

Periodic Research

A Perspective on Sexual Crime Against Women

Abstract

In India a crime is committed against women every seven minutes. Every 54 minutes somewhere in India a woman is raped, in every 26 minutes molestation takes place. Every 43 minutes a woman is kidnapped and every 102 minutes a dowry death occurs.

In India, woman does not enjoy an equal status. The fairer sex is considered to be weaker sex and is subjected to the male dominance in off in the family and society. It is surprising to note that as compared to today's time, the Indian women used to enjoy a much better status in Vedic times.

Keywords: Rape, Harassment, Adultery, Equality

Introduction

Sexual offences are forms of human sexual behaviour that are crimes. Someone who commits one is said to be a **sexual offender**. Some sexual offences/crimes are crimes of violence that involve sex. Others are violations of social taboos, such as incest, sodomy, Sexual Violation, indecent exposure or exhibitionism. There is much variation among cultures as to what is considered a crime or not, and in what ways or to what extent crimes are punished.

Western cultures are often far more tolerant of acts, such as oral sex or cross-dressing, that have traditionally been held to be crimes in some cultures, but combine this with lesser tolerance for the remaining crimes. By contrast, many cultures with a strong religious tradition consider a far broader range of activities to be serious crimes.

As a general rule, the law in many countries often intervenes in sexual activity involving young or adolescent children below the legal age of consent, non-consensual deliberate displays or illicit watching of sexual activity, sex with close relatives ("incest"), harm to animals, acts involving the deceased (necrophilia), and also when there is harassment, nuisance, fear, injury, or assault of a sexual nature, or serious risk of abuse of certain professional relationships. Separately, the law usually regulates or controls the censorship of pornographic or obscene material as well.

Objective of the Study

1. To show that in India, woman does not enjoy an equal status. The fairer sex is considered to be weaker sex and is subjected to the male dominance in off in the family and society.
2. To show that India is a male dominant society, the birth of a girl child is considered as a liability whereas a son born is an asset to the family.

Sexual Offences

The activities listed below often carry a condition of illegality if acted upon, though they may usually be legally role-played between consenting partners of legal age:

1. Rape, lust murder and other forms of sexual assault and sexual abuse.
2. Child sexual abuse.
3. Statutory rape.
4. Marital rape.
5. Obscenity
6. Human trafficking,
7. Frotteurism: sexual arousal through rubbing one's self against a non-consenting stranger in public.
8. Exhibitionism and voyeurism, if deliberate and non- consensual, called "indecent exposure" and "peeping torn" respectively in this context.
9. Incest between close relatives-laws on what is permitted and not permitted varies widely.



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10. Telephone scatological: making obscene telephone calls for the purpose of sexual arousal.
11. Sex with animals.
12. Sexual harassment.
13. Sexual acts by people in a position of trust (such as teachers, doctors and police officers), towards any person they are involved with professionally.
14. Extra-marital relations are illegal in some places. In Islamic law, it is illegal under the term *Zina* (See also Polygamy).
15. Public order crimes are crimes that interrupt the flow of daily life and business according to local community standards; Public order crimes include paraphilia (deviancies).
16. Homosexuality.
17. A variety of laws protect children by making various acts with children a sex crime. These can include Age of Consent laws, laws preventing the exposure of children to pornography, laws making it a crime for a child to be involved in (or exposed to) certain sexual behaviours and laws against child grooming and the production and ownership of child pornography (including simulated images).
18. Non-consensual sadomasochistic acts may legally constitute assault and therefore belong in this list. In addition, some jurisdictions criminalize some or all sadomasochistic acts, regardless of legal consent and impose liability for any injuries caused.
19. Various Paraphilias /Fetishes (Sexual) such as transvestitism.
20. Pornography.
21. Prostitution and/or pimping.
22. Ownership of vibrators and other sex toys.
23. Public urination.
24. Stealing underwear- Although stealing is always a crime, men's stealing of women's underwear or vice-versa is sometimes regarded as more serious than stealing same-sex underwear.

Rape

"Rape is the act of physically forcing a woman to have sexual intercourse that is forced upon."¹

In most jurisdictions, the crime of rape is defined to occur when sexual intercourse or other form of sexual penetration takes place (or is attempted) without the consent of one of the parties involved.

There is no universally accepted distinction between rape and other forms of assault involving one or both participant's sexual organs. When the term "rape" is used, some criminal codes explicitly consider all kinds of forced sexual activity to be rape, whereas in others only acts involving penis penetration of the vagina. In recent years, women have been convicted of raping men; this is classed as either rape or sexual 'assault, or some other legal terminology. In some jurisdictions, rape may also be committed by assailants using objects, rather than their own body parts, against the sexual organs of their target. Some places, such as the U.S. state of Michigan, do not use the term "rape" at all in criminal codes, Michigan uses

the term "criminal sexual conduct" for acts which colloquially would be referred to as "rape" or "sexual assault",

As per Section 375 of Indian Penal Code describes in this regard

A man is said to commit "rape" who, except in the case hereinafter accepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions

Firstly

Against her will.

Secondly

Without her consent.

Thirdly

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

Fourthly

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

Fifthly

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

Sixthly

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

"Ordinarily, rape is violation, with violence, of the private person of a woman an outrage by all canons."

Explanation

Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception

Sexual intercourse by a man with his wife, the wife not being under fifteen years of age, is not rape.

Further it explains that-

1. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.²
2. Man and women³- "man" is a male human being of any age and the word "woman" denotes a female unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Though section 82 of the IPC grants criminal immunity to a child under seven year of age.

As Per Section 376 of Indian Penal Code Describes The Punishment for Rape"

- (1) Whoever, except in the cases provided for by subsection.
- (2) Commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may unless the woman raped is his own wife and is

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not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,-

- a. Being a police officer commits rape-
- I. Within the limits of the police station to which he is appointed; or
- II. In the premises of any station house whether or not situated in the police station to which he is appointed; or
- III. On a woman in his custody or in the custody of a police officer subordinate to him; or
- b. being, a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or
- c. being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or
- d. being, on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or commits rape on a woman knowing her to be pregnant; or
- e. Commits rape on a woman when she is under twelve years of age; or
- f. Commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

It has provided in that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

1. Women or children institution means an institution, whether ;a led an orphanage or a home for neglected woman or children or a widows1 home or by any other name, which is established and maintained for the reception and care of woman
2. "Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring, medical attention or rehabilitation.

376-A- Intercourse by A Man With His Wife During Separation

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

376-B- Intercourse by Public Servant With Woman in His Custody

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

376-C- Intercourse by Superintendent of Jail, Remand Home, Etc

Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

376-D- Intercourse By Any Member of The Management or Staff of A Hospital With Any Woman in That Hospital-

Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

3. Types of Rape – By Sex

These are non-domestic rapes committed by someone who knows the victim. They include rapes of co-workers, schoolmates, friends, and other acquaintances, including "date rapes."

Forcible Date Rape

The term "acquaintance rape" or "date rape" refers to rape or non-consensual sexual activity between people who are already acquainted, or who know each other socially as friends, acquaintances or people on a date, or even people in an existing romantic relationship—where consent for sexual activity is not given, or is given under duress. The vast majority of rapes are committed by people who already know the victim.

Drugs Facilitated Date Rape

Various drugs are used by rapists to render their victims unconscious, some also cause memory loss.

Blitz Rape

Rape by a stranger in which the rapist assaults the victim on the street with no prior contact.

Spousal Rape

Also known as spouse, marital rape, wife rape, husband rape, partner rape or intimate partner sexual assault (IPSA), is rape between a married or de facto couple.

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It is often assumed that spousal rape is less traumatic than that from a stranger. Research reveals that victims of marital/partner rape suffer longer lasting trauma than victims of stranger rape, possibly because of a lack of social validation that prevents a victim from getting access to support; a problem that domestic violence services combat.

Different countries have different rape laws. Many countries do not consider sexual assault of a spouse a crime.

Even more so, if two people are regularly sexually intimate, in many countries it is not a crime for one partner to have sex with their sleeping or drunk partner even though that partner did not give express consent.

College Campus Rape

Some studies indicate a particular problem with rape on college campuses. The subject attracts attention because of the presence of many young men and women, often experiencing their first years away from home together, in an environment where prior controls, supervision and discipline are to a great extent removed, and where youths are in a position to engage in audit behaviour with some anticipating new activities and freedoms, whilst others are left more vulnerable and less supervised.

Group Rape

Group rape⁴ occurs when a group of people participate in the rape of a single victim. Rape involving at least two or more perpetrators is widely reported to occur in many parts of the world. Systematic information on the extent of the problem, however, is scant.

Rape of Children by Parents, Elder Relatives, and Others Responsible Elders

This form of rape is incest when committed by the child's parents or close relatives such as grandparents, aunts and uncles. It is considered incestuous in nature but not in form when committed by other elders, such as priests, nuns or other religious authorities, school teachers, or therapists, to name a few, on whom the child is dependent.

Prison Rape

Many rapes happen in prison. These rapes are virtually always homosexual in nature (since prisons are separated by sex). The attacker is most commonly another inmate, but prison guards may also be involved, primarily in female prisons,

Third-Party Rape

These rapes occur when one person forces other people to have sex without actually sexually engaging either person. This has been used against prisoners of war in Bosnia and Herzegovina.

Rape As Means Of Warfare

Type of rape is also known as 'war rape'.¹ during war, rape is often used as means of psychological warfare in order to -humiliate the enemy and undermine their morale. Rapes in warfare often systematic and thorough, and military leaders may actually encourage their soldiers to rape civilians. Likewise, systematic rapes are often employed as a form of ethnic cleansing. During the Yugoslavian Civil War, it was reported that Serbian soldiers herded

enemy women into camps, who were raped on a daily basis until pregnancy occurred. There are numerous cases of rapes conducted on Jewish women and girls by German soldiers during Invasion of Poland rapes were also committed against Polish women and girls during mass executions made primarily by Selbstschutz, which were accompanied by Wehrmacht soldiers and on territory under administration of German military, the rapes were made before shooting female captives. Thousands of Soviet female nurses, doctors and field medicines fell victim to brutal German rapes when captured during the war, and often they were murdered afterwards. Wehrmacht also ran brothels where some of the women were forced to work. Ruth Seifert in War and Rape: Analytical Approaches writes, In the Eastern territories the Wehrmacht used to brand the bodies of captured partisan women and other women as well with the words 'Whore for Hitler's troops' and to use them accordingly.

Rape Within the Military

With more women in the United States military then before a growing problem is the assault of females by fellow soldiers and even their commanding officers. Department of Defense records show 1,400 reports of rape in 2007 and reports that 34% of military women have been sexually harassed. Military sexual trauma (MST) has lasting psychological implications for the victims and while originally the Department of Defence has been slow to deal with the problem new programs are currently being implemented that make reporting an assault and support after an attack easier.

Consent

In any allegation of rape, the absence of consent to sexual intercourse on the part of the victim is critical. Consent need not be express, and may be implied from the context and from the relationship of the parties, but the absence of objection does not of itself constitute consent. In case of **Sureshbabu**⁵ it was observed that a girl and the boy knew each other. Their families were also known to each other. The girl voluntarily went with the accused for sightseeing, stayed with him at different places for about 10 days. At Hubli, they purchased some articles and went at a lodge where the girl complained that the boy did something to her by force which he ought not to have done. However, for two or three days they went to Bangalore and stayed there for five or six days. They were thus living merrily, when the boy cheated her by taking her necklace, chain and other ornaments and that he would go to Bijapur and return. Meanwhile, the father of the girl finding her missing complained to police. The girl was rescued and her medical examination established that she continued to have that.

Shivaji Saryabhau Gire V. State of Maharashtra, 1991(1) Crimes 512.

Sexual intercourse all these days, there was no doubt that she went with the boy willingly and had sexual intercourse with her consent. The main defence was that she was not under sixteen. This fact was established. In the circumstances of the case the

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Apex Court held that the offence of rape was not established holding that evidence of the age of the prosecutrix was not very convincing and medical tests even put her age around 20, In the cross-examination the Defense tried to elicit from her as to what exactly the accused did to her during night and she went on saying that the accused did something to her which he ought not to have done, her statement was the same before the police, the court felt it difficult to infer that the accused had intercourse with her, more so, in the absence of any other evidence to support the prosecution case.

Duress, in which the victim may be subject to or threatened by overwhelming force or violence, and which may result in absence of objection to intercourse, leads to the presumption of lack of consent; Duress may be actual or threatened force or violence. Even blackmail may constitute duress. The International Criminal Tribunal for Rwanda in its landmark 1998 judgment used a definition of rape which did not use the word consent. It defined rape as: "a physical invasion of a sexual nature committed on a person under circumstances which are coercive, Valid consent is also lacking if the victim lacks an actual capacity to give consent, as in the case of a victim with a mental impairment or developmental disability.

In case of **Lala alias Lal Chand**⁶ it was observed that accused alleged to have committed rape on prosecutrix who was mentally retard while she was alone in her house. There was delay in filling FIR, No independent corroboration if prosecution story. There was contradiction in statement if witness. The trial Court observed that no sexual intercourse took place and only there was an attempt on the part of the appellant. No injury of any nature found on person of prosecutrix when she was medically examined. Finding to the act that semen was detected on salwar of prosecutrix was of no consequent as she was a married woman and more so when accused was not found guilty of attempt of rape; Accused was liable to be acquitted.⁷

Consent can always be withdrawn before the actual sexual intercourse takes place, so that any further sexual activity after the withdrawal of consent constitutes rape.⁸

The law would invalidate consent in the case of sexual intercourse with⁹ a person below the age at which they can legally consent to such relations. (See age of consent.) Such cases are sometimes called statutory rape or "unlawful sexual intercourse", regardless of whether it was consensual or not.

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In times gone by and in many countries still today marriage is said to constitute at least an implied

consent to sexual intercourse. However, marriage in many countries today is no longer a defence to rape or assault. In some jurisdictions, a person cannot be found guilty of the rape of a spouse, either on the basis of "implied consent" or (in the case of former British colonies) because of a statutory requirement that the intercourse must have been "unlawful" (which is legal nomenclature for outside of wedlock). However, in many of those jurisdictions it is still possible to bring prosecutions for what is effectively rape by characterizing it as an assault.

A lust murder is a homicide in which the offender searches for erotic satisfaction by taking away the victim's life. Commonly this type of crime is manifested either by murder during sexual intercourse and/or by mutilating the sexual organs or areas of the victim's body. The mutilation of the victim may include evisceration and/or displacement of the genitalia. It also includes such activities as removing clothing from the body, posing and propping of the body in different positions; generally sexual ones; insertion of objects into bodily orifices; anthropophagi (the consumption of human blood and/or flesh) and necrophilia (the performing of sex acts on a human corpse). A lust murder begins with the obsessions of the offender. Generally, they have a sexual obsession with their victims, and organized lust murderers may stalk their victims for weeks or months before the actual killing. The signature component of the crime, that which names it is a lust murder, is the killer acting out their fantasies with their victims and the bodies of those victims. Lust murder is a common feature in the criminal careers of serial killers.

The term is also used in a related but slightly different sense, to refer to an individual who gains sexual arousal from the act of committing murder, or has persistent sexual fantasies of committing murder, even if the murder itself does not involve the genital mutilation or other characteristics cited above. As such, it is a type of perihelia.

Adultery

As per sec 497 of IPC Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both In such case the wife shall not be punishable as an abettor.

Adultery - Prosecution - Necessary party - The woman alleged to be adulterer even though cannot be prosecuted has a right to be heard

Section 497 does not contain a provision for hearing the married woman with whom the accused is alleged to have committed adultery. But, that does not justify the proposition that she is not entitled to be heard at the trial. We have no doubt that if the wife makes an application in the trial Court that she should be heard before a finding is recorded on the question of adultery, the application would receive due consideration from the Court. There is nothing, either

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in the substantive or the adjectival criminal law, which bars the Court from affording a hearing to a party, which is likely to be adversely affected, directly and immediately, by the decision of the Court. Infact, instances are not unknown in criminal law where, though the prosecution is in the charge of the Public Prosecutor, the private complainant is given permission to oversee the proceedings. One step more, and the wife could be allowed a hearing before an adverse finding is recorded that, as alleged by her husband, the accused had committed adultery with her. The right of hearing is a concomitant of the principles of natural justice, though not in all situations. That right can be read into the law in appropriate cases. Therefore, the fact that a provision for hearing the wife is not contained in Section 497 cannot render that section unconstitutional as violating Article 21.

Adultery - Provision leaving out adultery unmarried woman - Under inclusive definition is not necessarily discriminatory

An under inclusive definition is not necessarily discriminatory. The alleged transformation in feminine attitudes, for good or for bad, may justly engage the attention of the lawmakers when the reform of penal law is undertaken. They may enlarge the definition of 'adultery' to keep pace with the moving times. But, until then, the law must remain as it is. The law, as it is, does not offend either Article 14 or Article 15 of the Constitution. Incidentally, the demand of the petitioner that sexual relationship of a husband with an unmarried woman should also be comprehended within the definition of 'adultery' is a crusade by a woman against a woman. If the paramour of a married woman can be guilty of adultery, why can an unmarried girl who has sexual relations with a married man not be guilty of adultery? That is the grievance of the petitioner.

Adultery- Provision not conferring any right to wife to prosecute the husband for committing adultery- The provision is not discriminatory or invalid

The offence of adultery as defined in that section can only be committed by a man, not by a woman. Indeed, the section provides expressly that the wife shall not be punishable even as an abettor. No grievance can then be made that the section does not allow the wife to prosecute the husband for adultery. The contemplation of the law, evidently, is that the wife, who is involved in an illicit relationship with another man, is a victim and not the author of the crime. The offence of adultery, as defined in Section 497, is considered by the legislature as an offence against the sanctity of the matrimonial home, an act which is committed by a man, as it generally is. Therefore, those men who defile that sanctity are brought within the net of the law. In a sense, we revert to the same point: who can prosecute whom for which offence depends, firstly, on the definition of the offence and, secondly, upon the restrictions placed by the law of procedure on the right to prosecute.

Smt. Sowmithri vishnu v. Union of India and another, 1985 Cr Lj 1302: 1985 AIR

(SC) 1618: 1985 SCC (Cr) 325: 1985 CrLR (SC) 430: 1985 CAR 196: 1985 (2) Crimes 452.

Adultery- Provision not rendering woman punishable for offence

It is a matter of policy of legislature- Court cannot recast the provision for strike down the same for this reason. The first of these three grounds, the offence of adultery, by its very definition, can be committed by a man and not by a woman: "Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man is guilty of the offence of adultery," The argument really comes to this that the definition should be recast by extending the ambit of the offence of adultery so that, both the man and the woman should be punishable for the offence of adultery. Were such an argument permissible, several provisions of the penal law may have to be struck down on the ground that, either in their definition or in their prescription of punishment, they do not go far enough. For example, an argument could be advanced as to why the offence of robbery should be punishable with imprisonment for ten years under Section 392 of the Penal Code but the offence of adultery should be punishable with a sentence of five years only: 'Breaking a matrimonial home is not less serious a crime than breaking open a house. Such arguments go to the policy of the law, not to its constitutionality, unless, while implementing the policy, any provision of the Constitution is infringed. We cannot accept that in defining the offence of adultery so as to restrict the class of offenders to men, any constitutional provision is infringed. It is commonly accepted that it is the man who is the seducer and not the woman. This position may have undergone some change over the years but it is for the legislature to consider whether Section 497 should be amended appropriately so as to take note of the 'transformation' which the society has undergone.

We cannot strike down that section on the ground that it is desirable to delete it.

Adultery - Right of husband of offending wife or wife of offending husband to seek prosecution - The provision is not discriminatory or unconstitutional.

Section 497, Penal Code, is so designed that a husband cannot prosecute the wife for defiling the sanctity of the matrimonial tie by committing adultery. The law permits neither the husband of the offending wife to prosecute his wife nor does the law permit the wife to prosecute the offending husband for being disloyal to her. Thus both the husband and the wife are disabled from striking each other with the weapon of criminal law.

The philosophy underlying the scheme of these provisions appears to be that as between the husband and the wife social good will be promoted by permitting them to 'make up¹⁰ or break up' the matrimonial tie rather to drag each other to the Criminal Court. They can either condone the offence in a spirit of forgive and forget and live together or separate by approaching a matrimonial Court and snapping the matrimonial tie by securing divorce.

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They are not enabled to send each other to jail. Perhaps it is as well that the children (if any) are saved from the trauma of one of their parents being jailed at the instance of the other parent. Whether one does or does not subscribe to the wisdom or philosophy of these provisions is of little consequence. For, the Court is not the arbiter of the wisdom or the philosophy of the law. It is the arbiter merely of the constitutionality of the law.

Section 497, Penal Code, and Section 198(1) read with Section 198(2), Cr PC. Go hand in hand and constitute a legislative packet to deal with the offence committed by an outsider to the matrimonial unit who invades the peace and privacy of the matrimonial unit and poisons the relationship between the two partners constituting the matrimonial unit. The community punishes the outsider¹ who breaks into the matrimonial home and occasions the violation of sanctity of the matrimonial tie by developing an illicit relationship with one of the spouses subject to the rider that the erring man' alone can be punished and not the erring woman. It does not arm the two spouses to hit each other with the weapon of criminal law. That is why neither the husband can prosecute the wife and send her to jail nor can the wife prosecute the husband and send him to jail. There is no discrimination based on sex. While the outsider who violates the sanctity of the matrimonial home is punished a rider has been added that if the outsider is a woman she is not punished. There is thus reverse discrimination in % favour¹¹ of the woman rather than 'against' her. The law does not envisage the punishment of any of the spouses at the instance of each other. Thus there is no discrimination against the woman in so far as she is not permitted to prosecute her husband. A husband is not permitted because the wife is not treated an offender in the eye of law. The wife is not permitted as Section 198(1) read with Section 198(2) does not permit her to do so. In the ultimate analysis the law has meted out even-handed justice to both of them in the matter of prosecuting each other or securing the incarceration of each other. Thus no discrimination has been practiced in circumscribing the scope of Section 198(2) and fashioning it so that the right to prosecute the adulterer is restricted to the husband of the adulteress but has not been extended to the wife of the adulterer.

This Section deals with punishment for an offence of adultery.¹² Adultery is an invasion on the right of the husband over his wife. In other words, it is an offence against the sanctity of the matrimonial home and an act which is committed by a man.¹³ It is an anti-social and illegal act. It consists in having carnal knowledge of a married woman¹⁴ with knowledge of that fact, without the consent or connivance of her husband.¹⁵ To constitute adultery, sexual intercourse is a necessary ingredient.¹⁶

The Scope of the offence under the section is limited to adultery committed with a married woman, and the male offender alone has been made liable to be punished with imprisonment which may extend up to five years, or fine or with both. The

consent or the willingness of the woman is no excuse to the crime of adultery.¹⁷

Conclusion

Sexual offences are altogether a different kind of crime which normally is a result of a perverse mind. A rapist degrades and defiles the soul of a helpless female and impact is much more when such an offence is committed in the presence of mother and other members of her family. The courts have been bestowed a duty to implement the application of law and the object of framing of law is to protect the society and deter the criminals. The courts can achieve this object only by awarding the appropriate sentence, Like in some of the cases a man who raped a minor girl in the presence of her family members has been sentenced to undergo ten years of rigorous imprisonment by a court here, which termed the act as the result of a "perverse mind".

Sexual offences has now been increasing day by day , year by year in our society and if we count the ration or we can say the position of sexual offences in India specially Our India is now on 3rd position in sexual offences , Because in one of the news agencies have surveyed on the same aspect and found the same result on the basis of which some of the school going children's who have not been take care properly and have not been asked by their parents that what have they done throughout a day and they have no time for their family members to look after and to know about their day today schedules and without acknowledging their activities these types of activities and circumstances are loudly prevailing in our society and many more other things which are like our law and order is totally based on evidence on the beast of which the accused have been acquitted or evicted.

If we compare our machinery of law and order to the machinery of Arabic countries we found a drastic difference in the constitution between both of them there law and order is so strict on the basis everyone is being punished publicly as per their wrong acts which he has did with the person after knowing the same he is being convicted or the punishment is being given to him directly or we can say openly so that it will be the lessen to the others peoples out their that in future that may not done the same in any manner whatsoever , but here now in India our law and order is totally dependent on the evident and due to the heavy schedule and bulk of work load decisions of the cases have taken too much time and most of the time of the person who has been indulge or harasses or tortures or molest or threatened by all these acts have been deprived with law and order, justice . One famous Quotation is completing this meaning.

Justice Delayed Is Justice Denied

By this we can say that most of the persons who are being a part of that incident or wrongful acts are deprived with the delayed laws and justice criteria and after long struggle they got the result till they time their life has been totally charged and sometime they were in a position by anger to take revenge for the same acts and for that they adopt some hard and fast

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methods to do that particular acts and again they do the wrong things and punished under the law Sexual offences have now been increased I our society and peoples have to take strict actions against all these evils and for the peoples also who have been indulge in all these types of activities and have played a very vulgar role like to put forward the girls in the work of prostitution and to carry forward Indian small girls I the market of Asian countries .

Measures taken by Government to improve the current scenario

The Hindu Widow Re-marriage Act was passed early in 1856. In 1861, a widow marriage Association was formed in 1929; the child marriage Restraint Act (Sharda Bill) was passed rising the age of marriage for a girl to fourteen and for a boy to eighteen. The Hindu marriage Act of 1955 puts the minimum age of marriage Hindu succession Act 1956 also made an amendment in 2005 and made woman a coparcener in the joint family property so that harassment of the women can be reduced to some extent. And she can enjoy her separate entity with her own property. Marriage for a bride at fifteen and for a bridegroom at eighteen, this was raised later and today stands at eighteen and twenty-one respectively. Also the acts like 'Sati Prevention Act' (which prohibited the practice of 'Sati' i.e. burning of the female in the funeral pyre of her husband), the Maternity Benefits Act, 1976 were also passed. Section 376 provides punishment for the offence of 'Rape' Under Sec. 376B graver punishment is provided if the offence of rape is committed by Police servants. Section 114-A of the Indian Evidence Act provides for the presumption in the favour of the women as to the absence of consent in case of rape. Domestic Violence Act was also passed in 2005 to save women to all kinds of harassment and cruelty done on her at her domestic place.

United Nation's Concern for the advancement of rights of women

The preamble to the charter of the United Nations mentions the determination of the people of the United Nations" to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women" The principle of equal rights for men and women has been incorporated in the Universal Declaration of Human Rights. It clearly provides that without any discrimination all fundamental rights and freedoms incorporated in the Universal Declaration of Human Rights are equally available to both men and women- The principle of 'Gender Equality is considered to be the most important in the growth and progress of a civilization, thus the equality provisions available in the Universal Declaration of Human Rights are as such incorporated in both the International covenants i.e. the international Covenant on Economic, Social and Cultural Rights and International covenant on Civil and Political Rights. Even after incorporation of various provisions providing for gender equality, not many efforts were taken by the international agencies and State parties to improve the status of 'women folk'. Thus, another declaration was unanimously

adopted by General Assembly on 7th November 1967 which aimed at Elimination of Discrimination against women.

In the last, I would quote the statement of **Swami Vivekananda** who said *"Country and Nation which do not respect women have never become great nor will ever be in future."*

Footnotes

1. Random House dictionary of English language
2. Phul Singh v. state of Haryana, AIR 1980 S.C. 249.
3. Joseph s/o Koovell poulla v/s state of Kerala 2000 Cri L.J. 2467 (S.C). 2000 (41) All Cri C 105: AIR 2000 SC: 1608: 2000(2) Crimes 230: 2000(2) All Cri LR 677: 2000 SCC(Cri) 926: 2000(2) Rec Cri R 738
4. Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of section 376 of IPC.
5. Tukaram and another v. the State of Maharashtra, 1978 CrLJ 1864: 1979 AIR (SC) 185: 1978 CrLR(SC) 479: 1978 CAR 413:1979 SCC(Cr) 381. Consent-Distinction with passive submission- Absence of any protest by prosecutrix- effect of. No marks of injury were found on the person o f the girl after the incident and their absence goes a long way to indicate that the alleged intercourse was a peaceful affair, and that the story of a stiff resistance having been put up by the girl is all false.
6. It would be preposterous to suggest that although she was in the company of her brother (and also perhaps of Ashok and her aunt Nushi) and had practically left the police station she would-be so over-awed by the fact of the appellants being persons in authority or the circumstance that she was just emerging from a police station that she would make no attempt at all to resist. On the other hand, her natural impulse would be to shake off the hand that caught her and cry out for help even before she noticed who her molester was. Her failure to appeal to her companions who were no other than her brother, her aunt and her lover, and her conduct in meekly following Ganpat appellant and allowing him to have his way with her to the extent of satisfying his lust in full, makes us fell that the consent in question was not a consent which could be brushed aside as "passive submission". The fear which clause Thirdly of Section 373 speaks of is negative by the circumstance that the girl is said to have been taken away by Ganpat right from amongst her near and dear ones at a point of time when they were all leaving the police station together and were crossing the entrance gate to emerge out of it. The circumstantial evidence available, therefore, is not only capable of being

construed in a way different from that adopted by the High Court but actually derogates in no uncertain measure from the inference drawn by it.

7. Shiv Lal v. State of H.P., 2003 Cri. L.NOC12 (Him.Pra).
8. Lala alieas Lal chand v. State of Rajasthan, 2004 Cri. L.J. 1218 (Rajasthan)
9. Mohammed changwadia v/s state of Gujarat 1999 Cr Lj 3419 (Guj). J. 1218 (Rajasthan)
10. V. Revathi v Union of India and another, 1988 CrLj 921: 1988 AIR (SC) 835: 1988 SCC(Cr) 308: 1988 CAR 136: 1988 CrLR (SC) 249: 1988 (1) APLJ (Cr) 72
11. Smt. Sowmithri Vishnu v. Union of India and another, 1985 CrLJ 1302 : 1985 AIR (SC) 1918: 1985 SCC (Cr) 325: 1985 CrLR (SC) 430 : 1985 CAR 196 : 1985 (2) Crimes 452.
12. Chandla Chhittar Lodha v. Mst Nandu, AIR 1965 MP 268 (269)
13. Olga Thelma Gomes v. Mark Gomes, AIR 1959 Cal 451.
14. Dalip Singh, AIR 1949 All 237.
15. M. Clarence v. M. Raicheal, AIR 1964 Mys 67
16. Munir v. Emperor, (1925) 24 ALJR 155.
17. Gul Mohammad v. Emperor, AIR 1947 Nag 121