelter, clothing and other basic amenities
- Right to privacy, free from unwanted interference and indulgence.
- Right against sexual harassment by the officials of the institution. The decision of the Supreme Court in *Visakha vs Rajasthan* applies to privately run work places and, therefore, to NGO’s too.
- Right to counselling, as provided in the special laws like JJ Act 2000.
- Right to legal representation, to be defended in the concerned courts of law, whenever and wherever the female inmate feels its requirement. As per the JJ Act, the advocate is not expected to wear his gown.
- Right of education, further studies and scope for advancement as specifically provided in the JJ Act.
2.10 Rights of woman victims vis-a-vis medical attendants

The victim's right to medical attention cannot be disputed. This includes all types of medical care, including psychiatric care. The role of doctors assumes importance as their report is considered by the court as expert opinion. There are many aberrations in this field. Instances are available to show that medical examination was done in a perfunctory manner, jeopardizing the victim's version. Though it cannot be generalized, Bajpai says "many physicians are unfamiliar with the medical examination procedure of sexual assault victims. The trend among doctors is to do cursory examination which is one of the reasons for a low rate of conviction in sexual assault cases. The medical examination of the rape victim further traumatizes her" (Bajpai, 2003, p.xvii). In this context, the victim has a right to demand

- that medical attention and care is extended without delay
- that proper medical care is given to her
- that medical examinations do not violate her rights of privacy and dignity
- that age verification is done without any bias. Chapter 3.4 speaks about the court rulings according to which in any doubtful assessment of age by the doctor, the benefit of doubt should go to the victim.
- that any wrong medical report can be challenged and a Medical Board can be constituted for further medical examination. The Court can direct constitution of such Boards. Even the investigating officers can seek second opinion through a different expert or through a Board of doctors.

2.11 Rights against the offenders

No doubt the female victim, like any other citizen of the country, does enjoy all the rights and privileges enshrined in the constitution and the laws of the country. Further she also enjoys special rights and privileges under the constitution and the special provisions of various laws in vogue. More often victims are unaware of their rights against the accused and, therefore, suffer the crime in silence. Similarly a woman witnessing the crime, like any other person, also enjoy certain rights to prevent the crime and even apprehend the offender. Situations are aplenty where even eye-witnesses have been reluctant to react appropriately to
the situation for fear that any act by them against the offender might go against them. Situations are not far and few wherein the witnesses have ‘retreated’ against the accused, causing grievances, injury or even death of the offender. Certain law enforcement officials, being blissfully unaware of the rights of witnesses/victims in such situations, may even abhor them, alleging that their ‘reactions’ tantamount to a crime, whereas the witnesses/victims have only acted within the ambit of law and made use of the specific rights against offenders. It is, therefore, essential that not only the public at large, but also the law enforcement officials are frequently made aware of the victim’s rights against the offenders. In this context, the following rights of victims against the offenders are relevant.

- Any act done in exercise of the right of private defence is no offence (section 96 IPC).
- The right of private defence extends to defending not only the body but also the property of self and anybody else (section 97 IPC).
- The right of private defence of the body extends even to causing death (section 100 IPC), when the offender is seen assaulting a women victim with the intention of committing rape or for gratifying unnatural lust or for abduction or for kidnapping or for wrongful detention, and where there is apprehension that the law enforcement agencies cannot be immediately approached. The right of private defence of the body can also extend to causing death of the offender, when there is reasonable apprehension that death or grievous hurt will be the consequence of the assault by the offender. If the situation is not as grievous as said above, the right of private defence extends to causing any harm other than death to the offender (section 101 IPC).
- Even if there is a risk of harm to an innocent person, the right of private defence against a deadly assault would hold good, as under section 106 IPC.
- Right of defence against self-incrimination arises when the act done by a person is without any motive or intention to commit any crime. The criminal may allege that the act of the victim tantamounts to a crime, but it is for the victim to prove that it was only an act of private defence. The onus is on the victim.
- Victim’s right against the offender also extends to the claim of compensation, under section 357 CrPC, right to maintain anonymity under section 228-A IPC and right to appeal against lesser conviction/acquittal, under section 378 CrPC.
NGOs, crimes against women and women's rights

Non Governmental Organisations play a crucial role in ensuring the rights of women, in their empowerment and generating public concern. “It is only when the society in general realizes that the question of gender oppression in terms of power relations between sexes is a question of women’s empowerment in a total powerless situation socially, politically, economically and culturally that gender justice emerges as a primary concern in a society” (Aiyida, p.79). Therefore, the role of NGOs in the field of crimes against women is manifold. They are as follows:

- Create public awareness on the rights of women
- Initiate legal action by notifying the law enforcement agencies
- Sensitise the law enforcement agencies
- Stimulate public opinion and act as pressure groups or watch-dogs
- Initiating Public Interest Litigations on matters of public concern
- Follow-up of reported and unreported crimes to their logical conclusion
- Rehabilitation of the victims and their wards
- Providing assistance to the victims in distress

Legal authority and rights of NGOs

Though NGOs are private bodies, they do enjoy legal rights by virtue of the fact that they work on matters of public concern and take-up public causes. Legal rights accruing to them in many ways, as provided in the various laws. Some of the rights which the NGOs enjoy are enumerated below.

- NGOs have a legal right to file Public Interest Litigations in the High Court under article 226 of Constitution and in the Supreme Court under the article 32 of Constitution. Since the NGOs are not interlopers nor busybodies, but are public-spirited persons or bodies having genuine public concern, they have a legal authority to take up the case of victims in PILs and, thereby, initiate the required action.
- NGOs enjoy the rights of private defence, which accrues to any citizen of the country, under sections 96 to 108 IPC, whereby they can take law into their hands in protecting the body and property of the victims, within the parameters laid down in these provisions of law.
NGOs have the right to arrest a person or cause him to be arrested by anybody else if that person commits a non-bailable and cognizable offence, vide powers available to a private person u/s 43 CrPC.

NGOs have been legally conferred rights of being part of the law enforcement machinery with respect to matters relating to juveniles. (J Act 2000 especially Sec. 4 and 11)

NGOs enjoy legal rights of law enforcement, prevention of crime and protection of victim u/s 13 of Immoral Traffic Prevention Act. They have a right to demand that the government notify them as a part of the state anti-trafficking machinery. By virtue of this notification, the NGO’s concerned will enjoy jurisdiction throughout the concerned state. If they are part of the central anti-trafficking machinery system, NGOs will have jurisdiction throughout the country.

Rights of women victims Vs. NGOs: Since NGO’s as mentioned above, are entrusted with certain rights and duties, as a corollary, the female victims derive certain rights against these NGOs.

- The victim has a right to demand that the NGO’s, who form part of the advisory body along with the police officer, specially notified as trafficking officers u/s 13 of ITPA, perform their expected duty. The act has a specific rationale and purpose behind incorporating NGOs as member of the anti-trafficking team.

- It is clear that the role of the NGO is not that of an eye witness or embezzler on the police functioning, but in participatory and involving. The NGOs, once notified, cannot absolve of their bounden duty in the prevention of trafficking, and protection and rehabilitation of trafficked victim. The victim has, therefore, a right against the NGO to demand that they perform their duty as envisaged by the statute.

- The Juvenile Justice Act, 2000 envisages a larger role of the NGOs. They form part of the juvenile justice board (JJB) and the child welfare committee (CWC). Magisterial powers have been conferred on JWB. Perhaps this is the first law in the country where NGOs have been given magisterial powers, at par with judicial officers, to perform common duties and functions in criminal law. Therefore a right accrues to the child victim or a juvenile to demand that NGO, who forms
part of the JWB, perform their expected duty. Similarly a neglected child has to be looked after by the child welfare committee (CWC). 79 Act, 2000 assigns specific duties and functions to the NGOs who form part of CWC in looking after the interest of the children who are uncared for. Such street children become the responsibility of the CWC and, therefore, they have a right to be looked after and attended to by the NGO in the CWC.

- The Apex Court in its decision in "Delhi Domestic Working Women Forum Vs. Government of India" had laid down the law that a rape victim arriving in the police station should be provided counselling services. However the existing police systems in the country do not envisage any expert in counselling matters to be part of the law enforcement machinery. Moreover policemen are not trained in counselling too. Therefore they need to co-opt NGOs for this work. Once co-opted, it becomes a bounden duty on the part of NGO to perform the task of counselling to help the victim come out of the trauma and also to prevent re-victimisation. Naturally it becomes a victim's right that the NGO performs this onerous task properly.

- Indian Police Act, 1861 envisages special police officers (SPO) being appointed as honorary officials to assist police. There are instances where sensitive and proactive police officers / magistrates have made use of this provision. For example, in Delhi the Commissioner of police, who also enjoys magisterial powers, has appointed several NGOs as SPOs. They have been issued with identity cards too. SPOs are entrusted with specific task of proactive policing. A specific duty has been cast on them. Therefore, the victim has a right to demand that the SPOs rise up to the occasion and delivers the goods expected of them.

2.13 Media, crimes against women and women's rights,

Media has an important role in the criminal justice system. Media highlights the problems and issues, thereby calling attention of the law enforcement agency. They act as watch dogs and pressure groups, keeping the law enforcers on their toes. They notify the agency concerned by providing statistics and analysis of not only instances but also trends. Effective criminal administration arises out of proper study of the trends and the utilisation of the outcome of this study for crime control, detection and prevention.
However, media at times has been criticized for playing negative role too. Despite the specific provision laid down under section 228A IPC by the Supreme Court in various decisions, which demand that the anonymity of the victim has to be protected and that her name, address or any other identity particulars should not be published or broadcast, several sections of the media find thrill in publishing the name of the victim to make it sensational, thereby increase the demand for the concerned newspaper / magazine / channel. Sometimes, under the garb of protecting anonymity they provide a different name but at the same time hasten to give several other bits of information about the victim that any ordinary man of prudence can easily identify who the victim is. This amount to circumventing the principles laid down in the statute that the victim has the right to be free from any publicity. A case of Orissa reported in 1994, where the allegation was that the then advocate general had molested a woman, got published in several newspapers and magazines and TV Channels. Most of the publicity was victim-centric, even with her photographs, but there was least, if not nil, coverage of the accused. Sometimes the accused was not even cited.

Another instance of unusual hype was seen in the infamous ‘Espionage Case’ reported in December 1991, against certain scientists of the Indian Space Research Organization (ISRO) and other persons. The FIR registered by a state police agency was, on their request, taken over by the CBI. The state police agencies had arrested certain scientists and two Maldivian women and put them behind bars after interrogating them in police custody. The CBI after sustained in-depth and impartial investigation had categorically concluded that the allegations of espionage against the accused were false and concocted. The judicial magistrate, after careful scrutiny of all records, applied his judicial mind and accepted the report of the CBI. Matter was taken up in the High Court and even to the Supreme Court by various persons and parties. The Apex Court came down heavily on the wrongs committed against the innocent persons who were earlier arrested and detained for long. The two Maldivian women had been painted in ‘black and blue’ in several sections of media. There was a time when the headlines of certain newspapers used to split stories after stories, all of which were fabricated, concocted and fictitious. This created a deep impression in the minds of the public that the two Maldivian women and other accused were really traitors and had been involved in espionage. The public also were made to believe that CBI investigators, who, after sustained but quiet investigation, had discovered the case to be false, were in collusion with the alleged spies. The media hype created such ripples in the
community that the public were not ready to accept the judicial verdict upholding the CBI findings. The vilification against the persons who were already arrested or "going to be arrested" (this included one police officer of senior position) was so high that they and their families were socially boycotted by the society for some time. The role of media in causing undue and untold harm to innocent persons has been well exemplified in the ISRO espionage case. Such false propaganda and adverse publicity tantamount to subject violation of the rights of the innocent women. The media does have a moral responsibility towards victims to ensure that their fundamental rights are protected.

The responsibility of the media is not only moral but also legal. The Press Council of India is the ombudsman to oversee the various deviations and take appropriate steps to remove them. The role of media in protecting the rights of the victims is a clear conclusion. As a corollary the victim has a right against adverse publicity, against disclosure of identity against unsolicited publicity, against undue criticism and against defamation. The rights of the victim vis-a-vis the media thus emanate from the remedies enshrined in the constitution as fundamental rights, the provision of the substantive law dealing with defamation etc., rulings of the Apex Court in this regard, the Press Council Act etc.