

COMPENSATION TO RAPE VICTIMS IN INDIA- Lakshay Lohia¹**INTRODUCTION**

The oriental practice of India teaches "MAATRI Devotional BHAVA" and that implies love thy mother; and ladies ought to be regarded with incredible respect like goddess. India has unique and particular culture and virtues from its western partners.

BACKGROUND

The history of Human science has anyway settled that "Grit THY NAME IS Ladies; Selflessness THY NAME IS Steadiness AND Fruitful PURSUIT, THY NAME IS WOMEN"

History verifies that man has exposed ladies to his will, involved her as a way to supportive of bit his self-delight, to singer to his sexy joy, as an instrument in advancing his solace, however never he has wanted to raise her to that rank which she was created to possess. He has done everything he could, to spoil and oppress her psyche and presently he looks victoriously on the ruin he has brought. All ladies for, is that men ought to ask our brethren, is that they will take their feet from our neck and license them to stand upstanding on that ground which God planned us to possess.

However old writing pinpoints towards a superior situation for the females, yet many ancient scholars e.g.: - Confucius, Aristotle, Manu and so on, were of the assessment that it is a characteristic right of a male to state strength and the females were concurred intrinsically sub-par position¹. As a sort of

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property, they can be moved or auctions off, and, surprisingly, under the Greek development females were kept inside the four walls of the houses. Thusly, these cases pin point that however they possess an elevated place in the family, yet they were exposed to the strength of male and were denied of any right. This mastery slowly prompted sexual backwards natures and was viewed as the primary driver of obliteration of human progress as well as the nuclear family. The sexual backwards natures in reproducing occurred in the general public because of the substandard place of the females and their simple adaptability and openness. Throughout the long term there has been a disturbing decrease in the virtues all around and the equivalent can be witnessed in India prompting degeneration of moral and in the pretense of open culture the reception of im-moral methods of presence.

Viciousness is for the most part conceptualized regarding actual power and horrendous con-pipe. The least complex meaning of brutality is the way of behaving intended to incur injury for a person or to cause.

- Hasan Riffat "Strict Common freedoms in Worldwide Points of view: Strict Point of view" John Witte.harm to property.

Viciousness against ladies is an indication of verifiable inconsistent power connection between ladies and men, which have prompted control over and separation against women, and is a social system by which the subordinate place of ladies is tried to be sustained. Ladies experience even today, they comprise more than half of the total populace.

In a 1980 UN Report, it was accounted for that ladies comprise a portion of the total populace, perform almost 66% of its work hours, get one-tenth of the world's pay and short of what one-hundredths of the world's property. Brutality against women is characterized as - Any demonstration of gender-based viciousness that outcomes in, or is

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probably going to result in, physical, sexual or mental mischief or enduring to ladies, including dangers of such demonstrations, compulsion or erratic hardship of freedom, whether happening out in the open or private life.

Sexual viciousness portrays the intentional utilization of sex as a weapon to exhibit power over and to cause agony and embarrassment upon, another person. Sexual savagery might be characterized as any viciousness, physical or mental, brought out through sexual means or by focusing on sexuality.

Sexual savagery is a disgrace full thing for socialized human culture and furthermore an unforgiving truth of ladies' daily routine fierce truth of ladies' experiences. Sexual brutality, gives physical hurt as well as leaves an extremely durable scar on memory of the person in question, which obliterates her profound mind tremendously². It influences the general public on the loose by dropping down the improvement possibilities as it straightforwardly encroaches upon the potential of nearly half of the human populace i.e., ladies.

Sexual savagery can be both gay and hetero. Lady on account of their abused and enslaved position in the public eye are undeniably more inclined, concerning weakness to sexual savagery. The proof recommends that no less than one out of five of the World's Female Populace has been actually or physically manhandled sooner or later in their lives. Wrongdoing against ladies has existed constant with overall setting.

- **RESEARCH OBJECTIVE**

There is an idea of giving remuneration to the person in question and is considered as first fundamental thing in law enforcement. Various

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nations have various techniques for giving pay to the person in question . india has different legal arrangements in law enforcement under which the remuneration can be given to the person in question . a portion of the instances of codes are: Code of Criminal System 1973, Probation of Wrongdoers Act 1958 , Lethal Mishap Act

- U.N Report, 1980

1.3 STATEMENT OF ISSUE

The reason for this exposition is to examine the issue of "Assault" in India according to various viewpoints and suggest measures for moderating this crime from the country. Utilizing the much-featured occurrence of assault of 23-year-elderly person in Delhi, India on sixteenth December 2012, this examination investigations the way of behaving of the different gatherings associated with the case with the assistance of a few humanistic and mental speculations.

Planned/Procedure/approach-An organized examination through the method or underlying driver investigation was applied to the assault instance of sixteenth December 2012 to distinguish the genuine reason for the issue of assault and propose the activity important to kill such reoccurrences in future.

Discoveries - the examination of the issue of assault overall and the assault case specifically introduced various reasons for this issue. taking into account the intricacies of this question this exposition has introduced a multi-layered reaction to this issue.

Research constraints/suggestions Because of the delicate idea of topic under concentrate on this examination is restricted by utilize optional information to lead main driver investigation.

Social ramifications Notwithstanding the way that assault is respected deplorable and criminal in nature, the number and the degree of savagery of this wrongdoing has been on an ascent. accordingly, the topic is vital and effective. this exploration makes hypothetical and pragmatic commitment on a least investigated subject of wrongdoing against lady as assault. Many advantages could be gathered from such multi-faceted examination of the assault case. A superior comprehension of the inspiration driving the assault, would most likely outcome in going to lengths to forestall the problem.

Creativity/esteem However diverse perspectives exist with respect to assault and unified violations, the examinations are distributed in nature and need an all encompassing coordination to dig further into the reason and subsequent of assault. This examination doesn't just incorporate different points of view yet additionally investigates the multi-faceted reasons for the peculiarity of assault.

1.4. HYPOTHESES

Three speculations regarding the matter of assault were tended to observationally. The main worries the effects of openness to sexual savagery on responses to assault. Guys and females were first presented to either a sadomasochistic or a peaceful form of a similar sexual entry and afterward to a depiction of assault. Reactions to the assault showed connections among orientation and past openness: In contrast with guys who had perused the peaceful variant, guys presented to the sadomasochistic story were all the more physically stirred to the assault portrayal and more reformatory toward the attacker while females proved contrasts in the inverse course. Straightforward impacts investigations for every orientation, nonetheless, yielded tremendous contrasts for the correctional nature measure just and for guys as it were. In tending to the

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subsequent speculation, distinctions in sexual orientation were tracked down in the discernment. of assault. Third, the affirmation that assault might be an expansion of typical sexual examples was investigated. Subjects were found to accept that a high level of men would assault whenever guaranteed of not being rebuffed and that a significant level of ladies would appreciate being exploited. While the two sexes shared these convictions, not very many ladies accepted that they actually would get delight from victimization⁵. Shockingly, the greater part of the guys demonstrated some probability that they, when all is said and done, would assault whenever guaranteed of not being rebuffed. The relationship between this self-report and general mentalities toward assault uncovered an example that bears striking similitude to the unfeeling perspectives frequently held by sentenced attackers.

Kinds of Rape:

- **Date Rape:** - Date assault is a type of colleague assault. The two expressions are frequently utilized reciprocally, however date assault explicitly alludes to an assault where there has been a heartfelt or possibly sexual connection between the two gatherings of some kind.
- **Gang Rape:** - Assault happens when a gathering take part in the assault of a solitary casualty. Assault including no less than at least two violators is 5 Nandal, Dr. Santosh, "Attacker and Capital punishment : A Survey", 2003 Cri LJ 193 (Diary) detailed.
- **Marital Rape:-** Conjugal assault or spousal assault is the demonstration of sex with one's mate without the life partner's assent. The absence of assent is the fundamental component and need not include brutality. Conjugal assault is viewed as a type of abusive behavior at home and sexual maltreatment.

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- Child rape:- Youngster sexual maltreatment, likewise called kid attack, is a type of kid maltreatment where a grown-up or more established juvenile purposes a kid for sexual feeling..
- Prison rape: - Jail assault or prison assault is assault happening in jail.
- Acquaintance rape: - Colleague assault is assault that is a the executed by an individual casualty. Models a schoolmate, collaborator, business, relative, mate, guide, specialist, strict authority, or medica

CHAPTER - II

HISTORICAL PERSPECTIVE OF RAPE

The wrongdoing of assault is basically as old as humankind and Assault de famme is a wrongdoing against a lady. For a man can't assault an individual of equivalent sex because of its being homogeneous in character. It is in fact named as gay demonstration of having sexual connection between the individuals from a similar sex. At the point when such sexual variation is between two females, it is named as lesbianism. From this time forward sexual wrongdoing of assault is entrance of male organ to the female privates. Assuming that Gnostics are to be accepted, the primary lady to be assaulted was the mother of humanity, Eve. As per them, the noticeable universe was the underhanded production of an idiotic, bogus God whose cohort assaulted Eve in the Nursery of Eden. As far as we might be concerned, neither one of the divine beings was idiotic or misleading, nor was Eve assaulted. In any case, obviously this most shocking wrongdoing existed and exists since times immemorial¹⁵.

- **CONCEPT UNDER HINDUISM**

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The Mitakshara states that sangrahana implies the unlawful meeting up of a man and a person for sexual happiness. Wicked sangrahana is of three sorts, viz, achieved forcibly, misdirection or sexual enthusiasm. The first (which is assault) happens when between course is had in a segregated spot against the desire of lady , or with an inebriated lady or is disarranged as a main priority or is under a slip-up or who she raises a cry ; the second happens when a lady is brought to ones house by some stunt or misrepresentation , an intoxicant, (for example, dhatura) is managed to her or her brain is brought under con-trol (by drones etc.) and sex happens ; the third happens when intercourse happens by conveying (energy) to one another through the eyes (looks) or by utilizing a go between and when the gatherings are attracted to one another by the enticement of magnificence or of riches. The first is described by winking ata lady , grinning at her , sending a go - between , contacting her trimmings or garments; the second by the sending of roses, organic products , incense , food , garments and enjoying private discussions ; the third is described by lying on a similar bed , dalliance , kissing and embraces. Strisangrahan forcibly (that is assault) is truly included under sahasa as expressed by madanaratna¹⁶.

- Patil, Ujwala, "Social Propensities in the Law on Assault" — paper introduced at fifth Public Meeting of the Indian Relationship for Ladies' Examinations at Jadavpur, (Feb., 1991).
- K.A Nilkanta sastri, History of south india , From pre-memorable times to fall of vijayanagar, 1955OUP, NEW DELHI(republished 2002)

That's what brihad states assuming a man commits assault on a lady of a similar standing, he was to relinquish all his property, to have his male private parts slice out and was to be strutted on the rear of an ass. That

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on the off chance that lady assaulted was of a lower station, a big part of his discipline was to be granted and on the off chance that she was of a higher rank, he was to be condemned to death along with seizure of all property. Katya endorses that when a man has forcibly had sex with a lady, the death penalty is to be caused inasmuch as it is infringement of (legitimate) conduct¹⁷. On account of assault and sex by misleading, the lady was not by any stretch of the imagination rebuffed but rather she needed to go through a compensation (prayaschitta) of krcchra or paraka for contact with a male other than her better half and till she played out the prayaschitta she was to be kept well - monitored in the house, was to stay filthy (for example not to deck herself or apply fragrances), to lie on the ground (not on a bed -stead or love seat), was to get exposed support. Subsequent to performing prayaschitta she was depended on her previous position.

Narada holds that sex with the step - mother, mother's sister, mother by marriage, the fatherly or maternal uncle's spouse, father's sister, a companion's or alternately understudy's significant other, sister, little girl, girl in-regulation, a lady that looked for security, a plain lady (pravrajita) or an idealistic wife (sadhvi) is perverted and the discipline to be prescribed for this wrongdoing is the extraction of his genital and no less.

The Hindu regulation provider Manu gives illustration of perverted connection as follows :- sexual connection with sisters by same mother, he puts sexual connection with educator's spouse at the top depraved wrongdoing. He recommends weighty discipline followed by expulsion of such wrongdoer. However, they all ventured to such an extreme as to express that if a man had a sexual intercourse with a lady (of a similar standing) who energized his advances, then there is no of-wall deserving

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of the lord, yet he was to give decorations to her, honor her and must wed her.

Brihaspati Smriti states the lady of east rehearsed indiscrimination and that was the custom of the land, which was not to be denounced as it was an acknowledged custom¹⁷. Baudhyan, Manu, Yajnavalkya, all incredible regulation providers of their period, express that the spouses of entertainers, artists, and so on, could have sex with others, past conjugal relationship, with the information and endorsement of their lords or husbands.

It is entertaining to find from old texts that it was regular with such experts or spouses to stay concealed at the hour of such intercourse and show up in the mid of act or after it to guarantee the lease of such love-production. They lived on their spouses. Clearly from this class of entertainers and artists emerged the organization of artists and of whores. The master or spouse actually keeps on existing in some structure in each place of an Indian prostitute. There are reference in antiquated texts which expresses that nobody should be glad for his starting point, for none knows without a doubt who his dad is. In old India, as in later Vedic age, no resilience was displayed to miscreant. Buddhist writing supports murder of a found man "in the arms of another man's better half". Yet, it was not infidelity to utilize a vocalist or entertainer's better half, a whore (abhisarika), a public harot (veshya), a bad lady (svairini), in the event that she was not of the Brahmin's rank, or a slave young lady or on the other hand on the off chance that she isn't wanted by her lord. The word in sanskrit for sex with such ladies is 'bhujishya.' In sanskrit spouse is called 'bhartar', and that implies sustains, defender and it was viewed as an extraordinary sin to live on the pay of wife by her relationships as evil as killing the untouchable relic. Through stories and

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world history, universe has mind nessed the manly predominance and need over the ladylike and it has since from the days of yore been seen essentially by all By and by, the shortfall of such wrongdoing can't be precluded or there is probability of presence of such egregious wrongdoing, consequently this evil is stylish in our general public previously, as of now and could convey to future. It was a standard practice in the old India as it was in old muslim realm as likewise with muslim rulers in the new past, to keep some lady, as per the method for the individual worried, for the impermanent utilization of a visitor as a conclusive gift to the visitor. It is expressed in Mahabharata that ruler Yudhishtira of the Pandavas kept a huge number of young ladies, youthful and entrancing, wearing wristbands and most marvelous decorations, sprin-kled with sandalwood fragrance, talented in the 64 expressions, and with extraordinary expertise in moving and singing, that they may cordially look out for the Brahmins, priests and kings¹⁸. Through legends and world history, universe has seen the manly predominance andpriority over the female and it has since from the days of yore been seen basically by all By and by, the shortfall of such wrongdoing can't be precluded or thereis plausibility of presence of such egregious wrongdoing.

Wrongdoing is everlasting as timeless as society and as old as creation itself. Indeed, even God and God-desses are not liberated from such motivations. The investigation of Vedas and Puranas portrays that sex assumed conspicuous part among individuals. Lovers and mistresses have large amounts of the general public. The affection - charms are intended to win over individual of other gender or to reestablish lost love. In the Vedic smritis , it has been brought up that person arenot just highminded yet in addition of embellished indecencies .In this manner it

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is undenied truth that the shrewd penchants are likewise a piece of human instinct regardless of overall setting. The seduction of Angiras Brahaspati's better half Tara by Soma , the introduction of pururavas out of unlawful association of Budha and Illa , the introduction of Bharadvaja from the illegitimate association of Brahaspati with sibling's significant other - affirms the laxity in sexual connection of old time.

- **CONCEPT UNDER ISLAM**

Islam sees human existence as a holy gift from God. The Quran over and over again focuses on the holiness of life. The existence of each and every individual paying little mind to orientation, age, identity or religion deserve regard. In sections alluding to the holiness of life, the term utilized is 'nafs' (soul, life); and no differentiation made in that spirit is being youthful or old, male or female, muslim or non-muslim.

"Take no person's life, (the life) which God has pronounced to be sacrosanct

- in any case than in (the quest for) equity: this has He ordered upon you so you could utilize your reason".¹⁹

Quranic lessons envelop each part of life; subsequently it doesn't restrict the meaning of life to the actual body just, however incorporates the psychological, close to home and otherworldly aspects also. There are around 150 stanzas that characterize the term 'nafs' in different ways clarifying that the idea of 'life' isn't restricted to simple actual presence.

By and large, Islam has resolved difficult issues transparently and tried to address activities that comprise hurt or 'zulm'(ie: remorselessness and misuse) to the nobility of humanity. Human life and regard for it has been focused on unstintingly, paying little mind to progress in years or orientation. When in

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doubt, Islam prohibits all 'zulm', be it physical, mental, close to home or otherworldly.

19. Maudoodi, Abu al Ala; "Human Rights in Islam" The Islamic Foundation UK 1976, 1993.

CHAPTER-III

RAPE: LEGISLATIVE DEVELOPMENTS IN INDIA

Criminal Law of a country, in its quest to preserve social order and solidarity, not only prescribes a set of norms of human behaviour but also forbids the human conduct against social conditions. It also stipulates punitive 'sanction' for the perilous outlawed conduct.

However, the kind of conduct to be 'forbidden' and to the formal penal 'sanction' considered as best calculated to prevent the officially outlawed conduct depending upon the 'social setting' and 'socio- moral-legal ethos' of a community. Nature and contents of criminal law and social (punitive) reaction to the violation of penal law, therefore, varied with changes in social conditions.

Penal law of a country, therefore, needs to be appreciated and understood in the back- drop of its prevailing social, moral and cultural values and political ideologies.

- **PERCEPTION OF MACAULAY'S COMMISSION**

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In 1828, an Act for improving the administration of criminal justice in the British colonies in Asia was passed, which declared rape as an offence punishable with death, provided the girl was below 8 years and with imprisonment in other cases¹.

In 1834, Thomas Macaulay landed in India to take his seat as Law member on the Supreme Council, under the charter of 1833.. Section-359 defined the offence and section-360 specified the punishment for it²³.

As observed by Vasudha Dhagamwar, Clause 359 reflected the 'Victorian notions' of morality. It attracted several comments from the judicial officer of East India Company. Messrs Campbell and Pyne of Madras Presidency argued that a woman, who submitted to threat of trivial hurt, was not reluctant and did not deserve the protection of law. Greenhill, a judicial officer, suggested that 'hurt' should be amended to read 'grievous hurt'. This suggestion was accepted by the Law Commissioners, but was rejected by J.M. McLeod in his notes on the Report of the Law Commissioners. He went to remark that these sections were not intended to protect only 'rigid chastity'.

23 Thomas Macaulay, 1834 (Drafted The Indian Penal Code)

J.F. Thomas, a Judge in Madras Presidency, Criticised the code for giving too wide a range of punishment. He argued that once the commission of rape is proved, character of the woman should be no criteria and same punishment should be awarded to all offenders. But the Law Commissioners took a different view and held that injury in case of

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a high class woman is surely infinitely more than in case of a woman of low caste, who was presumed to be without character. It is pertinent to point out that both Law Commissioners and Thomas saw the problem in terms of a high caste woman's violation by low caste man as the most heinous of rapes requiring the strictest punishment. Hence, instead of assuring equal protection of law for all, the Commissioners were only reinforcing the caste system hierarchy.

Section-375 of the final version differed from Clause-359 as it incorporated an important amendment that "sexual intercourse by a man with his own wife, the wife not being under ten years of age, is not a rape". No reasons for this change were given by the Select Committee.

For thirty years, after the enactment of Indian Penal Code 1860, rape law remained the same. The later change was owing to a number of cases in Bengal in which the child wife died due to consummation of marriage.

Out of these, the most notable was Queen Empress v. Haree Mohan Mythee. This case tells the pathetic story of Phulmonee Dasse, who was eleven years and three months old when she died as a result of rape committed on her by her husband. The medical evidence showed that Phulmonee had died of bleeding caused by ruptured vagina. In this case, rape of child wife was severely condemned and it was held that the husband did not have the right to enjoy the person of his wife without regard to the question of safety to her²⁴.

In 1891, Sir Andrew Scoble introduced the Bill, which culminated into Indian Criminal Law (Amendment) Act, 1891. This Act raised the age of consent to 12 years both in cases of marital and extra-marital rapes. The object of Act was humanitarian, viz. "to protect female children from immature prostitution and from pre-mature cohabitation". Pre-mature

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cohabitation resulted in immense suffering and sometimes even to death of the girl and generally resulted in injury to her health and that of her progeny.

- Queen Empress V. Haree Mohan Mythee, ILR 1891 Cal 49.

Beginning of the 20th Century witnessed increased public attention towards the improvement in the physique of the nation and the reduction of causes leading to abnormal mortality of younger generation. In 1922, Rai Bahadur Bakshi Sohan Lal, MLA, moved for leave to introduce a Bill in the Assembly to amend section-375, IPC, by raising the age of consent in both marital and extra-marital cases. This attempt to legislation proved futile, but with the passing years, agitation for a modification of law steadily grew owing to a better knowledge of the evil consequences of early marriage and early consummation.

In 1924, Dr. Hari Singh Gour introduced a Bill to amend section-375, IPC, raising the age to 14 years in both marital and extra-marital cases. The Bill was referred to a Select Committee, which made a material alteration by reducing the age from 14 to 13 years in the case of marital rape. On 1st September 1925, Sir Alexander Muddiman introduced the Bill fixing 14 years the age in extra-marital cases and 13 years in marital cases, which culminated into Amendment Act, 1925. The amendment in 1925 for the first time introduced a distinction between marital and extra-marital rape cases by providing different age of consent in marital rape cases. The distinction was further emphasised in section-376 by incorporating the words –“unless the woman raped is his own wife and is not under twelve years of age”, in which case the punishment was

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diluted by prescribing a maximum of two years. Thus, the purpose aimed to be achieved by raising the age of consent to 13 years, stood mitigated to a large extent by the diluted punishment provided by amended section-37625.

The question of age of consent was not considered as finally settled and Dr. Hari Singh Gaur again introduced a Bill in 1927 to raise the age to 14 and 16 years in marital and extra-marital cases respectively. It was followed by the appointment of Age of Consent Committee, which reviewed the prevailing situation and suggested few amendments. The Committee was of the opinion that the amended law was ineffective due to the nature of the offence, particularly in case of marriage as consummation necessarily involves privacy. The prevalent view among the awakened sections of society was that prohibiting the marriage of a girl under a particular age would be a better measure than to increase the age of consent for sexual intercourse.

- Parliamentary Speeches – Law and Sexuality: Speech on the amendment to the Penal Code, (September, 1995) at <http://www.Iceclombo.org/Neelan/ps190995.htm>.

The dissenting group among these classes felt that law was partly futile because it afforded no protection to the girls over 13 years, who need it on account of their tender age. The Committee recommended the use of term ‘marital misbehaviour’ instead of rape in marital cases. The offence of marital misbehaviour would be committed by a husband in case of sexual intercourse with his wife below 15 years of age. The Committee recommended the inclusion of offence of marital misbehaviour in

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Chapter XX of IPC and section-375 and section-376 of the IPC should be confined to rape outside the marital relation. The Committee also recommended maximum punishment of either description for 10 years and fine where the wife was below 12 years of age and imprisonment, which may extend to one year or fine or both, where wife was between 12-15 years.

- **LAW SINCE INDEPENDENCE**

In 1949, rape laws were further amended in respect of the age of consent. The age was raised to 16 years in clause fifth of section-375, dealing with extra-marital cases and 15 years in the exception dealing with the marital cases, by section-3 of the amending Act. Another amendment was brought about in 1955, which substituted the words 'transportation for life' by 'imprisonment for life' in section-376.

The Indian Law Commission had stated its intention of revising the Indian Penal Code in 1959, but it was only after twelve years, in 1971 that the Law Commission could send its report on the IPC to the Union Law Minister.

- **IMPACT OF MATHURA CASE; CAMPAIGN FOR AMENDMENTS AND THE 84th LAW COMMISSION REPORT**

The decision of the Supreme Court in Tuka Ram v. State of Maharashtra created furors in the field of rape law. The facts of this case were so peculiar and the decision so coldly legalistic and unjust that it led to the culmination of mass movement for the amendment of rape laws. In this

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case, Mathura was a young girl of 14-16 years. She had developed a relationship with her employer's cousin. On March 26 1972, her brother filed a report that Mathura was kidnapped by her employer and her boyfriend. They were all brought to the Police Station at 9 P.M. and their statements were recorded. When everybody started to leave, Mathura was directed to remain at Police Station by Tuka Ram, the Head Constable and Ganpat, a Constable²⁶.

- Tuka Ram V. State of Maharashtra, AIR 1979 (SC)185.

While both Policemen were on duty, they bolted the doors and put off the lights. Ganpat raped Mathura and Tuka Ram fondled her private parts. Tuka Ram was too drunk to rape Mathura. A crowd gathered outside and then shortly after Mathura came out and announced that she had been raped by Ganpat. Mathura was examined on the next day. Her report showed old ruptures of hymen and that she was habituated to sexual intercourse. In Sessions Court, this fact was held against her and the accused were acquitted. It was held that Mathura had in fact consented to the act. The Bombay High Court reversed the decision and sentenced Tuka Ram to rigorous imprisonment for 1 year and Ganpat for 5 years. The High Court held that mere passive submission or helpless surrender of the body and its resignation to the other's lust induced by threats or fears cannot be equated with consent²⁷.

The Supreme Court reversed the decision and held that Mathura had consented to the act. There were no injuries on person of Mathura, thus, it was held that the story of rape was concocted by her and her testimony was disbelieved. Further, it was held that only fear of death or hurt could vitiate consent in the clause thirdly. The operation of clause secondly was not even considered. The decision drew attention of four law teachers;

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Prof. Upendra Baxi, Prof. Raghu Nath Kelkar, Prof. Lotika Sarkar of Delhi University and Prof. Vasudha Dhagamwar of ILS, Pune. In October, 1979, they wrote an 'Open Letter to the Chief Justice of India', protesting against the judgement. This letter created an unprecedented furor and received tremendous publicity from the Press. The Open Letter criticised Supreme Court judgement and stated that there is a clear difference in law and common sense between consent and submission. The facts of the case revealed submission on part of Mathura and not the consent. It was questioned in open letter, is the taboo against pre-marital sex was so strong as to provide a licence to Indian Police to rape young women. This decision shook the conscience of many belonging to civilized society for the custodians of law and order and had taken advantage of an innocent girl and turned the Police Station into a theatre of sex. Thus, Mathura case has become a major reference point for any discussion on rape laws. There was a nationwide movement for the amendment of law and many mass protests, demonstrations and meetings were organized by the women organizations, lawyers, teachers, students, social workers, etc.

An academic protest by a group of four got transformed into a national wave and, thus, became a unique event in history of criminal law. The judgment was widely criticised both inside and outside Parliament as an extraordinary decision sacrificing human rights of women under law and the Constitution. The Government took serious note of the rare degree of sensibility of public

as well as of the parliamentary criticism of the law and its failure to safeguard the rights of innocent rape victims. Thus, the Law

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Commission was appointed to submit its report on law relating to rape and allied offences in 1980. The Law Commission submitted its 84th Report in a remarkable time period of less than one month.

The main recommendations of the 84th Law Commission Report were as follows :-

THE SUBSTANTIVE LAW

- The Law Commission devoted special attention to the concept of consent. They emphasized that the consent should be active consent, which is not said to be implied by silence. They suggested the substitution of the word 'consent' by the words 'free and voluntary consent' in section -375.
- The Law Commission considered that in the third clause to section-375, the consent is vitiated not only when a woman is put in fear of death or hurt, but also when she is put in fear of any 'injury' being caused to any person, including herself in body, mind, reputation or property and also when her consent is obtained by criminal intimidation. Thus, they suggested the insertion of word 'injury' in third clause to section-375, which would take care of situations, in which woman is threatened with injury to herself or anyone else in whom she is interested²⁸.
- The Law Commission pointed out that rape can be committed without overt violence and the injuries on the person of the woman are not the compulsory and conclusive evidence of the commission of the crime.

- The Law Commission suggested that addition of sub-clause (b) to clause fourthly, to take into account numerous situations falling under the guise of misconception.
- The Law Commission suggested that a new clause fifthly should be added to section-375, covering the situation when consent is obtained by intoxication or administration of some stupefying substance to the woman.

28. The Criminal Law (Amendment) Bill 1980 — Report of the Joint Committee, Govt. of India, Rajya Sabha Secretariat, (1982).

- The Law Commission made a strong suggestion to raise the age of consent to 18 years. It was asserted that when according to the Child Marriage Restraint Act, 1929, marriage of a girl below 18 years is prohibited then sexual intercourse with a girl below 18 years should also be prohibited.
- The Law Commission recommended that a rape of child wife should not be dealt separately. Explanation II dealing with judicially separated wife was retained.
- The Law Commission retained the recommendations of 42nd Report in regard to sexual offences committed by a public servant, superintendent or manager of a woman's or children's institution and a person on the management of staff of a mental hospital.

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- The Law Commission opined that the discretion of the Court to award punishment should remain unfettered. The maximum limit of punishment was life imprisonment or punishment upto 10 years.
- In cases of gang rape, where more than one person raped the woman one after the other, each one of them should be punishable with a maximum punishment of 10 years rigorous imprisonment. Similar punishment was also suggested in cases of minor rape, rape of a pregnant woman and rape by a Police Officer.

ARREST AND INVESTIGATION

- The Law Commission suggested the addition of a proviso to clause (1) of section- 46 Cr. P.C., dealing with the manner of arrest of a person, which would spare a woman the indignity of being touched by strange men. Thus, a male Police Officer could lay hands on a woman being arrested only in exceptional circumstances.
- The Law Commission recommended the addition of section-417-A in Cr.P.C. for keeping a woman under detention in women's or children's homes.
- The Law Commission considered that woman Police Officers alone should interrogate female victims of sexual offences. They also recommended the additions to section-160, Cr. P.C. to provide that the statement of the rape victim, when she is under 12 years of age should be recorded by a female Police Officer or a person interested in welfare of women or children as recognized by the State Government²⁹.

- The Law Commission emphasized that the interrogation under section-160 (1) of Cr. P.C., should take place at the dwelling place only and the Police Officer,

29. The Criminal Law (Amendment) Bill 1980 — Report of the Joint Committee, Govt. of India, Rajya Sabha Secretariat, (1982).

who violates such provisions should be punishable under the new Section

166-A, IPC with one year punishment or fine or both.

The Law Commission also recommended a woman should not be interrogated after sun set and before sunrise and a social worker should be permitted to be present during interrogation.

5. The insertion of section-167-A to IPC was also recommended, which punishes the failure of non-recording of any information regarding any cognizable offence.

MEDICAL EXAMINATION OF ACCUSED AND THE VICTIM

The Law Commission observed that procedures for examining the accused and victim are quite cursory and tardy. Hence, they recommended addition of sub-section (1A), (1B), (1C) and (1D) to section-53, Cr. P.C., which deals with the medical examination of the accused in all cases and the insertion of a new section 164-A to Cr. P.C. to improve in the Camera existing and provisions regarding of the medical examination of the victim.

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TRIAL IN CAMERA AND PUBLICATION OF PROCEEDINGS DURING TRIAL

- The Law Commission endorsed the need of trial in camera and recommended the addition of proviso (2) to section-327 Cr. P.C., which provides for the court to be open.
- The Law Commission felt that in cases of rape to avoid the embarrassment to the victim due to the publicity during the trial new section 228-A, should be added to the IPC, which provided punishment in cases of violation of prohibition regarding publicity of proceedings³⁰.

EVIDENCE

The Law Commission recommended various changes in law relating to burden of proof and character of the woman.

- Insertion of a new section 111-A was recommended in the Indian Evidence Act, 1872, which shifted the burden of proof on the accused instead of prosecutrix, that the act was done with the consent of woman.
- The Law Commission recommended that in section-155 (4) of the Indian Evidence Act, the evidence of sexual relations of prosecutrix other than with the accused should not be permitted .

30. The Criminal Law (Amendment) Bill 1980 — Report of the Joint Committee, Govt. of India.

On similar lines, addition of clause (4) to section-146 was recommended, which would render it unpermissible to put questions in cross examination of the prosecutrix as to her general immoral character.

3. The Law Commission recommended the insertion of a new section- 53-A, which rendered the evidence related to prosecutrix 's previous sexual relations with any other person than the accused, irrelevant.

- THE BILL OF 1980, JOINT PARLIAMENTARY COMMITTEE REPORT OF 1982 AND THE AMENDMENT ACT OF 1983.

After considering the recommendations of the Law Commission, Criminal Law (Amendment) Bill, 1980 , was introduced in Lok Sabha on 12th August, 1980. The Bill was referred to a Joint Committee of both Houses on 23rd December, 1980. The purpose of Bill of 1980 was to make rape law more stringent and to create conditions in which the victim is not inhibited by fear or embarrassment to prosecute the offender. The Bill departed from the recommendations of 84th Law Commission mainly in the following ways :-

- It shifted the burden of proof on the accused only in cases of custodial rape, gang rape, rape of a minor and pregnant woman.
- Only a married woman could plead the misconception of fact in clause fourthly to section-375.
- Punishments to section-376-A, B, C, were enhanced to 5 years.
- It included sections-375, 376, A, B, C under the heading 'Sexual Offences' in the IPC.

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The Joint Committee held forty four sittings in various parts of the country. It invited memoranda from Governments, voluntary organizations, lawyers, press organizations, bar association and public spirited individuals. The Joint Committee submitted its report on Nov. 2, 1982.

Unfortunately, the Committee took few grave retrogressive steps :-

1. The Joint Committee did not accept the words 'free and voluntary consent' in place of the word 'consent' in section-37531.

31. The Criminal Law (Amendment) Bill 1980 — Report of the Joint Committee, Govt. of India, Rajya Sabha Secretariat, (1982).

- The Joint Committee reduced the age of marital rape from 15 years to 12 years. If this suggestion had been incorporated in the Amendment Act, it would have led to a retrogressive leap to 1891, when the age of consent for marital rape was 12 years.
- Though the Committee inserted section-376-A to acknowledge the rape cases of judicially separated wife, it diluted the punishment upto 2 years imprisonment only. The Committee took the view that this could help in the re-conciliation between the spouses.

The Criminal Law (Amendment) Bill as reported by the Joint Committee was introduced in Lok Sabha on Nov. 18, 1983, by the Minister of Home Affairs. The Bill took almost 3 years to be introduced in Lok Sabha, which can be considered as a reflection on the seriousness of the Government's approach towards it.

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- THE EXISTING LAW

In 1983, after being debated in Lok Sabha for three days and in Rajya Sabha for two days, the Bill finally received President's assent on Dec 25, 1983 and culminated into the Criminal Law (Amendment) Act, 1983, which is the existing law at present. The legal definition of rape as incorporated in section-375 of the Indian Penal Code, 1860 32, reads as follows :-

375. Rape –A man is said to commit rape, who, except in the case hereinafter ex- cepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions :

First – Against her will.

Secondly – Without her consent.

Thirdly –With her consent, when her consent has been obtained by putting her or any other person in whom she is interested in fear of death or of hurt.

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.

32. Section-375 Of The Indian Penal Code, 1860

Fifthly – With her consent, when, at the time of giving such consent, by reason of un- soundness of mind or intoxication or the administration by

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him personally or through another of any stupefying or unwholesome substance,

who is unable to understand the nature and consequences of that to which she gives consent.

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

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

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

- **INGREDIENTS OF RAPE**

- **AGAINST HER WILL**

“Against the Will”, as appended under section 375 IPC clearly refers to a woman (who is) in full sense or full possession of her sense and reason or who in other words, is fully conscious normal and reasoning accompanied with deliberation , after mind has weighed, as in a balance ,the good and the evil on each side, with the exist- ing capacity and power to withdraw the assents according to one’s will or pleasure.

- **WITHOUT HER CONSENT**

Section 375, IPC secondly lays down that A man is said to commit “rape” if he has sexual intercourse with a woman without her consent .The word

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consent has not been defined by the Indian Penal Code but its meaning has been gathered from the facts and the circumstances of the commission of the offence³³. While dictionary meaning of the consent is to agree in sentiment, permit or approve, acquiescence. Consent is an act of reason, accompanied with deliberation, the mind weighing as a balance, the good and evil on each side². Therefore, one cannot consent to a thing unless one has a knowledge of it. It is an agreement of opinion on the part of all the concerned.

- WITH HER CONSENT, WHEN HER CONSENT HAS BEEN OBTAINED BY PUTTING HER OR ANYPERSON IN WHOM SHE IS INTERESTED IN FEAR OF DEATH OR OF HURT.

Section 375, clause third, states that a man is said to commit rape when he has sex-

- Indian Penal Code, 1860.

ual intercourse with her consent, when her consent has been obtained by putting her in fear of death or of hurt. Such fear might be to put any person in whom she is inter-ested³³.

- With her consent under a mistaken belief.

The fourth clause gives that he whoever induces a woman to have sexual intercourse with him by personating as her husband commits rape. Thus if the consent under mis-ception of facts has been obtained, or when the consent is obtained by impersonat- ing as her husband, the offence

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under the section has been committed which is punishable under section 376 I.P.C34.

- With her consent due to intoxication.

In view of clause fifth of section 375 IPC, rape can undoubtedly be committed on woman while she is in a state of unconsciousness which might have occurred in an ordinary course or as a result of administration of Narcotic , Intoxicating or Anesthetic drugs. It is accepted fact that it is very difficult, unless over – powered, to rape a healthy woman in full sense. She is bound to offer resistance and a struggle is invariably followed, as a result of which injuries are bound to be found on the body of victim, on the person and even on the part of the accused³⁴.

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

This is one of the important clause under the section and enacted with the view to protect minor girl of the society. The clause simply declares that an act done even though with the consent of a child under 16 years of age would be a rape, her consent had precocity being both immaterial³. The fact that such a girl can discriminate between right and wrong and invited the accused to the act are both wholly irrelevant, for the policy of law is to protect children of such immature age against sexual intercourse. The Criminal Law Amendment Act has substantially changed sections 375 and 376 of the IPC.

Several new sections have been introduced

therein- viz., sections 376(A),376(B), 376(C), 376(D) of the IPC. Section- 376(A) punishes sexual intercourse with wife without her consent by a judicially separated husband.

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Section- 376(B) punishes for sexual intercourse by a public servant with a woman in custody.

Section- 376(C) punishes sexual intercourse by superintendent of jail, remand house, etc. whereas,

- The Indian Penal Code , 1860.

Section- 376(D) punishes sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital.

These new sections have been introduced with a view to stop sexual abuse of women in custody, care and control by various persons- which though not amounting to rape were nevertheless considered highly reprehensible.

- **PUNISHMENT OF RAPE**

Section 376 itself is a substantive one as it describes as to how many years of imprisonment will be suffered by a person who commits a rape. In view of section 376(2) punishment appended therein shall be inflicted upon a convict 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 extend to ten years and shall also be liable to fine 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. The court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a

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term of less than seven years³⁵. When the offence is committed against those listed under section 376(2) (a) to (g) i.e.,

Whoever –

- being a police officer commits rape
- within the limits of the police station to which he is appointed; or
- in the premises of any station house whether or not situated in the police station to which he is appointed; or
- on a woman in his custody or in the custody of a police officer subordinate to him; or
- 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 him³⁵; or
- 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 institution³⁵; or
- 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

34. The Indian Penal Code, 1860.

- commits rape on a woman knowing her to be pregnant; or

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- commits rape on a woman when she is under twelve years of age; or
- 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:

Provided 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.

Explanation 1 - 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 this sub-section³⁶.

Explanation 2 –“Women’s or children’s institution” means an institution, whether called an orphanage or a home for neglected woman or children or a widows' home or by any other name, which is established and maintained for the reception and care of woman or children³⁶.

Explanation 3 –“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 rehabilitation³⁶.

The main features of the Criminal Law (Amendment) Act, 1983, are as follows:

- The Act, for the first time recognised the existence of aggravated forms of rape, viz. rape of minor, gang rape, rape of a pregnant woman, custodial rape committed by police Officer, public servant, a person on

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the management or staff of jail, remand home, women's or children's home, hospital etc.

- The Act also distinguished the rape of a judicially separated wife under section-376- A and provided for a punishment, which may exceed to 2 years alongwith imposition of fine.

- Prescription of mandatory minimum punishment can be regarded as the most im- portant achievement, by 1983 Amendment Act. It enhanced the punishment by provid- ing the mandatory minimum imprisonment of either

description for 7 years under sec- tion-376 (1) in general rape cases along with imposition of fine. section- 376 (2) took care of aggravated rape cases and provided a mandatory minimum of 10 years rigorous imprisonment along with the imposition of fine.

36. The Indian Penal Code, 1860.

- A new clause 'fifthly' was added to section-375, which made the consent of a woman of unsound mind or the consent, which is given under intoxication or admin- istration of some stupefying or unwholesome substance, irrelevant against a rape charge.

- Section-327, Cr. P.C. was amended to include sub-sections (2) and (3).

Clause (2) provided that in case of inquiry into and trial under Sections 375, 376, 376- A, 376-B, 376-C and 376-D, shall be conducted in camera. clause

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(3) prohibited the printing and publication of any matter in relation to the proceedings covered under clause 1(2), without the previous permission of the Court.

- A new section 228-A was inserted in the Indian Penal Code, which made the disclosure of identity of rape victim penal except under permission granted for publication by the victim. The Officer in charge of Police Station or the Police Officer investigating such case can also give permission by a written order to such publication³⁷.

- In the Act, all recommendations of 84th Law Commission Report regarding the provisions relating to evidence, were not accepted, but for the provision relation to the burden of proof, which was accepted partly.

To this effect, a new section 114-A was inserted in the Indian Evidence Act, which shifted the burden of proof on the accused in aggravated rape cases covered under section-376, IPC.

- Few changes were made in the First Schedule to the Criminal Procedure Code, which made the offence of rape as cognizable and non-bailable. Marital rape remained non-cognizable and bailable. The offence under section-228-A was also made cognizable and bailable. The offence under section-376, B, C and D are cognizable and bailable, but no arrest can be made without a warrant or without an order of a Magistrate.

- The age of consent is 16 years in general rape case, 15 years in marital rape case and in the case where the victim is below 12 years, section- 114-A of Indian Evidence Act is applicable.

- The position of wife remained same in the amendment of 1983 as it

was in 1891 except for the three years increase in the age of consent in marital rape cases unrecognised by the Indian Penal Code.

37. The Indian Penal Code, 1860.

• THE SUGGESTIONS PROPOSED BY THE LAW COMMISSION OF INDIA

Despite many progressive changes introduced by the 1983 Act, there remained many lacunae in the existing law. To fill up the gaps, the National Commission for Women (NCW) made certain suggestions, which were considered by the Law Commission in its 156th Report on Indian Penal Code.

The main recommendations of the 156th Law Commission Report are as follows—

- The Commission was of the view that the offence of rape should be retained in the IPC subject to a few modifications.
- The Commission recommended that clause ‘thirdly’ to section-375, IPC, be modified to include words- ‘or of any other injury’. These words expand the scope of the clause to provide for situations of rape by persons in position of trust, authority, guardianship or of economic or social dominance. The Commission was of the view that such change

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will cover the cases of incestuous abuse where the victim is totally dependent on the offender³⁸.

- The Commission recommended that the age limit prescribed in the clause ‘sixthly’ to section-375 IPC, be raised to 18 years from the existing 16 years.
- The Commission did not endorse the view of NCW that the age limit for wife in the exception to section-375 IPC, should be raised. In a move to rectify those lacunae, a NGO called “Sakshi”, approached the Supreme Court of India for directions concerning the definition of the expression “sexual intercourse” as contained in S-375 IPC. The Supreme Court directed the Law Commission to examine the issues involved. In response to this order of the hon’ble Court, the Law Commission brought forth its 172nd Report on Review of rape laws in 2000.

The main recommendations of the 172nd Law Commission Report are as follows—

THE SUBSTANTIVE LAW

1. The Commission strongly recommended making the provision of rape gender neutral because not only women and girls, but young boys are also subjected to forced sexual assaults, which causes no less psychological trauma to a boy than a girl³⁹.

- Law Commission of India –156th Report on the Indian Penal Code, 1860, Ministry of Law and Justice. Govt. of India, (1996).
- Law Commission of India –172nd Report on Review of Rape Laws, Ministry of Law and Justice, Govt. of India (2000).

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- The Commission felt that it was necessary to include under the definition of rape not just penile penetration but penetration of any other part of the body (like finger or toe) or by any other object. The modified explanation makes it clear that penetration to an extent is sufficient to constitute rape.
- The Commission has retained the marital exception to rape though “Sakshi” wanted its deletion. The Commission found it to be excessive interference with the marital relationship but raised the age of wife from fifteen to sixteen years.
- The Commission has proposed the addition of a new proviso (while keeping the existing provisions proviso II) to section-376 IPC providing that when the sexual assault is committed by the father, brother, grandfather or any other person in position of trust or authority towards that person, the punishment should be severe.
- For aggravated minor rapes, the Commission raised the age of the victim from 12 years to 16 years.
- The Commission has retained both ‘adequate and special reasons clause’ to section- 376 IPC.
- Retaining section-376 IPC, rape by husband during judicial separation, the Commission enhanced the minimum punishment as not less than 2 years but which may extend to 7 years.
- Retaining sections-376-B, 376-C, 376-D, the Commission recommended that an explanation should be added which covers all types of sexual intercourse, as described above for section-375.

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- The Commission recommended the insertion of a new section 376 E which gives the definition of ‘unlawful sexual contact ’as including many other acts of sexual abuse e.g., touching directly or indirectly, with a part of

body or an object any part of the body of another person.

- The commission recommended the deletion of section-377 IPC as in the light of the proposed modifications, it will not be required.

- The Commission has reiterated the suggestion made in the 84th Law Commission Report that a new section 166-A should be inserted in the Code. The proposed section punishes a public servant who knowingly disobeys the law prohibiting him from re- quiring the attendance at any place of any person for the purpose of investigation into any offence or during the course of conduct of investigation, he knowingly disobeys directions of law and such an act results in prejudice to another person⁴⁰.

40. Law Commission of India –84th Report on Review of Rape Laws

THE CODE OF CRIMINAL PROCEDURE, 1973.

- The Commission recommended that sub-sections (3) and (4) be inserted in section- 160, Cr PC to the effect that the statement of the victim shall be recorded by a female police officer, in case a female police officer is not available, by a female Government servant available in the vicinity and in case a female Government servant is not available, by a female authorised by an organisation interested in the welfare of women or children⁴¹. Where either of these alternatives are not

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available, the officer in charge of the Police Station shall record the reasons in writing and record the statement of the victim in presence of her relative.

- Substitution of the proviso to sub-section (1) of s-160, Cr PC was also recommended for raising the age limit from 15 years to 16 years.
- The proviso to section-160, Cr PC should provide for recording of the statement of the victim, in presence of one of her relatives of her choice, who shall not interfere with the recording of the statement.
- The Commission recommended the insertion of a new section 164-A, Cr PC for medical examination of the victim with her consent, by a Medical Practitioner, during investigation, so that the valuable medical evidence is not destroyed due to the delay etc.
- The Commission also recommended the insertion of a new section 53-A, Cr PC, to provide for the medical examination of the accused without delay.
- The Commission recommended strongly that the proviso to section-273, Cr PC be modified, so that the minor victim is not confronted by the accused while at the same time ensuring the right of the accused to cross-examine.

INDIAN EVIDENCE ACT, 1872.

- The Law Commission recommended the insertion of section-53-A, which provides that where consent of the victim is in issue, her past sexual experience with any person will not be relevant⁴².

- The Commission was of the view that section-146 (4) should be inserted prohibiting the questions regarding general immoral character of the victim.

- Code of Criminal Procedure, 1973

- Indian Evidence Act, 1872

- THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT, 2005.

Due to the liberal interpretation of section 53 Cr.PC, it became a mandatory practice for a rape victim to be examined by a woman doctor only (wherever woman doctors were available). This was meant to make the victim more comfortable in the hands of a woman doctor. But the small number of woman doctors (especially in rural hospitals), and their workload with maternity services, often resulted in delays in the medical examination of a victim of rape. Even when a doctor eventually became available, his/her busy schedule often meant that only a cursory examination was performed and the collection of evidence was inadequate or improper. As there was no explicit law dealing with these issues, there was much confusion regarding who (male or female doctor) should examine victims of rape and the extent of such examinations (documentation of injuries and evidence / collection of evidence).

The Criminal Procedure Code (Amendment) Act of 2005 introduced specific sections for medical examination of victims of rape, medical examination of those accused of rape and investigation by judicial magistrates of custodial rape and deaths. Section 164(A) CrPC explains

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the legal requirements for medical examination of a victim of rape. One of the main elements of this is that the consent of the victim is mandatory and should be part of the report. Only with the consent of the victim (and in the case of a minor by the parent or guardian) may the examination be conducted by any registered medical practitioner (only allopathic doctors registered under the Medical Council of India (MCI)) employed in a hospital run by the government or a local authority, and, in the absence of such a practitioner, by any other registered medical practitioner⁴³. Thus this explicit provision mandates that any registered medical practitioner with

the consent of the victim may do the examination, solving the difficulties caused by the requirement that only government doctors should do this examination. Amendments are also made to section 176 CrPC regarding an inquiry by a magistrate into the cause of death, by adding section (1A) by which if

- any person dies or disappears, or
- rape is alleged to have been committed on any woman, while such person or woman is in the custody of police or in any other custody authorized by the Magistrate or the Court under this Code, in addition to the inquiry or investigation held by the police,
- Code of Criminal Procedure (Amendment) Act, 2005

an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the

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offence has been committed. This amendment now mandates that a judicial magistrate must investigate all cases of custodial rape and deaths in custody.

- THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT, 2008.

Many victims of rape do not want to register a police complaint due to the cumbersome procedures that it involves, and the unsupportive atmosphere at police stations. Further, they must narrate their ordeal to male police officers. Even if a woman musters up the courage to initiate criminal proceedings, there are inordinate delays in the trial of the case, with needless adjournments. She is always psychologically harassed in open courts, undergoes long trials and is forced to repeatedly describe her traumatic experiences in front of people who view her testimony with suspicion. It has also been found that in most cases the accused gets acquitted for lack of evidence. The courts have also failed to provide immediate and long term relief to the victim, let alone punishment to the accused. All these issues were looked at when the CrPC was amended in 2008. These amendments came into effect in 2009.

- A provision has been added to section 157 CrPC dealing with the procedure of investigation in relation to the offence of rape. The recording of the statement of the victim shall be conducted at the residence of the

victim or in the place of her choice and, as far as practicable, by a woman police officer in the presence of her parents or guardians or near relatives or social worker of the locality.

- The amendment to section 173 CrPC now mandates that investigation in relation to rape of a child must be completed within three months of the date on which the information was recorded by the officer in charge of the police station⁴. Also, when the report is forwarded to a magistrate it should contain the report of the medical examination of the woman where an investigation relates to an offence under sections 376, 376A, 376B, 376C, and 376D IPC.

- Code of Criminal Procedure (Amendment) Act , 2008.

- The amendment to section 309 CrPC has the additional proviso that when the inquiry or trial relates to an offence under sections 376 to 376D IPC, the inquiry or trial shall, as far as possible, be completed within a period of two months from the date of commencement of examination of witness.

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Though the CrPC amendment of 1983 to section 327CrPC itself mandated in camera inquiry and trial for rape of an offence under section 376, 376A, 376B, 376C or 376D IPC, victims of rape were still not comfortable in court proceedings. The 2008 amendment to section 327CrPC allows an in camera trial be conducted, as far as is practicable, by a woman judge or magistrate. It also partially lifts the ban on printing or publishing trial proceedings in relation to an offence of rape, subject to maintaining confidentiality of the names and addresses of the parties. The amendment of the CrPC in 2008 has brought in progressive legislation by inserting a new section 357(A) CrPC, the victim compensation scheme. All state governments in consultation with the central government are to prepare a scheme for victim compensation. On recommendation by the court for compensation, the district legal service authority or state legal service authority must decide on the quantum of compensation.

The salient features of Criminal Law Amendment Bill 2012 are as follows:-

- The bill proposes to replace the term 'rape' with 'sexual assault' in the

Criminal Law (Amendment) Bill, 2012 in order to widen the scope of this heinous crime. If this amendment is passed by Parliament, then rape will become gender neutral as it has been treated as crime against women and children⁴⁵.

- The bill proposes that sexual intercourse by a man with his wife under 16 years of age is not sexual assault.

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- The age of consent has been raised from 16 years to 18 years in case of sexual assault and the punishment will be minimum seven to ten years.

In spite of the efforts of the legislature to provide protection to rape victims, the existing rape law has been hardly able to make even a dent in the societal structure responsible for such violence. The ever escalating graph of the rape crime demands serious probe in the area and then the rape law should be designed accordingly.⁵

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