

**A THEMATIC REVIEW OF**  
**SEXUAL OFFENCES,**  
**EXPLORING VARIOUS ACT**  
**WITH CASE STUDY**

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**IJRTI**

## **ACKNOWLEDGEMENT**

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**LIST OF ABBREVIATIONS**

1. UNODC- UNITED NATIONS OFFICE ON DRUGS AND CRIME
2. AHTU- ANTI-HUMAN TRAFFICKING UNITS
3. IT- INFORMATION TECHNOLOGY
4. IPC- INDIAN PENAL CODE
5. CRPC- THE CODE OF CRIMINAL PROCEDURE
6. PIL- PUBLIC INTEREST LITIGATION
7. CRAC- CYBER REGULATION ADVISORY COMMITTEE
8. ISPAI- INTERNET SERVICE PROVIDERS ASSOCIATION OF INDIA
9. DoT- DEPARTMENT OF TELECOMMUNICATION
10. TSP- TELECOM SERVICE PROVIDER
11. ISP- INTERNET SERVICE PROVIDER
12. IP- INTERNET PROTOCOL
13. TLD- TOP LEVEL DOMAINS
14. POCSO- PREVENTION OF CHILDREN FROM SEXUAL OFFENCES
15. CSA- CHILD SEXUAL ABUSE
16. WHO- WORLD HEALTH ORGANISATION
17. SJPU- SPECIAL JUVENILE POLICE UNIT

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## INTRODUCTION

Because of feminity, Women are considered inferior. Women were subjected to various social restrictions when always discriminated from the very beginning from the upbringing of a girl and the boy child. Women have been subjected to various tortures right from the vedic ages till today.

Cruelty or domestic violence is the burning problem for married women, atrocities are being committed by the family members and such atrocities results in grave results which hence becomes a social and legal issues to take into the consideration. The doctrine of male and female is to make understand the significance of the gender equality and to make people aware about the vital role played by the women in this world.

Female children are brought up in such a manner that from the very beginning of their childhood they start adopting the environment in the manner it is. The word “**SEXUAL HARASSMENT**” denotes its roots directly to the unwelcome behaviour of the world which is difficult to inherit and requires strict phases in “**SEXUAL OFFENCES**”.

### Sexual harassment includes many things:<sup>1</sup>

1. Actual or attempted rape or sexual assault.
2. Unwanted pressure for sexual favors.
3. Unwanted deliberate touching, leaning over, cornering or pinching.
4. Unwanted sexual looks or gestures.
5. Unwanted letters, telephone calls or materials of a sexual nature.
6. Unwanted pressure for dates.
7. Unwanted sexual teasing, jokes, remarks or questions.
8. Referring to an adult as a girl, hunk, doll, babe or honey.
9. Whistling at someone.
10. Cat calls.
11. Sexual comments.
12. Turning work discussions to sexual topic.
13. Sexual innuendos or stories.
14. Asking about sexual fantasies, preferences or history.
15. Personal questions about social or sexual life.
16. Sexual comments about a person’s clothing, anatomy or looks.
17. Kissing sounds, howling and smacking lips.
18. Telling lies or spreading rumors about a person’s personal life.

<sup>1</sup> Preventing Sexual Harassment (BNA communications) SDC IP. 73 1992 manual

19. Neck message.
20. Touching employee's clothing, hair or body.
21. Giving personal gifts.
22. Hanging around a person.
23. Touching or rubbing oneself sexually around another person.
24. Standing close or brushing up against a person.
25. Looking a person up and down (elevator eyes).
26. Staring at someone.
27. Sexually suggestive signals.
28. Facial expressions, winking, throwing kisses or licking lips.
29. Making sexual gestures with hands or through body movements.

**Sexual offences** are an attitude. It is an attitude of an individual about his/her thoughts, environment, adaptability etc. it is a behaviour which is treated very unruly. This behaviour or afterthought should not a long term. Sexual offence can occur through strangers, friends, acquaintances, current or ex-partners or family members. The passage of time and even though today's changing social and cultural views have not been able to prevent the harborous effect of sexual offences. There are range of crimes connoted with the chapterization of criminal sexual offences which hereby includes most heinous and non consensual crimes like rape or sexual assault.

**Rape and Child Abuse** - Early explanations attributed that an assumptions that a rape from male point of view is an act of their sexual desires which compelled them to perform vibrant acts. Usually rape is studied as a sexual deviancy. Female assumptions shows rather rape is an instead sexual assault as an act of violence supported by prevailing attitudes against women. Violence again women and children in sexual aspects have taken a serious concern. Rape prevalence estimations has incurred sexual violence an assault. Rape is generally defined as sexual contact that occurs without the victims consent which involves serious use of force, threat of force, intimidation or when the victim is of unsound mind due to illness or intoxication and involves sexual penetration of the victims vagina, mouth or rectum. Rape against women is a public health problem. Rape is associated with a range of reproductive health consequences are direct and indirect such as injuries, sexually transmitted infections including HIV and unwanted pregnancy. Emotionally the main problem is associated with chronic somatic disorders, anxiety, depression, high risk sexual behaviour, illness and socio-economic consequences generally impact negatively on the victims quality of life. Child abuse can be defined as any act, failure or negligence on the part of any individual, adult or child that leads to severe threat and danger to the life and development of the child. Child abuse in any forms are very much socially degraded issue and is extremely prevalent in India as well.

**Prostitution** is merely an exchange of sexual pleasure only for the benefits as of for financial background. Prostitution comes from the latin word known as prostituere which means to expose publicly. In India, it is not completely. legal to practice prostitution, even though the court very specifically mentioned the prostitution to be unethical From the initial period when the Mughals enter India, prostitution has founded a deep roots and ever since is practiced on a very large scale all over the country.it is perhaps an old profession and now being the mostly hatred one. Majority of the victims are women and is considered to be one of the gender issue. Not only women are the victims of the prostitution but we just cannot ignore the transgender community. At the outset, it is considerable to note that transgender are often neglected by the community but barely accepted when it comes to prostitution. On the contrary it pertinent to note that though prostitution being immoral, this industry is showing its graph on the upper sage and every day demands are increasing. Paying money for sex to fulfil demands is the only significance of the prostitution. The other collateral embodies are owning or managing brothel, prostitution in hotel, child prostitution, pimping and pandering and soliciting in public place. Delhi, Ahmedabad, Kolkata and Mumbai are the cities where brothels are illegally being operated for satisfaction and pleasure and more and more for money.

**Pornography** – representation of sexual behaviour in pictures/books/magazines and other forms of media which induces the sexual excitement whether in written or picturization and the cause of which results into sexual assault. The word pornography is derived from Greek word porni means “prostitute” and graphein means “to write”, also defines its relevancy as a form of an art and depicting the role played by the prostitutes. Depictions of sexual behaviour and about their significance where deeply illustrated in the books of religious mythology but never deprived any illegality or offence against any religion or community.it is simply a loaded and visualised depictions leading to sexual addictions and encourage sexual behaviours. Porn video is an outcome of having a sexual pleasure in just one click leading to erotic. The easy access provided through internet have made an easy and prompt option for sexual activities.

### **SEXUAL OFFENCES IS DISCUSSED IN DETAIL AS UNDER:**

#### **A. IN THE INDIAN PENAL CODE, 1860:**

1. Sexual offences (Section 375-376 D),
2. Other Sexual offences (inserted by the 2013 Amendment, Section 354 A, 354 B, 354 C AND 354 D,
3. Unnatural offence (Section 377),

#### **B. PROSTITUTION:**

#### **C. PORNOGRAPHY:**

#### **D. THE PREVENTION OF CHILDREN FROM SEXUAL OFFNCES ACT, 2012:**

## **STATEMENT OF PROBLEM**

It is very well significant to describe the subject of interest in a study as well as various facets of the problem to be researched so as to explain the parameters of the study clearly. The following concepts will be used throughout the study and defined and described, namely sexual harassment, rape, stranger rape, acquaintance rape as well as date rape. The victimisation of women is an initial problem which has been identified globally. It is a well-known fact that violence against women is very common and in a very unruly sense it has now opened its ways to the young girls and boys too. This victimisation can take various forms namely, physical, sexual, verbal and emotional abuse. It was however, the feminist movement with the support of the media and the #me to movement that put the issues of especially sexual abuse of women and girls firmly on the social agenda. This includes the litany of abuses from repeated assaults to rape and other related sexual offences. A sexual offence may also occur where a child under 16 years old is met or contacted by an adult through telephone calls, letters or messages of any kind e.g. by texting or emails so as to meet with the child in order to engage in behaviour that is sexual in nature. This is also known as sexual grooming. The Protection of Children from Sexual Offences Act, 2012 is gender neutral meaning that both females and males can be charged with offences and both females and males can make complaints about being victims of the offences provided for under the Act. All forms of sexual offences and sexual exploitation and abuse are completely unacceptable. These behaviours have no place in the country, and do not represent who we are. Zero tolerance means just that..... **Even one case, anywhere, in the country is too many.**

Sexual offence is a complex and critical subject and often very hard to talk about, but the fact is that sexual violence/offence is an issue of epidemic proportions that impacts all of society. Despite the fact that sexual offence is regarded heinous and criminal in nature, the number and the level of inhumanity of this crime has been on a rise. Although multifarious views exist in the field of rape and allied crimes these studies are dispersed in nature and need a holistic integration to delve deeper into the cause and consequences of sexual offence. The present study intends to not only integrate diverse perspectives but also envisages a new lens of inquiry and line of multidimensional explanation for sexual offence as a crime against women as well as children, which includes both girl and boy.



## **SCOPE AND LIMITATIONS**

Initially people consider sexual offence, indecent assault, and rape as the same thing but it is not the case at all. In order to understand all these terminologies and etymologies there are different meanings having its various dimensions. Sexual offence is generally considered as a broad term which can also include sexual intercourse with some other person without their lawful consent. Consent can be considered as lawful when that person voluntarily agrees to do something and he is not unconscious or asleep for that matter. However, the indecent assault includes the inappropriate and intentional touching on private body parts without the consent of another person. The scope of the indecent assault varies with different jurisdictions. In many jurisdictions, both sexual and indecent assault are considered under the same category of offense and hence their punishment is also the same. If any individual is charged with such crime he can be made liable either for sexual assault or indecent assault. The same is rationalized in the Prevention of Children from Sexual Offences Act, 2012. In India, the concept of indecent assault is often considered as a synonym to sexual assault and rape, and because of that sometimes the punishment which is inflicted on the individual for indecent assault is at par with the punishment which is given for offense of rape or sexual assault. Although the person who does the act of indecent fault is not at less fault, however, the gravity of the offense is less than rape.

In 2019, our country witnessed a nationwide “Me too” movement, where many women came out and discussed the type of assault they have faced either at their workplace or in their families. Some of them either claimed the grave sexual assault by man, while many women claimed that have been touched inappropriately by the men at their workplace. Some of them were real accusations but there were some false allegations as well which have been inflicted for defaming another person which has led to the suicide of many individuals.

In Prevention of Children from Sexual Offences Act, 2012-The prevention of child sexual abuse, protection of victims, justice delivery, and rehabilitation of victims are not isolated issues. The achievement of these objectives requires a co-ordinated response of all the key players, which include the police, prosecution, Courts, medical institutions, psychologists and counsellors, as well as institutions that provide social services to the children. The protection of children from violence and abuse thus requires an integrated and coordinated approach. Needless to say, the identification and understanding of the roles of each of these professionals is crucial to avoid duplication and promote effective convergence. The responsibility of supporting children who have been sexually abused should be embraced by the whole community, but it is the professionals that work in this field who play an important role in enabling the healing process. These guidelines are therefore aimed at various professionals involved in providing services to the child and other affected persons including his/her family. Their objective is to foster better response mechanisms involving coordination amongst these professionals, so as to result in the evolution of a multi-sectoral, multi-disciplinary approach that will go a long way in achieving the objectives of the POCSO Act, 2012. A deeper understanding

of how and under what circumstances factors are associated with sexual offence shall help determine where to focus prevention efforts and to look in a ruly manner.

**The limitations of the methodology and the existing data are:**

1. Lack of sufficient reliable and specific data in the field of research related to sexual offences in India.

2. Difficulty in establishing counter-factual situations to establish clear relationships between variables.

3. Absence of large-scale studies that have interviewed child victims before and after trial 4. With respect to the project, lack of specific and relevant questions regarding interactions with the criminal justice system.

### **RESEARCH OBJECTIVE:**

1. To create an environment that encourages and supports detection, reporting, investigation of an offences integrated with sexual acts.
2. To identify and understand the scope of any such acts related to sexual offences. To develop and adopt measures to construct the minds of the victims and their profiles. To analyse the gender amplifications in sexual offences.
3. To provide a new route to prevent women, children and men becoming victims of sexual assault, through community and professional education, public awareness strategies and media.
4. To understand the behavioural and psychological anatomies regarding the structural changes in the body of the victim and to provide better health education to minimise outcome of a sexual offence.
5. To enable to understand the reason behind prostitution. The aim is to prevent the violence suffered by the prostitutes. To enable the overview impact if prostitution legalised and to establish the worries of the needy.
6. To strive to provide an environment that promotes all good wishes and blessings to the victim of sexual offence and evaluate with a good welcome feeling and to restart the life with full of hopes and new commitments.

### **PREVENTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012:**

#### **The objectives of the act are as follows:**

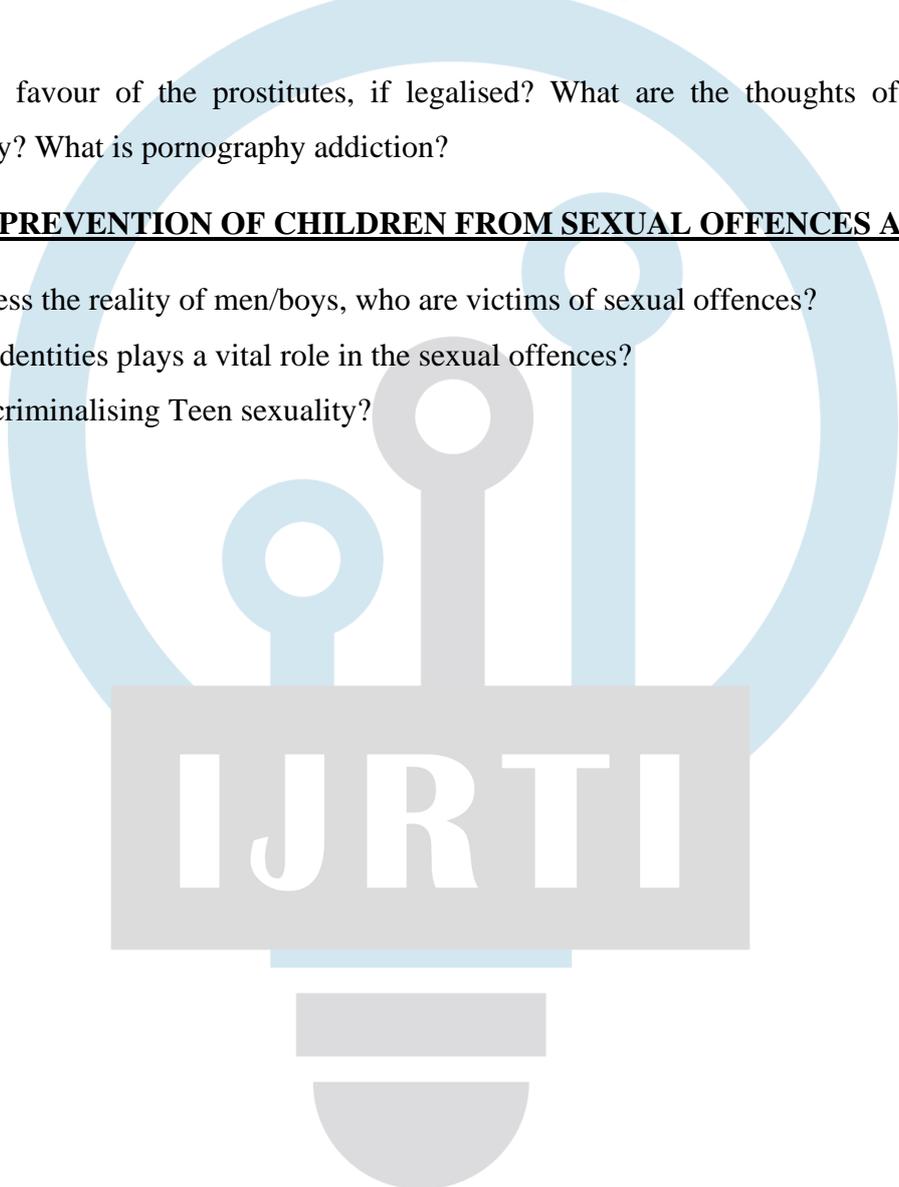
1. It aims to offer protections to children (individuals below the age of 18) from sexual violence, namely sexual assault, sexual harassment and the inclusion of children in pornography. It provides a comprehensive legislation to safeguard the interest of a child at every stage – reporting, recording of evidence, investigation and trial of offences.

### **RESEARCH QUESTIONS:**

1. How does sexual violence impact on individuals, families and communities in the pretext of the social issue?
2. Is sexual offence- an offence against gender specific? What are the basic and general needs of women and girls who become pregnant as a result of rape? What challenges do they face during pregnancy, at the time of giving a birth and upbringing of that child?
3. Why prostitution is related with the term sex workers? Do prostitutes share their income and their work?
4. Is it in the favour of the prostitutes, if legalised? What are the thoughts of the women about pornography? What is pornography addiction?

### **UNDER THE PREVENTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012:**

1. How to access the reality of men/boys, who are victims of sexual offences?
2. Do gender identities play a vital role in the sexual offences?
3. Is POCSO criminalising Teen sexuality?

A large, light blue watermark of a lightbulb is centered on the page. Inside the bulb, the letters 'IJRTI' are written in a bold, white, sans-serif font. The base of the bulb is a grey semi-circle.

**IJRTI**

## REVIEW OF LITERATURE

The research literature on sexual offences who perpetrate against other provides insight into how sexual offence and assault can create a comprehensive prevention strategy. The largest lesson to take away is that sexual offenders are a diverse group of people. Sexual assault and offences perpetration is likely caused by multiple factors and occurs through different developmental pathways. Research have identified characteristics associated with perpetration, but according to sophisticated statistical modeling, they have one-third of the variance associated with the sexual aggression which is the only means to rationalise their intolerance behaviour. Statistically, this may be considered a good model for predicting something as complex as human behaviour, but for applied purposes, use of these factors to identify sexual offence and assault perpetrators will lead to multiple misclassifications. There are some characteristics of male-on-female offenders, however, that may be good targets for prevention, including attitudes related to violence and gender roles, peer group dynamics, and the use of alcohol. More research is persuaded to understand the other offender types male-on-male, female-on-male, female-on-female, group offenders and how the different offender characteristics influence one another, and how the research findings may or may not apply. As evidenced in this report, the vast majority of research has focused on understanding the characteristics and behaviours of individual men who commit sexual offence/ assault against a female victim. Therefore, it is important to gain a deeper understanding of individuals who perpetrate all forms of sexual offence/assault so that prevention efforts can be targeted across all types of assault and to prevent women, children- both girls and boys. Rape, molestation, incest, psychological abuse, assault, physical abuse, and domestic violence are events that we hear about and may confront frequently while working in medical settings. These formidable and devastating aspects of human behaviour are becoming an increasing part of our clinical and administrative practices as a result of the advent of child protection laws, a robust and growing body of literature discussing the physical and psychological effects of sexual and physical abuse, and the requirements to report abuse and assault.

### **Article:**

#### **1. Department of psychiatry, MAMC and GB Pant Hospital, New Delhi- India-2015,- from rape to sexual assault – legal provisions and mental health-**

↔ This article plays a vital role in understanding the law reports which are thereto connected with sexual offences and assault. It co-relates the Law Commission Reports explaining that there are four major law commission reports that address the law on rape-while two reports recommend on the IPC in general within which the provision of rape is discussed, the other two reports exclusively deal with reforms related to rape. These are as follows:

- 42nd Law Commission Report
- 84th Law Commission Report

- 156th Law Commission Report
- 172nd Law Commission Report.

## 2. RAHI- AN NGO BASED IN DELHI-

↔The report from RAHI (an NGO based in Delhi) includes exploitative sexual activity, whether or not they involve physical contact, between a child and another person, who by virtue of his power over the child due to age, strength, position, or relationship uses the child to meet his or her own sexual and emotional needs to the definition of child sexual abuse. The act though sexual in nature is also about the abuse of power and the betrayal of trust. A child's dependency needs for nurturance, touch, caring, caressing, and the like are not the same as adult sexual desires. The adult or older person completely disregards the child's own developmental immaturity and inability to understand sexual behaviours. The act, therefore, is not only a gross violation of the child's body but also of the trust implicit in a care giving relationship. Child sexual abuse, according to the report is any sexual contact between a child and an adult. The contact covers a wide range of behaviours. It may or may not involve physical contact, force or violence, but always involves coercion. It can also include fondling of the breast or genitals, rape, oral sex, and/or sodomy. It can also include an adult demanding that a child touch his/her genitals either directly or through clothing. Non-physical sexual contact also includes exhibitionism, obscene talk or pornography.

## 3. Dr. K.K.Mukhpadhyay from Delhi School of Social Work, University of Delhi-

↔In his presentation based on surveys he conducted for the Government of India, said that young girls in India were taken away from their parents in poor backward and drought affected districts of the country for purposes of trafficking. These were also states with gender inequality and low literacy rates. The trafficking network was well organised in these areas. He found in his survey that about eighty per cent of the girls who were in this profession entered it as children and due to difficult circumstances, such as poverty, illiteracy, ignorance, and deception. The increasingly consumerist society only further complicated the situation. Children are often hired out or sold by their families to agents who may or may not reveal the true nature of the work offered. The agent may promise a job as a domestic servant or factory worker at a wage many times higher than is customary in rural areas. A sum which is large in the eyes of the family, may be handed over to them, and the child is obligated to work to pay off the debt. Some young girls are deceived by young urban boys who go to villages. The boys conduct fake marriages with these girls, bring them to the cities and sell them to the brothels.

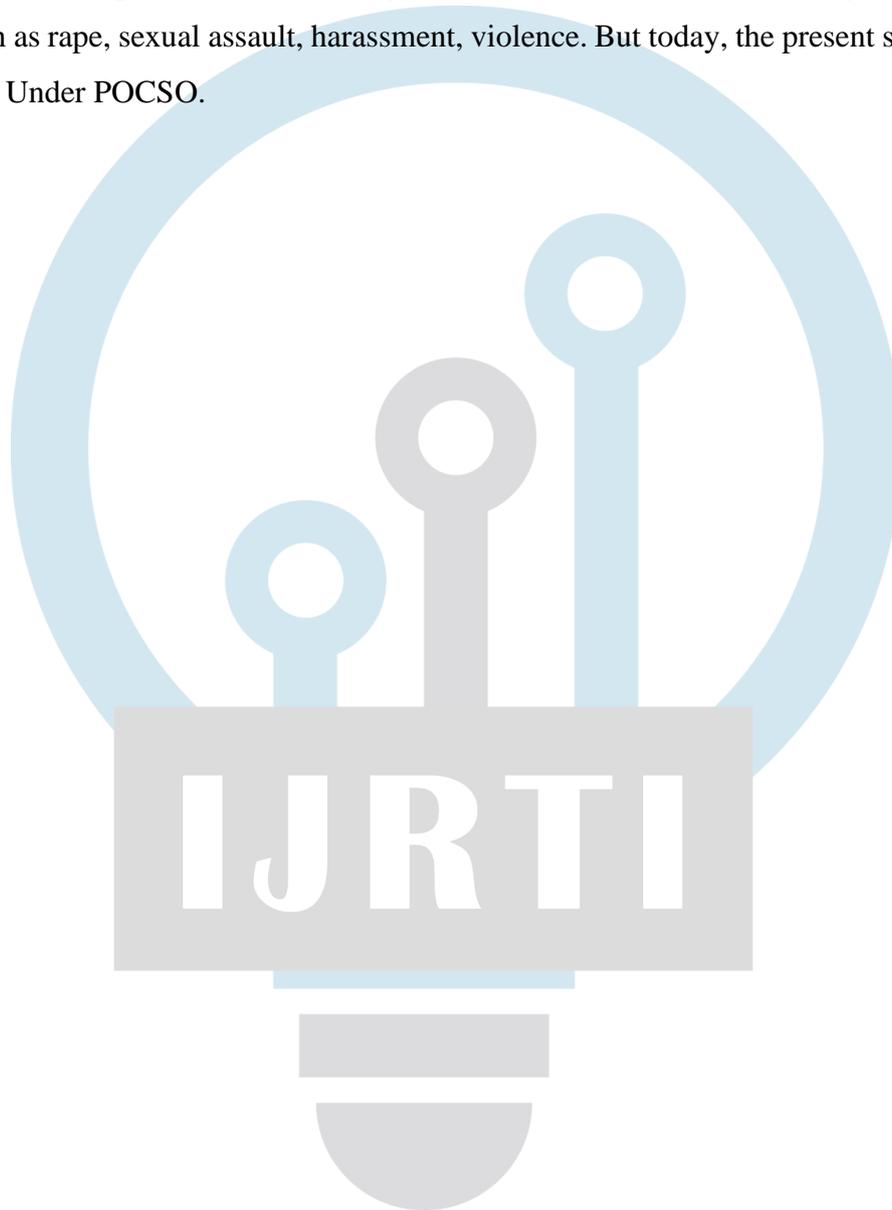
## 4. The Hindustan Times, 5 Oct 1994-

↔Men who travel to the Third World for 'sex with children', argue that there is nothing new in going abroad to escape the moral strictures at home. This phenomenon is further enhanced by the growing demand for very young girls with a premium on virgins. According to Ms. Prasanna, a research scholar

with the Department of Criminology at Madras University, the fear of AIDS often makes the Western 'sex tourist' to seek virgins. Such a demand is catered to by large markets in Bombay and Hyderabad also. This article explains about prostitution, child and women trafficking.

**5. International Journal of Pure and Applied Mathematics- Volume 119-2018, 1063-1072-**

↔This article is emphasised on the study of sexual abuse of children and youth in India in every pretext such as rape, sexual assault, harassment, violence. But today, the present scenario has changed since 2012. Under POCSO.



## **RESEARCH METHODOLOGY**

Research methods is the key for one who is able to shape and diagnose the main element and to interpret the main out come and results, which is required. The present research work is doctrinal and non-doctrinal research based on primary and secondary data collection. Number of books and surveys, articles and journals have been studied and analysed case law for better and clear understanding of this topic and able to deeply understand the reason and impact of an offences having its roots in the pretext of sexual arenas and provisions to curb the effect of sexual offences, the study of sexual offences in various acts with comprehensive studies of various case law and landmark judgments. To review and critically discuss the nature of the sexual offences, its various kinds, impact on the social and economical life of the victims. To understand the intervening nature of population when it is related to sexual offences matter. To make this dissertation an engagement process between me, myself, the victims and the community around. Thereafter a conclusive viewpoint is formulated in hope of encompassing the different methods of understanding the sexual offences in view of various studies related to different codes of criminality and to brief with a conclusive report and proof. The results of presumptions and its effectiveness shows the gravity of the topics and helps to give an analytical approach. In this manner I have made an attempt to understand the scope of sexual offences, its impact on various lifestyle and to study the sexual aggressions and its strengthens roots to limit the same. Understanding the nature of victimization. This research begins with a brief discussion of what is sexual offence, its different variants and its impact and to understand the types of research questions asked. Special emphasis is given to the Prevention of Children from Sexual Offences Act, 2012 and concludes the need of emphasizing advance knowledge about sexual offences.

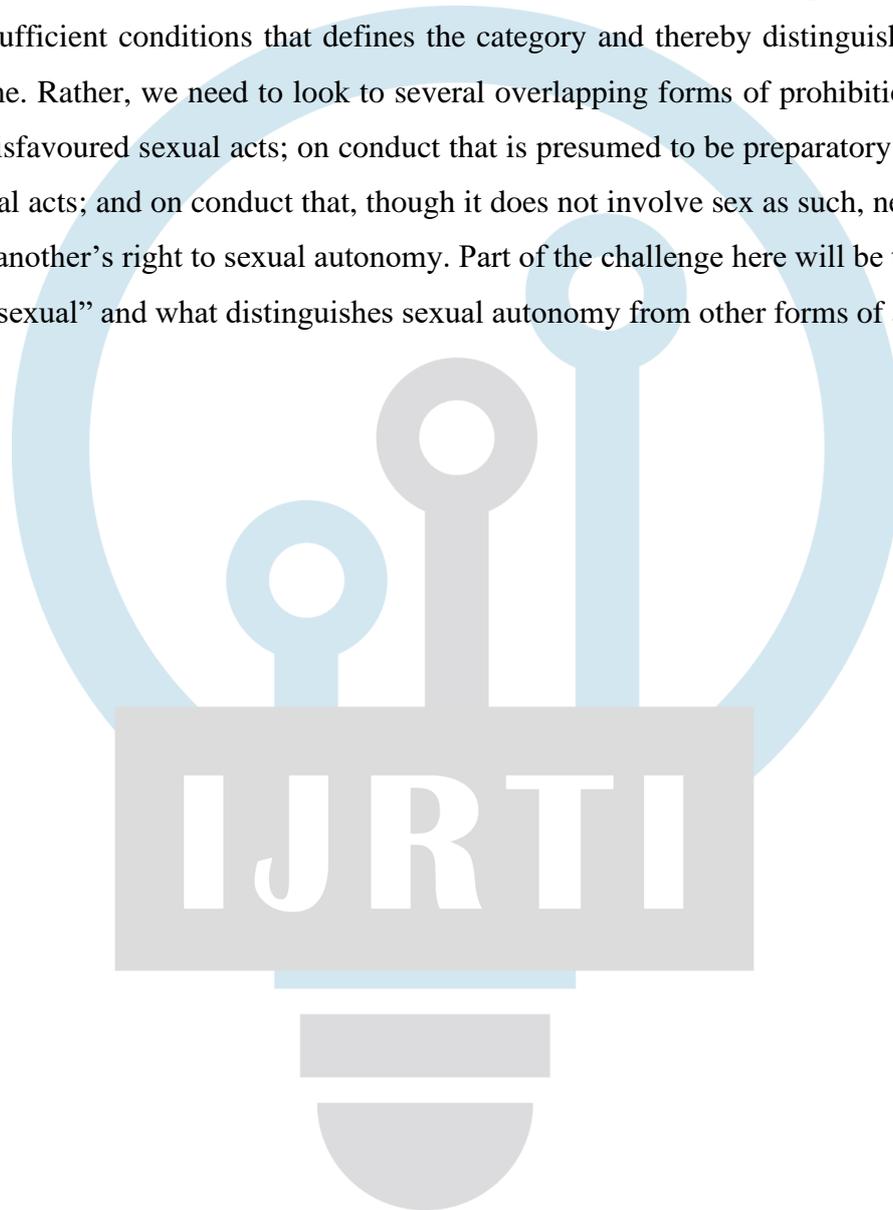
## PREFACE

Sexual violence occurs throughout the world. Although in most countries there has been little research conducted on the problem, available data suggest that in some countries nearly one in four women may experience sexual violence by an intimate partner, and up to one-third of adolescent girls report their first sexual experience as being forced. Sexual violence has a profound impact on physical and mental health. As well as causing physical injury, it is associated with an increased risk of a range of sexual and reproductive health problems, with both immediate and long-term consequences. Its impact on mental health can be as serious as its physical impact, and may be equally long lasting. Deaths following sexual violence may be as a result of suicide, HIV infection or murder – the latter occurring either during a sexual assault or subsequently, as a murder of “honour”. Sexual violence can also profoundly affect the social wellbeing of victims; individuals may be stigmatized and ostracized by their families and others as a consequence. Coerced sex may result in sexual gratification on the part of the perpetrator, though its underlying purpose is frequently the expression of power and dominance over the person assaulted. Often, men who coerce a spouse into a sexual act believe their actions are legitimate because they are married to the woman. Rape of women and of men is often used as a weapon of war, as a form of attack on the enemy, typifying the conquest and degradation of its women or captured male fighters. It may also be used to punish women for transgressing social or moral codes, for instance, those prohibiting adultery or drunkenness in public. Women and men may also be raped when in police custody or in prison. While sexual violence can be directed against both men and women, the main focus of this chapter will be on the various forms of sexual violence against women, as well as those directed against young girls by people other than caregivers.

It is now a judicially recognized fact that the right to life is something more than a mere an animal existence. It includes the right to live with human dignity. Nonconsensual sexual assault on a woman violates her right to live with dignity. Rape laws in vogue in India do not exhibit respect to, and recognition of the honour and the right to live with dignity of a woman. To many feminists and psychiatrists, rape is less a sexual offence than an aggression aimed at degrading and humiliating the woman.

Our law criminalizes a broad array of sexual, and sex-related, conduct. Among the offences that do this (or did until recently) are rape, sexual assault, coercion, human sex trafficking, female genital mutilation, forced marriage, sexual humiliation, voyeurism, public nudity and public indecency, sexual transmission of disease, selling and buying sexual services (prostitution), pimping and pandering, statutory rape and child molestation, abuse of position of trust, child grooming, creating and possessing child pornography, revenge porn, failure to register as a sex offender, fornication, sodomy, adultery, assault by sadomasochism, adult and child incest, bigamy, polygamy, miscegenation, bestiality, necrophilia, and sale of sex toys. While many of these offences, taken separately, have generated a significant body of analysis, there have been relatively few attempts to look at the category of sexual offences systematically, across the board. In this chapter, I intend to take a first step in considering the sexual offences as a whole by seeking to define the category itself.

Specifically, I will address two basic issues: First, given the wide range of conduct that is covered, what exactly is to be gained by looking at the sexual offences as a whole? I will argue, among other things, that many of these offences, whether consensual, non consensual, or a consensual, make use of, or rely on, the same set of basic concepts (including “sexual conduct,” “consent,” and “autonomy”) and ultimately reflect an interlocking set of common legal interests, rights, duties, harms, and wrongs. Looking at how the concepts are used in one context may yield insights about its application in a different, related context. what, if anything, distinguishes the sexual offences from other kinds of criminal offences? I will argue that there is no one set of necessary and sufficient conditions that defines the category and thereby distinguishes sex crimes from other kinds of crime. Rather, we need to look to several overlapping forms of prohibitions: on one or more kinds of socially disfavoured sexual acts; on conduct that is presumed to be preparatory of, or conducive to, future (illicit) sexual acts; and on conduct that, though it does not involve sex as such, nevertheless infringes on some aspect of another’s right to sexual autonomy. Part of the challenge here will be to say what it means for conduct to be “sexual” and what distinguishes sexual autonomy from other forms of autonomy.



## CONSIDERING THE RANGE OF SEXUAL OFFENCES AS A WHOLE

**Sexual violence** is defined as:

Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work. Coercion can cover a whole spectrum of degrees of force. Apart from physical force, it may involve psychological intimidation, blackmail or other threats – for instance, the threat of physical harm, of being dismissed from a job or of not obtaining a job that is sought. It may also occur when the person aggressed is unable to give consent – for instance, while drunk, drugged, asleep or mentally incapable of understanding the situation. The offences listed earlier involve an extraordinarily wide range of conduct. What can legal theory hope to gain by looking at the sexual offences as a whole? Let me suggest three reasons for doing so: To begin with, the category has real doctrinal significance. There are extensive collections of criminal statutes in Anglo-American law labelled as “sexual offences,” as well as provisions that subject a wide range of “sex offenders” to registration and notice requirements, under which those convicted of offences as diverse as rape, incest, bestiality, voyeurism, and indecent exposure are all subject to the same regulatory regime. Determining what these offences have in common is thus essential to determining whether such regimes make sense. A second reason for this comprehensive approach is that, from a historical perspective, the sexual offences can be said to have “grown up together.” The offences were, and to some extent still are, largely complementary; they work in combination to define the limits of permissible sexual conduct. For example, in an era in which the only kind of sex officially valued by society was consensual, marital, vaginal intercourse, it may well have made sense that the only sort of act treated as rape was forced, non marital, vaginal intercourse, and that almost everything else was treated as criminal—typically, as fornication or sodomy—whether or not it was consensual. What constituted rape was also dependent on what constituted seduction; what constituted statutory rape was dependent on what constituted incest; and what constituted prostitution was dependent on what constituted sodomy (and vice versa). Today, as society's sense of what kinds of sexual activity constitute a “legitimate” and “acceptable” means of expressing one's sexuality has evolved and broadened, to include not just marital intercourse but a wide range of other forms of sexual activity as well, it is not surprising that the definition of what constitutes rape or sexual assault, as well as incest and DRAFT What Are the Sexual Offences? Prostitution, would continue to broaden and evolve as well. Nor is it surprising that offences like fornication, sodomy, and adultery would have virtually disappeared from the scene. Finally, and perhaps most fundamentally, the offences that make up this category of crime share a common set of conceptual building blocks, which ultimately reflect an interlocking set of legal interests that cut across the consensual and non consensual offences. For example, we need to have a coherent conception of sexual conduct in order to define both presumptively non consensual offences like abuse of position and child incest as well as presumptively

consensual offences like adult incest and prostitution. Similarly, we need to know what sexual autonomy is and how it can be infringed in order to understand both why rape is a crime and why fornication and sodomy, and perhaps sadomasochism, no longer should be. And we need to understand the nature of consent to explain the criminalization not just of rape, but also of statutory rape and bestiality. More generally, consideration of the sexual offences can help us understand why certain kinds of sexual interests and behaviours are highly valued, and worthy of legal protection, while others continue to be reviled and even feared, and are arguably worthy of legal condemnation. In criminal court, “Sexual Assault” is where someone with authority or control has sex with someone they are in charge of. For example, a teacher commits sexual assault when they engage in sexual contact with someone enrolled in their school, a hospital employee commits sexual assault when they engage in sexual contact with a patient of that hospital, a psychologist commits sexual assault when they engage in sexual contact with a patient. In civil court, “Sexual Assault” is a broader term used in civil cases for all non consensual sexual touching. So “rape” is a sexual assault, but not all sexual assaults meet the legal definition of “rape.” Sexual assault claims in civil court are often referred to as “assault” and “battery” claims. “Assault” is the intentional causing of fear or apprehension of unauthorized physical contact. “Battery” goes beyond fear of contact – it is when the unauthorized physical contact actually occurs. This contact doesn’t have to be harmful. Contact may be **insulting, unwanted, or humiliating** instead. When deciding whether contact was unauthorized, courts use what the law calls a “reasonable person” standard. If a “reasonable person” would be harmed, insulted, humiliated, or not want that physical contact, it meets the legal standard.

To determine what should count as a “sexual offence,” we will certainly want to consider how the issue is addressed in positive law. But it would be a mistake simply to survey the existing statutes, list the sex offences, and consider the question answered. We need to know what the sexual offences have in common, and how they differ from nonsexual offences. We need an approach that will give us a basis for evaluating schemes across different jurisdictions. We need some external criteria for deciding whether the classification of sexual offences in a given system is over- or under-inclusive. Are there offences that should be regarded as sexual offences that are not generally included on the list? Are there offences that are regularly included on the list that should be excluded? Although I will rely on existing sexual offence provisions as a starting point for analysis, that is no more than a start. It will be necessary to draw out certain salient features that such offences have in common. These features can then be used as a basis on which to go back and assess whether particular existing offences are in fact properly thought of as sexual offences after all. In attempting to develop a coherent and principled understanding of the norms that inform the sexual offences, it will often be necessary not only to describe the various approaches the law takes but also to advocate for a conception that departs from one or more prevailing formulations. The following are the various sexual offences as described as under:

## **SEXUAL OFFENCES**

### **RAPE**

#### **(SECTION 375 – 376 D)**

Definition of Rape:

Section 375- A man is said to commit “rape” if he-

- a. Penetrates his penis , to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or with any other person; or
- b. Inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- c. Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- d. Applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,-

Under the circumstances falling under any of the following seven descriptions, namely-

**FIRSTLY**- Against her will

**SECONDLY**- Without her concern

**THIRDLY**- With the consent, when the consent has been obtained by putting her or any 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.

**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 gives consent.

**SIXTHLY**- With or without her consent, when she is under eighteen years of age.

**SEVENTHLY**- When she is unable to communicate consent.

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

**Comments:**

In the nineties, the inadequacy of the criminal law to protect women who have been victims of rape or assaults on their modesty was severely criticised. On request by the Government of India, the Law Commission submitted its comprehensive report on April 25, 1980 suggesting reforms in law. Subsequently, the Parliament passed the criminal law (Amendment Act), 1983, section 375 and section 376 have been substantially amended by the Criminal Law (Amendment) Act, 1983. The Act has introduced new sections from section 376A to section 376D.

It is said that raping a woman is a much more heinous crime than murder, because rape reduces a woman to a state of living corpse.

This Section has the following ingredients:

1. Sexual intercourse of a man with a woman.
2. Against her will.
3. Without her consent.
4. And, if with her consent, clause 3 to 6 apply.

Rape is the forcible ravishment of a woman. This offence consists in the act being committed against her will and consent. Clauses 3 to 6 are only explanatory to her non-consent.

**CLAUSE ONE:**

This shows that a sexual intercourse of a man with a woman is against her will. The rule is that one is best Judge of his own interest. If someone suffers an injury voluntarily, such person does not have the cause to complain. This rule is expressed in the Latin maxim thus: **volenti non fit injuria.**

An act is said to be against the will of a woman when she is in full possession of her senses and reason and she should be aware of what is being done and objects to it or resists it.

**CLAUSE SECOND:**

Against her will and without her consent, both are mental conditions in a woman. This section makes a distinction between an act against her will and an act without consent. But, an act done without consent may not be against will.

Consent requires voluntary participation. Generally, the consent is given after the exercise of intelligence based on the knowledge of the act, but after having freely exercised the choice between resistance and assent it is not defence to say that the woman consented after the act.

**IN TUKARAM V/S. STATE OF MAHARASHTRA<sup>2</sup>**

This case is well known as Mathura Case, a young girl, named Mathura, was working a Nushi's house as a maid servant. She came in contact with Nushi's sister's son, Ashok. Both decided to marry. Mathura's brother Gama filed a complaint against Nushi, her husband and Ashok of kidnapping his sister Mathura. One Babu Rao, a Police constable called Ashok and Mathura at the police station and recorded their statements. Thereafter, this constable left for his home. It was about 10.30 pm and at that time two other constables named Ganapat and Tukaram were present. While the parties were leaving the police station, Tukaram told Mathura to stay and asked others to leave. Ganapat raped Mathura behind the Police station. Tukaram was drunk and therefore he could not do the act and went away after making some indecent gestures. Nushi and others were waiting for Mathura outside the police station. When they saw the lights of the police station being put off and the door being closed, they went behind the police station and started shouting for Mathura. No reply and hence the crowd gathered. Meantime, Mathura followed and told the crowd that Ganapat had raped her. Somebody from the crowd called Babu Rao, recorded the statement of Mathura. The next day morning 8.30 am. the doctor examined Mathura. He opined that there were no injuries on her body, hymen was torn long before. In prosecution the Session Court held that sexual intercourse had taken place but it was not rape. The Court held that it was voluntary submission and that she lied that she was raped. The High Court made a distinction between submission and consent. Since she and her brother had a complaint to the police, it is possible that she submitted. The Nagpur bench of Bombay High Court reversed the order of acquittal of the Sessions Court. The Supreme Court did not rely upon the Mathura's statement. The Apex Court held that Mathura allowed Ganapat to do the act. The accused were acquitted. But, it must be noted that now in a custodial rape, if the girl says that she did not give consent, the Court shall presume that she did not consent. The Supreme Court Judgment compelled the Indian Parliament to amend the provisions of law relating to rape. Now, custodial rape is an offence.

**IN BIJOY KUMAR V/S STATE<sup>3</sup>**

In this case, a college girl in Roorkela was gang raped by 4 men. The girl was between 18 to 24 years of age and the High Court held that question of her consent did not arise. In this case, the High Court of Orissa further held "consent" must be voluntarily. A mere inevitable compulsion, quiescence, non-resistance of passing giving-in when volition faculty is either consent on the other part of a woman as a defence to all allegations of rape, requires voluntary participation after having fully exercised the choice between the resistance and assent.

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<sup>2</sup> (1979) 2 SCC 143

<sup>3</sup> 1982 Cr. L.J.2162 (Ori)

### **IN RAM KUMAR V/S STATE OF HIMACHAL PRADESH<sup>4</sup>**

It was held that, the husband and wife, both were taken into custody by the police on a false pretext that she had been abducted. In a police station they were detained in a separate rooms. She was raped by the head constable. He was convicted.

“THE FACT THAT THERE IS NO INJURY AND THE GIRL USED TO HAVE SEXUAL INTERCOURSE IS IMMATERIAL IN A RAPE TRIAL”

#### **CLAUSE THIRD:**

It says that if sexual intercourse with a woman is with her consent when her consent is obtained by putting her on any person in whom she is interested in fear of death or of hurt it is rape.

### **IN BHARAT V/S STATE OF MADHYA PRADESH<sup>5</sup>**

In this case, the woman accompanied the accused to the house of someone and stayed there a week. She did not disclose the incident to anybody. It was held that on in Terence could be drawn that she was consenting party. As she was not a minor, she accused was held to be entitled to be acquitted.

#### **FOURTH CLAUSE:**

When the accused know that he is not husband of the consenting woman, but the woman consents under the belief that he is her husband it is no consent at all. In other words, if a woman does not resists intercourse as a result of misbelief, it does not amount to her consent. A question may be asked as to how and when such a situation can arise. It is possible that in the dark house, the accused goes to a woman and does the act, the victim believing him to be her husband. It may also happen that at the time of marriage, the woman has not seen the face of her husband. In such a situation, the accused is guilty for the reason that he knows that the woman's consent is given under misbelief.

This clause deals with a situation in which the accused knows that he is not the husband of the consenting woman. He knows that he is another man to whom she is or believes herself to be legally married. An English Court's view is that a husband can be convicted of the rape or attempted rape of his own wife where she has withdrawn her consent to sexual intercourse.

In one case, a woman was suffering from the disease of sleep walking and epilepsy. Once she walked out of her home in sleep at 2 a.m. on the way, she was subjected to a gang rape. Injuries symptomatic of rape and all other symptoms were found. It was held that circumspection should be shown to such persons.

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<sup>4</sup> AIR 1995 SC 1965

<sup>5</sup> 1992 L.J. 3218 (M.P.)

**SIXTH CLAUSE:**

In clause six the age limit was raised to 16 years and in the exception it was raised to 15 years by an amendment in the year 1949. In one case the age of the victim was said to be 14 years, relying on the birth register. But, the medical opinion showed it to be between 14-16 years. In this case, it was held that birth register should be preferred. In other case, the victim was only a 7 year old girl and she was raped by her own uncle. The medical evidence confirmed that episode and the accused was convicted. In this case, it was further held that the minute details of the incident could not be expected from a child victim of rape.

**EXPLANATION:**

This explanation to Section 375 says that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Degree of penetration is not material. Some penetration however slight, is necessary to constitute the offence. It was also held that in order to constitute the offence it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration into labia major of the vulva or pudendum or even an attempt at penetration is sufficient.

**IN PRITI CHAND V/S STATE OF HIMACHAL PRADESH<sup>6</sup>**

It was pleaded relying on medical evidence that keeping in view the girl's age and the fact that her vagina admitted one figure with difficulty, it was not possible to believe that there was penetration. The Supreme Court, rejecting the argument held "the arguments overlooks the fact that in the absence of penetration there would not be absence of hymen with edges torn and profuse bleeding from the vagina staining the salwar. Merely because the doctor found that vagina admitted one figure only, it cannot be inferred that there was no penetration as the muscles must have contracted by then. The appellant, a robust man, must have penetrated the vagina otherwise there would not have been so much bleeding.

**IN BHOGIN H. V/S BHARWADA CASE<sup>7</sup>**

Held that refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule is adding insult to injury.

**Rape**, unlawful sexual activity, most often involving against the will of the victim through force or the threat of force or with an individual who is incapable of giving legal consent because of minor status, mental illness, mental insufficiency, intoxication, unconsciousness, or deception. In many jurisdictions, the crime of rape has

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<sup>6</sup> AIR 1989 SC 702

<sup>7</sup> (1983) 3 SCC 217

been subsumed under that of sexual assault. Rape was long considered to be caused by unbridled sexual desire, but it is now understood as a pathological assertion of power over a victim.

Rape is often explained or excused as a manifestation of racial, ethnic, and class hatred or as stemming from a patriarchal system in which women are viewed as the property of men. Whatever its origins, rape is a serious crime and is treated as a felony in most countries with common-law systems. In many rape trials, the guilt or innocence of the accused hinges on whether or not the victim consented to sexual intercourse. The determination of consent often can lead to distressing cross-examination of rape victims in court. As a result, many rape victims choose not to report the crime to police or refuse to press charges against their assailants.

It has come to my knowledge that the psychological motivations of rapists are more complex than was formerly thought. They may include the desire to punish, to gain revenge, to cause pain, to prove sexual prowess, and to control through fear. The psychological reactions of victims of rape also vary but usually include feelings of shame, humiliation, confusion, fear, and rage. Victims often report a feeling of perpetual defilement, an inability to feel clean, an overwhelming sense of vulnerability, and a paralyzing feeling of lack of control over their lives. Many are haunted by fear of the place in which the crime occurred, or of being followed, or of all sexual relationships. Others experience long-term disruption of sleep or eating patterns or an inability to function at work. The duration of the psychological trauma varies from individual to individual; many feel the effects for years, even with considerable supportive therapy. In view of the great psychological harm it causes, many psychologists regard rape as a form of serious hacker and a permanent mutilation of an individual's life. In addition to these psychological effects, in some societies victims of rape face the danger of ostracism or even death at the hands of relatives seeking to preserve their family's honour (victims of abduction without rape may be treated in the same way).

Sexual violence is any unwanted sexual act or activity. There are many different kinds, including: rape, sexual abuse (including in childhood), sexual assault, sexual harassment, forced marriage, so-called honour-based violence, female genital mutilation (FGM), trafficking, sexual exploitation (including child sexual exploitation), and others. Sexual violence can be perpetrated by a stranger, or by someone known and even anyone. No-one ever deserves or asks for it to happen.

100% of the responsibility for sexual violence lies with its perpetrator(s). There is no excuse for sexual violence; it can never be justified or explained away.

If you have been raped or been through any kind of sexual violence, no matter how long ago, where you were, what you were doing, wearing, or saying, whether you were drunk or had taken drugs, **it was not your fault and you did not deserve this.**

## **EXCEPTION**

1. A medical procedure or intervention shall not constitute rape.
2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age.

U/s 228A[2] of Indian Penal Code, No person can disclose the name of the rape victim and if anybody discloses the name, he shall be punished with either description for a term which may extend to two years and shall also be liable for fine.

U/s 114-A[3] of Indian Evidence Act, presumption can be made as to the absence of consent in certain prosecutions for rape.

U/s 53(1)[4] of Code of Criminal Procedure, When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for tha.

U/s 164A[5] of Code of Criminal Procedure, provisions for medical examination of rape victim are given.

U/s 327(2)[6] of Code of Criminal Procedure, there should be in camera trial for all rape victims.

The Judiciary in India is burdened with a lot of work and therefore judgment of the rape cases comes very late. Sometimes it comes so late that either of the parties had died. So, there should be speedy trials in rape cases so that the victim gets justice as it is rightly stated that “Justice delayed is justice denied.”

As every coin has two sides, in this case also there are two sides. Many a times girls also make fake complaints just to ruin the life of a boy, sometimes the parents of girl compels her to file a complaint against the boy she loves, as the law shows a lot of sympathy towards the girl. The accused is left with nothing, when the complaint is made his life is ruined irrespective of the fact that he was proved guilty or not. So, in my views there must come an amendment which equalizes the burden of proof on both the sides and the law works smoothly. It should be such that is contradicts the statement i.e. “Law is there for vigilant.”

**Justice Krishna Iyer has observed in a very famous case of Rafiq v. State, “A murderer kills the body but a rapist kills the soul.”**

**Is India effectively protecting its daughter against Rape?<sup>8</sup>**

In order to persuasively answer the aforementioned question, it would be sagacious to look at the data released by the National Crime Records Bureau (NCRB) on 9<sup>th</sup> January 2020. The department functions under the Union Ministry of Home Affairs and is responsible for collecting and analyzing crime data as defined by the Indian Penal Code and special and local laws of the country. The significant findings from the data produced by NCRB pertaining to the offense of rape are as follows:

- A rape was reported every 15 minutes on an average in India in 2018.
- The total incidents of rape that were reported during the year 2018 are 33,356, involving 33,977 victims, making an average of 89 rapes daily.
- Out of these reported cases, just over 85 per cent led to charges and merely 27 per cent of them led to convictions.
- Every fourth victim of rape across the country was a minor, while more than 50 per cent of them belonged to the age category of 18 to 30 years.
- Furthermore, in almost 94 per cent of the cases, the perpetrators were known to the victims. According to the findings of the data, such an offender could be a family member, friend, live-in partner, employer, etc., In 15,972 of the total 33,356 reported cases, the offender was a family friend, neighbour, employer or some other known person, while in 12,568 cases, the offenders were friends, online friends, live-in partners or separated husbands.
- Among states, Madhya Pradesh reported the highest (5,433) number of rape cases in the year 2018, followed by Rajasthan (4,335), Uttar Pradesh (3,946), Maharashtra (2,142), Chhattisgarh (2,091), Kerala (1,945), Assam (1,648), Delhi (1,215), Haryana (1,296), Jharkhand (1,090) and West Bengal (1,069).

<sup>8</sup> Lawtimesjournal.in/rape.laws.in India

## **PUNISHMENT FOR R RAPE**

### **SECTIN 376**

- (1) Whoever, except in the cases provided for in sub section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.
- (2) Whoever,-
- (a) Being a police officer, commits rape-
    - (i) Within the limits of the police station to which such police officer is appointed; or
    - (ii) In the premises of any station house; or
    - (iii) On a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or
  - (b) Being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
  - (c) Being a member of the armed forces deployed in area by the Central or State Government commits rape in such area; or
  - (d) 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, commits rape on any inmate of jail, remand home, place or institution; or
  - (e) Being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
  - (f) Being a relative, guardian or teacher of, or a person in a position of trust or authority towards the women, commits rape on such woman; or
  - (g) Commits rape during communal or sectarian violence; or
  - (h) Commits rape on women knowing her to be pregnant; or
  - (i) Commits rape on woman when she is under sixteen years of age (this clause now stands omitted by the Criminal Law (Amendment) Act, 2018); or
  - (j) Commits rape, on a woman incapable of giving consent; or
  - (k) Being in a position of control or dominance over a woman, commits rape on such woman; or
  - (l) Commits rape on a woman suffering from mental or physical disability; or
  - (m) While committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
  - (n) Commits rape repeatedly on the same woman,

Shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

**The Criminal Law (Amendment) Act, 2018 has added a new sub-section (3) in section 376 which reads as under:**

(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also liable to fine.

Provided that such fine shall also be just and reasonable meet the medical expenses and rehabilitation of the victim.

Provided further that any fine imposed under this sub-section shall be paid to the victim.

**EXPLANATION**- for this sub-section,-

- (a) "armed forces" means the naval, military and air forces and includes any member of the armed forces constituted under any law for the time being in force, including the parliamentary forces and any auxiliary forces that are under the control of the Central Government or the State Government;
- (b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence of or persons requiring medical attention or rehabilitation;
- (c) "police officer" shall have the same meaning as assigned to the expression "police" under the police Act, 1861 (5 of 1861);
- (d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women and children.

## **SECTION 376 A**

### **PUNISHMENT FOR CAUSING DEATH OR RESULTING VEGETATIVE STATE OF VICTIM**

Whoever, commits an offence punishable under section (1) or sub-section (2) of section 376 and in the course of such commission inflicts which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall be not less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.

## **SECTION 376 AB**

### **PUNISHMENT FOR RAPE ON WOMAN UNDER TWELVE YEARS OF AGE**

This Criminal Law (Amendment) Act, 2018 omitted clause (i) in section 376 and added a new section 376 AB which provides as under:

Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life,, which shall mean imprisonment for the remainder of that person's natural life, and with fine or death.

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim.

Provided further that any fine imposed under this section shall to be paid to the victim.

## **SECTION 376 B**

### **SEXUAL INTERCOURSE BY HUSBAND UPON HIS WIFE DURING SEPERATION**

Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description, for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

**SECTION 376 C**

**SEXUAL INTERCOURSE BY A PERSON IN AUTHORITY**

Whoever being,-

- (a) In a position of authority or in a fiduciary relationship; or
- (b) A public servant; or
- (c) 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 a women's or children's institution; or
- (d) On the management of a hospital or being on the staff of a hospital,

Abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

**EXPLANATION-**

- 1. In this section, "sexual intercourse" shall mean any of the acts mentioned in clause (a) to (d) of section 375.
- 2. For the purpose of this section, Explanation 1 to section 375 shall also be applicable.
- 3. "Superintendent", in a jail, remand home or other place of custody or a woman's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise authority or control over its inmates.
- 4. The expressions "hospital" and "women's or children's institutions" shall respectively have the same meaning as in Explanation to sub-section (2) of 376.

**SECTION 376 D**

**GANG RAPE**

Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine.

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim.

Provided further that any fine imposed under this section shall be paid to the victim.

**SECTION 376 DA**

**PUNISHMENT FOR GANG RAPE ON WOMAN UNDER THE SIXTEEN YEARS OF AGE**

Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall imprisonment for rest of the remainder person's natural life and with fine.

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim.

Provided further that any fine imposed under this section shall be paid to the victim.

**SECTION 376 DB**

**PUNISHMENT FOR GANG RAPE ON WOMAN UNDER TWELVE YEARS OF AGE**

Where a woman under twelve years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall imprisonment for rest of the remainder person's natural life and with fine.

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim.

Provided further that any fine imposed under this section shall be paid to the victim.

**SECTION 376 E**

**PUNISHMENT FOR REPEAT OFFENDERS**

Whoever has been previously convicted of an offence punishable under section 376 or section 376 A to Section 376 DB and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.

### **RELEVANT CASE LAWS IN SUPPORT**

#### **MUKESH AND ANOTHER V/S STATE OF NCT OF DELHI & ORS, 2017:**

-This is the popular Nirbhaya Gang-rape case of a 23-year-old girl committed on the doomed night of 16<sup>th</sup> December 2012 which shook the conscious of not only the entire nation but the whole world. The bestial proclivity, loathsome brutality and immense trauma to which the young lady was subjected, led to thousands of protestors marching across the streets with candles and placards in their hands, demanding justice for Nirbhaya.

-When the matter reached the Honorable Supreme Court, it opined that the instant case of the gang-rape, unnatural sex and insertion of iron rod in the private parts of the victim falls within the category of 'rarest of rare case' where the question of any other punishment is 'unquestionably foreclosed'.

-Furthermore, it was asserted that "When the crime is brutal, shocking the collective conscience of the community, sympathy in any form would be misplaced and it would shake the confidence of the public in the administration of criminal justice system. Whether there is no alternative punishment suitable except for the death sentence. Where a crime is committed with extreme brutality and the collective conscience of the society is shocked, courts must award the death penalty, irrespective of their personal opinion as regards desirability of the death penalty. By not imposing a death sentence in such cases, the courts may do injustice to the society at large."

#### **INDEPENDENT THOUGHT V/S UNION OF INDIA, 2017:**

-In this case, Honorable Supreme stipulated that sexual intercourse with a girl below 18 years of age is deemed to be rape regardless of the fact that she is married or not and that the exception carved out in the IPC fosters a superfluous, capricious and synthetic distinction between a married girl child and an unmarried girl child and is therefore liable to be thrown down the gauntlet.

#### **VISHAKHA V/S STATE F RAJASTAN AND ORS. 1997:**

-This was a landmark case pronounced by the Honorable Supreme Court regarding the protection of women against sexual harassment at the workplace. In this case, it had been asseverated that the sexual harassment of a woman at her workplace is a transgression of the fundamental rights of gender equality and right to life and liberty enshrined under Articles 14, 15, 19 and 21 of the Indian Constitution. The court further concluded that such an act is also a violation of women's human rights.

**MANOHARAN V/S STATE BY INSPECTOR OF POLICE, 2019:**

In this case, the Apex Court observed that the instantaneous case consists of a petrifying criminal act wherein a young 10-year-old girl has first been horribly gang-raped and after that, she and her brother aged 7 years were thrown away into a canal which caused their death by drowning.

Since the case involved a child below the age of 12 years, the same fell under Section 5(m) of the POCSO Act. Consequently, the Apex Court reaffirmed the decision of Madras High Court in awarding a death sentence to the accused and the appeal was outright dismissed.

**STATE OF KARNATAKA V/S KRISHNAPPA, 2000:**

In this case, the Honorable Supreme Court avowed that sexual violence in addition to being a dehumanizing perversion is also a villainous encroachment upon the right to privacy and sanctity of a female. Such a degrading and humiliating act is a serious blow to the supreme honour, self-esteem, and dignity of the victim.

**PHUL SINGH V/S STATE OF HARYANA (1980 Cr.L.J.8):**

The Supreme Court described the offence of rape as “violation, with violence, of the private person of a woman”. In this case the accused, a young philanderer aged 22, overpowered by his sex drive, barged into his cousin’s house next door and in broad day light overpowered a young 24 years old girl, raped her in hurried heat and then made an urgent exit, having fulfilled his erotic sortie. The Court awarded him a sentence of four years rigorous imprisonment only, on the ground that he was not a habitual offender and had no vicious antecedents.

**IN RAFIQ V/S STATE OF UTTAR PRADESH (1980 4 SCC 262):**

A middle age baal sewika in a village welfare organisation was raped by the accused when she was sleeping at night in a girl’s school. The next day, the victim related the incident to mukhya sewika of the village, which resulted in the conviction of the accused for seven years rigorous imprisonment. The High Court confirmed the sentence, but the accused applied for special leave appeal to the Supreme Court on two grounds. Namely absence of injuries on the body of the victim. Absence of corroborative evidence. The Supreme Court rejected his plea and held that need of corroborative evidence and the presence of injury marks of the body of the victim are not imperative for conviction in all the cases. In other words of the Court- **“RAPE OF A WOMAN**

**IS A DEATHLESS SHAME AND MUST BE DEALT WITH AT THE GRAVEST AGAINST HUMAN DIGNITY”.**

**IN SURESH CHAND V/S STATE OF HARYANA (1976 Cri. L.J. 452):**

The prosecution proved that the two girls were returning from the fields to their house. On their way, they plucked some fruits from the field of another person and ate them. The accused, who was present in the field, caught one of them, aged about eight years, and took her inside the field. He then pulled off the underwear of the girl, undressed himself, threw her on the ground and tried to rape her. The girl began to bleed and raised an alarm, as a result of which the accused ran away. The medical evidence showed that the hymen was not injured, although there were injury marks on the fourchette. In the circumstances, the High Court of Punjab and Haryana held that the accused was guilty of an attempt to rape.

**RAPE.....WHY ALWAYS WOMAN?**

The definition of rape in IPC is very narrow and has made it absolutely clear that only forceful vaginal penetration by a man will amount to rape. So, as per our laws, men can never get raped and women can never be guilty of rape.

The only provision that can protect men from sexual offences is Section 377 of the IPC, wherein the offender either a man or a woman can be held guilty of forced carnal intercourse. However, forced intercourse with a man cannot amount to rape.

The unequal treatment by our statutes based on gender is mainly due to our society, where men facing sexual abuses are subject to ridicule. With numerous myths flowing around such as: ‘men are not vulnerable’, ‘men always want sex’.etc, it is unlikely that our laws will see a change to support in the near future.

Gender doesn't matter in case of a child, whether male or female – all children are protected from sexual offences under the POCSO ACT, 2012.

**ATTEMPT TO RAPE**

In cases where an indecent assault is made upon the person of a woman, but where rape is not committed- the culprit is charged with Section.354 of IPC, because unless the Court is satisfied that there was determination in the accused to gratify his passion at any cost, and in spite of all resistance, such person is not charged with rape.

Section.354 of the IPC prescribes punishment for anyone who assaults or uses criminal force to any woman with an intent to outrage her modesty. An indecent assault upon a woman is punishable under this section. Rape is punished

under Section.376; but the offence under this Section is of less gravity than rape. And also because a person who is guilty of attempting rape cannot be allowed to escape with the lesser penalty of this section. An indecent assault, i.e., an assault which right minded persons would consider as indecent- accordingly any evidence explaining the defendants conduct, or whether any admission by him or otherwise is admissible to establish whether he intended to commit an indecent assault, as is stated under Section.21 sub clause (2) of the Evidence Act, which reads:

Section.21 (2): An admission may be proved by or on behalf of the person making it, when it consists of statements of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

### **OTHER SEXUAL OFFENCES**

(INSERTED BY 2013 AMENDMENT)

The 2013 amendment has inserted four new sections, namely Section 354A, Section 354B, Section C and Section D to deal with offences relating to sexual harassment of women, assault or criminal force used on a woman with intent to disrobe her, voyeurism and stalking. Significantly, all these offences are gender-specific and can be committed only by men against women.

The Criminal Law (Amendment) Bill, 2013, more popularly called the Anti-Rape Bill, is now law. The Act came into force on 3<sup>rd</sup> February, 2013 following the outrage of the entire nation behind the homicidal gang rape that took place in New Delhi on the night of 16<sup>th</sup> December 2012. The protest in the Delhi after the barbarous Rape Incident indicated the whole of India, the enormity as well as the seriousness for an immediate reform in Rape Laws.

The nation-wide outrage over the brutal gang-rape and subsequent death of the physiotherapy intern in India's very own capital city, New Delhi was the driving force behind the passing of the Criminal Law (Amendment) Act, 2013. It has been known all over as one of the most concrete steps taken by the Indian government to curb violence against women. Major amendments by the Act, not only widen the ambit of certain offenses but also recognize new offenses like acid attacks which earlier lacked a specific provision and definition in the Code. The Act is deemed to be one of the most important changes that have been made in the existing criminal laws namely the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act.

The Act recognizes the broad range of sexual crimes to which women may fall victim, and a number of ways in which gender based discrimination manifests itself. It also acknowledges that lesser crimes of bodily integrity often escalate to graver ones. It seeks to treat cases as "rarest of the rare" for which courts can award capital punishment if they decide so. The Act clarifies and extends the offense of sexual assaults or rape as a result of abuse of position of trust. As per the Act, the police will also be penalized for failing to register FIRs – this will make it easier for rape victims to report their cases.

The Act introduced unprecedented provisions in the Indian Penal Code which criminalises sexual voyeurism and stalking and amends legal provisions to protect the privacy of individuals, such as discontinuing the practice of examination of the sexual history of the victim of a sexual assault for evidence. With instances of threats to individual privacy on the rise in India, it was high time that the criminal law expands its scope to deal with offences which violate physical privacy.

The Act has also been widely criticized for not following the recommendations of the Verma Committee that had been specifically constituted to observe and recommend changes in the present penal provisions.

### **CRIMINAL LAW (AMENDMENT) ACT, 2013:**

The Criminal Law (Amendment) Act, 2013, an Indian legislation passed by the Lok Sabha on 19 March 2013, and by the Rajya Sabha on 21 March 2013, provides for amendment of Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973 on laws related to sexual offences. The Bill received Presidential assent on 2 April 2013 and deemed to come into force from 3 February 2013. It was originally an Ordinance promulgated by the President of India, Pranab Mukherjee, on 3 February 2013, in light of the protests in the 2012 Delhi gang rape case. This incident generated huge international coverage and was condemned by the United Nations Entity for Gender Equality and the Empowerment of Women, who called up the Government of India and Delhi “to do everything in their power to take up radical reforms and the like to make women’s lives safer and secure”<sup>9</sup>

There had been widespread demand by the public as well as various human rights groups and women’s organisations to change or amend the existing law relating to sexual offences. A graver punishment for the accused was demanded for committing such a heinous crime.

In a meeting at UN Women, Justice Verma stated that, “to ensure its success, it is important that the Act be implemented with dedicated human and financial resources, and clarity in roles and responsibilities. A law is only as good as the systems and individuals that implement them. Mindsets and attitudes need to change so women can truly be respected equally and value in society.”<sup>10</sup>

### **REASONS FOR THE ENACTMENT:**

The nation-wide spread outrage over the brutal gang rape and subsequent death of the physiotherapy intern in India’s very own capital city, New Delhi was the driving force behind the passing of the Criminal Law

<sup>9</sup> The Criminal Law (Amendment) Act, 2013

<sup>10</sup> “UN Women welcomes India’s Criminal Law (Amendment) Act as a deterrent to violence against women” available at <http://www.unwomensouthasia.org/2013/un-women-welcomes-india>

(Amendment) Act, 2013 that sought to amend the existing laws regarding sexual offences in India. The Act is deemed to be one of the most important changes that have been made in the existing criminal laws namely the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act.

### **NIRBAHAYA CASE / 2012 DELHI GANG RAPE CASE:**

The 2012 Delhi gang rape case involved a rape and fatal assault that occurred on 16 December 2012 in Munirka, a neighborhood located in the southern part of New Delhi, when a 23-year-old female physiotherapy intern was beaten and gang raped in a private bus in which she was travelling with a male friend. The victim later died due to her injuries. The incident generated widespread national and international coverage and was widely condemned, both in India and abroad. Subsequently, public protests against the Government of India and the Government of Delhi for failing to provide adequate security for women took place in New Delhi, where thousands of protesters clashed with security forces. Similar protests took place in major cities throughout the country demanding stricter laws and speedy justice.

### **FACTS:**

The gang rape in Delhi took place on the night of 16<sup>th</sup> December 2012. The victim, a 23 year old physiotherapy intern took a ride home in a private bus that night, with her friend. There were six other people on the bus, including the driver.

The victim and her friend were beaten up when they raised their suspicions as to route of the bus to the destination. The woman was later raped by all the men while the bus was moving and her friend was beaten unconscious. After the beatings and rape, both the victims were thrown out of the moving bus by their perpetrators and left on the side of the road, partially clothed. Later, a PCR van arrived at the scene after receiving a call from a passerby. The victims were taken to the Safdarjung Hospital in Delhi for treatment.

Medical investigation of the woman suggested she was penetrated by a blunt object, probably a rod-like object that had caused extensive damage to the internal organs of the victim. Two blood-stained metal rods were retrieved from the bus on police inspection, which the medical staff later confirmed to be the object used for penetration that had caused serious injuries to the victim's uterus, genitals and the abdomen.

Within a day of the commission crime, arrests were made by the Delhi police in the case and all the six accused including a juvenile were arrested.

## **TRIAL AND VERDICT:**

### Trial-

There was a huge demand for speedy trial and immediate prosecution in the matter. While five of the accused were tried for the crime before the Additional Sessions Judge in the Special Fast Track Court, the sixth accused, who was a juvenile at the time of the crime, was tried before the Juvenile Justice Board.

However, during the trial, one of the accused, Ram Singh was found dead in his prison cell. The remaining accused were booked for rape, murder, kidnapping, destruction of evidence, and the attempted murder of the woman's male companion under Sections 120-B, 365, 366, 307, 376 (2)(g), 377, 396, 302, 397, 201 and 412 of the Indian Penal Code, 1860.

### Conviction and Sentencing-

The juvenile defendant was found guilty of rape and murder of the victim under the Juvenile Justice Act by the Juvenile Justice Board on the 31<sup>st</sup> of August 2013. He was sentenced to three years imprisonment in a reform facility.

The remaining four accused, after the death of Ram Singh, were found guilty of rape, murder, unnatural offences and destruction of evidence by the fast-track court. They were sentenced to death penalty by the court on 13<sup>th</sup> September 2013.

## **CONSEQUENCES:**

Widespread protests followed after the gang rape incident occurred. There were protest movements nationally as well as internationally, all demanding stricter laws to check violence against women. This particular incident garnered huge popularity because of the heinous nature of the crime committed. As a result of the nationwide protests, the Justice Verma Committee was constituted under the notification of the Government of India to suggest changes in the existing laws.

## **THE JUSTICE VERMA COMMITTEE:**

On December 23, 2012 a three member Committee headed by Justice J.S. Verma, former Chief Justice of the Supreme Court, was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. The other

members on the Committee were Justice Leila Seth, former judge of the High Court of Delhi and Gopal Subramaniam, former Solicitor General of India.

The committee urged the public in general and particularly eminent jurists, legal professionals, NGOs, women's groups and civil society to share their views, knowledge and experience suggesting possible amendments in the criminal and other relevant laws to provide for quicker investigation, prosecution and trial, and also enhanced punishment for criminals accused of committing sexual assault of an extreme nature against women.<sup>11</sup>

### **OBJECTIVE OF THE COMMITTEE:**

The key objective of the Commission was to review for possible amendments to the criminal law and suggest measures for faster trials and harsher penalties for vicious offences related to violence against women. Taking further cognizance of the strident storm of public protests in general and a tribute to Nirbhaya in particular, on January 23, 2013, the commission submitted its recommendations by identifying 'lack of good governance' as the central cause of violence against women. The commission goes on to criticize the government, the abysmal and old-fashioned police system alongside public apathy in tackling violence against women, and thereby, recommends dramatic transformation in legislations. It made recommendations on laws related to rape, sexual harassment, trafficking, and child sexual abuse, medical examination of victims, police, electoral and educational reforms.

The Committee adopted a multidisciplinary approach interpreting its mandate expansively. The Report deals with sexual crimes at all levels and with the measures needed for prevention as well as punishment of all offences with sexual overtones that are on affront to human dignity. This is on the basis that the issue of sexual assault against women is one that goes to the core of social norms and values. The Report also deals with the construct of gender justice in India and the various obstructions to this. The Committee's approach is founded on achieving the guarantee of equality for all in the Constitution of India.

The comprehensive 630 page report, which was completed in 29 days, was appreciated both nationally and internationally. This eventually led to the passing of the Criminal Law (Amendment) Act, 2013, which was criticised as not adequately applying the Committee's work and recommendations. The committee in its report blamed the government, police insensitivity and gender bias for the rising crimes against women in the country. It also created some offences like disrobing a woman, voyeurism, stalking and trafficking.<sup>12</sup>

<sup>11</sup> [www.lawoctopus.com/criminal-law-amendment-2013](http://www.lawoctopus.com/criminal-law-amendment-2013)

<sup>12</sup> [Law-times-journal.in/rape/case-in-india](http://Law-times-journal.in/rape/case-in-india)

The Justice Verma Committee (JVC) report was a landmark statement, applauded by all citizens, welcomed by all Political Parties. JVC was significant because it showed a mirror to the Constitution of India, and reflected its wise and just guarantees of women's equality. Today the women and youth of India are looking with hope and expectation towards Parliament, and towards all Political Parties. There has been an urge to all Members of Parliament to pass a law upholding the spirit and letter of the Justice Verma Committee; to pass a law that makes a step forward in our collective struggle to end sexual violence in India.

### **AMENDMENT OF THE PROVISIONS OF THE INDIAN PENAL CODE, 1860**

#### **SEXUAL HARASSMENT (SECTION 354A):**

Under Section 354A, if a man commits any of the following four acts, he is deemed to be guilty of the offence of 'sexual harassment'. The four acts specified in section are:

- i. Physical contact and advances involving unwelcome and explicit sexual overtures; or
- ii. A demand or request for sexual favours; or
- iii. Showing pornography against will of a woman; or
- iv. Making sexually coloured remarks.

The punishment for acts falling under clauses i, ii and iii above is rigorous imprisonment for a maximum term of three years or fine or both. For acts falling under clause iv, the punishment is milder: imprisonment of either description for up to one year or fine or both.

According to the Indian Constitution, sexual harassment infringes the fundamental right of a woman to gender equality under Article 14 and her right to life and live with dignity under Article 21.

#### **ASSAULT OR CRIMINAL FORCE WITH INTENT TO DISROBE A WOMAN (SECTION 354B):**

The new Section, Section 354B, provides that if any man assaults or uses criminal force to any woman – or abets such an act – with the intention of disrobing her or compelling her to be naked, he is to be punished with minimum imprisonment of either description for three years, which can extend to a maximum of seven years and also fine.

#### **VOYEURISM SECTION 354 C:**

Section 354 C has introduced the concept of voyeurism into the Indian Penal Code, with stringent punishments prescribed for this act. The Section provides that any man watches or captures the images of a woman engaging in a private act, in circumstances where she could usually expect not being observed by the perpetrator (or by any other person at his behest) or who disseminates such an image, is liable to be punished for such an offence. The punishment depends on whether the offender has committed the offence for the first time or whether the offender has committed the offence for the first time or whether it is a 'repeat offence'.

- If it is the offender's first conviction for this offence, he is liable to be punished with imprisonment of either description between one and three years plus fine.
- In case of second or subsequent conviction of the same offender, the punishment is enhanced to imprisonment of either description between three and seven years plus fine.

It is clarified that if the victim has consented to the capturing of the images but not to their dissemination of third persons, such dissemination is to be considered to be an offence.

Section 354 C also clarifies the term "private act". This expression includes an act of watching, carried out in a place which, in the circumstances, would reasonably be expected to provide privacy, and where the victim's genitals, posterior or breasts are exposed or covered only in underwear, or the victim is using a lavatory or the victim is doing a sexual act that is not of a kind ordinarily done in public.

#### **STALKING SECTION 354 D:**

Whether physical or on the internet – was earlier not specific offence under the Indian Penal Code.

Section 354 C now makes it an offence and provides that a man shall be guilty of this offence if he-

- i. Follows a woman and contact such woman to foster personal interaction repeatedly, despite a clear indication of disinterest by such woman; or
- ii. Monitors the use by a woman of the internet, email or any other form of electronic communication.

The punishment for a first conviction is imprisonment of either description up to three years plus fine. For a second and subsequent offence, the enhanced penalty is imprisonment of either description up to five years plus fine.

However, no such offence is committed if the man who is accused of the offence proves that –

- i. It was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
- ii. It was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
- iii. In the particular circumstances, such conduct was reasonable and justified.

Although these three defences are available to a man who is accused of this offence, the language of the section makes it clear that the burden of proof lies on the accused.

#### **PROVISIONS AFTER AMENDMENT:**

Section 375 – Under the new section, a man is said to commit rape if there is:

- Penetration of penis into vagina, urethra, mouth or anus of any person, or making any other person to do so with him or any other person;
- Insertion of any object or any body part, not being penis, into vagina, urethra, mouth or anus of any person, or making any other person to do so with him or any other person;
- Manipulation of any body part so as to cause penetration of vagina, urethra, mouth or anus or any body part of such person or makes the person to do so with him or any other person;
- Application of mouth to the penis, vagina, anus, urethra of another person or makes such person to do so with him or any other person;
- Lastly, touching the vagina, penis, anus or breast of the person or makes the person touch the vagina, penis, anus or breast of that person or any other person.

**The 2013 Act expands the definition of rape to include oral sex as well as the insertion of an object or any other body part into a woman’s vagina, urethra or anus.**

The punishment for rape is seven years at the least, and may extend up to life imprisonment. Any man who is a police officer, medical officer, army personnel, jail officer, public officer or public servant commits rape may be imprisoned for at least ten years. A punishment of life imprisonment, extending to death has been prescribed for situations where the rape concludes with the death of the victim, or the victim entering into a vegetative state. Gang rape has been prescribed a punishment of at least 20 years under the newly amended sections.

The new amendment defines ‘consent’, to mean an unequivocal agreement to engage in a particular sexual act; clarifying further, that the absence of resistance will not imply consent. Non-consent is a key ingredient for commission of the offence of rape. The definition of consent therefore is key to the outcome of a rape trial, and has been interpreted systemically to degrade and discredit victims of rape.

### **GENDER-NEUTRAL OR GENDER-SPECIFIC OFFENCE:**

Earlier the offence of rape, i.e. ‘sexual assault’ was a gender neutral offence, while now this offence is women centric. Only a man is assumed to be capable of committing such offence and that too against a woman only. The aspect of gender neutrality was required in following aspects:

#### **1. Neutrality with respect to the victim:**

Often the members of the marginalised sex like ‘Transgender’ are also victim of this offence and as such they cannot claim any protection because the crime of rape is not gender neutral.<sup>13</sup>

<sup>13</sup> Upendra Baxi, *Human Rights Violations against the Transgender Community*  
<http://ai.eecs.umich.edu/people/conway/TS/PUCL/PUCL%20Report.html>; accessed on 14.02.2014

## 2. **Neutrality with respect to the perpetrator:**

During the war in Iraq it surfaced that many women officers also involved themselves in torturing the prisoners by variant sexual assaults. This strengthened the assumption that even women can be perpetrator of such crimes. There are two occasions when the need for gender neutrality arises even in India. Firstly, when during some communal or casteist violence a women is found to be participus criminus. Secondly, when a transgender person is an offender. The recent case of Pinki Pramanik, where her partner filed a case of rape against her, shows the very real possibility of female to male transgender persons or male to female transgender persons (either pre- or post- transition) causing sexual assault on a woman.

## 3. **Marital Rape:**

The absence of law on marital rape (sexual assault), would also fail the objective as married women cannot be protected. The law under 376-A and exception under 375 should be deleted equate marital rape and sexual assault. As the S. 3 of DVA is only applicable in grave life threatening scenario the need for consent of woman isn't important leaving her as an object of sex.<sup>14</sup>

### **DISTINCTION BETWEEN THE VERMA COMMITTEE RECOMMENDATIONS AND THE CRIMINAL LAW (AMENDMENT) ORDINANCE, 2013**

The major differences between the Ordinance passed by the government and the J. S. Verma Committee recommendations were:

1. The Justice J. S. Verma Committee recommended 20 years imprisonment for gang-rape and life imprisonment for rape and murder but refrained from using the term “death penalty” though there was public outcry to sentence rapists with death sentence following the brutal gang-rape and murder of a 23-year-old medical student in Delhi on December 16, 2012.

However, the ordinance passed by the Cabinet went for a harsher punishment for a rapist – a minimum of 20 years imprisonment for rapists and even death penalty in extreme cases.

2. Verma panel recommended criminalization of marital rape but the ordinance rejected it.
3. The Justice J. S. Verma Committee recommended restriction of politicians facing sexual offence charges from contesting elections. Ordinance rejected this recommendation.
4. The panel recommended that the senior police or army officials be held responsible for sexual offences committed by their junior but the ordinance rejected it.

<sup>14</sup> Protection of Woman from Domestic Violence Act, 2005

5. The Justice J. S. Verma Committee wanted to make videography of recording statement from victim mandatory but the ordinance made it optional.
6. The Justice J. S. Verma Committee wanted the definition for sexual offences as rape but the ordinance replaced it with the word “sexual assault”<sup>15</sup>

### **CRITICISM OF THE ACT:**

The Criminal Law (Amendment) Act, 2013 has been strongly criticised by several human rights and women’s rights organisations for not including certain suggestions recommended by the Verma Committee Report like, marital rape, reduction of age of consent, amending Armed Forces (Special Powers) Act so that no sanction is needed for prosecuting an armed force personnel accused of a crime against woman. The Government of India replied that it has not rejected the suggestions fully, but changes can be made after proper discussion.

Critics of the 2013 Act run the gamut of political and ideological affiliations. One of the most notable omissions of the Act is its failure to criminalize marital rape—as recommended by the Verma Committee—which places India in the company of a select group of nations, including China, Pakistan and Saudi Arabia. In the fervent debate that preceded the 2013 Act, opponents insisted that criminalizing marital rape would destroy the institution of marriage, and allow women to fabricate claims of rape, since rape within marriage was “difficult to prove.” The remedy espoused by the self-styled saviors of marriage is divorce or prosecution for cruelty, but not for rape. However, such “justifications” ignore the very specific harms induced by the crime of rape, which violates a woman’s physical integrity and sexual autonomy by forcing her to submit to unwanted intercourse.

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<sup>15</sup> “Government Ordinance vs. J. S. Verma Committee Recommendations” available at <http://www.ibtimes.co.in/articles/430786/20130202/government-ordinance-vs-js-verma-committee-recommendations.html>; accessed on 14.02.2014

## **UNNATURAL OFFENCE**

### **SECTION 377**

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life or for 10 years and fine.

#### **EXPLANATION:**

Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

This section provide punishment for what is known as sodomy, buggery and bestiality. The offences consists in a carnal intercourse committed against the order of a nature by a man with a man, or in the same manner with a woman, or by a man or woman in any manner with a beast. As in rape, penetration, however slight, is essential. Consent is immaterial in a case under this section. The person who takes a passive part is equally guilty as an abettor with the person actively participating in the act.

Several acts between consenting homosexuals become punishable under this section. Whether this provision is relevant in the liberalized climate of the twenty-first century is worth consideration.

#### **CONSTITUTIONAL VALIDITY OF SECTION 377:**

It deserves to be noted that Section 377, which was enacted by the British Colonial Rulers in 1863, was devised to prevent and criminalise homosexual sex, as well as certain consensual heterosexual acts, both of which were frowned upon in those days. It was widely felt today, such provisions in the penal law of the country are outdated and impose an unreasonable –unnecessary- restriction on an individual's freedom, and therefore, ought to be repealed.

In 2001, an activist group, the NAZ Foundation, filed a public interest litigation (PIL) in the Delhi High Court, seeking legislation of such acts between consenting adults. In 2003, the High Court passed an order refusing to hear such a PIL, observing that the NAZ Foundation had no locus standi in the matter. When the Foundation appealed to the Supreme Court, the apex court held that the foundation did have locus standi, and remanded the case back to the High Court for disposal on merits.

On July 2, 2009, that is, eight long years after the PIL was filed, a Bench of the Delhi High Court headed by the then Chief Justice, Ajit Shah, delivered a historic ruling to the effect that this section , as it stands, violates

Article 14 of the Constitution. The Court thus overturned the 150 years old provision that punished homosexual activities between consenting adults.<sup>16</sup>

The Delhi High Court also observed that its judgment would hold good until Parliament chooses to amend the Indian Penal Code suitably. It also clarified that Section 377 would continue to apply to non-consensual intercourse and to intercourse with the minors.

When the case reached the Supreme Court in appeal, the apex court reversed the judgment of the High Court, and restored Section 377 to its infamous glory. On December 11, 2013, it ruled that Section 377 rightly makes homosexuality a criminal offence. The Bench of the Supreme Court upheld the validity of section 377 which makes such acts of sex a punishable offence. It also put the ball in the Government's court, observing that Parliament was free to modify or annul the law by a suitable legislation.

A review petition filed in the matter was also rejected. Thus, the process of setting the clock ahead, rightly set in motion by the Delhi High Court, was effectively reversed by the highest court of the country.

On 6 September 2018, the Court ruled unanimously in **NAVTEJ SINGH JOHAR V. UNION OF INDIA** that Section 377 was unconstitutional "in so far as it criminalises consensual sexual conduct between adults of the same sex". The judgment was given by a five Judges bench comprising the then Chief Justice of India DIPAK MISHRA, JUSTICES R.F.NARIMAN, D.Y.CHANDRACHUD, A.M.KHANWILKAR and INDU MALHOTRA.

The apex court, however, said other aspects of Section 377 of IPC dealing with unnatural sex with animals and children shall remain in force.

## **Homosexual rape, what need to be understand.....**

Section 377 of the IPC used to criminalise even consensual sex among people belonging to the same gender as being 'unnatural'. A ray of sunshine was brought upon by the Supreme Court in the case of Navtej Singh Johar v. Union of India, wherein consensual gay sex was decriminalised.

The relationship between rape and homosexuality can be best understood by studying male rape. Offender(s) may deny homosexuality and confuse an aggressive active behaviour with a masculine (even macho) behaviour. They may project their homosexual feelings onto the victim. In the aftermath of rape, the victim may be ashamed of having lost control and may question himself about his real sexual identity. An aspect of female or male rape by a group of males may be an attempt to annihilate latent homosexual tendencies existing

<sup>16</sup> NAZ Foundation v. Government of NCT, Delhi, (2009) 160 Delhi Law Times, 227

between members of this group. Surprisingly, in the short term, post traumatic disorder related to rape and pre-existing psychiatric disorder may develop separately, without substantial interaction.

Non-criminalisation of sexual abuse of boys by adult women in the IPC the 42nd Law Commission Report of 1971 debated whether a mature woman who compels or seduces a boy under the age of 16 to sexual intercourse should be as severely punished as a man in the converse case. The Commission stated that apart from the physiological fact that forcing a boy, in the strict sense, to perform the act is impossible, complaints of a woman forcing or seducing minor boys to illicit intercourse is unheard of. Such lascivious acts on the part of a woman are not so evil as to merit a penal provision.<sup>17</sup>, this mentality persists even to date, and the general criminal law fails to law criminalise sexual abuse of boys by women. This is just a baby step towards achieving equality amongst our society. However, non-consensual homosexual intercourse will not amount to rape, as there are no laws regarding it. Any forceful carnal intercourse will merely be conceived as sexual offence and not rape.

### **CONCLUSION:**

The current interpretation of the offence of carnal intercourse in section 377 IPC, obtained from a combined reading of the new definitions of rape under sections 375 and 376 post-2013 along with case laws in Sakshi's case (2004), Naz (2009) and Suresh Kumar Kaushal (2014), is problematic. Though section 377 punishes only voluntary acts, the court has interpreted this to include types of child sexual abuse which are excluded from section 376. Section 377 would now technically apply to:

- (1) consensual penile-anus, penile-oral, finger-anal, finger-vaginal penetration, or object-vaginal penetration of a man by any person;
- (2) penileanus, penile-oral, finger-anal, finger-vaginal or object-vaginal penetration of minor children irrespective of consent, by any person; and
- (3) bestiality. Section 377 IPC was designed to criminalise voluntary carnal acts, not non-consensual and abusive carnal acts.

The law does not protect men who seek legal recourse for being forced into non-consensual and abusive intercourse with other persons; non-consensual and abusive acts by women upon other women are also not addressed. Discussions on these reforms are beyond the scope of this research, which please be noted.

<sup>17</sup> Law Commission of India (1971). The Indian Penal Code 1860, Para 16.121, p.279 <http://lawcommissionofindia.nic.in/1-50/Report42.pdf>

## PROSTITUTION IN INDIA

Prostitution in India is the oldest profession. It is a general misconception that prostitution in India is illegal, rather prostitution is legal but pimping, owning and managing a brothel is illegal. Mumbai, Delhi, and Kolkata are the major cities in India where brothels are operating illegally in large numbers. Prostitution in itself is neither illegal nor punishable under the act. This article explores the arena of prostitution and does justice to those weaker sections by legalizing this Act.

### HISTORY OF PROSTITUTION:

In India, it took the route of devotion. Anciently, there existed the Devdasi system where it was a prevalent practice among Hindus to contribute their female child for the purpose of dancing in temples and worship of God. However, with diminishing feudalism, these so-called Devdasis lost their protectors and were mishandled by the temple priests. This was the earliest form of prostitution. This practice further flourished in the British era when these outsiders curbed the traditional textile industry, weaponry, etc. and these communities had to turn to prostitution for livelihood.

The Ministry of Home Affairs made a report titled National Crime Records Statistics in 2016 depicting crimes against women among other crimes.

It is estimated that more than 110 women of all age groups have been abducted for the purpose of forced prostitution. About 50 of them are girl children. One-fourth of child abductions for prostitution takes place in the metropolitan cities.

About 2300 cases were filed in 2016 for cases under the Immoral Traffic (Prevention) Act and about 100 victims are men.

Metropolitan cities namely, Mumbai, Delhi, and Kolkata are the major players in the prostitution industry.

The issue of prostitution has become the need of the hour and Governmental agencies are required to address this issue at the earliest. The legalization of prostitution appears to be more practical and feasible than trying to abolish prostitution as the government has been trying it for decades and hardly struck that note. The lives of prostitutes are saddening and it is in the hands of the society to evolve which could be catalyzed by the Governmental Institutions. The male prostitution industry is still unrecognized by law and it calls for due attention. On that note, laws shall be amended to include men along with women.

## **TYPES OF PROSTITUTES:**

Generally prostitutes can be classified on the basis of their 'modus operandi' which is as follows:

┆ **Brothel Prostitutes:** Their operations are carried out in the brothel which is owned by an ex – prostitutes. The prostitutes work for a commission based on her sexual service.

┆ **Call Girl Prostitutes:** They generally operate independently from her place. She may be available directly or solicit customers through middlemen.

┆ **Street Prostitutes:** This type solicits customers on the streets and takes the customer to a place of assignation.

┆ **Other Types:** Clandestine forms of prostitution are also found in bare, massage parlors, amusement centers, dance clubs etc.

## **IS PROSTITUTION LEGAL IN INDIA?**

In the Indian context, prostitution is not explicitly illegal though pronounced to be unethical by the Court, certain acts that facilitate prostitution are regarded as illegal and acts like managing a brothel, living off the money procured by means of prostitution, soliciting or luring a person into prostitution, traffic of children and women for the purpose of prostitution, etc. are made explicitly illegal by the **Immoral Traffic (Prevention) Act, 1956 (ITPA)**. For example, running a sex racket is illegal but private prostitution or receiving remuneration in exchange for sex with consent without prior solicitation might not be illegal.

Laws related to Prostitution:

ITPA defines “**prostitution**” as sexual exploitation or abuse of a female for monetary purposes and a “prostitute” is the person who gains that commercial benefit. The Indian Penal Code of 1860 also deals with prostitution but it is limited to child prostitution. However, it attempts to combat activities such as kidnapping in general, kidnapping for the purpose of seduction and luring a person into sex, importing a girl of a foreign country for sex, etc.

In addition, **Article 23(1)** of the Constitution prohibits traffic in human beings and beggars and other similar forms of forced labor. **Article 23(2)** declares that any contravention of this provision shall be an offense punishable in accordance with the law.

Prostitution denotes providing sex work in exchange for money. It not just indicates gratification of sex but also other accompanying acts such as solicitation of customers, management of brothels, pimping or dealing

with prostitutes, sex traffics and other activities that facilitate prostitution, thus promoting the growth of sex industry.

It was stated in **Raj Bahadur v. Legal Remembrancer**<sup>18</sup>, that-

**“Clause (2) however permits the State to impose compulsory services for public purposes provided that in making so it shall not make any discrimination on grounds only of religion, race, caste or class or any of them. 'Traffic in human beings' means selling and buying men and women like goods and includes immoral traffic in women and children for immoral" or other purposes.”**

Main Provisions of Immoral Traffic (Prevention) Act, 1956:

The statute governing the subject of prostitution in India is the Immoral Traffic (Prevention) Act, 1956. The constitutionality of this Act was challenged in the case of **The State of Uttar Pradesh v Kaushalya**<sup>19</sup>. In this case, a number of prostitutes were required to be removed from their place of residence for maintaining decorum in the city of Kanpur. The High Court of Judicature at Allahabad contended that **Section 20** of the Act abridged the fundamental rights of the respondents under Article 14 and sub-clause (d) and (e) of Article 19(1) of the Constitution. The Act was held to be constitutionally valid as there was an intelligible difference between a prostitute and a person causing a nuisance. The Act is also in consonance with the object sought to be achieved ie. maintaining order and decorum in society.

This Act aims at suppressing prostitution in women and girls and achieving a public purpose viz. to rescue the fallen women and girls and to stamp out of prostitution and also to provide all opportunity to these fallen victims so that they could become decent members of the society. This Act seeks to criminalize the acts amounting to prostitution as mentioned above and authorizes the police to remove them, to close brothels and move them to institutions that may reform them. It empowers the Central Government to establish a Special Court to try offences under this Act.

### **IN SAHYOG MAHILA MANDAL V/S. STATE OF GUJARAT**<sup>20</sup>

The facts were that it was within the powers of the commissioner to notify the area around those places of religious worship and educational institutions under Section 17 (1)(b) rendering activity of prostitution an offence under section 7(1) of Immoral Traffic (Prevention) Act, 1965. It was contended that the right to carry on prostitution is a fundamental right of women and girls involved in it. In this case, the High Court of Gujarat held:

<sup>18</sup> AIR 1953 Cal. 522

<sup>19</sup> 1964 AIR 416

<sup>20</sup> 2004 (2) XLV (2) G.L.R. 1764

“The restriction in personal liberty imposed in section 7 is in interests of a general public and is imposed by law enacted by the Parliament in the background of the conviction for suppression of the Traffic in persons and of the exploitation of prostitution of others signed by and ratified by India, and deprivation of the liberty to carry on prostitution in public places is as per the procedure established by law. Therefore, there is no violation of the fundamental right to life and personal liberty of persons as guaranteed by Article 21 of the Constitution.”

It was suggested on behalf of the sex workers that they may be allowed to reside in rooms in the notified areas and carry on prostitution in localities outside the area. Regarding this suggestion, the High Court of Gujarat observed.

To recognize prostitution as a legitimate means of livelihood would be an open invitation to trafficking in women which is shunned internationally, and in all the civilized nations of the world. “Trafficking in women and girls is one of the most coercive forms of violation of human rights. It results in a gradual and total destruction of a woman’s personal identity, and her right to live as a free human being in a civilized society. The victim is subjected to violence and total humiliation and violation of personal integrity. The victim of such devastating violence may also end up with life threatening HIV/AIDS/STD or a lifetime of trauma, violence, cruelty or degrading treatment, the right to a home and a family, the right to education and employment, the right to health care- everything that makes for a life with dignity.”

## **RESEARCH SUGGESTED THE FOLLOWING FACTORS TO BE CONDUCTIVE TO PROSTITUTION:**

1. **Abduction:** This is the most common cause. Young girls are abducted from their villages /negative places on some or other pretext, exploiting their innocence. Some of these are going to movies, cities, temples / pilgrims, making them film-stars offering job opportunities and marriage. Contrary to common beliefs, most kidnappers are females or couples. Incidence of prostitution through abduction is estimated to be 35 percent.

2. **Devadasi System:** The inhuman system of prostitution with religious sanction “Devadasi System” still continues to flourish in the so called progressive and democratic country. Every year thousands of girls are dedicated to goddess ‘Yellamma; ‘Renuka’ (mostly in the State of Karnataka and Maharashtra) and after a brief period of concubinage, they become accessible to urban-prostitution. Within these mechanics we find, that three socialized instruments perpetuate the fates of these women, namely economic organization, brute force and the religious rituals. Devadasi System contributes to about 10 per cent of total prostitution in India. The percentage of Devadasi amongst the Bombay prostitution is 15-20 per cent; in Nagpur, Delhi and Hyderabad 10 per cent in Pune it is 50 per cent and in the urban centres bordering Belgaum Dist. (Kolhapur,

Sangli, Satara, Miraj, etc.) it is upto 80 per cent of total prostitution. Devadasi System contributes to 20 per cent of the child prostitution and moreover it legitimizes the practice of putting them to prostitution.

3. **Rape:** About 6 per cent of the girls entered prostitution after the incidence of rape. Rape on the girls is a great social stigma and in some circumstances, the victims of rape are not even accepted at home. Apart from the delay or even absence of justice, the victims have to face similar incidents every now and then. When they don't find any safe place in society and don't foresee any better future perspective, they find their ways in the brothels. About 8 per cent of the girls came to prostitution following the incidents of incest. The most common incest is between father and daughter, followed by uncle-niece. When the young victim of incest is exploited at home, she doesn't foresee safety anywhere in the society and slowly ends up in prostitution. In certain circumstances, we have come across the cases where the girls were sold by their own fathers, uncles or the brothers-in-law after subjecting them to incest.

4. **Marriage:** Though the problem of prostitution directly through marriage is not very common in Bombay, a few cases were noticed through this source. In Pune nearly 15 per cent of the women in prostitution came through marriage.

5. **Children of women in prostitution:** Female children of the women in prostitution invariably end up in prostitution (98 per cent), as there is no safe place for the children and there is no program for them till date, to get them out of these areas and to provide them alternation livelihood. This contributes to about 10 per cent of prostitution.

6. **Social Factors in Prostitution:** The view of women as a commodity is pervasive in popular manifestations of Hindustan culture in India. Women who have had sexual experiences are considered to be 'used goods' and are unlikely to ever marry. Without a husband, a woman has no source of income; she also cannot wear the marriage bindi. She is an impoverished cultural outcast. The prevailing line of reasoning is that she at least has a useful place as a prostitute. Women who have been widowed or divorced are also confronted with this social stigma. If a woman's husband dies, she has essentially outlived her purpose. Since she is no a virgin, she obviously cannot marry again. In rural areas, "bride burnings," in which a woman burns herself to death on her husband's funeral pyre, still occur. The social stigma, which leads a woman to believe that her life is worthless after her husband's death, is also attached to a woman whose husband chooses a different woman as his wife. When strong cultural notions are combined with the potency of religion or poverty, even more people are pressured into prostitution. For example, a girl may become a street child because her mother died and her father's new spouse will not accept her. As a street child, she may be periodically arrested along with her fellow vagabonds for crimes, which they may or may not have committed. While in police custody, instead of simply being beaten as her male cohorts are, she may be sexually abused by the police officers. She may

decide to become a prostitute to support herself and to find her place in the broken world in which she is fated to reside. Her children will likely be prostitutes as well.

**7. Economic Crisis, Poverty and Debt:** Most of the respondents reported that the biggest reason for involvement into prostitution was bad economic circumstances and conditions. Poverty is the motivating force to fend their lives for the survival of the family. Among thirty three respondents, seven narrated that they had chosen this profession under the pressure of debt on their families. One woman reported: “My daughter’s marriage date had been set. Basically we were very poor family so; it’s too tough to arrange all things in well mannered. For that my father took debt form someone. After some time the economic condition being too worse and my father was unable to re-back taken debt that had led to an increasing pressure on them to repay the loans. I was house worker and earning was not enough. We sell domestic things even our crockery but this money is not enough which repay our loan and I had to click this option at the age of 19 years old, without consulting anybody”.

**8. Illness:** In the Family some domestic issues lead the members to crucial stages. A few women reported that the illness in the family was the reason to join this profession effectively. One women narrated: “My father was chronically sick having kidney problem. Our family had to spend around 75000 of rupees on my father’s recovery and treatment. My father was single earning hand and in this condition our family couldn’t afford all the expenses. Our all relatives left alone in this bad condition. We family didn’t have any source of money. We had to sell even our house for that purpose but all in vain. I used to work as a factory laborer and was paid very little. The money was not enough and I had to decide to choose this profession.

**9. Husbands’ Drug Abuse:** Some women reported that their husbands’ addiction become the cause of their becoming prostitution. They narrated that their husbands used to alcohol and different types of drugs. They didn’t have any concern about their families. In this situation, they were compelled and had to do something for their children.

**10. Sex for Enjoyment:** A case has been reported that she joined this profession for enjoyment. She said: “I was from upper-middle class family and everything was good in my house in every respect. We were financially happy but I want to job for my own will. After finishing my 12th class, I started looking for a job to spend my leisure time. At that time our neighborhood aunt was working as field worker. She promised me to get me a good job under very handsome salary package and very soon. After sometime she took me to a house outside of the city and made me sit outside the room. There were three or four girls as well. They were very friendly and I stayed with them for three to four days. But when I realized everybody engaging in sexual activities I also wished and desired I could do it. The owner of the house understood my feelings and sent a man to me. I had sex with him and enjoyed it. I then started doing it on a regular basis.

### A Proposed Amendment in 2006 - Highlights:

A proposal was made in 2006 to amend the Immoral Traffic (Prevention) Act and has not been enforced yet. The amendment bill deletes the provisions that penalize prostitution by soliciting clients. This proposal recommends enhanced punishment and an increased fine amount. It intends to criminalize the act of visiting a brothel for the purpose of sexual exploitation of trafficked victims with imprisonment of at least three months or a fine of Rs. 20,000 which has not been criminalized in the Act. The bill constitutes authorities at the center and state level to combat trafficking. The term “trafficking in persons” has been defined with a provision for punishing any person who is guilty of the offence of trafficking in persons for the purpose of prostitution.

### **LAWS FOR THE PROTECTION OF SEX WORKERS AND THEIR RIGHTS:**



The right to life enshrined under Article 21 is also applicable to a prostitute. This was explained in the case of **Budhadev Karmaskar v State of West Bengal**. It stated that sex workers are human beings and no one has a right to assault or murder them as they also have the right to live. The judgment also highlighted the plight of sex workers and empathizes that these women are compelled to indulge in prostitution not for pleasure but because of abject poverty and directed the Central Government and State Governments to open rehabilitation centers and impart technical and vocational skills like sewing so that they attain other means of livelihood. Following the direction, the Immoral Traffic (Prevention) Act has incorporated Section 21 as a rule for the State Governments to establish and maintain protection homes and these should be regulated by licenses issued by them. An appropriate authority should be appointed for making an investigation for the application of the license for the protection homes. These licenses are not transferable and they are valid only for the specified period. The Government is empowered to make ancillary rules in respect of license, management, and maintenance of protection homes, or ancillary matters by virtue of Section 23 of the Act.

### **WHAT ARE ILLEGAL ACTIVITIES RELATED TO PROSTITUTION?**

Immoral Traffic (Prevention) Act, 1956 declares certain acts to be illegal. These acts include a solicitation for prostitution, managing a brothel or allowing the usage of certain places as brothels, living on the earnings of a prostitute’s money, inducing or kidnapping a girl for prostitution, detaining girls in brothels, seducing a person under custody for prostitution and carrying out prostitution within 200 meters of any public place like schools, colleges, temples, hospitals, etc.

The court directed the central and state government to enrol the sex workers in vocational and technical courses and open rehabilitation centres for the better job opportunities for them. Immoral Traffic (Prevention) Act has incorporated Section 21 as a rule for the State Government to establish and maintain the protection homes and the houses should be regulated and licensed by them. There should be an adequate authority for

investigation of the application for the protection homes. These licenses were temporary and non transferable. The state has powers to make ancillary rules in respect of license, management and maintenance of these homes or ancillary matters by virtue of section 23 of the act. Article 23(1) also declares that traffic in human beings and the beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.

### **WHAT IS THE PUNISHMENT AND PENALTIES FOR INDULGING IN ILLEGAL ACTIVITIES?**

The above-mentioned activities attract heavy penalties such as rigorous imprisonment even at the first instance of conviction. The minimum punishment for brothel-keeping is imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees. Offence of procuring a girl child for prostitution attracts rigorous imprisonment for a term of not less than seven years but may extend to life. Seducing or Soliciting for prostitution under the unamend Act for first conviction attracts a punishment of imprisonment for six months or fine of rupees five hundred and for the second conviction, imprisonment upto one year or with fine of rupees five hundred. In addition, the Indian Penal Code under Section 370A punishes the offender for the exploitation of a trafficked minor with imprisonment of five to seven years.

### **FOLLOWING ARE THE HEADS OF CRIME WHICH ARE RELATED TO PROSTITUTION AND HUMAN TRAFFICKING:**

- ┆ Procuration of Minor girls (section 366-A IPC).
- ┆ Importation of Girls (Section-366-B IPC).
- ┆ Selling of Girls for prostitution (Section-372 IPC).
- ┆ Buying of Girls for Prostitution (Section-373 IPC).
- ┆ Immoral Trafficking (Prevention) Act 1956.
- ┆ Child Marriage Retrain Act, 1929.

### **WHAT IF PROSTITUTION IS LEGALISED?**

Prostitution is considered a taboo in India and is not discussed openly and a topic frequently frowned upon. However, it poses a huge threat to the fabric of Indian society for its role in weakening the institution of marriage, sexually transmitted diseases, abduction of girl children, isolation of prostitutes from society, physical and mental trauma, etc. It is reported that there are about 38000 sex workers in Delhi. The situation in Mumbai is more depressing. Thus there arises an emergent need to control prostitution.

The abolition of prostitution is a mammoth task as it is an ancient practice and has existed too long. Though it has been described to be illegal, it is still continued. This could be due to a lack of enforcement of laws or due to the inability to restrict this practice. To combat this issue, the legalization of prostitution could be adopted since abolition appears to be a daydream.

If prostitution is legalized, the State will acquire responsibility to manage brothels and it can fulfill this obligation by issuing a license to authorized persons. It shall also formulate guidelines regarding the age of prostitutes, database on clientele, adequate remuneration and medical facilities to the prostitutes. By this method, the prostitutes can acquire some rights such as the right to medical care, the right to education of their children, right against exploitation and rape, etc. This method can facilitate the eradication of sex racket operations, hidden and street prostitution, abuse of prostitute, etc. There shall be protection houses established for those prostitutes who have lost their livelihood, or those who were forced into prostitution but do not want that lifestyle anymore. Also, the government can impart training and basic education to these prostitutes so that they find other means to earn money and sustain their livelihood.

On the flipside, legalization of prostitution could be misinterpreted as the promulgation of prostitution. This could pave the way for easy money for prostitutes and could encourage more women to practice prostitution. There is a great possibility that this could be a revenue-generating industry for the Government. Thus rules have to be stringent to regulate this industry so that it is not legitimized and that is the least the government can do to address this issue.

The law enforcement scenario, seen from the traditional view point, presents a dismal picture.

#### **THE MAJOR ISSUES IN THE EXISTING SCENARIO OF LAW ENFORCEMENT ARE AS FOLLOWS:**

- **Lack of priority:** The law enforcement agencies and justice delivery agencies for various reasons, give lowest or nil priority to HT issues.
- **Insensitivity:** Lack of sensitivity is a major challenge in response to human trafficking. It is more of an attitudinal issue.
- **Victimization of the victim:** More often trafficked women have been arrested and penalized as ‘soliciting persons; The NHRC study shows that around 85 to 90 percent of the arrested persons are women and most of them are victims of trafficking.
- **Improper investigation:** Whereas a trafficking crime extends across a large canvas as the scene of crime, starting from the source point and extending to the transit places as well as the destination areas, the investigation is more often unheard and unrepresented.

• **Database:** One of the major drawbacks in law enforcement is the fact that there is no database of traffickers and other exploiters. There is no sharing of intelligence among the stake holders and therefore, the offenders indeed act with impunity.

### **BENEFITS OF LEGALIZING PROSTITUTION ARE:**

└Legalization of prostitution and the sex industry will stop sex trafficking.

└Legalization of prostitution will control the sex industry.

└Legalization of prostitution will decrease clandestine, hidden, illegal and street prostitution.

└Legalization of prostitution will protect the women in prostitution as they will have rights.

└Women in systems of Prostitution want the sex industry legalized as they are the one who suffers the most as they don't have any rights.

└Legalization of prostitution will promote women's health as they can have easy access to medical facilities which they don't have when it is illegal.

└Recognizing prostitution as an economic activity, thus enabling women in India to obtain working permits as "sex workers". However, those who demand that prostitution should be "legalized" and treated and with "respect and dignity" at par with all other professions and occupations need to answer a few basic questions:

└What does the term "legalize" actually imply? Does it mean that a prostitute can open a brothel or sex parlour any where she likes and advertise her services? Does it mean minor women supplying call girls should be able to set up an office in any neighborhood they like, just as doctors set up their clinics, and put up a hoarding outside the house proclaiming that call girls are available between such and such hours?

└Since sex trade inevitably comes with sex slavery and violent forms of pornography and sex trafficking it is essentially mixed up with criminal mafias even in those countries where it is legalized. If a brothel owner is free to set up shop in my neighborhood, does it not endanger my life? How many even among those who are empathetic towards the plight of prostitutes are willing to allow a brothel right next to their own house? How many of us are willing to let our young children grow up amidst an atmosphere where renting a women's body for sex is considered a perfectly legitimate activity?

└If the vast majority of people in India do not want to have brothels functioning openly and legally in their neighborhoods, the only way to make provision for "legal" sex work is if sex workers agreed to operate in specially designated areas traditionally known as red-light districts. Sex worker can then seek individual

licenses or licenses for registered brothels. But every sex worker does not want to leave in openly identified sex zones.

Most women, especially those who operate as high society call girls prefer to operate surreptitiously, especially those who want to wear the mask of respectability. Most men who run sex rackets, including trafficking of women would also not want to be openly known as pimps and procurers. How does the law handle such persons? If people come to know that a person of their neighborhood is using his premises to run a call-girl racket, do they have the right to seek its removal or demand that the call-girl centre be shifted to a red-light district after the trade is legalized? Or does it mean other citizens have to suffer the presence of such activities in the name of “respecting” the rights of sex workers to an occupation of their choice and thereby endanger their own lives?

Those who demand that sex work be given the same “respect” as any other profession, need to explain whose duty it is to give or ensure “respect” for prostitutes and pimps who are their “helpmates” Is the government expected to enact a law requiring people not to shun prostitutes, as for instance it did to ban the practice of untouchability ? One can prove that one does not practice untouchability by freely intermixing and-dining with castes condemned as untouchable. How does one prove one’s “respect” for a prostitute? Do we have to send our children to brothels to intermix with the children of sex workers or do we hold special functions to socially honour the most successful among them?

### **EFFECTS:**

No doubt, prostitution cause personal, family and social disorganization. The prostitutes suffer from deterioration .The prostitute and the person who approaches her lead a sort of ‘double life’. They suffer from moral collapse and loose their status and position which other respectable men and women enjoy in society. Respectable people hate them, avoid their company and want to isolate them in society. As a result, the pimp and the prostitute become ‘hated and isolated islands’. They lead a life with their own definition of promiscuous sex conduct and a life with their own definitions of promiscuous sex conduct and immoral principle. This will be quite different from the society’s conception of morality.

The man who approaches a prostitute may be contaminated with venereal diseases. If married he may communicate the disease to his wife and children. The children born to the parents having venereal diseases are likely to be maintained for life and many a time are born blind. The illegitimate and adulterous sexual union, if known to the wives, brings tension in the family and ultimately to desertion to divorce. There are clinical and psychoanalytic evidence to show that many young men who had pre-marital sex –union with prostitutes suffer from ‘psychic – impotency’ in married life .The reasons for this may be many and various depending upon the individual. One of the reason for the ‘psychic-impotency’ is the hatred owned towards

the prostitute's sex developed before, during or after the sex-union and fear of the contamination of venereal diseases from the prostitute at the time or after he had sexual relation with her.

A prostitute performs two functions in the society-viz., the commercial functions and health function. The brothels, call flats and disorderly hotels where prostitution is permitted become accessible places for the public to have free sex satisfaction. This brings money to those who conduct it, but, at the same time, it spreads venereal diseases. The managers of hotels, pimps, panderers and prostitutes perpetrate criminality in society by inducing and kidnapping girls. They resort to various foul methods of procuring young innocent girls and women to make their trades very prosperous and profitable. By this, they wreck the personality, communicate diseases, scatter marriage and ruin the family of many girls and people in society.

### **IS THERE A NEED TO UNDERSTAND!**

#### **Can a customer of prostitution be penalized?**

In the present scenario, private prostitution is not recognized as an offence. Thus a customer is not penalized and there is no provision under any statute to do the same.

#### **What are the shortcomings of laws related to prostitution?**

Prostitution is a topic where laws are have not fully evolved yet. It is silent about male prostitution and bisexual acts of prostitution. The rights of sex workers have no place in any statute.

#### **Is the red light area legal in India?**

According to Section 7 of the Immoral Traffic (Prevention) Act, 1956, the existence of red light areas in the vicinity of public places like schools, colleges, temples, etc. are prohibited and penalized. However, there is no provision stating that the red light area is illegal as such.

#### **What is the punishment for child prostitution in India?**

The Indian Penal Code of 1860 penalizes child prostitution by granting ten years of imprisonment or fine for a person convicted for buying or selling children for the purpose of prostitution.

#### **Is it legal to operate a prostitution website in India?**

The answer is no. Operating a website for prostitution will amount to the solicitation and this is an offence under the Prevention of Immoral Traffic Act, 1956.

## **Are newspaper advertisements providing escort services allowed?**

They are not allowed as such an act is considered to be solicitation which constitutes an offence.

## **Can I be punished for merely contacting an escort agency?**

Any person contacting an escort agency will not be punished as there is no law to punish the customers of prostitution.

## **RED LIGHT AREAS:<sup>21</sup>**

### **Sonagachi, Kolkata:**

With the regrettable title of Asia's largest red light area, Sonagachi is a world in itself. It's inhabited by more than 11,000 sex workers. Watch the Oscar winning documentary, *Born into Brothels*, to know about the lives of the children born to prostitutes here. Pretty hard hitting stuff.

### **Kamathipura, Mumbai:**

India's second largest red light district houses a staggering number of sex workers, most of whom live in squalor. The area also has a small beedi rolling industry that is run by women. In the '80s, gangsters like Haji Mastan and Dawood Ibrahim frequently visited Kamathipuram.

### **Budhwar Peth, Pune:**

Apparently the third largest red in India with around 5000 commercial sex workers. The area is also a hub of electronic goods and books.

### **Meergunj, Allahabad:**

This red light district has a notorious reputation for illegal trafficking and forced prostitution. It's also pretty dangerous for visitors, which is kind of obvious considering the place sounds shady as hell.

### **G.B. Road, Delhi:**

Another large red light area, this place is known for the hundreds of brothels along the streets. There are markets for machinery and vehicle parts on the ground floors and kothas or brothels above them. Strange.

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<sup>21</sup> Red-light-areas-india/-

### **Chaturbhujsthan, Muzaffarpur:**

This old temple area has existed side by side with brothels since ancient times. Seems strange, but when you think about the high social space concubines occupied in the old days, it all starts to make sense.

### **Itwari, Nagpur:**

The area in Itwari known as Ganga Jamuna is a hotspot of sex workers, along with other criminal activity.

### **Shivdaspur, Varanasi:**

This red light village is another leftover of the ancient times that lost its sheen a while back. It sits on the edge of Varanasi city and is known for the cheap brothels being run from homes in the village.

## **SHUTTING DOWN INDIA'S RED LIGHT AREAS AMID COVID – 19 PANDEMIC:**

Will life ever get back to normal? As COVID-19 continues to spread, it's a question that haunts all sectors of society but perhaps SEX WORKERS most of all with the fear of being pushed further into the shadows in an age of social distancing darkening their present and clouding the future.

Eating one day, going hungry the next, their children turfed out of school because of lack of devices needed for online education and unable to make rent, the last six months have been a nightmare and one that shows no signs of ending, say several community members and those who fight for their rights.

When the lockdown happened, each and every community was affected. The government seemed to care about all and offered them some form of relief but there has been nothing for them, It's about immediate relief but also revival for a line of work that involves physical proximity and may have led to social stigma but also a livelihood on which their families depend.

There have been efforts to increase awareness about sanitising their premises and also innovations such virtual ways of servicing clients, but to little avail.

## **CUSTOMERS' ATTITUDE AND BEHAVIOR:**

There are following customers' attitude and behavior with the women prostitutes happened with them in different time periods and in different places.

**Refusing for Payment:** Most of the prostitutes expressed their experiences in view of reward and payment after having sex with their customers. Some women reported that initially they entertained their customers as their will and wishes but not paid for their work. They explored these incidents occurred when they were encroached far away from their home places and when didn't have pimps for this profession.

**Forcefully Abusive Acts:** Most of the respondents described that they had been compelled to do abusive acts against our own will forcefully. They reported that they kept having abusive relationships with the customers and entertained them but we were treated worse as animals.

**Threaten to Children's Death:** Some women explored that they wanted to be exit from this profession but remained just for the sake of their children's lives.

### **HEALTH IMPLICATIONS:**

Women prostitutes explored that they had been survived and sustained numerous times from very sever and different types of injuries. They stated that they had been affected by their pimps and customers both. There were following health implications derived from the women prostitutes' interviews:

**Unwanted Pregnancy and Abortion:** A few respondents explained that initially when they took start in this profession unknowingly pregnant. Almost all of the respondents had been pregnant once in their lives except two prostitutes. Most of them had been took initiatives for abortion from unwanted children.

**Drug Addiction:** Most of the respondents explored that they used to take drugs like smoking, alcohol etc.

**Ovarian Issues:** Some women prostitutes highlighted ovarian issues that had been experienced by them in prostitution profession.

**Some other Diseases:** Almost all the respondents had some different types of other diseases like stomach problems, headache, hepatitis, blood pressure, menstruation issues, breathing issues, liver pain and some psychological issues for instance, depression, anxiety, frustration, anger, rage etc.

When women prostitutes asked about themselves **“What Do You Think about Yourself as Women in this World?”**

**Women prostitutes replied in varieties of response. One prostitute elaborated: “Men wished only two things from women, first, how to use women to get their things done and second, how to trap to have**

sex with her”. Another of them described: “Men have only single purpose from women; they wanted sex, sex, and sex nothing more. Humanity not matter for them”.

### **CONCLUSION OF THE SURVEY:**

I ended my survey by asking Roshni above mentioned questions. The only reason of conducting this survey was to understand the life of prostitutes. The mental trauma they move from, their daily income, their lifestyle etc. even prostitutes are woman, human being, but still we people treat them with an unwanted stuff and nothing else. To bring into highlight, that woman who are stepping into this flesh industry are also forced to carry out certain acts against her will, but just to earn a little they even step in. **The community does not ascertain this type of offence as sexual offence, the only reason is that she is prostitute, her work is to make her customers happy.** Not even bothered to ask her about the incident. **Any type of sexual act is allowed with the prostitutes, only if she gives him a consent, no man can even in that position treat woman a stuff of satisfaction and rule in the manner they want. Why? –just because they are paying!**  
**IS THIS NOT A SEXUAL OFFENCE? - YES IT IS, BUT NOT CONSIDERED.**

Community Policing should be made popular, so that involvement of civilians and NGO’s in Policing can be done, in order to prevent and combat prostitution .Community Policing is a philosophy based on the paradigm of solving problem in synergy where police acts as a facilitator and community is made to share responsibility.

- Second Generation Prevention: Problem of prostitution can be minimized, if the children of the prostitutes are given respectable future. A Beginning has been made by Prajwala; an anti-trafficking organization of Andhra Pradesh. Efforts are being made by the organization to explore education and self employment alternatives for the survivors.

Initiation and decision to be as prostitute, some joined voluntarily and other involuntarily. In voluntarily, women who enter in sex work due to some natural and some manmade situations like lack of economic resources, illness in family, lack of education, poverty, debt burden, sex for enjoyment, peer association, family neglect, domestic clashes, drug addiction in husbands and some others. In involuntarily, forced rap, sexual assault, early marriages, trafficking, deceived by family, deceived by lover, sexual abuse in childhood and kidnapping. In view of the qualitative results, women prostitutes had to face worse and severe consequences in concern their health like unwanted pregnancy, abortion, unwanted children, HIV/AIDS, Drug addiction, ovarian issues, break the parts of the body and some other psychological and social issues. In respect of customers’ behavior like refusing of payment, kidnapping and sexual assault, beating, forcefully abusive acts, violence, drug abusing, threatening, call names, abandon in desert areas, tie and sexual abuse.

It may be said that the practice of prostitution is a hydra-headed serpent who has many facets and therefore, must be dealt with at various levels and from various angles, it requires a radical change in the society. This would involve a comprehensive review of the whole problem of social customs and mores regarding marriage, divorce, sex education as well as socioeconomic conditions, and also evolving a suitable and comprehensive program to raise the economic level and the socio-moral and emotional level of the people. It is important to realize that “economic hardship is a form of psychological stress. And all mental stress of whatever kind is one of the commonest precipitation factors in abnormal conduct”. Hence, efforts should be made not only to alleviate every variety of psychological stress, but to provide compensatory children the love, affection, proper knowledge of facts of life’ and sense of security and belongingness that is necessary for their normal life, we cannot expect them to lead normal life. This calls for reorganization of the entire problem of child care and child upbringing.

### **PREVENTIVE MEASURES TO TACKLE THE PROBLEM OF PROSTITUTION:**

**Sex Education:** Both men and women should be educated about and dangers of venereal diseases or sexually transmitted diseases and the sources of such diseases and their negative impact on marital and familiar relations, there are various steps to educate people. The values of self control should be taught at an early age. These should be a provision for sex education to young people in schools and colleges. Suitable literature for sex education should be distributed to the young ones by some social welfare agencies. The Association for Moral and Social Hygiene in India is also working in this direction. The sex education is also helpful in avoiding unwanted pregnancies before marriage and also after marriage.

**Employment opportunities for Women:** Girls and women are forced to take up this profession because of extreme poverty. Hence training and education should be provided to them. Imparting education, training and skills will increase the employability of women in job market. Economic empowerment can prevent the poor women from entering this degraded profession.

**Abolition of Certain Social Customs:** Widow Remarriage should be encouraged. With Window Remarriage Act window became free to marry. Unfortunately the restriction of Society on widow marriage has perpetuated. The system of dowry which debarred many girls from getting married should be discouraged wholeheartedly in practice. There is an urgent need to change the society’s attitude towards the widow marriage, dowry and devdasi.

**Double Standards of morality has to be discouraged:** The notation of double standards of morality should be discouraged. It is in reality impossible to have double standard morally in matters of sex for without male chastity, female chastity is impossible. As a result of a double standard of morality which demands ds woman to be chaste, and expects man to be irregular and there developed tolerated vice”.

**Publicity and propaganda:** Public should be enlightened on the legislations and if any such nuisances in the surrounding areas are found then, immediately one should come forward to report this event. Besides, films stimulating sex interest and pornographic literature should be discouraged. The present younger generation has a free access to Internet. In internet there are many sites are there that are capable of bringing down the moral standards among youngsters, hence, parents should be cautious about the internet habits of their children.

**Establishment of Venereal Disease Clinics:** Special Venereal Disease Clinics should be opened to treat the victims of venereal diseases. Diagnostic facilities should be provided to vulnerable groups like prostitutes and lorry drivers.

**Bulletins:** Pamphlets should be issued to create public awareness about the flesh trade. Public should be advised to seek treatment immediately if they are suffering from such venereal diseases. Besides, there should be free blood test examination and treatment of all antenatal cases to ensure the birth of normal, healthy children free from all congenital blemishes.

## **PORNOGRAPHY**

Pornography is an evil which prevails in our society and destroy our society. In the present era of globalization and information technology the word cyber space is gaining great importance and is in the knowledge of each and everybody ranging from young to old. The extensive uses of internet have resulted in speedy flow of information from one side of globe, thus reducing the world to a small village (globalized village). In the earlier days, computers were extensively used to store confidential data. The uses of computer increased with the passage of time and also lead to increase in the number of internet users. The rapid increased of the technology give new dimension to the crime called by the name pornography. Pornography is not only a morally problematic issue in India but also in every corner of the world. A worst and unfavourable impact of the technology can be seen in this era where pornography's composition is 33% in the world-wide net. The word pornography is defined as "anything written, any photograph, any movie etc. intended to arouse sexual excitement." The main problem regarding pornography is that there are various technically specialised issues while banning those sites which exhibit pornographic items and how it violates the fundamental rights of speech and expression and to access to the free use of internet which causes a very ill impact on the upcoming generation. Under Section 67 of Information Technology Act 2000, pornography is held as a punishable offence. Therefore, there is an ongoing controversy between the rights of users to access the internet content and legal provisions regarding that particular content. In this article the researchers have tried their level best to discuss various issues and challenges of pornography in India, through various articles, online data, case laws and books. One third of the internet is covered by pornographic content which is resulting in men trying exploiting and suppressing women and children and committing various offences of unnatural sex. To stop this exploitation of women and children, a strong control of law is needed. Through this article researcher highlights pornography, its legal provisions and judicial control over it. Researcher sheds a light upon the

adverse impact of porn on society, children and women and recommends strong control of law over it.  
 Keywords: - pornography, judicial pronouncement, sexual offences, challenges, legal provisions.

The word pornography is derived from two Greek roots, i.e. “Porne and graphos”. The word “porne” means prostitute, harlot or female captive, and the word “graphos” means “writing about” or “description of”. In a legal sense, Pornography means “obscenity”. Pornographic includes any video, pictures or movies that contain sexually explicit acts that are considered indecent by the public.

The term pornography is used to the depiction of the act rather than the act itself, and therefore, it does not include live exhibitions like sex shows and striptease. Those who favour or patronise pornography often contend that it is the artistic exhibition of one’s body while on the other hand, the people who criticize pornography calls it immoral and against their religious sentiments.

In the modern era, the concept of pornography has been widened. Pornography has now been categorized into soft core pornography and hard core pornography. The only point of difference between soft core pornography and hard core pornography is that soft core pornography does not depict penetration, while hard core pornography depicts penetration.

Cyber Pornography means the publishing, distributing or designing pornography by using cyberspace. The technology has its pros and cons and cyber pornography is the result of the advancement of technology. With the easy availability of the Internet, people can now view thousands of porn on their mobile or laptops, they even have access to upload pornographic content online.

By the term Pornography “the first question comes in mind is – Is it a problem or a solution? i.e. problems like sexual offences which are consequences of pornography or solutions like relieving stress by watching pornographic content etc. Times have drastically changed in the pornographic field, since the first known sexual guide book “Kamasutra”, which was made public in 5th century in India. The word “pornography” is defined as “written works, photographs, movies, etc intended to arouse sexual excitement”. In digital world the pornographic content includes the video pornography, interactive cyber-sex, webcam sex, social networking, mobile phones etc. Without sparing any efforts to understand the nature of effects that pornography has on the people, especially as reflected in the law and its desire to contain it and how laws desire to contain is also about personal interest and practices around technology. This necessarily leads to focusing on pornographic field itself and from there to proceed to questions around law related to pornographic content, history of porn, film, video, new media and technology which necessitates an exploration of film and video studies, new media culture studies and technology, science in relations to pornography. To understand a view, through pornography people insult women and it helps in accomplishing the active subordination of women i.e. the creation of a sexual dynamic in which the woman is put down, ultimately the meaning of porn taken by the people is the suppression of women and ultimately the

brutalization of woman. The connection drawn between pornography and sexual exploitation is excessively covered under passionate interactions which should not obscure the argument but it makes the mechanisms of domination clearer. That, in any case, does not occur rather a further obscuring of women and their subjectivity, their pleasures and experiences take place.

Pornography has a big influence over individuals “mind set or belief in myths of rape”. Sexual content present in the digital world advances these rape myths and leads people to sexually abuse women, it plants a seed in the mind that you need more violence to become sexually aroused. This is well recorded. The digital obviously adds a completely unique layer to interactivity and reciprocity but also perhaps brings into play distinctive realities and embodied experiences in stimulated environments, or even through devices possibilities. Be that as it may it is quite the more straightforward ways that the digital interact in the ways in which the viewer moves of his or her own volition through various material or how shoddy digital modes of production particularly mobile phones allow for creating and putting up of their own videos.

In the setting of India, the whole content of pornography includes film, video technology, literature. How law doesn't look or looks, at pornography is not the matter of only how law having the governing rules or policies but also in the view of society and how it relates to the various ways in which pornography is explicitly shown. Questions related to pornography can be clearly looked into by keeping away the field of law or focussing on this field only till various legal researches and analytical or critical studies it is expected by the laws to prohibit pornography in its clear sense or on a reasonable ground. Law can sort or order pornography only by the word “obscenity”. But pornography contains an exceptionally wide scope. The videos, films, porn movies, porn talking, porn article can't be marked by a solitary word obscenity or vulgarity. The working of law of India and the co-connection of obscenity with dirt and filth is explored particularly visual reception of pornography which arouses or excites bodily reactions, pleasure, excitement body responds with all the film. It can without much of stretch weaken those mental faculties that are open to such immoral influences and no conscience to think over it. Their body simply reacting in an invulnerable manner. Legitimately, pornography means the explicit form of obscene scenes and the material which is indication of vulgarity and obscenity whose main purpose is sexual arousal or excitement.

Few years ago, a horrific incidence was reported in Dehradun where a girl of 10th class was brutally raped by four of her seniors and when the accused got arrested, they confessed that they did such rigorous act after watching pornographic material on internet which has created the sexual fantasies<sup>22</sup>. In this case also, Pornography is responsible for violent sexual behaviour and rape. The questions that arises is whether pornography is an offence or? and watching pornographic content is not consider as a crime in India but what

<sup>22</sup> Priya Pathak, many porn sites are banned on Jio, Airtel in India, is it legal for people to access them despite ban? INDIA TODAY, at <https://www.indiatoday.in/technology/features/story/many-porn-sites-are-banned-on-jio-airtel-in-india-is-it-legal-for-people-toaccess-them-despite-ban-1408033-2018-12-12>.

about accessing banned or blocked porn websites? The reason for the sexual crime to be held as pornography, in numerous cases it is held by the court that mental pollution of the criminal in sexual crime is directly related to pornography. In gang rape also the arousal of such a barbarian act is the result of the scenes which are shown in porn movies which shows that women enjoy gang rape.

### **SEXUAL OFFENCES: REPERCUSSIONS OF PORNOGRAPHY:**

The main purpose which the pornography serves is sexual, each and every time it is used & there is nothing like nonsexual use of it. It provides a platform where people develop deviant and violent fantasies and if watch more than the normal number of times then it will eventually lead some individuals acting those fantasies out. Many kinds of fantasies develop while watching porn, some of them may be good and healthy and some of them may be deviant and bad. The fantasies present in your mind, when being acted out, involves consensual and respectful sexual activity then that sexual activity is healthy. But when deviant fantasies are acted out, if without consensus then it is not healthy and may lead a person to act in such a way that that act may fall under the category of sexual offence.

The main debate about pornography is how it impacts deviant behaviour, sexual thoughts and fantasies. It is proved that when pornography is viewed more frequently, then the fantasies get stuck in your head and whenever a person feels aroused, he may act according to the fantasies developed in the mind. It is proved that use of pornographic materials was very significantly related to the situation where an individual asks their female partner to engage in a sexual act which may be violent and sometimes women can also be forced to engage in such acts if they do not give their consent freely. In addition to this it is also proved that the younger the age of an individual is when he first watched porn then he will more likely engage in sexually assaultive behaviour.

### **JUDICIAL PRONOUNCEMENTS:**

The legal aspect of pornography shows wide variations from country to country. Using porn sites in private is not illegal in India but the production and sharing of pornography are both illegal, hence it allows the individual to see porn privately. By the virtue of Information Technology Act, 2000 (hereinafter referred as IT Act) Chapter XI 67, the Government of India takes into account the online pornography as punishable offence. The CEO of Indian subsidiary of eBay was charged with various criminal offences for allowing the trading of and containing these clips on the websites. According to 2010 survey of children and young adults, done by the Indian Ministry of Women and Child Development, children had reported of sexual abuse children and young adults had been sexually assaulted through oral sex or penetration of vagina or anus. Watching porn sites or possessing any kind of pornographic material is legalised in India although the sharing or production of such material is outlawed. Similarly, the publication of “X” rated materials is also contraband. The IT Act, Chapter XI paragraph 67 considers online pornography as a punishable offence. Section 293 of

Indian Penal Code, 1860 (IPC) also states that the law against sale of obscene objects to minors and Section 292 of Indian Penal Code is also relevant which appertains pornography or “obscenity” which was amended by the IT Act to include electronic data. The amendment of IT Act took place in 2008 and section 67 was embedded which illegalises browsing, publishing, downloading or creating child pornography. Child anime porn is also explicitly illegalised. browsing for child pornography on the internet can lead to a therefore, imprisonment for the term of 5 years and fine of 4 Lakhs is set as a punishment by the Government of India for browsing of child pornography on the internet. There are certain judicial pronouncements which shows the social dissidents, who filed petitions regarding the restriction on pornography, are trying to seek solutions through the judicial system to stop the impact of pornography on society. In 2013 a PIL petition was documented in the Supreme Court of India seeking a restriction on pornography in India. A notice was issued by the court to the Central Government and waited for its response. The Supreme Court was informed by the Government that the Cyber Regulation Advisory Committee (CRAC) was assigned with a brief related to availability of pornography on internet under section 88 of the IT Act, 200012 and it was looking into the same and it’s still pending in the Supreme Court. After the petition, which was filed by Adv. Vijay Panjwani to looking for an anti-pornography law, some notices also issued to the ministries of Home Affairs of Information Technology and Broadcasting, by the Supreme Court, besides the Internet Service Providers Association of India (ISPAI). Another public interest litigation (PIL) was documented before the Supreme Court by Kamlesh Vaswani who recommended that the major cause of increasing sexual offences against women is online Pornography. The restriction on online pornography may not be practicable and certainly court has no call on it.

Another PIL seeking for restriction on such sites written by Utkarsh Anand, published on April 28, 2014 that, there cannot be an entire ban on online pornography in the country and legal actions are also not feasible in a large number of cases as the govt. had told the Supreme Court. Even the Secretary of Department of Telecommunication (hereinafter referred as “DoT”) said that blocking porn websites is not practice able due to certain difficulties. The problem lies that most of the Internet Services were quite often located in foreign countries where such production or creation is permissible. Supreme Court asked for the clarification from the Secretary of DoT related to this issue. In response of that, Secretary of DoT said that the role of DoT was under some finite boundaries. These types of technical issues are creating hurdles between the law and its control on pornography. Finally, in that case Supreme Court says that it could not intervene on porn viewers who uses it in private as it will be against his fundamental right and violation of Article 21 of Constitution i.e. right of personal liberty and such temporary orders cannot be passed by this Honourable Court. Such opinion was explicated by Chief Justice of India HL Dattu. This issue is really serious and there is a great expectation from Centre to take action.

But in the year 2018, the issue was again got agitated in the media and reason for same is the horrific incidence from Dehradun where a girl of 10th class was rigorously raped by four of her seniors and when the accused

were arrested, they confessed that the cause of their brutal and disgraceful act was the sexual fantasies which was produced after watching pornographic material on internet. By the virtue of this incidence, the Uttarakhand High Court passed an order to ban pornographic websites in India and following by this order, Government once again directed the ISPs to ban 827 websites and now according to DOTs directive, major telecom companies like Jio, Airtel and Vodafone banned many pornographic websites from their network including the legal and genuine websites like Porn hub etc.

Cyber Pornography has become a global problem. The government has decided to ban 827 websites that possess pornographic content following the order of Uttarakhand High Court. However, the people especially the youngsters, are so addicted to cyber porn that they try different means like VPN, DNS Server Change, or downloading Opera Mini that has inbuilt VPN activation, to view cyber porn.

Can a person be made liable for watching porn on websites that are banned? Can the service providers be made responsible for publishing pornographic content? Are the laws sufficient to regulate cyber porn?

### **Avinash Bajaj v. State (N.C.T.) of Delhi**<sup>23</sup>

**FACTS:** An obscene video titled “DSP Girls having fun” was uploaded by a user (Ravi Raj, a student of IIT Kharagpur) on the website *bazee.com*. The **MMS** was posted on the website around 8:30 pm of 27 November 2004, which was deactivated around 10 am on 29 November 2004.

An F.I.R was also lodged against the **bazee.com** for putting on sale the obscene material. The CEO of *bazee.com*, Avinash Bajaj was arrested by the police under Section 67 of the IT Act. Since Ravi Raj (the user who uploaded the MMS) absconded, **Avinash Bajaj** file a petition, seeking the quashing of criminal proceedings.

**HELD:** The CEO of *bazee.com* was released on bail subject to furnishing of two securities in the sum of **₹1,00,000**. The accused was also directed not to leave India without the permission of the Court. He was also directed to participate and assist in the partnership.

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<sup>23</sup> 2005 (79) DRJ 576

### **State of Tamil Nadu v. Dr L. Parekh<sup>24</sup>**

**FACTS:** Dr L. Parekh was a reputed medical practitioner who had contributed more than 120 research paper, all of them were published in a reputed medical journal. The doctor was arrested and sentenced to life imprisonment in a case about online obscenity. The accused filed a writ petition to give him all the facilities as a “special class prisoner”.

**HELD:** The court dismissed the writ petition of the accused and denied any special class treatment to the accused.

### **State of Tamil Nadu v. Suhas Katti<sup>25</sup>**

**FACTS:** The accused (a family friend of the victim) was interested in marrying the victim but the victim married another person. The marriage of the victim could not last long and ended up in divorce. The accused again started to contact the victim but the victim refused to have any contact with the accused. The accused then started sending annoying emails to the victim.

**HELD:** The court found the accused guilty under section 67 of the IT Act, 2000, and was, therefore, awarded the rigorous imprisonment of 2 years along with a fine of ₹4,000 under the IT Act.

### **Conclusion:**

The presence of the Internet has increased the menace of cyber pornography. Although, there are various provisions which prohibit the publication and circulation of cyber pornography, viewing of cyber pornography is not illegal unless it is child pornography. Intermediaries won't be liable for any unlawful publication made by the users provided that they were diligent and had not abetted the cybercrime.

The main problem which is faced by the government is to regulate cyber pornography effectively. Minors can easily access pornographic material with the help of the Internet. The most effective method to curb the menace of cyber pornography is an attempt by the state to attain social maturity through education and then the rest should be left upon the individual's choice, as to what he wishes to see.

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<sup>24</sup> Writ Petition No. 7313 of 2002 and W.P.M.P.No. 10120 of 2002

<sup>25</sup> State of Tamil Nadu vs. Suhas Katti, 2004

The parents have to play an important role to control the activities of their children on the Internet, they need to educate the children and help them as a friend.

### **OBSCENITY AND PORNOGRAPHY:**

Obscenity and Pornography are often used synonymously. But it should be noted that obscenity is a wider concept than pornography. Obscenity means anything which is immoral and against the sentiments of people, whereas pornography refers to the act of causing sexual excitement through films, pictures or books. Thus, pornography is just a part of obscenity.

### **PORN CONTENT:**

- 20% of internet content is porn. One can get abundant access to pornographic content on the dark web. Dark web even contains the child pornographic contents. It is worthy to note that only 10% of the total content is available on the surface web, the rest of the content is available on the dark work and the deep web.
- There were more than 2 billion searches for porn.
- Almost 40% of the mobile phone searches are for porn.
- 90% of boys and 60% of girls watch porn by the time they turn 18.

### **PORN REVENUE:**

- The pornography industry is the fastest growing industry.

### **PORN RISE:**

- Easy access to the Internet has helped the people to view pornographic content without compromising their privacy and without disclosing their identity to anyone.
- It has removed the hurdles of the conventional form of pornography, where people used to buy the pornographic content in printed form, the people nowadays, can view the content without any fear of being caught by someone.
- Easy accessibility to sites that offer porn content for free.

## **EFFECTS OF PORNOGRAPHY:**

Many surveys reveal that a person who is addicted to pornography has a change in attitude towards himself and his family.

- Pornography which is usually viewed in private often leads to deception in marriage and which may, later on, affect their family life.
- It may lead to adultery, prostitution and many unreal expectations that can result in dangerous promiscuous behaviour.
- Pornography may lead to addiction, escalation, desensitization and acting out sexually by one person.

## **LEGAL FRAMEWORK:**

### **Information Technology Act, 2000:**

Cyber pornography is banned in many countries but legalized in some. Cyber Pornography is neither banned nor legalized under the IT Act, 2000. The IT Act prohibits the production and distribution of cyber pornography but does not prohibit the viewing or downloading of pornographic content if it is not child pornography.

Section 67 of the Information Technology Act, 2000 makes the following acts punishable with imprisonment up to 3 years and a fine up to 5 lakhs:

1. **Publication**– It includes uploading of pornographic content on a website, Whats App group or any other digital portal where third parties can have access to such pornographic content.
2. **Transmission**– It means to send obscene material to any person electronically.

3. **Causing to be published or transmitted**– It is a comprehensive terminology which would end up making the intermediary portal liable, using which the offender has published or transmitted such obscene content. The Intermediary Guidelines under the Information Technology Act put an onus on the Intermediary/Service Provider to exercise due diligence to ensure that their portal is not being misused.

Section 67A of the Information Technology Act makes publication, transmission and causing to be transmitted and published any material containing sexually explicit act or conduct punishable with imprisonment up to 5 years and a fine up to ₹10 lakhs.

Following conclusions can be made by understanding the above provisions:

1. Viewing Cyber pornography is legal in India. Merely downloading and viewing such content does not amount to an offence.
2. Publication of pornographic content online is illegal.
3. Storing Cyber pornographic content is not an offence.
4. Transmitting cyber pornography via instant messaging, emails or any other mode of digital transmission is an offence.

### **Exceptions:**

The section 67A of the IT Act does not prohibit books, pamphlets, magazines or pictures which are created for educational purposes or which is kept for religious purposes. Thus, the section does not prohibit the preserving of sculptures that are of historical importance.

### **CHILD PORNOGRAPHY:**

Section 67B of the IT Act, 2000 makes it publishing, transmitting, viewing or downloading child pornography illegal. The fact that the internet has made child pornography more accessible to the distributors, as well as the collectors, cannot be denied.

According to Section 67B, any person who has not attained the age of 18 years is a child. It further states that child pornography can be committed in the following five ways:

- By publishing or transmitting or causing to publish or transmit any material electronically that depicts the children engaged in a sexually explicit act or conduct.

- By depicting children in an obscene or sexually explicit manner.
- By inducing children to online relationship with one or more children for and on a sexually explicit act, or in a manner that may offend a reasonable adult on the computer resource.
- By facilitating child abuse online.
- By recording own abuse or that of others pertaining to sexually explicit act with others.

### **Exceptions:**

The section does not prohibit the books, pamphlets, magazines or pictures which are created for educational force or which is kept for religious purposes. Thus, sexology (the scientific study of human sexuality or sexual behaviour) is not prohibited under this section. Similarly, if a photograph of a child is used to tell about the anatomy of a child then it won't constitute an offence under this section.

### **INDIAN PENAL CODE, 1860:**

**Section 292 of IPC prohibits the sale of obscene material. Section 292 (1) explains the meaning of “obscenity” and Section 292 (2) explains the punishment for sale, distribution, etc. of obscene materials.**

Section 292(1) states that any material will be deemed obscene if it is lascivious or prurient or any part of the material has the tendency to corrupt or deprave the people.

Section 292(2) states that a person who:

1. Sell, distributes, lets to hire, publicly exhibit or put into circulation any obscene material.
2. Imports or exports obscene material or knows that such material will be put for sale, distribution or circulation.
3. Is involved or receives profit from any business in the course of which he has knowledge or reason to believe that such obscene objects are for aforesaid purposes.
4. Advertises the obscene material.
5. Offers to do or attempts to do any act which is prohibited under the section.

On a first conviction, such a person shall be awarded either simple or rigorous imprisonment that may extend to 2 years along with a fine that may extend to ₹2,000. On the second conviction or person, such a person shall be awarded simple or rigorous imprisonment that may extend to 5 years along with a fine that may extend to ₹5,000.

Section 293 of Indian Penal Code, 1860, specifies the punishment for a person who sells, lets to hire or distributes any obscene object to any person who is below the age of 20 years. It states that on the first conviction a person shall be awarded imprisonment which may extend to 3 years along with the fine which may extend to ₹5,000 and on subsequent conviction, with imprisonment which may extend to 7 years along with the fine which may extend to ₹5,000.

## **LIABILITY OF INTERNET INTERMEDIARIES:**

### **Intermediary Meaning-**

In the context of the Internet, Intermediaries can be understood as an entity that works as the facilitator of the flow of data. It can either refer to the TSP (Telecom service provider) or ISP (Internet service providers) that provide internet services to the users or host the web and provide the server that stores the data. Intermediaries play a crucial role in society that is dependent upon the internet.

Section 2 (1) (W) of the Information Technology Act, 2000 defines intermediaries. It states that intermediary with respect to any particular record refers to:

- any person who receives the information on behalf of another person,
- Stores or transmits the record or provide services for the record
- Includes telecom service providers, internet service providers, search engines, online auction sites, online marketplaces, web hosting service providers and cyber cafes.

### **Liability of Intermediaries:**

Intermediaries liability refers to the extent of the liability of intermediary for the content prohibited by law. It is the consensus that intermediaries often don't have control over the content, but it is the users who have control over the content or it is the users who publish illegal content on the website rather than the intermediaries, it is argued that in that case, it will be inequitable to make the intermediaries liable rather it should be the user who should be made liable for publishing illegal content unless the intermediaries have considerable editorial control over the content.

Section 79 of the IT Act provides that the Intermediary will not be liable if:

- The intermediary has observed due diligence and certain guidelines issued by the Central Government
- The intermediary has not conspired, abetted, aided or induced the commission of an unlawful act
- The intermediary had taken down the unlawful content after having “actual knowledge” of the illegality of the content or after being notified by the government.

Why is Cyber Pornography difficult to regulate?

It isn't as easy as it seems to regulate Cyber Pornography. It is really difficult to regulate Cyber Pornography. Some of the reasons for the same are:

- The Internet is a global network, connecting various computers. It is highly decentralized i.e. no single entity has control over the content published on the Internet.
- People can use proxy servers to access pornographic content on the Internet. Thus, they can even access banned websites by using proxy servers.
- There are a large number of servers on the Internet that contains pornographic content. It is highly difficult to regulate such a large number of servers.
- Adult websites are not the only way to download porn. There are other communication protocols that the Internet users follow to download the pornographic content, say, for example, if a website is banned, the users may download porn by using Bit-Torrent technology. Similarly, peer-topper networks such as e Mule or Bulletin Boards can be used to download and share files, including porn.

Suggestions for Regulation of Cyber Pornography:

- **Adult-oriented top-level Domains-**

The use of top-level Domains (TLD) may be an effective way to control pornography in the Cyber world. TLD is the identifier that comes after “dot” in an Internet address. For example, in “yahoo.com”, “com” is the TLD, similarly in “wikipedia.org”, “org” is the TLD. Initially, the Internet was used for military purposes and thus, there were very few computers connected to the Internet, each computer was recognise by its IP (Internet Protocol) address.

Also, as the number of computers and internet users increased, the network became burdensome and thus, the need was felt for designing a new system that used hierarchical database structure. This hierarchical database structure allowed for two domains viz. Top-level domains and second-level domains. Second-level domains are registered under the Top-level domain itself.

It would be easier to filter pornographic content if the service providers opt to force their registrants to register themselves only under the domain for which the website is created. For example, using the TLD “.xxx” or “.sex” for adult websites. This will help in filtering the pornographic content, as the filtering software will need not to filter the keywords but only the TLP’s.

### **-Credit Card Verification-**

Another method to regulate cyber pornography can be the use of a credit card to verify the age of the viewer. The operators can ask for a credit card number to verify that the viewer is not a minor.

### **-Parental Control-**

Another effective method to regulate pornographic content is the parental control of what minor can access on the Internet. This method involves the use of software which restricts the websites that contain certain keywords. Parents can use such software to screen out certain websites.

### **-Issuing Digital Certificates-**

Yet another effective method to regulate cyber pornography is the issuing of Digital Certificates. Digital Certificates resides in the hard drive of the users, it provides all the details about the user including his age. Therefore, if a user will enter a website then the website will automatically check the information of the user and permit

### **Indecent Representation of Women’s Act, 1986-**

Indecent Representation of Women’s Act, 1986 seeks to prohibit the representation of women or any part of her body in an indecent form provided that such representation will injure the public morality or morals.



### **THE PREVENTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012:**

Tears and silence are painfully dark memories of many children who are sexually abused at a very young age. Child sexual abuse has become an epidemic which is briskly spreading all over the society either higher class or, lower class and attacking the younger ones. Pain and tissue injury can heal with the passage of time, but psychological and medical consequences still leave scars on individual life that still have so much left to experience. Children have a very limited perspective on the event in their lives and most often interpret any negative event as their fault thereby leaving them to be emotionally incest. So hereby I would like to present my views on the POCSO ACT, 2012 enforced by the Indian constitution to protect the interests of the children in our country. Child Sexual Abuse (CSA) has only been discovered recently as a publicly talked about problem in India. The act of POCSO has been a welcoming enactment in form of a special law. The law is seen criminalizing a number of acts including rape, exploitation for pornography and harassment. The articles I read highlights the pre and post the law scenes in the child abuse law segment in India. The law mandates setting up of Special Courts to facilitate speedy trials in CSA cases. The papers read, highlights the intended benefits that are witnessed and the unintended consequences that might arise in the near future from the

application of the law in the Indian context and with reference to the Indian mentality. No doubt the implementation of the POCSO in the year 2012 has been a single step forward in securing the rights of the children of the Indian land and furthering the cause of protecting children against sexual abuse in conjunction with a related legislation to clamp down on child marriages, which were highly popular in India, called the Prohibition of Child Marriage Act, 2006. This paper identifies three main issues arising from POCSO: age of consent, age determination, and mandatory reporting; these are the issues that highlight the fact that well-meaning laws in favour of the society can nevertheless have unintended negative consequences as well range of which can differ.

### **IN LAKSHMI KANT PANDEY V. UNION OF INDIA [1984] 2 SCR 795:**

The Supreme Court asserted that children are a "supremely important national asset" and the future well being of the nation depends on how its children grow and develop.

### **WHY THERE IS A NEED FOR POCSO ACT?**

Existing laws (INDIAN PENAL CODE, 1860, INFORMATION TECHNOLOGY Act, 2000 and THE JUVENILE JUSTICE Act, 2015) are not enough to address sexual offences. There are no such specific provisions or laws for dealing with sexual abuse of male children.

### **IN SAKSHI V. UNION OF INDIA, AIR 2004 SC 3566:**

The Supreme Court recognizing that Indian law permitted child sexual abuse urged Parliament to draft a law punishing child sexual abuse.

### **IN SHARATH CHANDRA POTTALA V. UNION OF INDIA, 2014 (2) WLN 410 (RAJ.):**

The Rajasthan High Court held that, the POCSO has been enacted for the very special purpose to protect the children from sexual assault and sexual harassment. POCSO is in line with Article 15(3) of the Constitution of India so as to make special provisions for the children”.

### **COGNIZABLE AND BAILABLE?**

While providing for a whole range of offences, the POCSO Act does not specify whether the offences are cognizable or not, or bailable or not. Section 19 of the POCSO Act and Rule 4 (2) (a) of the POCSO Rules imply that the sexual offences are cognizable as the police receiving information of commission of such

offence is required to record and register a First Information Report (FIR), per the provisions of Section 154 of CrPC, and furnish a copy of it, free of cost, to the person making such report. To determine whether a sexual offence is bailable or non-bailable, it is necessary to see the First Schedule of CrPC (Part II - Classification of Offences Against Other Laws): Whenever the punishment is less than 3 years of imprisonment, the offence is bailable. Any term of imprisonment equal to or more than 3 years, the offence is non-bailable. **All sexual offences under the POCSO Act are punishable with imprisonment up to 3 years or more and are, therefore, non-bailable.**

## HOW POCSO ACT CAME INTO EXISTENCE?

1. The process started initiating from the year 2018.
2. Extensive consultation held with Ministries, State Governments, Civil Society, and Experts.
3. Passed by Rajya Sabha on 10th May, 2012.
4. Passed by Lok Sabha on 22nd May, 2012.
5. Received present's assent on 19th June, 2012.
6. Came into effect on 14th November, 2012.

## WHAT IS THE PURPOSE OF THE POCSO ACT?

To provide protection to all children from the offences of sexual assault, sexual harassment and pornography –Child defined as any person below the age of 18 years. The Act defines different forms of sexual abuse which includes penetrative and non-penetrative assault. It also involves sexual harassment, pornography, etc. Under certain specific circumstances POCSO states a sexual assault is to be considered “aggravated if the abused child is mentally ill or when the abuse is committed by a member of the armed forces or security forces or a public servant or a person in a position of trust or authority of the child, like a family member, police officer, teacher, or doctor or a person-management or staff of a hospital — whether Government or private.”

Sexual abuses on children are a big blot on society at large as it shook's the human consciousness of the society and retard the normal healthy growth of children. It leads to grave physical and psychological effects on the body and mind of a child and dismantles the normal growth of a child. It does not leave only physical injuries on the body but also leaves an everlasting scar on the child's mind at a very nascent age. POCSO ACT has been birthed out of the very need to enact a specific legislation to tackle with the increasing sexual abuse against children in form of abuses like rape, pornography, various forms of penetration and criminalise acts of immodesty against children too.

Child Sex Abuse is considered as the most heinous crime which can be done to a child as the offender of these crimes knows that the forced sex which they are doing with the child is by leashing child's vulnerability and trust and is exposing to child under grave trauma which is not just a physical attack on its body and private

parts but also disturbing a child's mind so blatantly that it can take a lifetime for the child to feel normal ever after that abuse.

### **What is Child Sexual Abuse?**

World Health Organization (WHO) determines child sexual abuse as, 'inappropriate sexual behavior with a child' and 'involving a child in sexual activity that he or she doesn't fully comprehend, is unable to give informed consent to, or that violates the laws and social taboos of society.'

### **FOLLOWING ACTIONS ARE CONSIDERED AS CHILD SEXUAL ABUSE:**

- ┆ Fondling a child's genitals,
- ┆ Making the child fondle the adult's genitals,
- ┆ Intercourse, incest, rape, sodomy, exhibitionism and sexual exploitation,
- ┆ Inducement or coercion of child in unlawful activity,
- ┆ The exploitative use of child in prostitution or other unlawful sexual practices,
- ┆ The exploitative use of children in pornographic performances and materials.

### **THE EFFECTS OF CHILD SEXUAL ABUSE CAN INCLUDE:**

- ┆ Depression,
- ┆ Post traumatic stress disorder,
- ┆ Anxiety,
- ┆ Low Self Esteem,
- ┆ Propensity to further victimization in adulthood,
- ┆ Physical injury to child,
- ┆ Psychological trauma.

**LAW BEFORE POCSO ACT, 2012:**

Child sex abuse crimes before the enactment of POCSO Act were dealt under Indian Penal code. Child Sexual abuses were prosecuted under Indian Penal Code under following sections

- ┆ I.P.C (1860) – Section 375 Rape,
- ┆ I.P.C (1860) – Section 354 Outraging the modesty of women,
- ┆ I.P.C (1860) – Section 377 Unnatural Offences.

The I.P.C. was not adequate enough to protect the children and criminalize non- conventional sexual abuses which are different from above mentioned conventional crimes in form of child trafficking, pornography, sale of children.

There were several loopholes in the IPC which could not effectively protect the child due to various loopholes like:

- ┆ IPC 375 doesn't protect male victims or anyone from sexual acts of penetration other than "traditional" peno-vaginal intercourse.
- ┆ IPC 354 lacks a statutory definition of "modesty". It carries a weak penalty and is a compoundable offence. Further, it does not protect the "modesty" of a male child.
- ┆ In IPC 377, the term "unnatural offences" is not defined. It only applies to victims penetrated by their attacker's sex act, and is not designed to criminalize sexual abuse of children.

The very inadequacy of Indian Penal Code and absence of any stringent legislation for effectively addressing and tackling heinous crimes such as sexual exploitation and sexual abuse of children birthed the commencement of POCSO ACT as the very intention of Government establishments was to protect the children from offences of sexual assault, sexual harassment and pornography and to facilitate adequate legal machinery by establishing special courts for trial of such offences and matters incidental connected with child sexual abuse crimes. This was in due compliance of Article 15 of Constitution of India which mandates the states to protect the children of this nation and in lieu of United Nations Conventions on the Rights of the Child which prescribes the set of standards to be followed by state parties in securing the best interest of the child.

## **PROMINENT CASES & JUDGEMENTS BEFORE POCSO ACT, 2012:**

A listing of landmark cases and their judgments that laid the framework for and child and victim friendly judicial process.

### **Ghanashyam Misra V/S The State on 27 November, 1956-**

Way back in 1956, the Orissa High Court, recognizing that the offence was committed by offence is committed by a person in a position of trust or authority for the child, enhanced the sentence of Ghanashyam Misra, a school teacher who raped a 10 year old girl in the school premises. The judgment reads – “The circumstances are all of an aggravating nature. The victim is a young girl of ten years, and the culprit an adult of 39 years. He took advantage of his position by inducing her to come inside the School room and committed such an atrocious act, the consequence of which might as well be the complete ruin of the future life of the girl”. Not only did the court enhance the sentence to seven years but also ordered the accused to pay a compensation to the father and the child.

### **Gurcharan Singh V/S State Of Haryana on 13 September, 1972-**

A girl under 16 years was ‘forcibly taken by the accused to his fields outside the village where he committed rape on her. The court ruled that mere absence of marks of violence on the victim is immaterial because she was under 16 years of age. More importantly, it ruled that the victim cannot be considered as an accomplice to the act.

### **Gorakh Daji Ghadge V/S The State of Maharashtra on 6 March, 1980-**

In a case where the father was accused of raping his 13 year old daughter at home, the Bombay High Court maintained that seminal emission is not necessary to determine rape. It also prescribed stringent punishment because the victim was the daughter of the accused. The judgment reads: “Crimes in which women are victims need to be severely dealt with and in extreme cases such as this where the accused, who is the father of the victim girl has thought it fit to deflower his own daughter of tender years to gratify his lust, then only a deterrent sentence can meet the ends of justice.”

### **Harpal Singh & Anr. V/S State Of Himachal Pradesh on 14 November, 1980-**

The Supreme Court condoned the delay in filing the FIR in case of rape of a 16 year old girl. The court mentioned that it is common that since the honor of the family is involved, family members took some time to decide whether the matter needs to be taken to the court or not. The court also emphasized that since it was proved that the girl was below 16 years of age, her consent in sexual activity was irrelevant. The court also ruled that delay in reporting of the case will not affect the case if a reasonable explanation can be given.

### **Bharwada Bhoginbhai Hirjibhai V/S State of Gujarat on 24 May, 1983-**

The accused, a middle aged man had confined 2 friends of his daughter aged around 10 , who had come to his house to meet the daughter, and had raped them. The trial court convicted the accused for rape, violating modesty and wrongful confinement. The High Court upheld conviction while reducing the charge from rape to attempt to rape. The Supreme Court upheld the judgment of the trial court on the ground that minor discrepancies in the evidence were not relevant. The Court further remarked that corroboration for conviction in rape cases is not necessary. This judgment was relied on in later judgments to secure conviction when they were no other eye-witnesses to support evidence given by the victim.

### **Imratlal V/S State of Madhya Pradesh on 27 January, 1986-**

The Madhya Pradesh High Court stated in this case that the conviction of the accused can be solely based on the evidence of the victim, if her evidence is worthy of credence. The judgment also noted that for proving an offence of rape, it is not necessary that the accused, who commits rape, must discharge semen inside the vagina. The rule of corroboration is not the rule of law but rather a rule of prudence. The judgment goes on to state that when an offence of rape is proved on girls of tender age, the sentence of imprisonment should be severe.

### **Delhi Domestic Working Women's Forum V/S UOI and Others on 14 December, 1989-**

Six young domestic workers travelling on a train from Ranchi to Delhi were brutally harassed, assaulted and raped by army personnel. Acknowledging the hardships faced by the victims throughout the judicial process, this judgment delineated several guidelines to be followed when dealing with cases of sexual offences:-

- The complainants of sexual assault cases should be provided with adequate legal representation
- Legal assistance will have to be provided at the police station

- The police should be under a duty to inform the victim of her right to representation before any questions were asked of her.
- A list of advocates willing to act in these cases should be kept at the police station for victims.
- The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment.
- In all rape trials anonymity of the victim must be maintained, as far as necessary.
- Rape victims need to be given adequate and fair financial compensation.
- Compensation for victims shall be awarded by the court whether or not a conviction has taken place.

### **State of Punjab V/S Gurmit Singh and Others on 16 January, 1996-**

In this case, the Supreme Court was highly critical of the acquittal of persons accused of gang-raping a 16 year old girl. The trial court had referred to the young village girl as a person of loose character who had invented the story of rape to justify spending a night out of home. It had refused to rely on her statement. The Supreme Court observed that the appreciation of evidence by the trial court was “not only unreasonable but perverse”. It held that: “The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.”

### **State Of Andhra Pradesh V/S Gangula Satya Murthy on 19 November, 1996-**

A girl of sixteen was raped and throttled to death. Sessions Court convicted the accused and sentenced him to imprisonment for life and rigorous imprisonment for 7 years. But on appeal, a Division Bench of the High Court of Andhra Pradesh acquitted him citing minor contradiction and discrepancies. This acquittal was challenged by the State of Andhra Pradesh. This time, the court concluded that the acquittal was an error and displayed a lack of sensitivity. It categorically stated: “The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the witnesses, which are not of a fatal nature to throw out allegations of rape.”

### **Sudesh Jhaku V/S K.C.J & Others, Delhi on 23 May, 1996-**

A sordid and shocking case of a father, a high ranking bureaucrat in the Ministry of Home Affairs, involving his six year old daughter in a series of sexualised games and orgies with himself and other adults forced the justice system into a series of deliberations on various aspects of sexual abuse and assault. There was a

need to elaborate and expand on the meaning of the terms ‘rape’, ‘penetration’ and according a higher punishment to sexual offenders who hold a ‘position of trust and authority’. The court also deliberated on the precautions to be taken when child is called on depose in court. The order makes mention of several child friendly procedures like asking simple questions (avoiding double negatives) when questing the child and giving breaks to the child. It also highlights how the presence of a screen cannot just retain anonymity of the child and also make her/him uncomfortable when deposing. It also speaks of the presence of ‘support persons’ or ‘neutral adults’ who can handhold and support the child during trial.

#### **State Of Karnataka V/S Manjanna on 4 May, 2000-**

Hosadgura Hospital refused to medically examine a girl victim of 15 years of age as she had not been referred by the police. In the passing of the judgment, the Court put on record their disapproval of such conduct by Government Hospitals particularly in rural areas where hospital are few and far between citing the loss of evidence on account of the delay in conducting medical examination. The judgment also stated that age assessment of the victim, when in doubt, should be considered in favour of the victim.

#### **Sakshi V/S Union of India on 26 May, 2004-**

The NGO Sakshi filed a writ petition in Public Interest to broaden the definition of rape in cases involving children where the child is abused by insertion of objects into the vagina or insertion of the male organ into body parts such as anus or mouth. The Supreme Court rejected the plea & dismissed the public interest litigation. But it issued valuable guidelines for trial of rape and sexual abuse which concern children. These are known as the Sakshi guidelines:

1. A screen or an arrangement where victim or witnesses do not see the body or face of the accused.
2. Questions put in cross examination on behalf of accused, if they relate directly to the incident, must be given in writing to the Presiding Officer of the court who may put them to the victim/witnessed in a language that is clear and not embarrassing. Victims of child abuse or rape should be allowed sufficient breaks as and when required during the testimony.

#### **Anchorage Case (Allan John Waters vs State Of Maharashtra on 23 July, 2008 & Childline India Foundation & Anr V/S Alan John Waters & Ors on 18 March, 2011)-**

In 2001, a case of institutional child sexual abuse was exposed in Colaba, Mumbai in which British nationals and former officers of the navy, Allan Waters and Duncan Grant had started an orphanage by the name of Anchorage Home which was center of sex tourism for many foreign nationals. In March 2006, a Mumbai sessions court sentenced Grant and Waters to six years in prison on the charge of sodomy and sexually abusing

five minor boys. They challenged the conviction in the Bombay High Court, which acquitted them in 2008. However in 2011, Supreme Court restored the conviction and the sentence. Grant and Waters have since completed their sentence and returned to the UK where they have been put on the Sex Offenders Register.

### **VARIOUS OFFENCES COVERED UNDER THE POCSO ACT:**

1. Section 3 - Penetrative Sexual Assault,
2. Section 5 - Aggravated Penetrative Sexual Assault,
3. Section 7 - Sexual Assault,
4. Section 9 - Aggravated Sexual Assault,
5. Section 11 - Sexual Harassment of the Child,
6. Section 13 - Use of Child for Pornographic Purposes.

The above mentioned offences are elaborated as under:

### **SECTION 3 - PENETRATIVE SEXUAL ASSAULT:**

┆ A person is said to commit "penetrative sexual assault" if -

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

### **SECTION 4 - PUNISHMENT FOR PENETRATIVE SEXUAL ASSAULT:**

(1) Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than 2 [ten years] but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for

life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine.

(3) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

#### **SECTION 5 - AGGRAVATED PENETRATIVE SEXUAL ASSAULT:**

**(a) Whoever, being a police officer, commits penetrative sexual assault on a child—**

(i) within the limits of the police station or premises at 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) in the course of his duties or otherwise; or (iv) where he is known as, or identified as, a police officer; or

**(b) Whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child-**

(i) within the limits of the area to which the person is deployed; or (ii) in any areas under the command of the forces or armed forces; or (iii) in the course of his duties or otherwise; or (iv) where the said person is known or identified as a member of the security or armed forces; or

**(c) Whoever being a public servant commits penetrative sexual assault on a child; or**

**(d) Whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or**

**(e) Whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or**

**(f) Whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or**

**(g) Whoever commits gang penetrative sexual assault on a child. Explanation.—**

When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) **Whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or**

(i) **Whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or**

(j) Whoever commits penetrative sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) of section 2 of the Mental Health Act, 1987(14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; (ii) in the case of female child, makes the child pregnant as a consequence of sexual assault; (iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; (iv) causes death of the child; or (k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or (l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or (m) whoever commits penetrative sexual assault on a child below twelve years; or (n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or (o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or (p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or (q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or (r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or (s) whoever commits penetrative sexual assault on a child in the course of [communal or sectarian violence or during any natural calamity or in similar situations]; or (t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or (u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated penetrative sexual assault.

**IN STATE V. HEMMAL SHAH, 2014 CRI LJ 1767:**

The Patna High Court held that, penetrative sexual assault becomes aggravated penetrative sexual assault if the penetrative sexual assault is, subject to certain conditions, committed, within the premise of a police station, by the member of armed force or security forces or a public servant or by a person entrusted by

management of jail or its staff or entrusted with the management or staff of a hospital or management or staff of an educational institution or religious institution, or when the penetrative assault is by a gang.

#### **SECTION 6 - PUNISHMENT FOR AGGRAVATED PENETRATIVE SEXUAL ASSAULT:**

Punishment for aggravated penetrative sexual assault (1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death. (2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

#### **IN VIJAY RAIKWAR V. STATE OF MADHYA PRADESH, MANU/MP/ 0690/2014:**

The Madhya Pradesh High Court held that, in a case based purely on circumstantial evidence, conviction under section 5 and 6 can be sustained by medical report, injury on victim's body and forensic evidence.

#### **SECTION 7 - SEXUAL ASSAULT:**

Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

#### **SECTION 8 - PUNISHMENT FOR SEXUAL ASSAULT:**

Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

#### **SECTION 9 - AGGRAVATED SEXUAL ASSAULT:**

(a) **Whoever, being a police officer, commits sexual assault on a child--** (i) within the limits of the police station or premises where 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) in the course of his duties or otherwise; or (iv) where he is known as, or identified as a police officer; or

(b) **Whoever, being a member of the armed forces or security forces, commits sexual assault on a child--** (i) within the limits of the area to which the person is deployed; or (ii) in any areas under the command of the security or armed forces; or (iii) in the course of his duties or otherwise; or (iv) where he is known or identified as a member of the security or armed forces; or

- (c) **Whoever being a public servant commits sexual assault on a child; or**
- (d) **whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or**
- (e) **Whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or**
- (f) **Whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or**
- (g) **Whoever commits gang sexual assault on a child.** Explanation.--when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or
- (h) **Whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or**
- (i) **Whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or**
- (j) **Whoever commits sexual assault on a child,** which-- (i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (1) of section 2 of the Mental Health Act, 1987(14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or (ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or
- (k) **Whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or**
- (l) **Whoever commits sexual assault on the child more than once or repeatedly; or**
- (m) **Whoever commits sexual assault on a child below twelve years; or**

- (n) **Whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or**
- (o) **Whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or**
- (p) **Whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or**
- (q) **Whoever commits sexual assault on a child knowing the child is pregnant; or**
- (r) **Whoever commits sexual assault on a child and attempts to murder the child; or**
- (s) **Whoever commits sexual assault on a child in the course of communal or sectarian violence or during any natural calamity or in any similar situations; or**
- (t) **Whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or**
- (u) **Whoever commits sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated sexual assault.**
- (v) **Whoever persuades, induces, entices or coerces a child to get administered or administers or direct anyone to administer, help in getting administered any drug or hormone or any chemical substance, to a child with the intent that such child attains early sexual maturity;**

#### **SECTION 10 - PUNISHMENT FOR AGGRAVATED SEXUAL ASSAULT:**

Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

#### **SECTION 11 - SEXUAL HARASSMENT:**

A person is said to commit sexual harassment upon a child when such person with sexual intent,-- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention

that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or (iii) shows any object to a child in any form or media for pornographic purposes; or (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or (vi) entices a child for pornographic purposes or gives gratification therefore. Explanation,--Any question which involves "sexual intent" shall be a question of fact.

## **SECTION 12 - PUNISHMENT FOR SEXUAL HARASSMENT:**

Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

### **IN VINOD KUMAR V. STATE, MANU/DE/3515/2014:**

The Delhi High Court held that obstructing the child victim on the way to the washroom and then returning with her to her train berth constitutes sexual harassment.

## **SECTION 13 - USE OF CHILD FOR PORNOGRAPHIC PURPOSES:**

Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes-- (a) representation of the sexual organs of a child; (b) usage of a child engaged in real or simulated sexual acts (with or without penetration); (c) the indecent or obscene representation of a child, shall be guilty of the offence of using a child for pornographic purposes.

**Explanation.**--For the purposes of this section, the expression "use a child" shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material.

## **PUNISHMENT FOR USING CHILD FOR PORNOGRAPHIC PURPOSES:**

(1) Whoever, uses a child or children for pornographic purposes shall be punished with imprisonment of either description which may extend to five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also be liable to fine. (2) If the person using the child for pornographic purposes commits an offence referred to in section 3, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment

for life, and shall also be liable to fine. (3) If the person using the child for pornographic purposes commits an offence referred to in section 5, by directly participating in pornographic acts, he shall be punished with rigorous imprisonment for life and shall also be liable to fine. (4) If the person using the child for pornographic purposes commits an offence referred to in section 7, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than six years but which may extend to eight years, and shall also be liable to fine. (5) If the person using the child for pornographic purposes commits an offence referred to in section 9, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than eight years but which may extend to ten years, and shall also be liable to fine.

**IN SHANKAR KISANRAO KHADE V. STATE OF MAHARASHTRA, 2013 CRILJ 2595:**

The Supreme Court noted that, sexual abuse can be in any form like sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted or encouraging, inducing or forcing the child to be used for the sexual gratification of another person, using a child or deliberately exposing a child to sexual activities or pornography or procuring or allowing a child to be procured for commercial exploitation and so on.

**SECTION 15 - PUNISHMENT FOR STORING PORNOGRAPHIC MATERIAL INVOLVING A CHILD, FOR COMMERCIAL PURPOSES – 3 years Imprisonment.**

**SECTION 3, 5, 7 AND 9 - BURDEN OF PROOF SHIFTED ON ACCUSED IN CASE OF SERIOUS OFFENCES.**

**IN NOOR AGA V. STATE OF PUNJAB, (2008) 16 SCC 417:**

Supreme Court held that the presumption of innocence is a human right rather than a fundamental right. The constitutionality of a provision reversing the burden of proof must be weighed against the State's responsibility to protect innocents. Note that the plain reading of POCSO goes against Noor Aga – it eliminates preponderance of probability. The accused must prove beyond a reasonable doubt.

## **ABETMENT OF AND ATTEMPT TO COMMIT AN OFFENCE:**

### **SECTION 16 - ABETMENT TREATED WITH SAME GRAVITY AS COMMISSION OF THAT OFFENCE:**

**Explanation:** Trafficking of children for sexual purposes covered under abetment (Section 16 Explanation III)

### **SECTION 18 - PUNISHMENT FOR ATTEMPT TO COMMIT AN OFFENCE:**

Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both.

### **PROCEDURE FOR REPORTING OF CASES:**

Section 19 - Reporting of offence to the SPECIAL JUVENILE POLICE UNIT or the local police.

Section 19 (5) - In case, child is in need of care and protection, SPECIAL JUVENILE POLICE UNIT / local police to provide such care within 24 hours of the report.

Section 19 (6) - SPECIAL JUVENILE POLICE UNIT / local police to report the matter to Child Welfare Committee and Special Court within 24 hours.

Section 20 - Obligation of media, studio and photographic facilities report cases to SPECIAL JUVENILE POLICE UNIT / local police.

Section 21 (1) - Failure to report commission of offence punishable with imprisonment of six months or with fine or both, Failure to record an offence also punishable with imprisonment of six months or with fine or both.

Section 21 (2) - Failure to report by a person, who is in charge of any company or an institution, in respect of offence committed by subordinate under his control, also punishable with imprisonment of one year and fine.

Section 21 (3) - Failure to report not punishable in case of a child.

Section 22 (1) - False complaint against any person with malicious intent punishable with imprisonment of 6 months or with fine or both.

Section 22 (3) - False complaint against child, punishable with imprisonment of one year or with fine or with both.

**IN AISHWARYA V. INSPECTOR OF POLICE, MANU/KE/1262/2014:**

The Kerala High Court exercised its discretion and quashed the FIR against the accused when the victim admitted to lodging false case upon being thwarted in love. Despite the public prosecutor urging the court that, such practice should not be encouraged in light of the serious nature of allegation and the steps already taken by the police to investigate the crime, given the tender age of the victim and her future career prospects, the court chose to allow her the relief she prayed for. The court also commented on the improbability of success in judicial proceedings in the absence of cooperation of the petitioner.

**SECTION 23 - MEDIA NOT TO DISCLOSE THE IDENTITY OF THE CHILD, EXCEPT WHEN PERMITTED BY THE SPECIAL COURT:**

└Identity includes: name, address, photograph, family details, school, neighborhood or any other particulars which may lead to disclosure of identity of the child,

└Punishment in case of contravention is imprisonment for not less than 6 months which may extend to one year.

**IN A.K. ASTHANA V. UNION OF INDIA, W.P. (C) 787/2012:**

The Delhi High Court held that, the guidelines for media reporting on children and directions to stakeholders concerning disclosure of identity of child sexual abuse cases be disseminated and implemented.

**PROCEDURES FOR RECORDING STATEMENT OF CHILD:**

**SECTION 24 - CHILD FRIENDLY PROCEDURES:**

└Recording at the residence of child,

└Recording by officer not below the rank of sub-inspector,

└Police officer not to be in uniform,

↳Child not come in contact with the accused,

↳Child not to be a detained in police station in night,

↳Recording of the statement of child in the presence of parents or any other person in whom the child has trust and confidence,

**SECTION 26 (2) - ASSISTANCE OF TRANSLATOR/ INTERPRETER/ SPECIAL EDUCATOR AS THE CASE MAY BE:**

↳Wherever possible recording also by audio-video electronic means

**PROCEDURES FOR RECORDING STATEMENT OF CHILD:**

**Section 25 - Recording of statement by Magistrate:**

↳As per Section 164 of Criminal Procedure Code, 1973, Sub-Section (I) of Section 164 shall not apply

↳Child speaks as per his/her convenience.

**SECTION 27 - MEDICAL EXAMINATION:**

↳As per section 164A of CrPC, In case of girl child, medical examination by lady doctor,

↳Medical examination needs to done in the presence of parents,

↳In case parent of the child cannot be present at the time of medical examination, then such medical examination is to be conducted in the presence of a woman nominated by the head of the medical institution.

**SECTION-164 A OF CR.P.C.- MEDICAL EXAMINATION OF THE VICTIM OF RAPE.**

↳The registered medical practitioner, to whom such woman is sent shall, without delay, examine her and prepare a report of his examination giving the following particulars, namely:-

(I) The name and address of the woman and of the person by whom she was brought;

(II) The age of the woman;

(III) The description of material taken from the person of the woman for DNA profiling;

(IV) Marks of injury, if any, on the person of the woman;

(V) General mental condition of the woman; and

(VI) Other material particulars in reasonable detail.

**The report shall state precisely the reasons for each conclusion arrived at:**

└The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.

└The exact time of commencement and completion of the examination shall also be noted in the report.

└The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.

**SPECIAL COURTS FOR POCSO CASE:**

Section 28 - A Court of Session in each District to be designated as Special Court for speedy trial.

Section 32 - State Government to appoint a Special Public Prosecutor for every Special Court.

**SECTION 33 - PROCEDURES AND POWERS GIVEN TO SPECIAL COURTS:**

└They may take cognizance of any offence, without the accused being committed to it for trial upon receiving a complaint of facts.

└ Cross examination or re-examination of the child through Special Court,

└ Frequent breaks for child during trial,

└ Presence of parents/ guardian/ friend/ relative of child,

└ Child not to be called repeatedly to testify,

└ No aggressive questioning or character assassination of child,

└ Identity of the child not to be disclosed,

└ “In-camera” trial of cases,

└ Child not to see the accused at the time of testifying

└ Special Court may take assistance of interpreter/ translator/ special educator, if need be,

└ If offence is committed a child, such child to be dealt under the Juvenile Justice Act, 2015,

└ Section 35 - Evidence to be recorded within 30 days of the Special Court taking cognizance of the offence, Completion of trial by Special Court within a year from the date of taking cognizance of offence.

**IN SHRI ASHARAM BAPU V. STATE OF RAJASTHAN, 2014 (3) RLW 2407 (RAJ.):**

The Rajasthan High Court rejected the bail of the accused holding that his release would impede the progress of trial as well as jeopardize the safety of the victim and her family, who have been living under constant threat.

**IN SACHIN V. STATE OF HIMACHAL PRADESH, MANU/HP/1301/2014:**

The Himachal Pradesh High Court rejected bail holding that it is not expedient in the ends of justice to release the applicants on bail till testimonies of minor prosecutrix are not recorded. Further, if applicants are released on bail at this stage then trial of case will be adversely effected and there is apprehension that they will induce and threat the prosecution witnesses.

**IN MAHENDRA V. STATE OF RAJASTHAN, 2014(3) RLW 2470 (RAJ.):**

The Rajasthan High Court held that, when accused are absconding, they are not entitled to anticipatory bail.

**IN LILLU @RAJESH V. STATE OF HARYANA, 2013 CRILJ 2446:**

The Supreme Court held that, the two finger test violates the right of rape survivors to privacy, physical and mental integrity and dignity. Consent cannot be presumed when if the report is affirmative.

**IN ATENDER YADAV V. STATE, 2013(4) JCC 2962:**

The Delhi High Court observed that the two-finger test must not be conducted as its findings are irrelevant to the determination of sexual assault. Conclusions such as 'habituated to sexual intercourse are forbidden by law.

**COMPENSATION AND PROVIDING A FREE LEGAL AID:**

**SECTION 33 (8) - Provision for compensation for immediate relief and long-term rehabilitation of child.**

**SECTION 40- Provision for free legal aid.**

**SECTION 43 AND 44 - MONITORING AND SPREADING AWARENESS: SECTION 43 AND 44:**

┆ National Commission for Protection of Child Rights (NCPCR) designated as Monitoring Authority of the Act,

┆ Onus on Centre and States to spread awareness on the provisions of the Act,

┆ Onus on Centre and States to provide training to their officers and other concerned persons.

### **Punishment for using a child for pornographic purposes**

<b>Offence</b>	<b>POCSO Act, 2012</b>	<b>2019 Bill</b>
Use of a Child for Pornographic purposes	Maximum: 5 years	Minimum: 5 years
Use of a child for the pornographic purposes resulting in penetrative sexual assault	Minimum: 10 years Maximum: life imprisonment	No Change
Use of a child for the pornographic purpose resulting in aggravated penetrative sexual assault	Life Imprisonment	Minimum: 20 years Maximum: Life imprisonment or death
Use of a child for the pornographic purposes resulting in sexual assault	Minimum: 6 years Maximum: 8 years	Minimum: 3 years Maximum: 5 years
Use of a child for the pornographic purposes resulting in aggravated sexual assault	Minimum: 6 years Maximum: 10 years	Minimum: 5 years Maximum: 7 years

**Sources: *The Protection of Children from Sexual Offences (Amendment) Bill, 2019; The Protection of Children from Sexual Offences Act, 2012: PRS***

**IN K. VENKATESHWARLU V. STATE OF ANDHRA PRADESH, (2012) 8 SCC 73:**

The Supreme Court held that the Court can accept a child witness's statement only if the child understands questions, is capable of giving rational answers, is not tutored and his evidence has a ring of truth.

**IN BALJEET SINGH V. STATE OF DELHI AND PUSHPA DEVI V. RAJESH KUMAR, CRIMINAL APPEALS 386, 486, 487 AND 1080/2011:**

No Court shall examine a child without first testing his / her testimonial intelligence.

**IN STATE V. RAHUL, (2013) ILR III DELHI 1861:**

The questions which were put to the child witness ought to have been sensitively framed keeping in mind the socio-economic background of the child, education of the child, the age as well as the capacity of the child which the trial judge would evaluate when the child is produced before him.

**IN JHINGE V. STATE OF UTTAR PRADESH, MANU/UP/1008/2006:**

If a child does not understand the obligations of the oath, he can still be permitted to testify but his evidence must be scrutinized more carefully.

**IN STATE OF MADHYA PRADESH V. RAMESH, (2011) 4 S.C.C. 786:**

The Supreme Court has held that children are “incapable of having any malice or ill will against any person,” and thus, there must be evidence of something occurring between the date of the crime and the date of the child's testimony to explain why the child would want to implicate the accused falsely.

**IN BHAWNA GARG V. STATE, MANU/DE/0469/2014:**

The Supreme Court has held that leeway should be granted in cases of delay in reporting of sexual offences. Victims agonize over the possibility of stigma, the honour of their family, the wishes of their family member etc. before approaching the police.

**IN SATPAL SINGH V. STATE, 2010 CRLJ 4283:**

The Supreme Court has held that courts must expect delay in lodging of FIRs of sexual offences and must use different measures to appreciate these delays.

**IN STATE V. RAHUL, (2013) ILR III DELHI 1861:**

The Delhi High Court held that, the court should ascertain the language of the witness as well as vocabulary before the deposition. Even if the prosecutrix uses unclear terms about “gandi harkatein” or “badtamezein” the Court should record those terms but also sensitively elicit their meaning.

**IN STATE OF MAHARASHTRA V. DATTATRAYA, 2014 ALLMR (CRI) 2078:**

The Bombay High Court held that keeping in mind the rising graph of sexual offences and especially of sexual offences against children and public outcry in relation to the same, the sentencing policy also now needs to be shaped keeping all these aspects in mind.

**IN STATE OF MADHYA PRADESH V. MADANLAL, MANU/SC/0689/2015:**

The Supreme Court of India strongly condemned the practice of awarding lesser sentences due to “compromise” between the rapist and the victim. Reminding judges that rape is non-compoundable, the Supreme Court cautioned that “consent” born out of such “compromise” could be due to pressure from the accused or years of trauma. This “consent” is therefore an unsafe ground for the discretionary power to award a lesser sentence. The Supreme Court also rejected the idea of marriage as compromise for rape cases because this is a way of “putting pressure in an adroit manner” and cautioned Courts to stay away from this “subterfuge”.

**IN SHIVA@SAVARAM V. STATE OF RAJASTHAN, 2014(1) CRIMES 102:**

Awarding Rs. 3 lakhs as interim compensation to a victim under POCSO, the Rajasthan High Court held that, to make the victim wait till the trial is concluded, is to leave her in misery without applying any balm or providing succour. Victims need compensation due to lack of institutions that provide psychological counselling or vocational options.

**IN KHEM CHAND & ORS. V STATE OF DELHI, ILR (2008) SUPP.(5)DELHI92:**

The Delhi High Court held that effective measures should be taken at every stage of the criminal justice process to ensure rehabilitation of the victim as member of the community. It is necessary to sensitize all who are involved in the investigation, prosecution and trial and the role each one of them can play to mitigate the rigor of the trial and prevent the erosion of confidence of the victim.

**IN SHANKAR KHADE V. STATE OF MAHARASHTRA, 2013 (5) SCC 546:**

The Supreme Court held that, courts must apply the “best interest of the child” standard – the best interest of the child is paramount and not the interest of the accused.

**IN VIRENDER V. STATE OF NCT DELHI, MANU/DE/2606/2009:**

The Delhi High Court held that, as far as possible trial should be conducted by women judges.

**IN SHEEBA ABIDI V. STATE, 113 (2004) DLT 125:**

The Delhi High Court held that, “the learned Trial Judge may also examine the child witness in his chamber so that the child is not overawed by the court atmosphere. The presiding Judge must ensure that child victim is examined in a congenial, cordial and friendly. It would be better if the evidence is recorded in post-lunch session at the end of Board when other cases are over and court is less crowded.” The Delhi High Court held that, “the learned Trial Judge may also examine the child witness in his chamber so that the child is not overawed by the court atmosphere. The presiding Judge must ensure that child victim is examined in a congenial, cordial and friendly. It would be better if the evidence is recorded in post-lunch session at the end of Board when other cases are over and court is less crowded”.

**IN STATE OF PUNJAB V. GURMIT SINGH, AIR 1996 SC 1393:**

The Supreme Court held that, “it is the role of the court to ensure that cross-examination “is not made a means of harassment or causing humiliation to the victim of crime”.

**MANOHARAN V/S STATE BY INSPECTOR OF POLICE, 2019:**

In this case, the Apex Court observed that the instantaneous case consists of a petrifying criminal act wherein a young 10-year-old girl has first been horribly gang-raped and after that, she and her brother aged 7 years were thrown away into a canal which caused their death by drowning.

Since the case involved a child below the age of 12 years, the same fell under Section 5(m) of the POCSO Act. Consequently, the Apex Court reaffirmed the decision of Madras High Court in awarding a death sentence to the accused and the appeal was outright dismissed.

**Intent behind the amendment:**

The Amendment Bill was passed keeping in mind the following objectives:

1. To stop the rampant sexual abuse of children, by providing a deterrent in the form of strong penal provisions in the Amendment Act.
2. To provide more stringent punishment, including the death penalty, for aggravated sexual offences against children.
3. To protect the interests of children who are vulnerable in times of distress, as well as ensure their safety and dignity.
4. To establish clarity with respect to different aspects of child abuse and the punishment thereof.
5. To look into the sexual assault of both minor boys and girls; being gender-neutral.
6. To provide for stringent punishment for storing and distributing pornographic material and life imprisonment, for using children for pornographic purposes.
7. To establish Special Courts for the trial of such offences.

Exploring sexual aspects and engaging in sexual acts with a romantic partner are normal processes of development among adolescents. However, in India, the whole aspect of the adolescent romantic relationship is colored by the complex interplay of sociocultural phenomena. Even from the legal point of view as given under the POCSO Act, 2012, the matter of consent remains as a tug of war between the age-appropriate developmental needs and legal obligation for the children in India. Unfortunately, amidst this debate, the real cases of child sexual abuse are getting over shadowed beclouded. There is an urgent need to address this issue, for protecting the best interest of the children from all forms of sexual exploitation and promoting their healthy

development as sworn by the act. the present legislation for criminalizing sexual offences against children was a much-needed piece of legislation. The adjudication process for the same should be made more transparent and the role of police in such offences much more prompt, so that people sense a feeling of contention and credibility in the whole process from initiation to adjudication. The deterrent effect which this act renders is also sufficient, but to overcome and eradicate this issue from the grassroots level, the collective consciousness among the masses should be pure and must include the feelings of love and care.

In **RAVI V. STATE OF MAHARASHTRA (2019)**, considering the heinous nature of the rape and murder of girl of 2 years, the court without any hesitation gave the death penalty to the accused giving a retrospective effect to the Amendment. Considering the twin factors, it concluded that such criminals cannot be reformed despite best efforts and would be a threat to the security and safety of the society whenever released. It further held that it would adhere to the legislative policy in the wake of increasing cases of sexual abuse and exploitation of children of tender age. A similar approach was also taken in **MANOHARAN V. STATE** which involved rape, sodomy and cold-blooded murder of a boy and a girl aged 7 and 10 years respectively.

However, the court also commuted the death sentence to life imprisonment in *Ravishankar v. State of M.P.* and *Prahlad v. State of Rajasthan* because the mitigating circumstances outweighed the aggravating ones.

In cases falling under the POCSO, a death penalty to the convict might give partial relief to the victim as well as their guardian, since a lot of victims go through secondary victimisation in the society. Secondary victimization refers to insensitive behaviours and attitudes which lead to victim-blaming. A lot of victims face this from their own family members, affecting their mental health adversely. Although it might not provide complete relief to the victims, many of them might get a partial relief because of the social backlash faced by the convict. However, the number of convicts awarded death penalty is also not that high as the court awards punishment of this severity only in 'rarest of the rare' cases. For example, in two cases from 2012 and 2015, the Supreme Court held the 2019 POCSO amendment inapplicable. The trend, however, can be seen changing as the death sentences awarded for murders involving sexual offences in 2019 was at the highest in four years.

The aim, according to the government statement, is to discourage the trend of child sexual abuse by acting as a deterrent due to strong penal provisions incorporated. The need for capital punishment has been rightly summarised in *Ravji v. State of Rajasthan*; in a criminal trial, the criminal gets punished according to the nature and gravity of the crime. If for such heinous crimes the most deterrent punishment is not given, then there will be no deterrence left in the society ultimately. One cannot argue for the abolition of death sentence citing violation of human rights of the offenders; doing away with the penalty harms the interests of the

society. Hence, neither should the Court recklessly hand out death sentences nor should it follow the ‘reverence for life’ principle by the book. The punishment before all things must be befitting the nature of crime and deterrent with an explicit aim to make an example out of the evil-doer and a warning to those who are still innocent.

The Supreme Court stayed a Bombay High Court judgment that interpreted sexual assault as only “skin-to-skin” contact with sexual intent under the Protection of Children from Sexual Offences (POCSO) Act, 2012.

In a judgment passed on 19 January, Justice Pushpa V. Ganediwala acquitted the accused, Satish, under Section 7 (sexual assault) of the POCSO Act, while ruling that the act of groping a child’s breast, without any skin-to-skin contact and sexual intent, is not sexual assault under the law.

“The act of pressing of breast of the child aged 12 years, in the absence of any specific detail as to whether the top was removed or whether he inserted his hand inside top and pressed her breast, would not fall in the definition of ‘sexual assault’,” the court had said.

Attorney General K.K. Venugopal mentioned the Bombay High Court verdict before Chief Justice of India S.A. Bobde’s court, calling it a “disturbing conclusion” and asserted that it “sets a dangerous precedent”.

The AG also told the court that the Centre will file a petition in the apex court, challenging the high court verdict.

In the meantime, the court stayed the release of the accused in the case and issued notice to him.

‘Direct physical contact i.e. skin to skin’

The high court was dealing with an incident that dates back to December 2016.

According to the complaint lodged by the mother of the girl who was then a 12-year-old, Satish took her to his house on the pretext of giving her a guava.

He then “pressed her breast and attempted to remove her salwar”. The girl’s mother reached the spot just then and rescued her, the complaint stated, adding that she immediately got an FIR registered against Satish.

In February 2020, a trial court found him guilty under sections 354 (assault or criminal force to woman with intent to outrage her modesty), 363 (kidnapping) and 342 (wrongful confinement) of the IPC, and Section 8 (punishment for sexual assault) of the POCSO Act.

He was sentenced to three years' rigorous imprisonment and a fine of Rs 500 was imposed on him. Satish then filed an appeal in the high court.

The high court considered the question “whether the ‘pressing of breast’ and ‘attempt to remove salwar’ would fall within the definition of ‘sexual assault’ as defined under Section 7 and punishable under Section 8 of the POCSO Act”.

Justice Pushpa V. Ganediwala then ruled that physical contact for sexual assault under Section 7 of the POCSO Act would mean “direct physical contact i.e. skin to skin”, the court added.

“Admittedly, it is not the case of the prosecution that the appellant removed her top and pressed her breast. As such, there is no direct physical contact i.e. skin to skin with sexual intent without penetration,” it said.

The court pointed out that it wasn't the prosecution case that Satish “removed her top and pressed her breast”.

It then opined that this would fall under Section 354 of the IPC, and convicted Satish under this provision.

This led to his punishment being reduced from a three-year rigorous imprisonment — the minimum under Section 8 of the POCSO Act, which lays down punishment for offences listed under Section 7 — to a year's rigorous imprisonment — the minimum under Section 354.

Meanwhile, the Youth Bar Association of India has also filed a petition in the Supreme Court challenging the high court verdict. The petition asserts that the observations and reasoning in the verdict would “lead to a dastardly situation”.

## **RAISING THE AGE OF CONSENT TO SEXUAL ACTIVITY FROM 16 YEARS TO 18 YEARS:**

Prior to its amendment in 2013, the IPC stated that sexual intercourse amounted to rape when committed upon a woman “when she is under sixteen years of age.” In such circumstance, consent of the woman was immaterial. The POCSO Act has increased the age of consent to sexual activity from 16 years to 18 years. Therefore, sexual activity described under the POCSO Act committed with a child above 16 years is an offence, even if such activity is consensual. Some believe that the increase in the age of consent to sexual activity is in conformity with the subject of Child Protection, and the Convention on the Rights of the Child. But there is also a view that sexual activity among children between 16 and 18 years is expected behaviour at that age and should not be criminalised, especially as it might become a tool in the hands of those perpetuating patriarchy, casteism and religious bias. At this stage, it is important to note that laws related to child sexual assault in several countries do not criminalise consensual sexual activity between children, when one child is below the age of consent but above a stipulated age, and the other child is above the age of consent, but the age gap between the two children is within a stipulated range. An example will help to better understand this. Legislation provides that the age of consensual sexual activity is 16 years, and it also provides that if a child is above 14 years and the age gap between such child and the other partner is less than 3 years, any consensual sexual activity between such persons will not be criminalised. Hence, consensual sexual activity between a 15 year old and a 17 year old will not be treated as an offence.

### **IN SHANKAR KISANRAO KHADE V. STATE OF MAHARASHTRA, 2013 CRILJ 2595:**

The Supreme Court held that, in cases of child sexual abuse, more needs to be done in terms of prevention. Penal laws focus more on situations after commission of offences like violence, abuse, exploitation of the children. Witnesses of many such heinous crimes often keep mum taking shelter on factors like social stigma, community pressure, and difficulties of navigating the criminal justice system, total dependency on perpetrator emotionally and economically and so on.

### **MARITAL RAPE ENUNCIATED WITH POCSO ACT, 2012:**

As demonstrated, the POCSO criminalizes sexual offences upon children below the age of 18 years, irrespective of the age of the perpetrator of such an activity, or consent of the child involved, or relationship with the child. In the paper on child marriage and the POCSO, irrespective of marital status, all sexual activity with regard to child wives above the age of 15 and below the age of 18 is criminalized by the POCSO. The POCSO states that one of the grounds of aggravated penetrative sexual assault is through a relative of the child through marriage (section 5(n), punishable with a minimum period of ten years imprisonment which may extend up to life imprisonment (section 6). According to section 42, the provisions of the POCSO shall be in addition to and not in derogation to any other law and, in case of any inconsistency, the provisions of the POCSO shall have overriding effect on the provisions of any such law to the extent of the inconsistency.

Going through a reading of section 42A POCSO it can be clearly inferred that such exemption under Exception 2 of Section 375 IPC is to be overridden by the provisions of the POCSO which criminalises various sexual offences against children below the age of 18.

This problem is exacerbated now that the age of consent for sexual activity of girl-children has been raised to 18, as per the POCSO and post-2013 IPC. However, for married women below the age of 18, sexual intercourse can take place irrespective of her consent once she reaches the age of 15. This kind of classification of women – a higher age to indulge in sexual activity if she is unmarried because she is considered by law to be incapable of making decisions regarding her sexual freedom, and a lower age to indulge in the same kind of activity once she is married – is arbitrary and discriminatory, and makes mockery of women as a class. The child-wife above the age of 15 is in a sad predicament: since she is married, she does not get the protection against rape that an unmarried girl below the age of 18, merely because the rapist happens to be her husband, as Indian law does not recognize marital rape. However, as per section 42A POCSO, the girl child above the age of 15 and below the age of 18 is legally entitled to protection against penetrative sexual assault by a person who is a relative through marriage. Whether the relative through marriage would include a husband is not specified. Incongruence to the rule of law can be removed if Exception 2 to Section 375 IPC is amended to exclude sexual intercourse with a wife below the age of 18 years.

**POINT TO BE NOTED:**

Despite being a traditionally closed society like India, where religion dominates culture, discussions on sexuality are taboo, and pre-marital relationships by women are actively discouraged, where it may seem highly unlikely that a discussion on age-appropriate sexual behaviour can be initiated, much less legislation providing defence mechanisms for non abusive sexual activity, it is welcoming to see judicial decisions by the High Courts of various states in India that have dismissed cases filed by the minor girl's relatives against close in age adult males who have been found genuinely in love with the girl, by taking steps to get married after the girl child reaches majority.

**STEPS TO BE TAKEN:**

There have been innumerable concerns regarding the implementation of the Protection of Children from Sexual Offences (POCSO) Act, 2012 such as:

- i. Lack of adequate Special Courts for the trial of such offences
- ii. Lack of sensitization for investigators as well as prosecutors in dealing with child victims
- iii. Extremely poor rate of convictions

The direction of the Apex Court to set up special courts within a period of 60 days of the order in each district that has greater than 100 pending cases under the Act must be urgently complied with.

Before providing death penalty to any convict, the said provision must be discussed at length and debated as to the pros and cons as well as the possible consequences, and it should be kept in mind that death penalty must be used only in the rarest of the rare cases.

The most important measure that can help in the prevention of the offence is awareness as well as sensitization of society.

There has been a rising trend in recent times in the incidences of child sexual abuse which clearly demonstrates the inhumane mindset of the abusers who have been barbaric in their approach. Children fall easy prey to such people owing to their tender age, physical vulnerability as well as the inexperience of life and society. Due to all these reasons, there was a strong impending need to take stringent measures to deter the rising trend of child sex abuse in India.

The amendments brought about by the Amendment Act, 2019 have made sure that by enhancing the punishments and penalties for various offences, the perpetrators of such crimes shall be punished and this would also serve as a deterrent for the potential offenders; thus ensuring the safety, security and dignified childhood for a child.

However, it should also be noted that before providing death penalty to any convict, it should be widely discussed and debated and it should only be used in the rarest of rare cases.

The positive outcomes achieved through sustained and intensive engagement of Support Persons with child victims and their families through the criminal justice system and beyond, in terms of ongoing social re-integration, processes, have given the authors immense inspiration and strength to remain committed to the case and the cause of child victims. Through their interventions, child victims have found and built trusted relationships with adults who have stood by them throughout their journey; extended family members have

been identified who take on the much needed supportive roles; schools have been sensitized to respond in a timely and child rights based and compassionate manner to cases of child sexual abuse, donors have been roped in to help with rehabilitation; communities have become more aware and sensitive to the issue; training of stakeholders has become enriched from the grass root insights that are ploughed into training resources; and lawyers and mental health practitioners have been inspired to take on cases on pro bono basis. All this consistently triggers a renewal of their commitment to retain the focus on enabling the wellbeing of the child victim, and of the energy to play these extremely challenging roles given the gaps in the child protection system - to move on, no matter what the odds are or the legal outcome of each case is. A well-coordinated and robust support system, with increased number of trained support persons in every district in the country will provide the required reassurance to the child victim and her family, reducing the number of victims turning hostile. In addition, having a cadre of trained legal aid lawyers to assist Special Public Prosecutors with cases, ensuring that there are medical health practitioners in every district who are trained in providing therapy and counselling to children who have faced abuse and ensuring that all stakeholders who engage with child victims of sexual abuse have the necessary skills to communicate effectively with children with different developmental capacities, ages, across socio-economic strata and genders will bring a sea of change in the implementation of the POCSO Act, 2012.

The POCSO Act must be commended for expanding the scope of offences to be included under child sexual abuse to more comprehensively address the issue. It also encourages a child-enabling environment during the investigation and trial of such offences, which immensely helps the victim. However, what is lacking is the methodical operational and implementation of the legislation to meet its objectives. As we cross the 11th year of the Act, we hope that these gaps will be addressed and bridged. Of greater worry are certain provisions in the POCSO Act, which do not adhere to the legislation's goal and require re-appraisal. These include: raising the age of consent to sexual activity, and the concept of mandatory reporting, to name just two. It is important that debates among stakeholders are facilitated to draw out more such issues, as also to strengthen the legislation. Successful prosecution is not the only test to measure whether a child has attained justice. The concept of justice extends to providing a child-friendly process through the special procedures, infrastructure and human resources envisioned under the POCSO Act. The right of the child to freedom from all forms of violence, issued by the Committee on the Rights of the Child. Part of justice delivery, and is not limited only to victim compensation, but rests on effective coordination with the juvenile justice system. Justice is not one fold; the interest of a specific child requires to be identified, and her/ his needs fulfilled. The solution may not always lie within the criminal justice system; other avenues also require to be explored. Precious little is being done towards preventing the entry of children into the criminal justice system. Under the Constitution, it is the state's duty to take steps to prevent violence against children, including sexual violence. "Preventing violence in one generation reduces the likelihood in the next". To be effective, preventive programs should

be integrated into the mainstream of community life. These should be initiated through professionals working in child-related fields, and should be implemented with community participation. This will also ensure a strong community support structure, more so for children at risk.

### **FOR WOMEN IN DISTRESS:<sup>26</sup>**

<b><u>Help Available on</u></b>	<b><u>Contact</u></b>
<b><u>Central Social Welfare Board -Police Helpline</u></b>	<b><u>1091/ 1291, (011) 23317004</u></b>
<b><u>Shakti Shalini</u></b>	<b><u>10920</u></b>
<b><u>Shakti Shalini - women's shelter</u></b>	<b><u>(011) 24373736/ 24373737</u></b>
<b><u>SAARTHAK</u></b>	<b><u>(011) 26853846/ 26524061</u></b>
<b><u>All India Women's Conference</u></b>	<b><u>10921/ (011) 23389680</u></b>
<b><u>JAGORI</u></b>	<b><u>(011) 26692700</u></b>
<b><u>Joint Women's Programme (also has branches in Bangalore, Kolkata, Chennai)</u></b>	<b><u>(011) 24619821</u></b>
<b><u>Sakshi - violence intervention center</u></b>	<b><u>(0124) 2562336/ 5018873</u></b>
<b><u>Saheli - a womens organization</u></b>	<b><u>(011) 24616485 (Saturdays)</u></b>
<b><u>Nirmal Niketan</u></b>	<b><u>(011) 27859158</u></b>
<b><u>Nari Raksha Samiti</u></b>	<b><u>(011) 23973949</u></b>
<b><u>RAHI Recovering and Healing from Incest. A support centre for women survivors of child sexual abuse</u></b>	<b><u>(011) 26238466/ 26224042, 26227647</u></b>

<sup>26</sup> [www.indianhelpline.com-Women](http://www.indianhelpline.com-Women) Helpline.

**LEGAL AID:**

<b><u>Help Available on</u></b>	<b><u>Contact</u></b>
<b><u>Human Rights Law Network runs Madhyam Helpline and provide Legal Services</u></b>	<b><u>(011) 24316922/ 24324503</u></b>
<b><u>Lawyers Collective Womens Rights Initiative</u></b> <b><u>LC WRI runs a pro-bono legal aid cell for domestic violence cases</u></b>	<b><u>(011) 24373993/ 24372923</u></b>
<b><u>MARG (Multiple Action Research Group)</u></b>	<b><u>(011) 26497483 / 26496925</u></b>
<b><u>Delhi Police HELPLINE</u></b>	<b><u>1091</u></b>
<b><u>Delhi Commission for Women</u></b>	<b><u>(011) 23379181/ 23370597</u></b>
<b><u>Women's Cell, Delhi Police</u></b>	<b><u>(011) 24673366 / 4156 / 7699</u></b>
<b><u>National Human Rights Commission</u></b>	<b><u>(011) 23385368/9810298900</u></b>
<b><u>Pratidhi</u></b>	<b><u>(011) 22527259</u></b>
<b><u>Information and Services related with AIDS :</u></b> <b><u>Govt AIDS Helpline</u></b>	<b><u>1097</u></b>
<b><u>Child Line- is a 24-hour, FREE, nation-wide phone outreach emergency helpline for children in need of care and protection. for more information Click here</u></b>	<b><u>1098</u></b>

<b><u>CATS - Centralised Ambulance for Trauma Services - Delhi Govt.</u></b>	<b><u>1099</u></b>
<b><u>Counselling Services on Women in Distress - Organised by Delhi Police</u></b>	<b><u>3317004</u></b>
<b><u>Sarthak - Career Guidance and Counselling for young people</u></b>	<b><u>9628052777, 9628019278, 9628019279</u></b>
<b><u>Helpline on Breathing Problems - Organised by Better Breathers Club of India</u></b>	<b><u>9628015969, 9632154536, 9628005278</u></b>
<b><u>Hotline for Brain Attack</u></b>	<b><u>5792090, 5794733</u></b>

#### **TARSHI - COUNSELLING SERVICES ON REPRODUCTIVE ISSUES**

<b><u>Help Available on</u></b>	<b><u>Contact</u></b>
<b><u>Navjyoti Addiction Helpline</u></b>	<b><u>7510490</u></b>
<b><u>Sharan Drug Drop Helpline Centre</u></b>	<b><u>2964637</u></b>

## CONCLUSION

In conclusion, I would like emphasize that sexual violence poses an obstacle to peace and security. It impedes women from participating in peace and democratic processes and in post-conflict reconstruction and reconciliation. As a tool of war it can become a way of life: once entrenched in the fabric of society, it lingers long after the guns have fallen silent. Many women lose their health, livelihoods, husbands, families and support networks as a result of rape. This, in turn, can shatter the structures that anchor community values, and with that disrupt their transmission to future generations. Children accustomed to acts of rape can grow into adults who accept such acts as the norm. This vicious cycle must stop, as we cannot accept a selective zero-tolerance policy.

Violence against women, girls and boys is a violation of human rights and an extreme form of gender-based discrimination. It may take many forms and is not limited to any culture, region or country, or to any specific group of women. It has enormous social and economic costs, and undercuts the contribution of women to development, peace and security, and human rights.

The legislative history and development literature revealed that female prostitutes have been subjected to discriminatory legislation and unequal law enforcement, regardless of age. In contrast to female prostitutes, men associated with the demand aspect of the sex trade have enjoyed relative immunity from the law. Despite a history of discriminatory prostitution-related legislation and law enforcement, there are signs of change. There are indications that discussions and efforts to suppress youth prostitution are shifting towards men who sexually procure youths. Youth involved in prostitution are not being charged with. Knowledge gaps that emerged from the literature provide several ideas for future research. Firstly, it should evaluate legislative amendments and law enforcement practices with respect to men who sexually procure youth and men who purchase the sexual services of a youth, i.e., how does the enforcement (or lack thereof) of these laws impact upon youth involvement in prostitution. Secondly, the literature points to a growing concern with the actions of men who purchase the sexual services of a youth. However, little research has focused on understanding the (male) demand aspect of the youth sex trade; more research is needed to understand why men purchase sex from youths, and the effectiveness of current policies used to confront male customers. Thirdly, considering the disagreement about the antecedents of youth involvement in prostitution, researchers must continue to examine the factors that precede youth entry into the sex trade, i.e., the association between intra familiar abuse, running away and involvement in prostitution. Fourthly, a conspicuous gap in the literature is research that incorporates the perspectives of youth involved in prostitution. Research ask young prostitutes

what role, if any, the law and social services should play in addressing the youth sex trade, and whether youths believe they need “protection,” and if so, what measures should be adopted. Finally, research is concerning youth involvement in prostitution should use an integrated approach that examines the broader social and political context (i.e., male sexual socialization, youth oppression and employment structures) that gives rise to the youth sex trade. Research considers the broader social context is necessary to help develop strategies that address existing power relations that makes prostitution a viable option for some youths.

Whatever pornography is or is not, many people find it disgusting, but many other people are more tolerant of it. In our discussion of prostitution, we examined the issue of whether it is proper for a democracy to ban a consensual behavior simply or mostly because many people consider it immoral. The same question may be asked about pornography (to be more precise, pornography that does not involve children), especially because it does not appear to cause violence against women. Even if it did cause such violence, efforts to stop it raise important issues of freedom of speech and censorship. In a free society, civil liberties advocates say, we must proceed very cautiously. Once we ban some forms of pornography, they ask, where do we stop. This issue aside, much of what we call pornography still degrades women by depicting them as objects that exist for men’s sexual pleasure and by portraying them as legitimate targets of men’s sexual violence. These images should be troubling for any society that values gender equality. The extent of pornography in India may, for better or worse, reflect our historical commitment to freedom of speech, but it may also reflect our lack of commitment to full equality between women and men. Even if, as we have seen, the growing disapproval of traditional gender roles, the persistence of pornography shows that our society has a long way to go toward viewing women as equally human as men.

Sexual offences are a violation of human rights. They are condemnable, reprehensive and repugnant reducing human dignity and rights of individuals. Many a times, these are acts of perversion, mixed with feelings of hatred. These can also be a result of an intention to hurt and brutalize the victims and often consequences of unsolicited gratification of personal needs of the perpetrators. Child sexual abuse can result in both short term and long term harm, including psychopathology in later life. Physical and social effects, including depression, post traumatic stress disorder, poor self esteem, anxiety disorders, general psychological distress and disorder are instilled in them. Despite of the fact that not all victims of child abuse and neglect experience behavioral disorders, studies have found that at least 25% of them are more likely to experience problems in future such as committing offences, teenage pregnancy, drug abuse and mental health problems, etc.

There has been a range of developments in the law against child sexual offences in the IPC and POCSO, some of which have created sophisticated methods of dealing with sexual offences against children. Problematic areas identified from the synthesis of legislation and case law, both national and state, are:

1. Has the nature and scope of the sexual offences in the POCSO made positive advances in responding to child sexual abuse?

2. Has the nature and scope of the amended offence of rape in the IPC made positive advances in responding to child sexual abuse?

3. Does the current interpretation of the offence of carnal intercourse in the IPC offer sufficient protection against child sexual abuse?

4. Is the current criminalisation of abusive and non-abusive sexual activity of children below the age of 18 a positive advance in responding to child sexual abuse? 5. Does the present law on sexual assault in the IPC make positive advances in responding to child sexual abuse? 6. Does the statutory exclusion of child-wife rape from the scope of the amended offence of rape in the IPC construe a positive advance in responding to child sexual abuse?



## **BIBLIOGRAPHY OF RESOURCES**

### **GENERAL REFERENCES AND SEXUAL VIOLENCE:**

-----**Rape: A human rights versus a patriarchal interpretation** by Latika Sarkar, Indian journal of gender studies V I (1) 1994, Pg 69. .

Summary: The CHAPTER makes an attempt to redefine rape not only as a sexual offence but also as an act of violence, which goes against the fundamental human rights laid down in the universal declaration of human rights. The treatment/objectives/follow-ups/education/rehabilitation/family arrangement/economic support etc. meted out to the rape victim and the onus on her to prove her lack of consent is all the reflection of patriarchal criminal justice system. The change in Indian rape law definition following the recommendations of law commission of India to change the substantive law, as well as law of evidence and procedural law, has been highlighted. A large number of custodial rape cases and subsequent acquittals of the guilty also cause concern. Insensitivity and apathy of the government results in delay and injustice and in most cases very little punishment. The issue of marital rape and legal sanction of cohabitation with a minor wife are discussed. This chapter also deals with a new thesis that is awareness about DATING RAPE & ACQUAINTANCE RAPE.

-----**Curriculum and Gender Question : The Indian Experience**, Saroj Pandey ( Senior lecturer, DTEE, NCERT, New Delhi) , Social Action, Vol. 46, Jan-Mar.1996, p.p. 340-347

Summary: This CHAPTER initializes its briefing with the importance of understanding the role played by men and women, to understand the explores the development of the curriculum in formal educational organisations from the point of view of gender equality, tracing back the historical antecedents,. It comments on the pre-independence and post independence status of women's education. It discusses recommendations made by various committees formed for women's education after independence. While appreciating the absence of visible curriculum differentiation, it states that gender inequality still persists in a social form. The article emphasizes that there is a need for sincere and sustained efforts to improve status of women in India along with screening the gap between the harmonizing strategies of gender justice.

-----**Gender Justice and The Supreme Court”** by Indira Jaising in **Supreme but not Infallible: Essays in Honour of the Supreme Court of India** B.N. Kirpal, Ashok H. Desai, Gopal Subramaniam, Rajeev Dhavan and Raju Ramachandran (eds.) OUP, New Delhi 2000 (pages 29, words 199).

Indira Jaising is a Senior Advocate of the Supreme Court of India. She has been a fellow of the Institute of Advanced Legal Studies London and is Secretary of 'Lawyers Collective' which deals with socio legal issues of public interest.

Summary: This essay traces the evolution of gender justice in the Supreme. Before taking up judicial decisions concerning issues that involve women's rights, the author draws attention to the composition of the judiciary and its starkly unrepresentative character. Through an analysis of cases dealing with property rights to women to cases of violence against women, the essay addresses the problem of formal equality and the evolution of equality jurisprudence in the Indian Supreme Court where sameness and similarity form the criteria for classification. One of the recent cases (Vishakha vs. State of Rajasthan) where the Supreme Court has considered provisions in CEDAW to address sexual harassment in the workplace is also discussed. While some recent decisions do indicate a positive step towards gender justice the unevenness in this development is attributed to a greater emphasis on criminal law as opposed to civil law, leading to a neglect of women's economic rights. Finally, the essay points to emerging issues concerning validity of personal laws, women's representation etc. which will engage the courts and it is felt that an increasing number of women in the judiciary will be able to perceive women as autonomous decision makers and active participants in public life.

### **CHILD ABUSE:**

-----Ali, B . Sexual abuse of children and the child protection challenge. In: Ganguly, E (ed) India's children continue to challenge our conscience. New Delhi: Centre for Child Rights, 2019, 186.

### **PROSTITUTION:**

-----Dutt, Anuradha, *In the name of the mother* , Manushi, no.79, pg-23-26, nov-dec,1993

Summary: This article brings out the importance of education rights for prostitutes children and a judgement being passed to that effect by the Supreme Court of India in January 1993, granting permission for the admission of prostitutes children into schools without having to state the father's name, which was the customary practice in school admission procedures. A case study of a prostitute house in Delhi shows the hardships that these women face. Extreme deprivation seems to be the cause of prostitution in India rather than sexual and psychological aberrations. In conclusion , the role of an 947mphasized947n called Bhartiya Patita Uddhar Sabha is 947mphasized , whose members are mostly prostitutes themselves and which has made some headway in bettering the lot of prostitutes and their children.

## **PROTECTION OF CHILDREN FROM SEXUAL VIOLENCE OFFENCES ACT, 2012:**

-----Swagata, R, Anuroopa, G, Geeta, S, . Frequently asked questions on the Protection of Children from Sexual Offences Act, 2012, and the Criminal Law (Amendment) Act, 2013. Bengaluru: National Printing Press, 2015, 132.

Summary: This book provides an exploration of the complex trauma that results from early abuses in child's lives, how child fall prey to many challenging circumstances as a result, and how to reclaim the power within.

Centre for Child and Law and National Law School of India University Implementation of the POCSO act, 2012 by special courts: challenges and issues.

-----ALSO putting full emphasis on the POCSO BARE ACT.

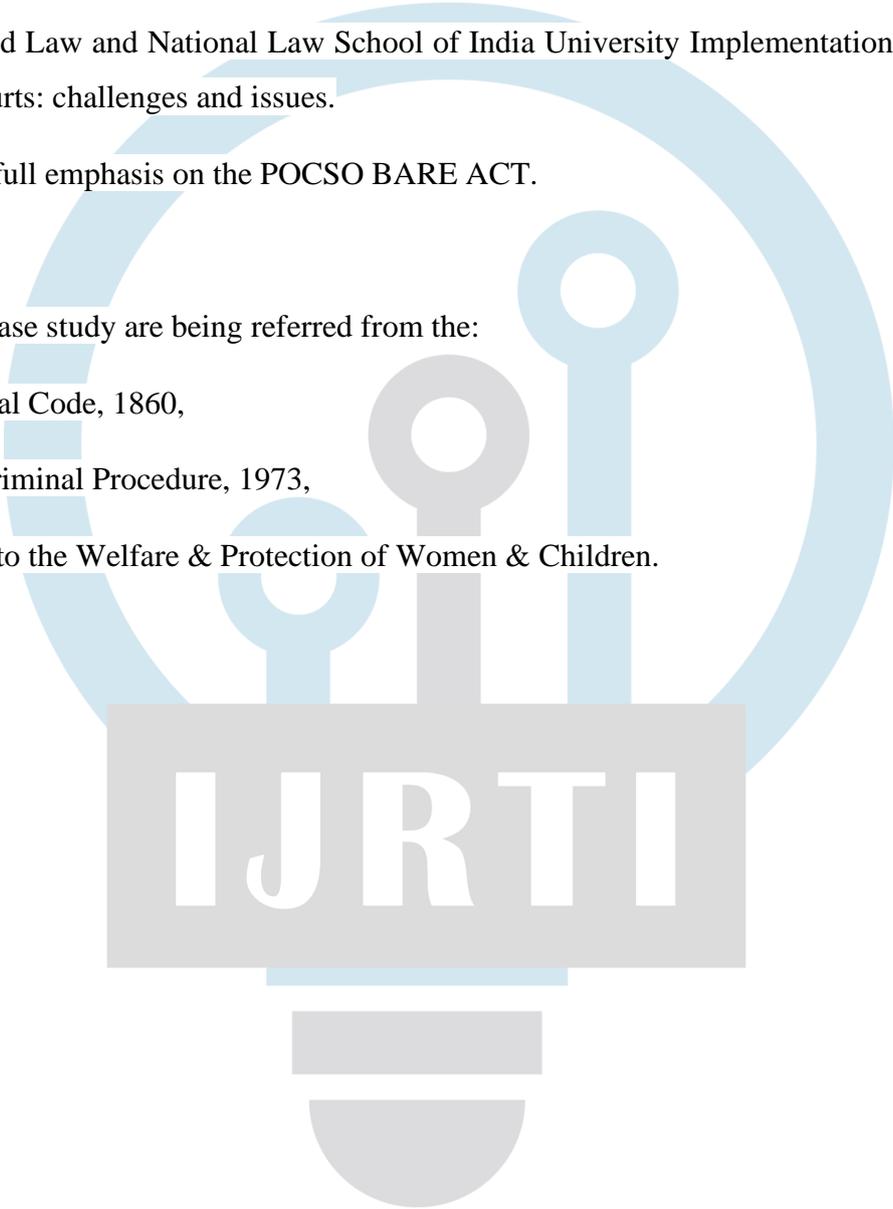
### **IN GENERAL**

Also the sections, case study are being referred from the:

-----The Indian Penal Code, 1860,

-----The Code of Criminal Procedure, 1973,

-----Laws Relating to the Welfare & Protection of Women & Children.

A large, light blue watermark logo is centered on the page. It features a stylized lightbulb shape with a circular top and a semi-circular base. Inside the circle, there are three vertical lines of varying heights, each ending in a small circle, resembling a stylized 'I', 'J', and 'T'. The letters 'IJRTI' are printed in a bold, white, sans-serif font across the middle of the lightbulb's body.

**IJRTI**