

## **INTRODUCTION**

## INTRODUCTION

**"Everything has been said already, but as no one listens, we must always begin again."-Andre Gide**

Five hundred years ago, there was scarcely and intellectually domination of one society by another society's intellectuals. Today, that scenario stands dramatically altered: the intellectual elite of the one-sixth dominates the conditions of life of the rest of humankind, decides what is good for it, what it should do, how it ought to organize its affairs, what kinds of seeds it ought to plant. The history of ancient India may be said to commence from the period during which Rig-Veda was composed. In Rig-Veda we find a great literary monument of hoary antiquity, containing a code of ethical life reflecting the thought and aspirations of the people. Vedic literature which is the prime source of all cultural manifestations in India depicts a vivid picture of ancient Indian womanhood. The Vedic society was a patriarchal one and hence father was the head of the family and son, was the person for whom prayers were uttered for even before the birth. The patriarchy of traditional Indian Society since times immemorial has viewed women as a product of history and based on this idea, the patriarchy has registered a milieu of mystification, whereas the reality is that women also actively participate in making the first unit, e.g. the family. Family is possibly the first or the forerunners of the association of human beings. The patriarchy kept women illiterate economically unrecognized, socially inferior and legally helpless and their image in public life had been negatively influenced due to their unvalued and under valued work in economic terms, whereas the reality is that they also contribute in nations building.

After independence we have resolved to give ourselves a Constitution. The preamble of the Constitution along with its jurisprudence has many dimensions, radical and crimson. The legal luminaries of the present century say that the value revolution and humanist transformation the Constitution has inaugurated has yet to blossom fully to make the lives of the many millions of our countrymen pulsate with material, moral and spiritual joy. The great vision of our founding fathers was that a just social order should bloom into existence in the fullness of time where the feeblest of the Indian fraternity shall have fulfilment, not frustration, where the state shall strive to wipe every tear from every eye, where

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people's sovereignty and democracy shall prevail. That is the mission of the Indian Republic projected through the fundamental rights in part III as well as directive principles in part IV and Part IVA of the constitution.

The Constitution guarantees certain fundamental rights and freedoms, e.g. freedom of speech, protection of life and personal liberty etc, which may be termed positive rights. Along with certain negative rights, prohibiting discrimination or denial of equal protection of law, are also guaranteed. As equal citizens of India, women benefit from these rights equally with men. However, since the constitution recognised the unequal social provisions for women and children even in violation of the obligation not to discriminate among citizens. These powers have been used to enact special laws for the protection of women workers in factories, mines and plantations and to provide maternity relief to women workers in the organized sector. The law has ensured that women get equal pay for equal work with men. The Directive Principles of State Policy, embodying the major goals of a welfare state, also contain specific items affecting women. The omnibus provision of Article 38 directs the state to bring about transformation of socio-economic conditions for the common good which is necessary for the achievement of an egalitarian and just social order which would affect men and women equally. Article 39 holds out the promise of an equal right to adequate means of livelihood, equal pay for equal work, protection of health and strength of workers-men, women and children-from abuse and entry into avocations unsuited to their age and strength. Just and humane conditions of work and the provision of maternity relief are directed by Article 42. The special attention given to the needs and problems of women as one of the 'weaker sections' of Indian society and the recognition of political equality was undoubtedly a radical departure from the norms prevailing in traditional India. It has led many scholars to describe the Indian Constitution as a manifesto of a social revolution.

Indian women had been suppressed under custom and law for a considerable period of time for which man was responsible and in the shaping of which she had no hand. It was later on realized that woman has as much right to shape her own destiny as man has to shape his and that it is up to men to see that they enable them to realize their full status and play their part as equal of men. The suggestion for a comprehensive reform of Hindu Law had in fact come from the reform movement and the women's movement in particular in the period before independence. The clamour and Gandhi's support had resulted in

the appointment of a Committee under the chairmanship of Sir B.N. Rau in 1941. Though the report was ready before independence, its implementation could only be taken up by the Government of free India. After years of debate and considerable modification the law could be enacted only piecemeal in the mid-fifties. As a result of these series of law, the legal position of Hindu women has improved considerably by the ban of bigamy, the provision of right to divorce and the right to inherit a share of parental property. While legal reforms have improved the status of Hindu women considerably similar reforms have not taken place in other systems of personal laws in vogue in current India. Apart from these India has adopted a series of social laws for the control and eradication of social practices like dowry and immoral traffic in women and their indecent representation as they were degrading the status of women. In the mean time the country has adopted various International conventions which are beneficial for the protection of women's human rights. However, the directive contained in Article 44 which speaks for the enforcement of a uniform civil code still remained a distant dream. Judging by the standards of many developing countries the legal and political rights conferred on women in India would thus appear to be considerably high. When one compares the situation that prevailed at the beginning of the 20<sup>th</sup> century, the progress may even appear fantastic. But this should not confuse an honest academician that we have achieved the goals of the constitution substantially.

In a complex and stratified social structure, however, cultural variations and the uneven distribution of power privileges and effectiveness automatically introduces the notion of comparison and grading in examining the status of any group. In discussions of women's status in any society, the general convention has been to assess their roles in relation to men. Two other dimensions have in recent times been introduced to facilitate such assessment particularly in a period of change; first the extent of actual control enjoyed by women over their own lives and the second the extent to which they have access to decision-making processes and are effective positions of power and authority. While the politico-legal frame work of a society indicates the scope of rights and obligation of its members, the advent of quantitative methods has made it possible to adopt certain statistical indicators, e.g. that may help to locate the status of women vis-à-vis men, both at a given point of time as well as to measure the extent of change over a period. This realization when translated in to reality through some legislative effort and consequent legislation position of Indian women became a little better. Application of the above indicators to a society however, poses

several problems. The problem is that secular law and statistics tend to reduce every individual and group to homogeneous, measurable units, while cultural variations, social hierarchy and economic inequality tend to defy these trends. The reality is that whatever the law may say, women's roles, rights, and norms of behaviour as also those of others towards them are still greatly influenced by cultural factors like institution of family, kinship groups, descent systems, religious and other cultural traditions, caste, economic and political hierarchy, etc. On this already complicated structure of India the process of social change, development and modernization has taken place, one must admit. But then this development had virtually become complicated by the impact of alien, western cultures which had superimposed certain other imprints resulting in various simultaneous processes which are sometimes complementary, sometimes contradictory and destructive of each other. As a result what we find now in India a conglomeration of complex, interrelated and often confusing pattern of change. Appreciation of this complexity led the Committee on the Status of Women in India to admit that the status of women in the Indian context can not be defined simply and that the general concepts like equality, role differentiation, legal, social and political rights, dependency or independence are not equally applicable to all section of our population.

Before science put it under the microscope, sex was a simple, uncomplicated thing. In order to 'build' humans, all one needed was a man a woman, and Mother Nature took care of the rest. But, all that is considered an old fashioned way of making new humans. In the future, it might be possible to build humans in tanks, make couples of human in labs and even change the course of one's genetic destiny by turning women into men. If kissing is nothing more than a way of sniffing out compatible genes, what is point of sex- and will it ever be the same again? This quest can unveil the secret of sex and throw light on a lot of new scientific facts of life and evolution. Any way from the very dawn of civilization sex and sexual offending has and had been the focal point for discussion and debate and in some cases it has remained as the main cause of discord among individuals. In some cases it has even went to the extent of becoming root cause for war where two kings found themselves engaged with. History bears witness to the above fact. Sex still remains as an enigma in every sphere of human activity. But sexual offences against women remained unabated. We are today fairly well convinced that society is in a bad way and not necessarily evolving in the direction of perfectibility. It is easy to recognize the various stages by which the deep corruption is reached. Futility, lack of a living faith, the drift

into loose morality, greedy consumption, financial irresponsibility, and uncontrolled bad temper; a self-opinioned and obstinate individualism, violence, sterility, and lack of reverence for life and property including one's own; the exploitation of sex, the debasing language by advertisement and propaganda, the commercializing of sex and nudity, the pandering to superstition and custom, the conditioning of people's mind by mass-media and spell-binding of all kinds, venality and , hypocrisy, dishonesty in material things, intellectual dishonesty, and above all hedonism that the modern scientific development and materialistic culture has commoditized the modern women. The result is that now the unique creature of god i.e. the human being is altogether a transformed entity that lives for money and sex.

Now we live in a complete different era because the time has changed, and so the scenario. Though the changes can be seen in the material culture, no changes in our attitude towards women, perception and values can be seen. The rate, complexity and variety of change in our time are with out precedent. All forms about us are altered, from the tools that complicate our toil, and the wheels that whirl us restlessly about earth, to the innovations in our sexual relationships, and the hard disillusionment of our soul. The sensual pursuits based on heady technology now drugs our whole generation. Modern women have now become an object to be viewed by men. She has become a thing to be enjoyed by men. They have now become more vulnerable elsewhere, whether it is her work place or the street or whether it is her own home. Male expectations of women are backed up by attitudinal, verbal and actual violence in all areas of life. Women of this era now experience violence and domination in the home, in the work place through sexual harassment and actual violence and on the streets in generalized hostility towards women. In the changed scenario a majority of modern women and minor female see themselves at risk of sexual violence and crime. The crimes against women namely sexual violence, rape, sexual exploitation are now the biggest threat to human rights across the planet and India is no exception to this phenomena. Despite existence of a number of special legislations for providing protection to women, the proportion of crime against women has deteriorated. Women in India still continue to be victims of crime which are directed specifically against women. These crimes are known as crimes against women. The latest data on crimes against women not only shows crimes against women have increased considerably.<sup>1</sup> (See the Table 0:1 below)

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<sup>1</sup> Crimes against women, 2005, National Crime Record Bureau, Government of India.

**Table 0:1**  
**Recent Trends in Sexual Offences in India**

Crime Head	In 2000	In 2001	In 2002	In 2003	In 2004	Percentage variation in 2004 over 2003
Molestation	32940	34124	33943	32939	34567	4.9
Sexual Harassment	11024	9746	10155	12325	10001	-18.8
Importation of Girls	64	114	76	46	89	93.5
Immoral Trafficking	9515	8796	6598	5510	5748	4.3
Indecent Representation of women	662	1052	2508	1043	1378	32.1
Rape	16496	16075	16373	15847	18233	15.0

Thus it appears that leaving sexual harassment all other sexual offences against women are on the rise. The offence of sexual harassment though has shown a decline in the year 2004 but still the number of commission of the offence is not less. However, these figures are only indicative of the tip of the iceberg as a majority of cases remain un-reported for a host of reasons like lack of trust between the law enforcement agencies and the public and attitude towards rapists and the victim. This necessitates a fresh look at the legal policy relating to sexual offences against women, to find out whether it is working properly or where we are lagging behind in this regard. The above data also calls for an introspection and examination of the law relating to sexual offences which are in vogue in the country. There may be problem not only in the law, but also policing, conducting inquiry and court proceeding and implementation of the policy of law. One idea may be to find out the exact areas which are contributory to the rise of such offences. The aforesaid data appears to indicate that increasing rate of sexual offences against women is really alarming and pointing out many possible flaws i.e., legislative lag, absence of proper law, weak implementing machinery, failure of existing protective measures. The problem therefore is of grave concern and is to be investigated from various angles including legal, sociological, psychological, and judicial point of view to find out whether there is

defect in the law itself or in its implementation, whether new law is required to cope with changing facets of the sexual offences against women. A humble attempt has been made to bring out an appropriate suggestion. The present work has contributed in this area.

There has been a constant rise of sexual offences against women in our country in the past few decades. Hardly a day passes without report in the newspaper or other media of a rape or assault or molestation or sexual harassment of women. Some survey even suggest that every two hours a rape occurs somewhere in India. The aim of the present research work is to analyze the existing laws relating to Rape, Sexual Harassment, Immoral Trafficking, Bigamy, Adultery and other laws-both substantive, procedural as well as judicial decision and wherever possible to suggest further reforms in order to make the law full proof and effective.

The present work is intended to be introductory, but not in the sense of describing the main rules of criminal law with regard to the sexual offence. Its first aim is to make a concerted study of the offences that may be and in fact committed against women which are in essence sexual offence. This is important in a country where the criminal law (The Indian Penal Code, 1860) recognizes 'rape' as the only sexual offence against women. Then the task is to assess how far our criminal law has been able to incorporate and foresee the sexual offences that may be committed against women. But then the present study has not been carried on in the sense of describing the main rules of criminal law in a simplified way. It has been weighed and measured and compared with and in relation to other progressive rules of law enshrined in the constitution of the country, international and regional instruments wherever possible. More over an attempt has been made to examine the whole thing in the light of human rights jurisprudence of the modern day world which the world body vouchsafes to enforce in a disparate group

Its foremost aim is to raise questions about the criminal law which deals with sexual offences as well as rules of procedure and to examine some of the principles and policies at work in the shaping of the criminal law by the legislature, the court and the law reform bodies and academic commentators. The process of examination does not start from the assumption that the criminal law is grounded in a stable set of established doctrines. A more realistic view is that the arguments and assumptions which influence the development of criminal law from a disparate group, sometimes conflicting and sometimes invoked selectively, has been the guiding force to the researcher. Another task of the researcher has been to identify the principles and policies that appear to play a major part for



formulating law; for defending an old law. The legal focus of this work is upon Indian Criminal law that deals with sexual offences either expressly or the sexual offences against women which are in essence a sexual offence against women.

The problem areas are too many in the present study. Firstly societies differ remarkably in what they consider socially desirable and undesirable in terms of sexual behaviour and consequently differ in what they attempt to prevent or promote. There appear, however, to be four basic sexual controls in majority of human societies. First, to control endless competition, some form of marriage is necessary. This not only removes both partners from the competitive arena of courtship and assures each of a sexual partner, but it allows them to devote more time and energy to other necessary and useful tasks of life. Second, control of forced sexual relationship is necessary to prevent anger, feuding, and other disruptive retribution. Third, all societies exert control over whom one is eligible to marry or have a sexual partner. All have incest prohibition; the prime reason seems to be the necessity for preventing society from being snarled in its own web. Fourth, there is a control through the establishment of some safety-valve system: the formulation of exception to the prevailing sexual restrictions. Turning to the particular forms of sexual behaviour, one learns from anthropology and history that extreme in social attitude is common.

The second problem is that sexual deviations and sex offences are of course, social definitions rather than natural phenomena. What is normative behaviour in one society may be a deviation or crime in another. One can go through the literature and discover that virtually any sexual act, even child -adult relations or necrophilia, has somewhere at sometime been acceptable behaviour. Homosexuality is permitted in perhaps two third of human societies. In some group it is normative behaviour, whereas in others it is not. In some group it also exists as alternative way of life for certain individuals. These special individuals are sometimes transvestites, who dress and behave like the opposite sex. The real problem is posed by the criminal law itself simply because law makes no formal distinction between sexual offence and other offences. How one differentiates is therefore largely a matter of individual choice, and the criteria for classification are open to debate. Another problem is that what constitutes a sexual offence against women varies over time and place. An existing offence may be decriminalized at the stroke of a statue, and existing behaviour may be recognized as needing to be criminalized. Some sexual offence may be committed even when there is consent between the adult parties concerned and most notably when activities are committed in a public rather than a private place, when they are deemed to offend our concept of public decency and morality.

Children and young people below the age of consent may be engaged in unlawful sexual intercourse, either with or without their consent. Such offending can take place within a family and may be intra-familial or outside of the family and may be extra-familial. They may be coerced into prostitution against their will. Offences may be committed against women with mental impairment who are unable to give a true consent. It may be committed against women falling within the prohibited degrees of relationship and may be incestuous.

Another problem in this field or area of study is that two major sexual offences namely rape and sexual Harassment are incapable of exact definition though penal law have defined rape but it is silent as to the exact definition of sexual harassment. Each of these offences needs more specific and clear definition. The Indian judiciary in few cases has applied to international law in the domestic matters. But the incorporation of international law in domestic law is possible only when the law does not come into conflict with an Act of the Parliament. In our country the will of the legislature still considered to be supreme though we have a written constitution and we proclaim it to be the supreme law of the land and international law only fills the gaps in municipal law. But when it comes to the sphere which necessarily calls for legal realism judiciary avoids a possible clash with the legislature. Though the efforts so far made by the highest court of the country is not negligible with respect to the protection of the rights of women, but the same judiciary has not taken the opportunity in many cases by avoiding possible clash with the legislature or missed the opportunity by not becoming a realist. There must be supportive legislative will as well as sufficient number of wings of the state having substantial power for the better implementation of human rights of the women in the changed scenario. How far the legislative orthodoxy and gerrymandering of the old policy, with respect to the sexual offences against women in the changed settings of the new millennium, has been beneficial to women in particular and to the nation as a whole, is an area that has been a constant inspiration of the present work. The present work therefore has tried to focus this particular aspect.

The incidence of rape, sexual harassment and other allied offences has attained alarming dimensions. The official figures represents only the tip of the iceberg as a majority of cases remain unreported for a host of reasons, like lack of trust between the law enforcement agencies and the public. Some sexual offences are so unique that, there the victim and not the accused is seen at fault. The decline in the rate of conviction and the social costs which the victim of sexual offence bears is certainly indicative that our criminal justice system has either failed or it is being manipulated by a section of influential & stronger

people or we are lagging behind in terms of civil administrative and judicial parameters when compared to the other civilized nations. All these speak volume for the need of proper policy formulation and better implementation of human right jurisprudence in this particular area, which has been so far considerably neglected. In view of these the following hypothesis may be formulated in this area of the present study; **in the present time sexual offences against women has increased tremendously and the present criminal justice system is not adequately equipped to protect the human rights of the women victim and it requires rethinking of the legislative policy to change the existing laws relating to sexual offences.**

The present study involves following basic questions; what are the protective mechanism that is available for women against sexual abuses and offences? Are the existing laws on sexual offences sufficient? If not then what is to be done in this regard? What is the present position of women victim of rape and sexual harassment? How far the compensatory jurisprudence of Human rights has been applied and can be applied to ameliorate the plight of victim of sexual harassment? How far the state Executive organs and the Apex court have been successful in preventing prostitution and trafficking of women? Does exclusion of marital rape by the husband serve the purpose of law? Is there any need of re-thinking of the legislative policy in this regard? Is it still proper to criminalize the act of same sex relationship under the vice of unnatural offences? Or, in other words, is there any need to decriminalize the act homosexuality and lesbianism? Does legislative & judicial gerrymandering in this regard need a rethinking in order to recognize the right of certain section of people in view of the present social reality? Apart from these, the significant question is how to make the law relating to sexual offences more effective? How to punish the offender and provide remedy to the victims? An attempt has been made in the present research work to find out appropriate solution to the aforesaid problems. How far the legislative orthodoxy and gerrymandering of the old policy, with respect to the sexual offences against women in the changed settings of the new millennium, has been beneficial to women in particular and to the nation as a whole? Finding of answer to all these questions has been one of the prime concerns of the researcher.

The approach to sexual offences against women that has been taken in the present work is, of necessity, an interdisciplinary approach, reflecting the nature of the activity itself and the various responses to it. The methodology of this research is mainly doctrinaire and historical, and analytical approach has been followed. As however the present study intends to examine even the

efficacy of the existing laws, method of the study may also be designated as action research. The work mainly concentrates upon these areas: The relevant statutory provisions in the Indian Penal code and other statutes. Secondly it includes the study of reported judicial decision of the Supreme Court of India; thirdly, the academics and juristic opinion gathered from various books and Articles published in the first rate law journals and from Internet.

The protectional rights against sexual abuse, harassment and exploitation find place in various regional and international Human Rights instruments, as well as in the Constitution of India. The work is mainly confined to the Indian position, however a brief reference to the position as well provisions of law in other countries and at the international level has also been made whenever found necessary. The necessary study of literature is done under two heads, namely as primary sources and secondary sources. As of primary sources, the Constitution of India, various Statutes, Acts, as well as International Instruments, Conventions, Declarations, Protocol, Reports both of National & International are consulted and referred. Various books, Journals, Periodicals, Articles, Unpublished work of law researcher and researches of other social science subjects, are taken as secondary sources.

Physical and psychological satisfaction, status symbol, sexual deprivation, anger, passion, erotic attraction, manifestation of superiority over another have been described as the reasons for sexual offences by many sociologists and anthropologists. But the reality is that a large number of sexual offences are committed in an organized way for economic gain, as for example immoral trafficking of women or prostitution, importation of minor girl and buying and selling of minor girl for the purpose of prostitution. The present study, therefore, has made an assessment of the role of State executive and judicial organ in the prevention of immoral trafficking and prostitution. So far as the knowledge of the researcher goes no interdisciplinary study has been made covering all the sexual offences against women in India. A number of studies have been made on the sexual offence of rape. The statutory provisions under the Penal Code have been subjected to judicial interpretation in many cases mainly at the Supreme Court level. Some Books are also available covering relevant aspect of rape and sexual harassment as well as protection of women in the contemporary society. But there has hardly been any research concentrating upon the Criminological and penological aspects to the judicial decisions and an investigation from sociological, economic and anthropological point of view. No studies have been made in this area covering judicial behaviour. This research work, therefore, has examined the whole aspect of the topic from various angles. The view of the Apex

court in some cases clearly asserts that a sexual offence like rape is a violation of the fundamental right to life. The emerging compensatory jurisprudence as fundamental Human Rights has also been extended to this area. The absence of a proper legislation was also felt by the court in the area of Sexual Harassment of working women in **Vishaka**<sup>2</sup> case, and consequently guide lines were framed and direction were issued. Various women group have expressed doubt whether these guide lines can effectively protect the working women from being sexually harassed in the work place. Under the international law women enjoy the right to choice her life partner even if the partner is a woman. Most of the advanced countries have decriminalized homosexuality or lesbianism. However, our criminal law seems to punish homosexuality but technically silent on lesbian relations. The emergence of alternative sexuality and the steady rise in the number of people and preferring and following alternative forms of sexuality has led to the formation of their organization around the globe and even within the geographical limits of the country and their consistent demand of human rights has drawn many academics to the controversy as to whether hetero-sexuality code is the only true and legal form of sexuality. The present situation has attracted the attention of the Legislators, Jurists, Policy makers, Authors, Journalists, Media persons; consequently this situation necessitates a comprehensive research in this area covering all those aspects. The present study is therefore likely to contribute in this regard. This work then may help the half of the Indian population who are women, may help the group who belong to the category of yet to be women but are in the group of minor female child. It may be helpful for the legislature, policy makers and also to the judiciary which often searches for reasoned clues and logic of justice. The possible beneficiaries may include the non-governmental organisations and people working for the cause of the 'we' the 'people of India' enshrined in the constitution of India, the supreme law of the country.

Sexual offences against women, in different biological and psychological forms, have remained in practice, since thousand of years back. However, in the contemporary period they are reported to be increasing in every year. It is universally accepted that the root cause of this phenomenon inter alia lies in our social system, the historical position accorded to them, the religious myth, the roles modelled for them by the dominant section of the society who are not only physically but also economically stronger. Any quest into the sexual offences particularly against women makes it imperative to trace back their position in the

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<sup>2</sup> Vishaka v State of Rajasthan (1997) 6 SCC 241

history, the roles which were exclusively modelled for them, the social status given to them in a particular period of time. The present work therefore incorporated within its fold the First chapter (**Chapter I**) which dealt with status and rights of women under the international and national legal framework. Here the researcher has tried to go back to the history to find out historical and religious reasons responsible for their present status. Status of women also includes within its ambit the legal status which determines their rights. An attempt has been made to find out the rights of women which were enjoyed by them from the dawn of civilization to the present day world. In doing so the present chapter has given an insight in to the status and rights to which women are entitled under both the national and international level, simply because without this the present study would be incomplete. Protection of women against rape and sexual harassment is a Human Rights issue, which attracts global norms transcending the national boundary. Hence, this chapter has taken into account the development of protective mechanism for women against sexual abuses in the International and National field as well as role of our judiciary as far as protection of the rights of women victim is concerned

Sexual offending is often considered as somehow inherently different from other forms of offending. The present work therefore has included within it **chapter-II** which deals with sexual offences against women. Attempt has been made to find out firstly, the offences against women which are in essence sexual offences against women and secondly the relevant law which covers such offences. An attempt has been made to find out whether the present law is gender neutral or not. As consent is the biggest factor in the determination of the fact whether a particular sexual activity is an offence or not, this chapter therefore, focuses on the aspect of consent. Societies differ as to their perception of morality and with the passage of time human generation also changes its view and behaviour pattern. Consequently changes can take place in the sexual orientation of the human beings and the law may not recognize that change. The said chapter therefore gives a cursory look in to this aspect to find out the premise of our criminal law relating to sexual offences against women.

Rape is the most heinous offence against women. It is an insult to the civility. It is symptomatic of sexually starved society that has injuriously threatened and still threatening the women's very right to liberty and personality. The present work therefore, has devoted a chapter (**Chapter III**) which dealt with rape and the law in India. This chapter thoroughly focuses on the offence of rape, its kinds, and attempt to commit the same offence which is also an offence. In doing so the said chapter has tried to critically study the law relating to rape,

the nature of the assault, the aspect of consent, exclusion of marital rape, rights of the victim. The study here therefore has focused on the entire area of investigation, trial and victim's evidence. An attempt has been made to find out the flaws in our rape law as well as social immaturity judicial antipathy at the lower level, and the legislative lag, with which women are confronted and subjected in our society. Even the Penal Code views rape as an offence which only affects human body ignoring the fact that rape is also a psychological assault. The present chapter has made an effort to find out the nature of assault, and consequent violation of the rights of the victim of rape; the rights to which they are and should be entitled.

The awareness regarding sexual offences against women has been only around few kinds of sexual offending like rape and sexual abuses or sexual exploitation. Even only rape and unnatural offence has got an express mentioning in the Indian Penal Code, 1860 as the sexual offence. Then both of these offences have been placed under the heading sexual offences in Chapter XVI which deals with offences affecting human body. Does this mean rape is the only offence what the author of the code could perceive as sexual offence? Obviously there remain other offences which are in essence sexual offence in the true sense of the term. The present work has tried to find out the answer of the above question, in **Chapter IV**, which dealt with sexual offences relating to marriage. In the said chapter the researcher has tried to prove that since consent plays a significant role in the determination of whether a particular sexual conduct is a sexual offence or not; there remains an area where sexual access may be gained by the people by inducing a belief of lawful marriage, in fact when there was no marriage at all in the eye of law. Sexual access may be gained by going through a fraudulent ceremony of marriage. In either case the person would gain sexual access and commit sexual intercourse with the woman victim who is unaware of the legality of the marriage. There remains another area where the victim gives the access to her body to a person without knowing that he is already married. In all these cases it is always the woman victim losses her precious thing. In some cases she losses even more than what is lost by a victim of rape. She loses her virginity, she loses her faith and confidence reposed in the person. In some cases she is left with the children born to them and the person releases himself from all responsibility. In all these cases the elements are common; one her consent in that relation which legalizes sexual intercourse which was obtained by fraud or deceit and sexual intercourse which was the intention of the offender. In all this cases she becomes victim because of her sex and because of the sexual desire of the offender. The present chapter therefore has made a through study

on the offences which have been kept in Chapter XX of the Indian Penal Code, 1860, under the heading 'offences relating to marriage' and examined them as sexual offences against women' where they are essentially a sexual offence. An attempt has been made here to find out the solution to the problem which has arisen due to the lack of political will in formulating and enforcing a uniform civil code. Here the researcher has tried to establish that in this particular field how and to what extent the penal policy is illogical and injurious to the victim or victims and how far it would be better for the victims of some of such offences if the legislative policy is changed from punitive to compensatory jurisprudence.

What constitute a sexual offence varies over time and place. Thus what is a sexual offence in one country may not be in another. Homosexual activity is an offence in India, but it is now not an offence in England. An existing offence may be de-criminalized at the stroke of a statute. An existing behaviour may be recognized as needing to be criminalized. It sometimes depends upon the morality of a given society. But what if that morality violates the basic human rights of the people (as per international as well as national legal norms) who are minority in terms of different sexual orientation or the human rights of the people who don not follow heterosexual code of sexuality? The present work therefore in its **Chapter V** has tried to face this dilemma by locating and examining the legal policy as to what constitute unnatural offence, where the law is silent, what is the technical difficulty in the law, the interpretation of the offence by the judiciary, the sentence actually awarded by the court, the emergence of alternative sexuality and its decriminalization around the world, the technicalities of the present law which is open to the question, the emergence of a ignorable social entity though insignificant in terms of the heterosexuality code enforced by the dominant section of the society. The said chapter also noted the development in the world and tries to get a clue as to what should be the way out.

Sexual harassment of women is a phenomenon of recent origin that brings forward the fact that violation of women's body and mind may extend beyond the brutal instance of other sexual offence like rape, to other aspects of men's conduct. Unlike rape, however, it is only comparatively recently that such conduct has been hauled up from its closet and has come to be viewed publicly as generating legally redressible harm. In other words women often face multiple barriers to being free and equal in the societies. Some barriers are based on their gender and some are on their sex. Sexual harassment of women is another form of gender based violence. What is sexual harassment? Women in the workplace need to know. The law does not fully inform the women. It does not even fully define sexual harassment. How, then, to understand and protect oneself against



the sexual harassment? Is it sex discrimination? Does it create hostile environment for a woman in the workplace? **Chapter VI** of the present work which is entitled as 'sexual harassment and sexual exploitation of women' has tried to find out the answer of these questions as this particular crime against women has come up relatively recently on the surface of the country. Sexual harassment can be termed as the most complex crime against women considering the fact that a variety of conduct may constitute the offence and still the victim may be either ignorant of it or may herself ignore it simply because of the difficulty of proving it or because of threat perception. As there is a void in the Indian law, the present chapter has therefore made a survey of foreign laws and decisions. The victim in case of workplace harassment would be more helpless as because the harasser is none but his employer or a person of superior authority. An attempt therefore has been made to find out various legal remedies that are available under the existing system.

Ours is a patriarchally superior society, where, males are the preferred children and male have so-called rights and priorities from the beginning while the women are viewed as sexual object, or used as an item to be sold in the sleaze market. It would not be wrong to say that the present decade is the decade, where co modification of women is witnessed more increasingly. This commoditization of women has made so much inroad in the modern society that it becomes very difficult to understand as to whether a particular expression is obscene or not. The scientific discovery in the form of world web, the mass media, the commercialization of symbol of women and its physical beauty and its marketization are now started to be viewed as the manifestation of women's right, and the right to information and education for both male and female is posing a substantive question as to whether the existing law relating to obscenity can maintain the equilibrium between these conflicting rights which the constitution gives them and the rights of those which the criminal law seeks to protect. **Chapter VI** of the present work besides discussing obscenity law and legal policy has tried to address the above issues. Sexual exploitation of women, and minor children, namely prostitution has existed in some form or the other ever since the society attempted to regulate and control sexual relationship through the institution of marriage. One group of feminist argue that this oldest profession, is another form of general exploitation of women, which under mines the sanctity of marriage as a social institution, downgrades the status of women, undermines the sacredness of sexual ethics, serves as a source of many problem including organized trafficking and breeder of hard-to-be treated sexually transmitted disease. Though, its history, culture and tradition vary from society to

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society, the only common thing is its prevalence and survival through out the ages. The global sweeping of prostitution notwithstanding, the problem in modern time is causing a great concern. India is not an exception to this booming flesh trade. The participants and perpetrators of this business have found some support from various organisations working for the prostitutes. They argue that the prostitutes also have freedom of trade and profession. True to the point voices are raised that they are the victim and not the perpetrator of the crime and until they are fully rehabilitated its decriminalization would lead to disaster. The present chapter therefore examines not only the legal intricacies & regulations but also the emerging facets of prostitution and its menacing manifestations. In doing so the problematic of prostitution has been probed with a humanitarian view highlighting the complexities involved in combating the problem.

In **Chapter VII** an attempt has been made to draw conclusion with regard to the legislative policy and judicial system along with their inherent lacunae which are still in motion to deal with vice of sexual offending. An attempt have also been made to suggest measures which are to be taken in terms of law both substantive & procedural, penal policy, judicial behaviour and social policy to increase the protection of women against sexual offending.

Finally it must be said that in the present work an attempt has been made to examine the fundamental principles of criminal jurisprudence, including the constitutional provisions relating to criminal jurisprudence and see if any modifications or amendments are required thereto; to examine as to whether there is a need to re-write the Code of Criminal Procedure, the Indian Penal Code and the Indian Evidence Act to bring them in tune with the demand of the times and in harmony with the aspirations of the people of India. An attempt has been made to make specific recommendations on simplifying judicial procedures and practices and making the delivery of justice to the common man closer, faster, uncomplicated and inexpensive. In doing so the present study has tried to suggest ways and means of developing such synergy among the judiciary, the Prosecution and the Police to restore the confidence of the common man in the Criminal Justice System whose primary task is to protect the innocent and the victim and punish unsparingly the guilty and the criminal.