CHAPTER - V
INADEQUACY OF RAPE LAWS: A LITERARY PERSPECTIVE

UNICEF provides a list of what VAW in South Asia includes. This list begins with female infanticide, dowry deaths, acid attacks and concludes with prostitution, honour killings, rape and wife-battering (UNICEF, 2001). Rape is one of the listed crimes of violence against women. It emerged as a public issue in India in the late 1970s in connection with the Mathura rape case. Anger raged rampant when a Supreme Court judgement announced the acquittal of the police rapists of a young tribal girl, Mathura. The paradigm of rape as a crime of violence against women is the focus of this study.

This study attempts to see the manifold implications of this crime of aggression, the law pertaining to it, its representation in Post-Colonial Indian Writing with a view to provide a better insight into this area of study. The feminist discourse places the rape discourse at the centre. It is a crucial entry point which has drawn our attention due to the inadequacy of our social, political and legal systems to deal with it.

There are expectations from law that it will ensure redressal and curb the crime. However the problem is so deep-rooted that laws alone cannot ensure non-occurrence. Even today, the laws framed to deal with rape are inept and flawed. Perhaps it is also the problematic nature of the crime itself that has posed a challenge for all concerned. Rape is an instance of violence against women which is a crime sexual in nature. Hence, the problematics of this crime have baffled even the legal system.
As many experts writing about this issue have rightly pointed out, the amorphous nature of our identity, once defined in association with the body and then only associated with the self, seems to raise problems. For in this crime, the body, the self, the psychology and the identity of the individual is seriously affected.

Thus, law which “ought to try and imitate justice” and deliver the same, is often seen fumbling, inadequate and highly debatable. Marcus is of the belief we need to rewrite the ‘rape script’, as it is lop sided in its emphasis on the body. In this we uphold the belief that “a single sexual organ identifies the self”. The intensity of the crime of rape is often seen as resulting from the bodily harm done to the victim. However, as many feminists have rightly pointed out there is a need to dislocate rape from the body. She urges the need “to revise the idea of female sexuality as an object, as property and as inner space”. According to Sharon Marcus, sexual violence constitutes the target as fearful and defenseless victim. She also feels that due to the emphasis on the body as vulnerable (also as the woman’s body is rapable), the feminist and patriarchal discourses concur that rape is a fate worse than death. Some critics like Nivedita Menon feel that the solution may lie in relocation of selfhood outside the body.

Though this seems a very welcome hypothesis, it is ridden with a number of problems. However, this may mean that the focus should shift more from the crime to rehabilitation. Would it also imply that the harm done to the bodily identity will be trivialized, so as to enable the victim to rehabilitate herself better? The relocation of selfhood outside the body seems to be quite an untenable possibility.
The project of studying the representations and appearance of rape as a theme in Post-colonial Indian Writing is a rather complicated one. One can see a transition from silence, and guarded covert portrayal to very bold and rational discussions of this theme in Indian writing. Besides, it is not merely a scholarly enterprise, it is an attempt to understand a very problematic paradigm, that is a glaring reality and also a real-life challenge for us.

Rape is a crime that is sexual in nature along with being a crime of violence. As Diane Scully postulates, “Rape is a violent act, but it is also a sexual act, and it is this fact that differentiates it from other crimes”. It is an extreme act of impulsiveness complemented by the lack of inhibition. It is a crime where passion, lust etc. override the dictates of reason. Even psychiatrists concede that rape has to do with the inability to take ‘No’ for an answer and the desire to take that which does not belong to one as a right. The unbridled tutoring by the capitalist culture and its motto that one can attain all that one desires, ends up in such crimes, where the imposition of one’s will on another takes place.

A study of 114 convicted rapists in the USA showed according to Diane Scully that for men rape is a low-risk and high-reward activity. According to many of the convicted rapists, it gave them pleasure, excitement and a sense of power. The sense of power in question is not just temporal. It is the sense of power one gender enjoys over another. It has to do with the gender inequality that has led to gender difference in society. It has to do with the power-racket of monachy.

Dictionaries too offer gender-specific definitions of this crime. The Merriam Webster dictionary defines it as “unlawful sexual activity and
usually sexual intercourse carried out forcibly or under threat of injury against the will, usually of a female”. This goes to show how a particular gender (i.e. female) is targeted and controlled through this crime.

It is the collusion of sexual violence in this crime that makes it very difficult for most countries to frame laws punishing marital rape. It is riddled with problems of consensual sex and the line that demarcates absence of consent. As Seemanthini Niranjana, points out the process of female embodiment is achieved through practices and rituals regarding the woman’s body (vis-a-vis, puberty, menstruation, pregnancy) being inserted into what is called “a matrix of sexualization”. This matrix that socializes the girl/woman, is in many ways the foundation for conceptions of the feminine that are imbued into women’s psyche. The attainment of legitimacy of fertility through the institution of marriage burdens a woman’s body with the fear of resultant shame when fertility or atleast a risk of fertility results from rape. This results in a two-way exploitation of the woman’s body: (a) within the institution of marriage (b) without it, when she encounters crimes of violence against her embodied self. Thus, socialization of the woman’s body both ways harms her. It is like a Scylla and Charybdis situation.

The body/mind dichotomy and the rape victim’s efforts to alienate herself from the body form a disdain for the body—this is termed as “somatophobia” by Elizabeth Spelman. In an attempt to escape or even conquer or redefine her selfhood, the rape-victim needs to split herself as the noble mind and the ignoble body. The resurrection of the victim is usually seen in terms of the violated body as the seat of identity. Ironically, however, rape is a crime in which the body is the medium of
harm to the victim and the crime amounts to denial of bodily integrity.

It is also ironical that most societies associate chastity with honour but are prone to this crime in which there is a loss of honour. In Hindi the phrase used for the crime of rape clearly connotes that women are treated as property of their menfolk.12

**The Paradigm of rape**

Rape challenges the premise and promise of secularism and democracy. It is not just a human rights violation but in the paradigm of rape the expressed misogyny manifests itself as a denial of basic fundamental rights.13 And by creating a phobia in many minds it results in a widespread impact, as even those who are not victims live in impending fear of the possibility.

Rape then acts as a ploy in the hands of men as it is outside marriage thereby heaping contempt on the victims for not safeguarding their embodied self. It is a weapon expressing power that men, whether literate, illiterate; of upper castes or lower castes, in uniform or without, have over the other gender. While other grievous crimes that do bodily harm to both men and women are serious enough, rape perpetrates a crime of much greater magnitude as it overlaps a denial of bodily rights, reproductive rights and human rights violation. The outcome of rape is grievous for a woman on whose body the crime is perpetrated and she is denied by this ghastly act the right to know what a pleasurable consensual sexual act means to a virgin. Thus, the emphasis should be not merely on the jeopardy of selfhood but on it as a crime.
The Dilemma of Rape Laws

The Indian state’s predilection to uphold its patriarchal nature is seen in the nature of the rape laws. Until now they clearly have disadvantaged women and do not show much understanding or respect for a woman’s fundamental right to her bodily integrity.

The irresoluble conflict between the feminist discourse and the legal discourse vis-à-vis rape has been fertile transculturally. The inability of rape laws to deliver justice is well known. As Flavia Agnes claims in *Journey to Justice*, it is impossible to prove beyond reasonable doubt (as required by laws) that the accused is guilty and the victim innocent specially regarding crimes against women that are “private and personal nature”. The stumbling block in rape laws definitely is the issue of consent.

The problem with the IPC that defines rape is that it has a very myopic and limited understanding of the crime of rape. Section 375 of the Indian Penal Code defines rape thus:

Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. A man is said to have committed rape, according to the section, if he has sexual intercourse with a woman in circumstances falling under any of the following:

- against her will,
- without her consent,
- with her consent when the consent has been obtained by putting her or any person in whom she is interested in fear of death or hurt.
- With her consent if her consent is given because she believes the man to be her lawfully married husband, when the man knows he is not.

- With her consent if she is unable to recognize “the nature and consequence” of that to which she gives consent because of intoxication or unsoundness of mind.

- With or without her consent if she is under sixteen years of age.\textsuperscript{15}

The definition of rape as it exits in the IPC, reflects a patriarchal bias, as it still centres around the penile penetration. Other forms of sexual assault which are at times more grievous such as penetration by other objects are not recognized. While many countries in the world have modified their rape laws, India still carries on with the same old definition that amounts to limited conveyance of justice.

Besides, the laws punishing sexual violence are inadequate due to their emphasis on non-legal and amorphous, indefinable concepts such as ‘modesty’. As a result grievous wrong and gross violence against women often goes unpunished or inadequately punished due to application of concepts of outrage or insult against a woman’s ‘modesty’.\textsuperscript{16} Many serious acts of sexual violence, as a result go unpunished due to the absence of a well-demarcated definition of sexual assault.

In the Post-Colonial context, it is crucial that the colonial laws have been inherited and practised in an unchallenged manner, more or less. Besides, no major efforts have been made to bring about rational changes in the laws punishing sexual violence. Thus, in Indian writing while dealing with violence against women, it is important to note that
inadequacies of the law dealing with sexual violence and its fall out. It is an important theme in such writing. The need of the hour is a comprehensive rape law and definition which can take into account the various aspects of sexual assault that have been ignored. The outdated Indian Penal Code, 1860 law needs to be amended in a revolutionary manner and not piecemeal.

A wider definition of rape is required to replace the antiquated law. *The Encyclopedia of Women and Gender* which is a study of sex similarities and differences and the impact of society on gender defines rape as “the nonconsensual oral, anal or vaginal penetration of the victim by the penis, fingers or other parts of the body, or by objects, using force, threats of bodily harm, or by taking advantage of a victim incapable of giving consent.”17 In America, all 50 states have revised the laws defining rape. So is the case in many other countries. However, the limited nature of the law in our country results in misery for the rape victims.

Since the rape of women is 10 times more common than the rape of men, it can therefore be classified as gender-based violence.18 It disproportionately affects women and girls, has implications of sexual, psychical, psychological and economic abuse and is the result of women’s subordinate status in society. However, the irony is that due to the resultant shame of reporting, *there is a lot of discrepancy between actual rape rate and reported cases the world over*. Secondly, *the maximum punishment in India varies between a minimum of seven years imprisonment to life sentence* and invariably the accused is acquitted due to the pressure on the victim. Thirdly, the definition of rape itself is problematic due to its limited nature.
The journey from the assault to redressal is a difficult one amounting to immense trauma and may not necessarily end in justice. One of the prominent legal activists, Flavia, Agnes has suggested that rape and its law aimed at giving justice to the victim is flawed due to the emphasis on the penile-vaginal penetration.\textsuperscript{19} For this reason many legal experts who wish to bring justice within the victim’s reach suggest that the term “sexual assault” would include any other intrusion and penetration can become punishable. It would also set right the law vis-à-vis victims in whose case the harm can be of a varied, grievous and more violent in nature. The Indian legal lobby too sees the solution in the widening of the meaning to include any anal, oral or penetration by other objects, as is the case in many countries.

**What Rape Statistics Reveal:**

The NCRB data upto the year 2011 reveals that there is a consistent increase in the incidence of this crime every year. However, paradoxically the conviction rate has been dismally low and remains statistically low over the years. This indicates that if there are better laws, speedy disposal of verdicts and publicity of convictions and punishment, it may lead to a lower incidence. Thus, one of the recommendations would be that speedy judgement can alleviate and reduce the incidence of such crimes. In fact law makers will have to keep this in mind while reviewing rape laws.

Statistics released by NCRB recently (2011) report rape as India’s fastest growing crime. It has seen a 792% increase since 1971. The dismal rate of convictions in India (27% appx.) as in 2010 is one of the major reasons encouraging perpetrators of violence against women.\textsuperscript{20} The
dilemma today is that though today we have more victims gathering courage and reporting the crime, the poor conviction rate continues to encourage the perpetrators. Thus, there is an urgent need to frame discouraging laws that can instill a sense of fear amongst the perpetrators.

What do rape statistics indicate?

The crime rate reported by the National Crime Records Bureau (NCRB) amazes one: a crime every 17 seconds. What is even more amazing is that among the crimes listed by the crime bureau, rape, motestation, sexual harassment, murder and dowry deaths were reported more frequently than dacoity, arson or counterfeiting. According to the ‘Crime Clock 2005; one crime against women was reported every 3 mins. One rape every 29 minutes amounts to 48 rape (approx.) cases in one day. The report also states that the figures could be much higher as only those which were reported are listed on the clock.21

Delhi : The Rape Capital

Delhi tops the list of unsafe metros in India. However, the year 2006 witnessed a marginal decrease in the number of cases reported compared to 2005. There has been a drop in the cases reported from 658 in 2005 to 599 in 2006, which still says that there is a lot that needs to be done. In over 98% of the cases the accused was known to the victim. What is interesting is that 90% of those arrested on charges of rape are completely illiterate or school dropouts. Besides, 23% cases were reported from areas like Nangloi, Sultanpuri, Gokalpuri, Mangolpuri, where slums exist and economically weaker sections reside. There is definitely a correlation between illiteracy, ignorance and poverty and less
esteem for women and the crime of rape in these statistics.\textsuperscript{22}

This goes to show that the crimes of violence against women here have gone up considerably over the years. There is tangible evidence that proves that the rape rate has increased over the years.

**RAPE LAWS AND JUSTICE:**

From time to time several individual cases have come into the limelight as they are glaring cases of reported rape. Some of them are those of Mathura, Rameeza Bi, Maya Tyagi, Suman Rani, Mukti Datta, Piyadarshini Mattoo, Hetal Parikh and that of Sarita Rani in Haryana.\textsuperscript{23} These cases have galvanized women’s groups into action and to seek better redressal for the victims along with the campaign to change the Rape laws. Rape statistics indicate the disturbing inability of the concerned laws to act as deterrents. Rape thus manifests itself as a painful reality in multifarious forms such as:

(a) child rape  
(b) date rape & acquaintance rape  
(c) gang rape  
(d) intragender rape  
(e) Spousal or marital rape  
(f) Caste rape  
(g) Army rape  
(h) Custodial rape or institutional rape (as in hospitals, remand homes, prisons)
(i) Rape in political organizations.

The crime of rape though not limited to female victims, is primarily a crime against women and is prevalent tranculturally. Also, the rape of women is 10 times more common than that of men. We also observe that though the list of victims may include men as well as, the perpetrators are invariably men.

Law, a discourse endowed with power and one that has an impact on many aspects of life, has ever been problematical. Many critics like Carol Smart have argued that law has more or less been a phallogocentric discourse. Phallocentric, in that it sides with the “masculine hetero-sexual imperative” and logo-centric, as most feminists believe that knowledge is “not neutral but produced under conditions of patriarchy”.24

Carol Smart argues that law is a site of power as well as struggle. Even if it “does not hold the key to unlock patriarchy”, it can provide an opportunity to articulate an alternative vision and discourse”. The discourse of law is grounded in patriarchy. According to Smart, we should shift “the understanding of rape into a critical deconstruction of naturalist heterosexuality”; it should be “contextualized in the domain of sexuality”.25 While law is very important as a deterrent to crimes against women, the history of law reforms in fields such as rape, domestic violence etc. goes to show that it is not enough ‘per se’ to empower women. A constant problem for women lawyers and those committed to bring about a change in women’s lives through law is the dilemma that legal activists such as Catherine MacKinnon have pointed out. And this dilemma is to determine which line to follow: the principle of equality or the principle of difference. This has proved to be a Scylla and Charybdis
situation for legal activists. The dilemma remains today like ever that is it in the interest of women to be treated differently for their unique gendered qualities or whether they be treated at par with men.

However, current jurisprudence in the field of the Indian rape laws, reveals that the principle of difference may at present achieve greater justice in the given situation. Keeping this in mind, the Indian government has approved bold changes in the criminal procedure code (Cr Pc). The aim of these reforms is to reduce the agony of rape victims. Completion of rape trial cases in two months, woman judge to hear cases as far as practicable are some of the proposals which are a part of the Cr. PC Amendment Bill.\textsuperscript{26} Investigations and recording of statements of victims at a place of their choice or their residence and as far as practicable by a woman police officer are some of the other changes. In another significant move victims will have the right to appeal against acquittals which was the prerogative of the state alone. This provision can act as a deterrent to collusions between the accused and the prosecution as witnessed in the Priyadarshini Matoo case.\textsuperscript{27} The victim can also avail of the option to be questioned in the presence of a family member or a social worker of the area. The aim of these reforms is to give protection to the victims who are often discouraged by the proceedings to even report.

The National Commission for Women’s report for the year 2005 has stressed the need for a new law on sexual assault. It stresses that the anomalies in the rape laws have been highlighted by the Supreme Court in the Sakshi vs. Union of India case. The inadequacies of laws relating to rape in India compelled it to recommend the overhaul of laws related to
The Law Commission has already examined and suggested review of laws pertaining to rape and sexual assault. The sections in need of significant review are Section 375, 376, 354 and 509 IPC. Also the relevant sections of the Code of Criminal Procedure 1973 and the Indian Evidence Act 1872 need to be reviewed. The report, also examining sexual harassment, stresses the infringement of women’s right to gender equality under Article 14, right to live life with dignity under Article 21 and right to a safe environment free from sexual harassment. The still pending draft Bill based on these proposals is hoped to bring relief but is still waiting to be passed. The Indian Penal Code 1860 still remains the basis for laws pertaining to rape. The immediate rectification of these colonial, outdated laws should be taken up immediately to ensure the prevention of violation of certain Fundamental Rights of Women in India. Hopefully, when these amendments are implemented justice in rape cases will be accessible and effective.

Crime and Conviction in Rape: Some gaps

Most figures of the crime of rape go to show that there is amazing discrepancy between cases filed and convictions. The first step in the long journey towards justice begins with the reporting of the offence. However, due to the legal tangles the criminal act of rape often goes unreported. Rape survivors are traumatized and due to the stigma associated with it are unable to speak of the horrifying experience. Another deterrent that discourages reporting is that 84% of the rapists are known to their victim (according to the NCRB report). Since the rapist is either the father uncle or brother, the families tend to hush up the matter and do not report the crime.
Even if a rape survivor crosses the first hurdle of reporting the crime she can anticipate the nightmare the police investigation is likely to be. Besides, the insensitivity of the police, the victim faces an equal apathy in the medical examination. Government hospitals are ill-equipped to handle such cases with care. There is no privacy in Government hospitals. Insensitivity and lack of staff to handle the victim make it highly traumatic. It is for these reasons that the rapists are often confident that they will go scot-free and if reports are to be believed, 80% rapists walk free.29

In such a situation, the likelihood of convictions is rare. Court cases dragging for years along with lax investigations spell doom for justice. The outcome is that there are more acquittals than convictions. Very often the lengthy, expensive proceedings are unaffordable for victims. Thus, justice becomes elusive and almost impossible in the given situation. Sometimes, the character of the victim is maligned to escape. “The accused would attack the moral character of the woman”, says Indira Jaisingh of the Lawyer’s Collective. “It would be the woman on trial rather than the offender”.30 In the Bhanwari Devi case too a low-caste woman was raped by upper caste men. To the outrage was added the callousness of the argument that why would upper caste men rape a low-caste woman. This was the situation till recently, since judges allowed the rapists to present “character evidence” against their victims. Besides, the legal defence of the accused often try to establish that the victim was known to the accused and the ‘rape’ may actually have been consensual sex.31

An anonymous sitting high-court judge says that we can blame it
on the law. It is this that turns the victims hostile in a majority of cases along with the above mentioned apathy of the investigators and lack of infrastructure. The judge says: “The USA and most European countries define rape as forced intercourse that includes psychological coercion and physical force. But in India only penile-vaginal penetration constitutes rape. It does not include anal or oral penetration, penetration by objects or sodomy. There is no concept of marital and date rape is a fantasy”.32

A newspaper report states that out of every 100 rape cases in India only 10 are reported and out of every 100 accusations only 5 are convicted. The low rate of convictions goes to reveal the failure of the whole system to bring the offenders to book. Thus, the system and society allow this crime to flourish. Brinda Karat, women rights activist says that the whole process – from registering an FIR to the courtroom is so insensitive that a woman goes through rape not just once but twice over. She says, “The police ask the victim to repeat what happened to her in the presence of the accused. It is almost as if the victim is on trial and not the accused. Since there are no time – bound procedures and the case drags on, the victims eventually drop out. Plus, there is always the factor of parental and social pressure. Some accused also use political influence to get off”.33 The low rate of convictions thus indicates that the myopic judiciary and inadequate rape laws amount to greater suffering for the victims. Thus, we require resolute political will to amend and implement these laws so as to bring justice to the victims and thereby discourage recurrence of such crimes. The low rate of reporting, convictions, the inability to contend the stigma and cultural bias in the crime of rape, coupled with half-baked laws, have all contributed in encouraging this crime. The history of this crime and the common inability of most
cultures to grapple with it indicate the problematic nature of this crime and indicate that it is indeed a crime that requires multiple strategies to tackle it. Law happens to be one important component of the recipe required to handle this crime which indeed needs to be handled with kidgloves.

MARITAL RAPE LAWS

Till the 1970s, marital or spousal rape was hardly acknowledged. Finkelhor & Yllo (1985) found that only one book out of 31 textbooks on marriage out in the 1970s spoke of the issue. With the John and Greta Rideout case in 1978, it became known through the much publicized rape trial. This crime was not recognized by most countries considering that the rape laws of most countries included “the marital exemption”. The rape law defined the crime as “the forcible penetration of the body or a woman who is not the wife of the perpetrator”.

In a newspaper report TOI, Oct. 7, 2006, the UN report produced by researchers of WHO, confirmed that violence against women by their live – in- spouses or partners is a widespread phenomenon, both in developed and developing countries. The report also suggests that most partner abuse is hidden and only a tiny fraction is reported. Rape is one such crime of violence often seen taking place in a spousal/marital framework. Psychologists believe that forced sex in marriage is not real rape. (Russell, 1991, 129). Many myth-stereotypes inhabit people’s minds in the form of rape-stereotypes. As in Gone with the Wind, Rhett Butler (Clark Cable) overcomes the resistance of the scared Scarlet O’Hara (Vivian Leigh). The woman is depicted as emerging satisfied and happy with the experience. Such images in films and fiction cause
damage by suggesting that women enjoy being overpowered and raped.

**Spousal rape and Law:** Many countries all over the world, till recently included “the marital exemption” in their rape laws. These laws which were sexist and allowed marital rape tacitly defined rape as “the forcible penetration of the body of a woman who is not the wife of the perpetrator” (Russell, 1991). The origin of this exemption is traced to the argument of Mathew Hale, Chief Justice in England in the 17th century. He said: “the husband cannot be guilty of rape committed by himself upon his lawful wife, for by their matrimonial consent and contract the wife hath given up herself in this kind unto the husband which she cannot retract”.

Most legislation has allowed the law to remain unchanged due to the understanding that marriage implies a special agreement for sexual intimacy. Infact even the Hindu conventions of marriage and ‘mantras’ suggest that the father is giving the bride to the groom for satisfying his ‘kama’. Thus, an unequal relationship is established by the conventions in marriage. It is for this reason that framing a law to punish marital rape is difficult in certain societies. In fact, India has failed to take cognizance of this reality. Even in the Western culture the marriage vows “to love, honor and obey” is looked upon as an approval of intercourse on demand. So this understanding that besides being under control by the husband, consent is taken for granted in marriage.

Rape occurs in the absence of consent. Whether it can occur in marriage is debatable. Hence posing a problem in framing the law. However, legal experts who realize the trickiness of the situation feel that by marrying, a woman is not necessarily consenting and that too
consenting for all times to come and definitely not consenting to rape.  

Studies have revealed that in many cases of spousal rape, it is used to overpower the wife, who is about to desert her marriage or is unable to accept it. In her work on *Rape in Marriage*, Diana Russell says, “wife rape cannot and must no be subsumed under the battered woman rubric”. This caution needs to be taken as most rapist husbands are wife batterers as well.  

**INADEQUACY OF RAPE LAWS: THE LITERARY PERSPECTIVE**  

The patriarchs of ancient Indian society propagated injunctions against violence in all its manifestation. Since a woman was considered unfit for independence (as laid down by Manu), she had to be guarded. To this effect the ‘dandaniti’ or the code of laws were laid down by lawmakers like Manu and Kautilya. Punishments for various situations prescribed in the penal code corroborate the cognizance taken of penal action in instances of violence against women. Since then and through the colonial period laws have been framed to punish violence against women but have failed to bring justice to women. Post-colonial Indian writing represents the several legal aspects related to the theme.

One of the most glaring cases of the disconnect between crime and punishment in rape cases that encourages such crimes is the case of Aruna Shanbaug, Staff Nurse of KEM Hospital, Mumbai on 27 Nov. 1973. Pinki Virani’s real-life account *Aruna’s Story* describes how Aruna Shanbaug was raped and almost murdered by one of the staff sweepers Sohanlal Walmiki. However, the convict served a sentence only for
Attempted Murder and Robbery (307 & 397 IPC).\textsuperscript{40} In the absence of any complaint of rape and the cover-up by people around her, Aruna’s appeal for justice remained incomplete. In fact in the absence of any family member’s initiative to complain, one of the police-officers was named the complainant. Sohanlal served a mere seven year term and was released, while Aruna’s incarceration continues. The need to change laws pertaining to rape and sexual assault is felt and addressing it is the only way to discourage such crimes.

More and more contemporary works are engaging in the analysis and drawing attention to the inadequacy of law in tackling the crime of rape. Most of these writers point out that the laws are unable to deter the perpetrators of this crime. Besides reporting the crime is not an easy task for the victim as seen in Shekhar Mallik’s story ‘Asvikaar’, where the victim Anandita is a feminist, human rights activist.\textsuperscript{41} The story registers a role-reversal as it reveals a victim who is sympathetic and understanding. This reveals that a sensitive approach is needed to handle the crime, the victim and the perpetrator. She realizes how the insensitive system deals with the victims and suggests in a very radical manner, the need for development of an emergency system to cope with this serious crime. The story also raises questions regarding the concept of ‘modesty’ - an outdated concept that continues to be given undue importance.

Suchitra Bhattacharya’s \textit{Dahan} reveals the collusion between the legal machinery and the powerful political lobby that makes it impossible even for educated couples like Romita and Palash to fight violence against women.\textsuperscript{42} The novel reveals how the family buckles under pressure. Societal apathy in dealing with the crime too is highlighted. The
writer reveals how difficult even filing an FIR (First Information Report) in such instances becomes almost impossible. Thus, the preliminary step towards acquiring justice is defeated.

Ambai’s ‘Black Horse Square’, too reveals the collusion of the law-enforcing machinery i.e. the police with the perpetrators of crime.\textsuperscript{43} In fact it highlights the issue of custodial rape and the tremendous responsibility that law-enforcing agencies such as the police shoulder. In fact one can see the need for stricter punishment of officials who are involved in enforcing justice arising from such situations.

Mridula Garg’s \textit{Kathgulab} too points out that the loopholes of the legal system that allow perpetrators such as Smita’s Jija to go scot-free.\textsuperscript{44} Vis-à-vis marital rape too, the problem persists and people like Jim Jarvis and Marianne’s husband go unpunished. Marital rape and its laws are not only inadequate in India but also many other countries is borne out by the novel.

Suchitra Bhattacharya’s short story GWBW too emphasizes the absence of laws regarding marital rape.\textsuperscript{45} The narrative emphasizes that within marriage the “forcible cohabitation” that Samiran defines as rape is still not recognized. There are no rape laws in India that acknowledge that a crime takes place in the act and is similar to the use of force and alcohol to rape a woman in society. Urmì is compelled to see the similarity between herself and Ms. Ria, the bar dancer who has been raped. Thus, the narrative emphasizes the need to recognize marital or spousal rape as a crime. The story also draws attention to the fact that a woman who is supposed to have loose morals (here Ria who is a bardancer) does not seem to have a claim to justice and is supposed to
have consented to cohabitation.

Bani Basu’s novella “Kharap Chele’ (The Fallen Man) weaves together the lives of sexually exploited women, exploited by the ‘fallen men’ like Nikhil. The novella raises questions concerning justice for women like Mallika who have been forced to silently endure monster – like relatives and have been sexually exploited. They need to speak up. The final blow that Mallika gives while grappling with Nikhil, kills him. The narrative also suggests that laws should be even more stringent when a close relative or family member is the perpetrator of the crime. It is also emphasized in this novella that the individual needs to be strengthened by the family around and the rest of the society to be able to overthrow and punish such offenders. Thus, Jina, Kalyanbabu, Mukut, Mallika and others join hands to obtain justice for themselves and others in the narrative. The depiction of the older generation as supportive and willing to change their mind-set reveals a positive outlook that is needed to re-form the system and restore justice.

Shashi Deshpande’s The Binding Vine addresses the complex nature of the crime when it affects family members. While Urmilla’s mother-in-law has suffered marital ape and denied justice, Kalpana, Shakutai’s daughter has been raped by her own uncle. The novel shows how a rape incident gets easily passed off as an accident. It also reveals how difficult even filling an FIR (First Information Report) is when the victim’s family does not support her.

In fact, Kalpana’s mother is hesitant even in sharing a photograph with the police for the fear that they may accuse her of being a ‘character-less girl’ and therefore prone to being raped. Justice is depicted as so
elusive and hard to attain that the family almost abandons all hope of getting it. It is only with the intervention of Urmilla and the NGO that they are able to instil Shakutai with the confidence to demand justice. Even the policeman knows that pursuing justice for the victim is like inviting trouble.

In fact, the concerned policeman feels that: “It’s going to mean trouble for everyone – the girl, her family, your colleague who first examined her, us (BV, 81). The novel ends on a positive note as far as the aspiration for justice goes. The narrator Urmilla confesses: “I have a feeling Shakutai knows it now, that her daughter’s tragedy can no longer be shrouded in silence (BV, 203). In fact, the narrator confesses that she can’t see any “road that can take as back” (BV, 203).

Mala Sen’s story of the Indian Bandit Queen, reveals the difficulty of a poor Dalit woman to obtain justice. Phoolan, who is married at the age of 11 to an elderly Puttilal is legally a rape-victim even in this marriage as she is still a minor. Besides this she is raped by the police in their custody at the behest of her cousin Maiyadin. Further she is continuously raped by the two dacoit groups of Babu Singh Gujar and Sri Ram Singh. Mala Sen, Phoolan’s biographer highlights that the onus of rape is put on the woman. Ironically, as in Phoolan’s case, even in custodial rape, the woman of “loose” morals is blamed for having encouraged the rapists. Mala Sen rightly compares Phoolan’s case with the Rameeza Bi and Mathura cases where the woman is blamed for having solicited rape. Phoolan herself explains her crimes, even the Behmai killings in relation to the crimes committed against her. She confesses to the connection between the victimization; denial of justice to
her and the crimes committed by her. She rightly questions “But what happened when I was abducted and raped? Where were the police then?” (BQ, 124).

The biography examines the making of a criminal and her final surrender to return to a normal life. However, it also stresses the inability of the legal system to bring about redressal of her problems and its inadequacy to provide justice to a victim who became a criminal due to the non-redressal of her problems. The work shows that the grievous wrong done to her are diluted and it is her aberrations that get highlighted. The work also reveals that if justice is denied to a victim it can have far-reaching and violent outcomes.

In Manjula Padmanabhan’s play Lights Out while the play examines the shameful apathy of society that encourages the crime of rape, it explores certain critical related issues connected to the issue of rape. The real life incident in Santa Cruz, Bombay that took place in 1982 is the inspiration for this play that attempts to represent the crime of rape. Bhasker says that “someone told Leela that to watch a crime and do nothing is to be…. involved in it yourself” (LO, 16). The argument between Leela, Bhaskar and Mohan about how witnessing such crimes is encouragement to them raises issues of communal support to this crime. In fact it is revealed that in the play the rapes that occur happen in full view of three buildings. Bhaskar’s suggestion that the woman could be a whore raise an issue often regarding the rape victim that a woman whose morality is suspect could have invited that situation. This complicates the ‘issue of consent’ which has been a crucial factor in establishing the crime of rape. It further raises a complication as Naina rightly point out in
her sarcastic question: “Why? A whore can’t be raped? Is that the law?” (LO, 40). As Surinder rightly points out the police won’t lift a finger if a poor woman is being raped (LO, 46). The play also suggests that since systems fail to take action against the perpetrators of crime, people may take recourse to any alternative such as using their guns, or by electrocuting throwing acid or petrol on them. This shows that the legal machinery is ineffective in tackling problems such as rape and the perpetrators go scot-free.

Thus some of the inferences are that firstly reporting the crimes of violence against women is a big challenge. Besides, often the onus is put on women. Attempts are made to pass off the crime as an accident. When close relatives are guilty, it becomes even more difficult for the victim to get justice. Also, when the victim belongs to an underprivileged section of society or class, her trauma gets multiplied. The reflection of these facets of the crime in relation to justice for the victim, is seen in most Indian writing dealing with this crime.