

# **Sexual Violence Against Women in Uttar Pradesh: Responses of Police and Judiciary**

THESIS

Submitted to  
Babasaheb Bhimrao Ambedkar University  
(A Central University)  
Lucknow

BABASAHEB  
BHIMRAO  
AMBEDKAR  
UNIVERSITY



• LUCKNOW •  
प्रज्ञा शील करुणा  
ESTABLISHED 1996

In fulfillment for the Award of

## **Doctor of Philosophy**

IN  
POLITICAL SCIENCE

**SUPERVISOR**

**Prof. Ripu Sudan Singh**  
DEAN, SAS

**SUBMITTED BY**

**Sandeep Kumar Aditya**  
RESEARCH SCHOLAR  
ENROLLMENT NO. 006/14

DEPARTMENT OF POLITICAL SCIENCE  
SCHOOL FOR AMBEDKAR STUDIES  
BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY  
(A Central University)

Vidya Vihar, Raibarely Road, Lucknow-226025 (U.P.), India  
Year - 2020



*DEDICATED  
TO  
MY REVERED SUPERVISOR  
AND  
MY PARENTS*

## DECLARATION

I, **Sandeep Kumar Aditya** hereby declare that the thesis entitled “**Sexual Violence Against Women in Uttar Pradesh: Responses of Police and Judiciary**” which is being submitted to Department of Political Science, School for Ambedkar Studies, Babasaheb Bhimrao Ambedkar University, Lucknow in partial fulfillment of the degree of **Doctor of Philosophy** has previously not formed the basis for award of any such degree by any university. This is my original research work and it is free from plagiarism.

**Dated:** 16-01-2020

*Sandeep Kumar Aditya*

**Sandeep Kumar Aditya**  
Enrollment No. 006/14  
Department of Political Science


## CERTIFICATE

This is certify that the thesis entitled “**Sexual Violence Against Women in Uttar Pradesh: Responses of Police and Judiciary**” submitted by **Mr. Sandeep Kumar Aditya** is an original research work and has not been previously submitted in part or full for the award of any other degree or diploma to this or any other university

The thesis submitted to Babasaheb Bhimrao Ambedkar University, Lucknow satisfies all the requirements as stipulated in the *Doctor of Philosophy (Ph.D.) regulations-1999 as an amended in 2008/2010/2013* and it is fit for submission and evaluation for the award of the degree of Doctor of Philosophy of the University.

Dated: 16-01-2020

  
Supervisor  
Prof. Ripu Sudan Singh  
Research Supervisor  
DPS/S.A.S/BBAU

  
Head of the Department  
विभागाध्यक्ष  
राजनीति विज्ञान विभाग  
बी०बी०ए०यू, हासनऊ  
Head  
Deptt. of Political Science  
B.B.A.U., Lucknow

## ACKNOWLEDGMENT

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*I express my heartiest gratitude to my supervisor and Dean **Prof. Ripu Sudan Singh** for all the motivation, intensive support, feedback, insights, patience and rigorous guidance without which this work would not have been possible. He was always positive and motivated me to concentrate on the research. I feel greatly indebted to him.*

*I thanks to **Prof. Sartik Bagh, Prof. Shashi Kant Pandey, Dr. Siddhartha Mukerjee, Dr. Priti Chaudhary and Manjaree Raj Oraon** for support, advice, insights and co-operation. That they rendered throughout my research period.*

*I am immensely thankful to **Prof. Roop Rekha Verma**, (Ex. Vice Chancellor), University of Lucknow, Lucknow, for her valuable cooperation and suggestion regarding research.*

*I am also thankful to the staff of various universities and research institutes like, **Jawaharlal Nehru University, University of Allahabad, Banaras Hindu University, Gujrat University, Giri Institute and Govind Ballabh Pant Social Science Institute, Prayagraj** who were helpful in consulting the resource available at their capacity. I have benefited from the academic and conductive Environment of **Babasaheb Bhimrao Ambedklar University, Lucknow**.*

*I am eternally grateful to the pillar of my strength my mother **Smt. Savitri Devi** and father **Shri Shiv Kumar Shastri**. I am also extremely grateful my brothers and sisters **Mr. Pradeep Kumar Aditya, Anand Kumar Aditya, Mukesh Kumar Aditya, Vandna Aditya, Archana Aditya, Kalpna Aditya, Naveen Kumar, Lal Ji, Mahesh kumar, Sunil kumar, Sharda Dwivedi**.*

*Thanks to everyone who supported me on this journey, in every way imaginable. This includes Prem Shankar Gond, Ajay Kumar Pathak, Seema Kumari, Dinesh Kumar Dr. Ram Bachan Kumar, Dr. Saifali Singh, Dr. Rajiv Kumar Prajapati, Dr. Rohit Kumar, Dr. Anand Kumar Singh, Dr. Anil Kumar, Dr. Bhawna Suman, Dr. Upendra Kumar, Dr. Veer Kumar Rai, Dr. Deepti Singh, Dr. Maya Bharti, Dr. Ranjna Updhdhay, Dr. Rajiv Sagar, Indu, Vikash Kumar Shukla, Abhisek Kumar, Mehdi Ali, Shraddha Mishra, Sanjay Sagar, Jay Kumar, Brijesh Tiwari, Swapnesh Mishra, Ashish kumar, Dr. Swadesh Kumar and all my dearest friends.*

*Thanks to the women who agreed to share their experiences, work, worries and insights into ending sexual violence against women in their interviews with me.*

***Sandeep Kumar Aditya***

# TABLE OF CONTENTS

---

## **Chapter First - Introduction.....1-29**

- 1.1 Position of woman in India
  - 1.1.1 Vedic Period
  - 1.1.2 Mughal Period
  - 1.1.3 British Period
- 1.2 Violence
- 1.3 Sexual Violence
- 1.4 Review of Literature
- 1.5 Research Questions
- 1.6 Objectives
- 1.7 Hypothesis
- 1.8 Selection of Variables
- 1.9 Research Methodology
- 1.10 Area of study
- 1.11 Tools and methods of Data collection
- 1.12 Pilot Survey
- 1.13 Final Survey
- 1.14 Sources of Data
- 1.15 Limitation:
- 1.16 Brief Summary of Chapters

## **Chapter Second- Theoretical Discourses on Sexual Violence...30-104**

- 2.1. Violence
- 2.2. The Concept of sexual violence
- 2.3. Occurrence of Sexual Violence – A Global Phenomenon
- 2.4. Determinants of Sexual Violence
  - 2.4.1. Unequal power relations in society
  - 2.4.2. Cultural practices and ideology
  - 2.4.3. Control of women’s sexuality
  - 2.4.4. The private/public dichotomy
- 2.5. Interlinkages between Sex, Gender, Sexuality and Violence
  - 2.5.1. The Constructs of Sex and Gender
    - 2.5.1.1. Sex
    - 2.5.1.2. Gender
    - 2.5.1.3 Sex-gender system
- 2.6. Sexuality, Masculinity and Patriarchy

- 2.7. Dimensions of Sexual Violence- Diverse Form and Sites of Occurrence in Family, Community and State
  - 2.7.1 Forms of Sexual Violence
    - 2.7.1.1. Sexual violence in the family
      - 2.7.1.1.1. Female genital mutilations
      - 2.7.1.1.2. Pledging of girls for religious, cultural and economic appeasement
      - 2.7.1.1.3. Marital Rape
      - 2.7.1.1.4. Child marriages
      - 2.7.1.1.5. Forced marriage
    - 2.7.1.2. Sexual Violence Occurring in the Community
      - 2.7.1.2.1. Rape
      - 2.7.1.2.2. Sexual Harassment
      - 2.7.1.2.3. Prostitution
    - 2.7.1.3. Sexual Violence Perpetuated/ Condoned By the State
      - 2.7.1.3.1. Custodial Violence
      - 2.7.1.3.2. Trafficking for Forced Prostitution
      - 2.7.1.3.3. Sexual Violence during Armed Conflicts
      - 2.7.1.3.4. Sexual Slavery
- 2.8. Impact of Sexual Violence
- 2.9. Feminism
  - 2.9.1. First-wave feminism
    - 2.9.1.1. Liberal feminism
    - 2.9.1.2. Marxist feminism
    - 2.9.1.3. Socialist feminism
      - 2.9.1.3.1. Summary of Socialist Feminist Thought
  - 2.9.2. The Second wave (the 1960s)
    - 2.9.2. Radical feminism
  - 2.9.3. The Third wave (1990s)
- 2.10. Indian feminism
- 2.11. Important efforts at international level to curb gender violence especially sexual violence against women are as follows
  - 2.11.1. United Nations Conference decade for women (1975-1985)
  - 2.11.2. Second and Third World Conference
  - 2.11.3. United Nations Fourth World Conference on Women, Beijing, China 1995-Action for Equality Development and Peace
  - 2.11.4. After Beijing

## **Chapter Third - Women & Sexual violence in India.....105-121**

- 3.1. Analysis of heinous crimes against women at the national level
- 3.2. Analysis of heinous crimes against women at the state and union territory levels
- 3.3. Sexual violence statistics of Uttar Pradesh

**Chapter Fourth- women as a victim of sexual violence in Lucknow: A Case Study.....122-148**

**Chapter Five- Role of Police & Judiciary in Lucknow: A Critical Perspective.....149-173**

- 5.1. The police system in India
- 5.2. Structure of Lucknow Police
- 5.3. The Judicial Response in Sexual Violence Cases
- 5.4. Special Procedure under the Pasco Act 2012
  - 5.4.1. The aims and objectives of enacting the Act
  - 5.4.2. Highlights of the POCSO Act, 2012
  - 5.4.3 Laws & Agencies

**Chapter Six- Conclusions and suggestions.....174-198**

- 6.1. Conclusion
- 6.2 Suggestions regarding the amendments in Law and Reforms in Enforcement Machinery
  - 6.2.1. Suggestions Relating to Rape Law
- 6.3. Justice V.S.Verma Committee Recommendations
  - 6.3.1. Committee's findings and observations
  - 6.3.2. Failure of many public functionaries
    - 6.3.2.1. Cult of masculinity
  - 6.3.3. Key Recommendations of the Committee
- 6.4. Suggestions

**Bibliography.....199-223**

**Annexure.....-----**

## LIST OF TABLES

Figure No.	Title of Figure
3.1	The Heinous Crime Rate Against Women in India over the Year
3.2	Cases in which Offenders were known to the Victims 2015-2016
3.3	Heinous Crime Rates, Number of Heinous Crimes per 100,000 Women, in Indian States and Union Territories in 2004 and 2014
3.4	Rape Rate, Number of Rapes per 100,000 Women, in Indian States and Union Territories in 2004 and 2014
3.5	Causes for Concern
3.6	Year-Wise Rape from 2001 to 2012
3.7	Year-Wise Rape Cases from 2013 to 2016
4.1	Age of the Victim
4.2	Religion of Victim
4.3	Caste of the Victim
4.4	Education level of the Victim
4.5	Marriage status of the Victim
4.6	Monthly income of Victim's family
4.7	About Sexual violence
4.8	Factors Behind increased Reporting of Sexual Violence cases
4.9	Place, where sexual violence committed
4.10	Accused know by victim
4.10(a)	Relationship with Accused
4.11	Reason for this Act
4.12	Registered the case / complaint
4.12(a)	Time of the Lodge the Report
4.12(b)	Regarding the Judgment
4.12(c)	Reason for not Lodging Report
4.13	Police Insensibility
4.14	Role of Patriarchy
4.15	Attitude of Police and Judiciary
4.16	Capability of Police and Judiciary
4.17	Weaknesses in Police and Judiciary
4.18	Law and Rights against Sexual Violence
4.19	About Institution related to Sexual Violence
5.1	Time of the Lodge the Report
5.2	Attitude of Police
5.3	Status of cases of 2015
5.4	Status of cases of 2016
5.5	Regarding the Judgment
5.6	Views of Respondent about weakness in Judiciary

## LIST OF FIGURES

Figure No.	Title of Figures
3.1	The Heinous Crime Rate Against Women in India over the Year
3.2	Cases in which Offenders were known to the Victims 2015-2016
3.3	Heinous Crime Rates, Number of Heinous Crimes per 100,000 Women, in Indian States and Union Territories in 2004 and 2014
3.4	Rape Rate, Number of Rapes per 100,000 Women, in Indian States and Union Territories in 2004 and 2014
3.5	Causes for Concern
3.6	Year-Wise Rape from 2001 to 2012
3.7	Year-Wise Rape Cases from 2013 to 2016
4.1	Age of the Victim
4.2	Religion of Victim
4.3	Caste of the Victim
4.4	Education level of the Victim
4.5	Marriage status of the Victim
4.6	Monthly income of Victim's family
4.7	About Sexual violence
4.8	Factors Behind increased Reporting of Sexual Violence cases
4.9	Place, where sexual violence committed
4.10	Accused know by victim
4.10(a)	Relationship with Accused
4.11	Reason for this Act
4.12	Registered the case / complaint
4.12(a)	Time of the Lodge the Report
4.12(b)	Regarding the Judgment
4.12(c)	Reason for not Lodging Report
4.13	Police Insensibility
4.14	Role of Patriarchy
4.15	Attitude of Police and Judiciary
4.16	Capability of Police and Judiciary
4.17	Weaknesses in Police and Judiciary
4.18	Law and Rights against Sexual Violence
4.19	About Institution related to Sexual Violence

### LIST OF PUBLICATION -

1. **"Rape in Uttar Pradesh: A Legal Perspective"** Published in **"Review of Research"** An International Online Multidisciplinary Journal, Vol. - 8, Issue – 8, May, 2019, ISSN No. – 2249-894X.
2. **"समलैंगिकता का कानूनी पक्ष और औचितता"** Published in **"Review of Research"** An International Online Multidisciplinary Journal, Vol. - 8, Issue – 6, March, 2019, ISSN No. – 2249-894X.

## LIST OF ACRONYMS

<b>AIDWA</b>	ALL INDIA DEMOCRATIC WOMEN'S ASSOCIATION
<b>AIPWA</b>	ALL INDIA PROGRESSIVE WOMEN'S ASSOCIATION
<b>CEDAW</b>	UNITED NATIONS CONVENTION ELIMINATING ALL FORMS OF DISCRIMINATION AGAINST WOMEN
<b>CR.P.C</b>	CODE OF CIVIL PROCEDURE
<b>CPS</b>	CROWN PROSECUTION SERVICES
<b>CWS</b>	CHILD WELFARE COMMITTEE
<b>CSA</b>	CHILD SEXUAL ABUSE
<b>CRC</b>	CONVENTION ON THE RIGHTS OF THE CHILD
<b>CEDAW</b>	CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN
<b>CSW</b>	COMMISSION ON THE STATUS OF WOMEN
<b>DIR</b>	DOMESTIC INCIDENT REPORT
<b>UNDEVAW</b>	UNITED NATIONS DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN
<b>DV</b>	DOMESTIC VIOLENCE
<b>EVIDENCE ACT</b>	INDIAN EVIDENCE ACT
<b>FIR</b>	FIRST INFORMATION REPORT
<b>GAD</b>	GENDER AND DEVELOPMENT
<b>GBV</b>	GENDER-BASED VIOLENCE
<b>ILO</b>	INTERNATIONAL LABOUR ORGANISATION
<b>IPC</b>	INDIAN PENAL CODE
<b>ITPA</b>	THE IMMORAL TRAFFIC PREVENTION ACT
<b>ICCPR</b>	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
<b>ICESCR</b>	INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
<b>JJ</b>	THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT
<b>MWCD</b>	MINISTRY OF WOMEN AND CHILD DEVELOPMENT
<b>NCRB</b>	NATIONAL CRIME RECORDS BUREAU
<b>NCW</b>	NATIONAL COMMISSION FOR WOMEN

<b>NGO</b>	NON-GOVERNMENTAL ORGANIZATION
<b>NHRC</b>	NATIONAL HUMAN RIGHTS COMMISSION
<b>NFIW</b>	NATIONAL FEDERATION OF INDIA'S WOMEN
<b>POSCO ACT</b>	POTECTION OF CHILDREN FROM SEXUAL OFFENCE
<b>RCICS</b>	RAPE CRISIS INTERVENTION CENTRES
<b>SJPU</b>	SPECIAL JUVENILE POLICE UNIT
<b>SGBV</b>	SEXUAL AND GENDER-BASED VIOLENCE
<b>SCRB</b>	STATE CRIME RECORDS BUREAU
<b>UNCRC</b>	UNITED NATIONS CONVENTIONS ON THE RIGHTS OF CHILD
<b>UDHR</b>	UNIVERSAL DECLARATION OF HUMAN RIGHTS
<b>UN</b>	UNITED NATIONS
<b>WUNW</b>	WOMEN UNITED NATIONS WOMEN
<b>UNDP</b>	UNITED NATIONS DEVELOPMENT PROGRAMME
<b>UNIFEM</b>	UNITED NATIONS DEVELOPMENT FUND FOR WOMEN
<b>VAW</b>	VIOLENCE AGAINST WOMEN
<b>WHO</b>	WORLD HEALTH ORGANIZATION
<b>WRVH</b>	WORLD REPORT ON VIOLENCE AND HEALTH
<b>WAMA</b>	WOMEN'S ASSOCIATION FOR MOBILISATION AND ACTION



*CHAPTER – 1*  
*INTRODUCTION*

# CHAPTER - 1

## INTRODUCTION

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Women and men are equal in every human concern in this world. They are equally competing in almost all spheres of work and power and they are achieving the sets goals. Cultural, economic and policy may be barriers to women in certain parts of the globe; still women are marching ahead with great conviction and confidence to keep themselves on par with their counterpart in every affair.

Thus, humanity is male and man defines woman not in herself but as relation to him, she is not regarded as an autonomous being<sup>1</sup>, she is defined and differentiated with reference to man and not be with reference to his, she is the incidental, the inessential as opposite to the essential, he is the subject, he is absolute she is the other. Offences against woman are not restricted to a particular area, class, race, region, or community. It is a phenomenon which has been plaguing woman worldwide. Violence against woman cuts through all kinds of community, culture, regional, and ethic barriers and impedes the right of the woman to participate fully in the society. A girl child, unmarried woman, divorced or widow woman or woman of elderly age may be victim of violence. In spite of contribution of woman in all spheres of life, they suffer in silence and belong to a class which in a disadvantaged position on account of several impediments or barriers. Offences against woman are problems which have been faced since time immemorial and even today. It remains wide spread from confines of house, to road , to her work place, rape ,sexual harassment etc. are committed.

This basis reason for such offence in a male dominated society is a inferior status, of woman, economically, educationally socially and politically. Historically men have dominated and discriminated against woman. Lack of access to legal information, lack of knowledge of law, awareness and inadequate effort by public authorities to enforce law increase violence against them.

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<sup>1</sup> Simone de Beauvoir, second sex(1949), Vintage Books, London, p-3

## 1.1. POSITION OF WOMAN IN INDIA

### 1.1.1. Vedic Period

During the Vedic period woman enjoyed a fair amount of freedom and equality. The Vedic period can best be termed as a period of feminine glory. Man and woman together performed religious duties and carried out other functions. The status of woman in India was based on liberty, equality and cooperation. The Vedic period is characterized by the absence of purdah, equal rights in selecting life partners, polygamy was rare and was mainly confined to the ruling class.

The dowry system was prevalent only in the rich and royal families and only the form of movable gifts. A widow could marry again, there was no discrimination bet were a boy and girl. Girls were allowed to undergo *Uponayana* or thread ceremony thus it can be said that during the Vedic period women had an excited position and they enjoyed a fair amount of personal independence and equality with men.

The honored position which the women enjoyed in the family and society during the Vedic era gradually started declining. This decline dates back to the period of the manuscript and increasing authority of men. The birth of a daughter which was not a source of anxiety during the Vedic period becomes the source of disaster for the father. Education of girl was neglected; thread ceremony which was performed to initiate a person into the Vedic studies was prohibited in case of women, thus closing doors to any kinds of formal education. Women in the ruling class did receive some training in military, administrative and fine arts but there was an exception though many describe wife as the divine in situation given by God he also says, husband is the lord and master of his wife, he must be adorned and obeyed even if devoid of all virtues (Manusmriti X 260). Manu and other smritikaras particularly Yajnavalkya ruled out the independence of women and spoke about their perpetual dependence on men. Manu suggested the ways to keep under subjection and taking a clue from Manu; men have adopted those ways and cruelly exploited women through the ages. This kind of treatment of wife is a natural consequence of Manu's theory that marriages establish the supremacy of husband over the wife (manuscript V, 152).

Despite the overall subordination of women, even at that time the right of women to her *Streedhan* was recognized.

With invasions of India by Alexander and Huns, the positions of women further besmirched. Their education and training almost halted. For security reasons women were confined to their homes which in turn affected their participation in community affairs. "With invading armies roaming in country side women were put behind the veil, uneducated and devoid of any status, they came to be treated as chattels. Social evils like sati, child marriage, and female infanticide arose. Women suffered great disabilities. The evil of dowry had become deep rooted polygamy and the system of *devdasi* had become widespread." The medieval period saw women being oppressed in feudal order and patriarchal families.

### **1.1.2. Mughal Period**

By the 12<sup>th</sup> Century, North India was under the rule of Delhi Sultans. During the Mughal period spanning from 16<sup>th</sup> century to 18<sup>th</sup> century, many customs crystallized that adversely affected the cause of women. The powerful Muslim started marrying Hindu daughters forcibly by converting them to Islam.<sup>2</sup> Consequent upon the terror of Turks and their nefarious activities, many social practices came into existence that went against women. Firstly, the Hindu heroic women began to embrace pyre instead of capacity of Muslims. This led to the evil custom, euphemistically called 'Jauhar' or 'Sati'. Secondly, the Hindus, under the compelling circumstances, started keeping women in seclusion to keep them out of the sight of the Muslim traitors. This gave rise to the baneful purdah system resulting in the seclusion of women in the zenana. And, in course of time the evil custom of purdah came to be recognized as a custom of responsibility, particularly among the higher classes. Women belonging to the poor strata of society, who did not observe purdah, had to expose themselves to the exterior hazards of society. Thirdly, the girls came to be married at an early age even among Muslims,<sup>3</sup> giving rise to the evil custom of the child-marriage that placed the married-child under the tutelage of husband and in-laws from early years of her life. Fourthly, the female-child came to be considered as

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<sup>2</sup> The Quran, Translated by George Sale (Oxford, November, 1953), p. 31; A.L. Srivastava, Delhi Sultanate (Seventh Edition, 1971). P-332

<sup>3</sup> Akbar passed orders prohibitory marriage of girls before 14 years and boys before 16. See Mulla Abdul Quair Bedouin, II. Trans, By W.H. Lowe, 1884. p-349

a burden and an unwelcome arrival by the parents in the families of both Hindus and Muslims,<sup>4</sup> giving rise to infanticide. Fifthly, these circumstances led to polygamy."<sup>5</sup> Sixthly, the strict moral control over widows made their life miserable and turned many of them into whores. Seventhly the practice of widows remarriage, except in lower classes, disappeared. The circumstances were so compelling that women themselves resented remarriage.<sup>6</sup> Finally, the education became beyond the reach of women in general; only elite class women were given opportunities that, too, only for religious learning and mental discipline.

It is observed that the medieval period was basically a feudal period which further subjugated women to men and a kind of perpetual men dominance started. Many vices like satipratha, praudh system, child marriage, infanticide, prostitution, prohibition of widow remarriage, and illiteracy became prevalent. The status of women in society touched its nadir and scope for the development of personality unthinkable.

With the emergence of Bhakti Movement which arose during the medieval period in reaction to feudal domination and unjust social practices of the orthodox Hindus, India witnessed a progressive landmark in the history of Hindu womankind during the middle ages i.e. thirteenth through sixteenth centuries. The Bhakti movement brought a new message and hope for women and downtrodden. The Saints in different parts of India propagated the ideal of equality between man and man, and between man and women, and preached that all are equally sparks of one supreme deity. Their message was: love and devotion complicated rituals and asserted. The women were totally on the mercy of men, is evident from the fact that they did not possess any proprietary status. Economically, women became completely dependent on men.

### **1.1.3. British Period**

During the British period the plight of women became the focal point for social reformation. Women's welfare process during the British period was

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<sup>4</sup> Co. James, Tod, The Amais and Antiquities of Rajasthan, Edited by W. Cookes, 1920. Vol. II, pp. 739-740. Also Nicocolac Venetian Irwine, Storia De Mogar, Vo. II. p.343

<sup>5</sup> Akbar ordered that a man of ordinary means should not have more than one wife. See Abdul Fazal. Ain-i-Akbari, Trans. By H. Blohmn, 1873. p.277

<sup>6</sup> F. Ovington, A Voyage to Surat (London, 1696), pp. 323-324

slow. During the period there were two major movements which affected the position of women namely social reform movement of the nineteenth century and the nationalist movement rose the twentieth century of equal status of women. Many laws were enacted which tried to eradicate certain social evils such as child marriage restraint act, 1929, the act legalizing remarriage of widows etc. In short during the British rule, though the progress was slow but awareness was created for the removal of social inequities and opportunities of education and participation of women in society increased.

After independence multi-pronged efforts have been made to uplift women. The constitution of India, the supreme law of the land, envisages equality, freedom, liberty of men and women alike. The constitution guarantees the dignified status of women. The fundamental rights guaranteed under the constitution ensure that women are treated equally with their male counter parts. The framers of the constitution realized that equality was important for the development of the nation. In order to do away with inequities and discrimination plaguing the women, it was necessary to promote education and economic interest women. It became the objective of the state to protect women from exploitation and to provide social justice to all.

The preamble to the constitution resolves to secure to all its citizens justice social, economic and political, liberty of status and opportunity. The fundamental rights envisaged under the constitution give effect to the object expressed in the preamble. In the same go, Directive Principles of the state policy, though non justiciable are considered by the state in formulating laws and policies. There directive intend to create a socially just and equal environment fundamental rights and directive principle provide the frame work to achieve the ideals of the preamble of the constitution of India. However there is a wide gap between the goals enunciated in the constitution and situational realities of women despite the constitution guarantees and other legislation protection, the spiral of violence against women is rising at an alarming rate.

## **1.2. VIOLENCE**

Violence in general is a coercive mechanism to assert one's will over another, in order to prove or feel a sense of power. Violence is an act committed to put down,

silence, and to keep under control someone with the intention of hurting or humiliating the person. It can be perpetuated by those in power against the powerless, or by the powerless in retaliation against coercion by others, to deny their powerlessness. The power exerted by the state is accepted as legitimate means of resolving a problematic situation. One of the core elements of violence is that the coercion involved is neither legitimately nor socially acceptable. Any hierarchical system of social organization, where there are categories of dominant groups and subordinate groups, is inevitably accompanied by the victimization of the latter through various means- subtle pressure, through the power ideology, through mechanism of socialization that reward compliance and punish non- compliance and also through open force. Any individual or group facing the threat of coercion or being disciplined to act in a manner required by another individual or group is subject to violence.

**United Nations defines violence as** “any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, Coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”<sup>7</sup>.

**The WHO defines violence as follows:** “The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation.” (Krug et al. 2002: 5)

This definition gives a bright understanding of violence, how it is used and affects human beings’ physically and psychologically. It is influencing development and causes deprivation. Violence, according to this definition, does not always have to end in injury or death, but the psychological harm is a major side-effect of violence.

Violence in general is a coercive to assert one’s will over another, in order to prove or feel a sense of power it can be perpetrated by those in power against the powerless, or by the powerless in retaliation which attempts to deny their powerlessness. Any hierarchical social system has an in-built gradation of domination

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<sup>7</sup> Declaration on the elimination of violence against women –UN documents: gathering a body of global agreements A/RES/48/104. Available from: <http://www.un-documents.net/a48r104>, accessed on November 22, 2015.

and subordination, as well as institutionalized violence and victimization. This is perpetuated by various means... Subtle pressure through the power of ideology, the mechanism of internalized social norms, and the system of social sanctions which penalizes non-compliance. Often the threat of violence is enough for exerting power, while something's an atmosphere of terror is created towards the same end. Thus, the problem of defining violence is complex. For the purpose of this study violence is defined as sexual violence, physical violence, physical and mental sexual harassment. In brief, all open and expressions of coercion (cf. Kelkar & Krishnaraj, 19885).

There are forms of violence which are directed specially against women – rape, sexual harassment, sexual exploitation as in prostitution, domestic violence ranging from battery to torture and even death. All these spring from the structure of patriarchy, defined broadly as a system of male dominance legitimated within the family and society through superior rights, privileges, authority and power. The degree and forms of expression of patriarchy vary from society to society. But the process of subordination is generally achieved by devaluing women's contribution, while at the same time extracting a significant contribution from them. A second process occurs through a powerful ideology of rigidly assigned roles for women, which act as boundaries for all their actions boundaries which can be overstepped at their own peril. The most potent and restrictive injunction is the virtual debarment of women in public places or places typically designated as the male sphere, Further, sexual morality has double standards for men and women, the latter being subjected to strict norms. The following accounts of violence against women poignantly illustrate the conjunction of all these processes, and also bring out the cultural specificity of some type of violence. Finally, they underscore the inadequacy, ineffectiveness and unwillingness of the state machinery to curb violence against women. Some scholars have defined violence as “injurious and destructive behavior which damages the victim physically, mentally and /or financially.”<sup>8</sup>

The term ‘violence is used for more extreme form of aggressive behavior that are likely to cause significant injurious to the victim. Although violence typically refers to physical aggression, it can also be applied to psychological stress that causes suffering or trauma. There are no women who have not suffered at one time or

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<sup>8</sup> Ahuja, Ram, Violence against women, Rawat Publication, New Delhi, p 5.

another harassment, humiliation and violence that shadow her sex. A women's life lies between pleasure at one end and danger at the other end.

In India, women are way ahead of their counterparts elsewhere in the matter of social legislation. But the implementation of laws granting rights to women has been so slow and haphazard that socially, economically and politically women are kept behind men. Some relates it with social conditions in our society like illiteracy, poverty, social customs, ignorance and lack of awareness of rights, while other relate it with their personality characteristics like feeling of helplessness, inferiority complex, poor self- image, lack of violence against women is a complex mixture of social, economic, cultural, biological and legal factors that accounts for the rising violence against women.

We can categorizes violence against women mainly in six parts- sexual violence, kidnapping and abduction, dowry deaths, wife battering and s few other specific categories of violence like torture, molestation etc.

### **1.3. SEXUAL VIOLENCE**

Sexual violence is a pervasive social problem that includes a spectrum of sexual behaviors, often with devastating physical, psychological, and social consequences for the survivors. The World Health Organization (WHO) defines sexual assault 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” (World Health Organization, 2002, p. 149). The terms sexual violence, sexual assault, and rape are often used interchangeably. The U.S. Department of Justice defines sexual violence as an overarching term encompassing specific crimes that include sexual assault, sexual harassment, and rape (2009).

Sexual violence against anyone has clearly major effects on mental and physical health, causes deaths, also through suicide, and murder. There are many theories about the motive of the perpetrator, but it always comes with the exertion of power over the victim. Many men think their actions are legitimate, because they are married to the women.

**Sexual violence is, according to the WRVH is** “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.” (Krug et al. 2002: 149)

This definition of sexual violence includes rape, unwanted sexual advances or sexual harassment (including demanding sex in return for favours), sexual abuse of children, denial of the right to use contraception or to adopt other measures to protect against sexually transmitted diseases (STD) and forced prostitution and trafficking of people for the purpose of sexual exploitation. The WHO report also states that the above used term coercion can be of various forms such as physical force, psychological intimidation, blackmail and other threats (WHO, 2002).

Violence against women is widespread globally (Watts & Zimmerman, 2002). One out of three women is subjected to physical or sexual violence by a partner, or sexual violence by a non-partner (WHO, 2013a). This highly contributes to women’s ill-health and according to WHO, this demands a public health response (WHO, 2005). Women who have been subjected to violence seek health care more than other women, also when not mentioning the violence and health care providers are often the first professionals to meet victims of intimate partner violence (IPV) (WHO, 2013a).

Sexual violence is a violation of the victim’s human rights and damaging to a person’s health (Campbell, Jones, Dienemann, Kub, Schollenberger, O’Campo, Gielen & Wynne, 2002). Sexual and reproductive health and rights (SRHR) is an umbrella term for people’s right to their own body, sexuality and reproduction, a right that is an absolute condition for health and well-being (Knöfel Magnusson, 2009). According to WHO, sexual health is a state of physical, mental, emotional and social well-being in relation to sexuality and not only the absence of dysfunction or disease. It is strongly linked to the extent to which human rights are respected, protected and fulfilled. Sexual rights are already expressed and recognised internationally in human rights documents, including the rights to social security and the highest attainable standard of health, the rights to be free from torture or cruel or degrading treatment or punishment and the right to decide the number and spacing of one’s children (WHO, 2013b).

#### 1.4. REVIEW OF LITERATURE

A literature review surveys books, scholarly articles, and any other sources relevant to a particular issue, area of research, or theory, and by so doing, provides a description, summary, and critical evaluation of these works in relation to the research problem being investigated.

**Vandana, “sexual violence against women: penal law and human rights perspective”, Butterworths wadhwa, Nagpur 2009.** In his book, the author focuses on sexual violence-its concept, determination and dimension-and endeavors to analyze it from the feminist and human rights perspective. The author says that violence against women is one of the most pervasive yet hidden forms of human rights abuses throughout the world. Sexual violence comprising the major chunk of violence against women is a universal but an invisible phenomenon. So much is the prevalence of sexual violence that women’s physical, mental and sexual violence integrity ever remain at the risk for survival, in all societies in all regions of the world.

She says, sexual violence, apart from causing immediate physical harm, leaves permanent scars in the memory of the victim, which destroy her emotional psyche tremendously. Sexual violence not only negates the human rights of the victim concerned but at a larger level, affects the society at large by lowering down the development prospects as it directly impinges upon the potential of nearly half of the human population i.e., women. Whether a woman herself becomes the victim of sexual violence or not, the terror of it always lingers on her mind.

According to her there are deep interlink ages between gender, sexuality and sexual violence. In a patriarchal set up, sex role specialization of individuals create a gender surcharged atmosphere in the society where by aggression of masculinity becomes the norms to dominate and control the female sexuality. Sexual violence becomes a tool to demonstrate power In order to command subjugation and compliance .The women victims are so conditioned by the social norms, right from the birth, that they accept their subjugated status in the society and sexual violence becomes a part of their lives. Other chapters of the book analyze the concept of role and sexual harassment and trace the development of law in each case. The chapters also examine various critical issues related to rape and sexual harassment and throw

light on the judicial response as exhibited through the decision of higher judiciary with a focus on the decisions of the Supreme Court.

**Ray, Sukumar, “Sexual violence against women with special reference to rape”, Eastern law house private ltd.2015.** In his book author says that sexual violence as a result of stress and strain of modern life is spreading in society. Offences against woman are increasing alarmingly .The author of this being an associate in judiciary expressed his justice views over these problems. In his analysis and observation of the subject he has moved all- around and thereby determined causes of sexual violence, historical retrospective, remedies, and compensation, sexual violence’s prescribed its punishment, proposed amendment and so on. The author also described about the rape and its causes and classification and suggestions and end of his book he define the sexual harassment of women at workplace. He says the offence of rape is as old as the human civilization itself. Ancient times saw victors ravishing the women of the vanquished whenever there was war between two nations. In his book author identify the causes of rape as a perverted pleasure, male domination in society, influence of television and cinema, free mixing, failure of love, poverty, revenge, communal feeling, and superstition. Classification of rape as marital rape, rape in uniform, gang rape, statutory rape, and date rape. Ray also defines the rape legal perspective and legal provision of rape.

About the sexual harassment he argues that sexual harassment of women at workplace act 2013 was passed by the Lok Sabha on 3<sup>rd</sup> September 2013 and by Rajya Sabha ON 26<sup>TH</sup> Feb 2013 it has received the assent of the president of India on 23<sup>rd</sup> April 2013. It came into force on and from 9<sup>th</sup> Dec 2013. He also define the main purpose of this act are-

1. To provide protection against sexual harassment of women at workplace; or
2. To provide effective mechanisms for redressed of complaints of sexual harassment and other incidental matters.

Chapters of this book mainly indicates deep discussion of the causes of rape, historical retrospective, allied offence, rape of child, sentencing trend, compensatory jurisprudence, sexual harassment at workplace, allied offence, latest offence like voyeurism, stalking etc. A comparative discussion relating to rape in different

countries of the world. The critical analysis of criminal law (amendment) act 2013 is also discussed of length with a view of critic.

**Kakar, Sudhir, “Intimate Relation: Exploring India sexuality,” penguin book India ltd, Gurgaon, Haryana, 1990.** Intimate relations is a ground breaking work that explore in detail India’s sexual fantasies and India, the until stage of desire where so much of our inner theatre takes place; kakar’s sources our textual in the main, celebrating the primacy of the story in India life.

This book is a psychological study of the relationship between the sexes in India. It is about men and women-lover, husband and wives-living in those intimate statuses where at the same time we are exhilaratingly open and dangerously vulnerable to the other sex. It is about Indian sexual politics and its particular language of emotions. The major routes which have kakar’s selected for undertaking meanders through a terrain hewn out the fantasies of intimacy, a landscape whose contours are shaped by the more obscure desires and fears men and women entertain in relation to each other and to the sexual moment in which they come together.

Chapter of this book have been presented at different forums in condensed versions. Chapter two (scenes from marriage) and three (lovers in dark) were originally delivered as the George De Vas Lectures at the department of Anthropology. University of California, Barkley. Chapter two also formed the basis of a talk at the department of sociology, university of Delhi. Chapter six was presented in the social science seminar at the institute of advanced study, Princeton, the department of Anthropology, Princeton University, and the department of political science, Cornell University. Chapter seven was presented at the conference on human development, university of Chicago, the Swiss psychoanalytic society, Zurich, and the second international psychoanalytic symposium at Delphi.

**Mehrotra, Mamata, “Crime against Women in India”, Ocean book pvt. Ltd, New Delhi, 2014.** This book deals with contemporary issues of rape, the aftermath and judgments. According to authors rape is rampant in the country. No girl or women for that matter is safe whether at home, workplace or on the road. With or without a chapter on she is subjected to all kinds of humility. A woman is not safe even in the so called safe environment of her home. The person who takes oath to

protect her sometimes, rather most of the times become one whom she has to fear. She is unsafe even with him.

This book is an outcome of ages and frustration of Nirbhya case. Which was occurrence in 16<sup>th</sup> Dec. 2012? Author says that at one side we as women speaking of women empowerment and growth and on the other side the very sexuality and feminist of women were put at state. Her security arises as a big issue. With so, girls are getting education and going out into big cities in search of job and education. The author again says that the very concept of growth would get jeopardized if the security of women is threatened. Her movement and freedom would be gravely host. So it is high time that be nation as a whole contemplates about these serious issues and work out a solution. The solution would be adequate arrived at only if women are having male control over their body and safely having home, workplace and on the streets.

This book has been dived in eight chapters. In the first chapter author argue that, are we becoming a country of rapist? In the second chapter she shown the status of women in ancient time and crime against women in present time and constitutionally and legal provisions safety for women. Lastly she says that any country of the world which is developed needs to have a safe working environment for its womenfolk and flying high in the sky.

**Anuradha, S, “women and children innocent victims of sexual violence”, Medhashri Publication, New Delhi, 2010.** Author s Anuradha says that, “violence is a key barrier to women realizing their rights and achieving social justice. It is because there is no gender equality that violence is so prevalent. Reflecting there are the hidden millions, the more than 60 million women and girls who are not here today because of sex selective abortions and female infanticide. Where people are living on the edge, and where there is most conflict, women and children usually lose out the most. As amnesty international and others point out, sexual violence remains widespread in various conflicts. Few women and children have access to adequate care or justice. Perpetrators of violence against women are rarely held accountable. Often the victims are stigmatized and further marginalized.

Author Anuradha argue that violence against women is both a cause and consequence of gender inequality perpetrators are usually knew men; partners, ex

partners, family members, friends or colleagues. They use power deliberately and systematically over time by psychological threat or physical force to frighten their victims and control their behavior.

Male control over women has a history. Women historically were legally the property of men-men owned women. The right of husband to beat their wives was enshrined in law. Sexual access to women was a right of marriage. That was the case until as recently as the 1990s.

This book is also divided in eight chapters. In her first chapter 'Gender and sexual violence' says that an increasing number of feminist agree with Susan Moller Okin's claim that multiculturalism is "Bad for women", because it locks them up within the confines of their traditions, often patriarchal, communities and hands them over to the power of a men with in that community.

**Chawla, Monica, Gender Justice: "Women and law in India", Deep and deep publication Pvt. .Ltd, New Delhi 2013.** In her book Monica says that women, like men are both born and made. Still in almost all societies of the world, we find scathing attack against them. The speculations about women have been not only numerous, but immensely varied. In India, a woman is seen as divine and worship as the embodiment of all the virtues on one hand but on the other hand she is discriminated against and victimized by the norms created by the male dominated society. She has not been given her due and legitimate place and status in society even after all the civilization and cultural revolutions. No religion grants equal rights given to the women at par with the man in all respects. Whatever law applicable to men is also applicable to women equally. However, some enactments relating to women are of two kinds; one equally applicable to both women and men and another specially intended to women only. The resolution by the united nations of the international women's year urged:

To strive for equality between men and women; to promote a higher role of women in the economic, political, social and cultural life of countries; to promote their active participation in the struggle for the development of friendship and cooperation between nations, for peace and social progress. This book is an effort to

bring together various provisions relating to women nationally and internationally with regards to their personal law, constitutional rights and other legal rights.

The book is divided into seven sections and it includes all new amendments and acts relating to women. The first chapter deals with the status of women in India and the efforts made at the international level to remove all kinds of discrimination against women. The second chapter deals with the constitutional provisions relating to women. The Indian constitution guarantees certain fundamental rights to the citizen of India. The framers of the constitution were well conscious of the discrimination and unequal treatment meted out to the fairer sex, from time immemorial. So, they include certain general as well as specific provisions for upliftment of the status of women. Chapter third deals with the personal laws relating to the women in India. India is a secular country and there is no uniform civil code even throughout there is uniformity in criminal and other laws. Different religions confer different rights on the women in respect to the personal matter like the marriage, separation and divorce. In this chapter, the rights of Hindu, Muslim and Cristian women and their position with regard to their personal matter have been discussed. Chapter our deals with provision relating to maintenance, guardianship, adoption and succession relating to women.

The fifth chapter contains various provisions in criminal laws provided for the safeguard of the women. Under this chapter, a brief explanation has been given regarding the offences committed against the women like adultery, rape, outraging modesty, domestic violence, female feticide.

The six chapter deals with the provisions of labour and industrial laws which benefits and protects the women workers and employees. The maternity benefit act of 1961, the equal remuneration act etc. acts have been discussed along with the latest amendments made in these acts. The last chapter deals with special laws enacted for the welfare of women.

**Anand, A.S (Chief Justice), Justice For Women: Concern and Expressions”, Universal Law Publishing Co. Pvt. Ltd, 2008.** Justice Anand says that in his book “Man and Women are two halves of humanity neither can reach highest creative excellence without the cooperation of the other.” Through the ages

we have placed women on a pedestal 'mother of mankind's'. Paradoxically, the most horrendous cruelties have been inflicted on her, often without reason and mostly without just cause. Through we have entered the new millennium, the status of women has not improved, mainly due to the traditional bias and prejudice towards that section of the society, which has remained, for no fault of theirs, discriminated against all these years. The discrimination stems not so much from legislative insufficiency as from the attitudinal bias of the society. Contemporaneous legislations, laws, treaties and conventions have unequivocally established equal rights for men and women as a global norm. In spite of all this discrimination continues.

Anand again says that women's issues have been a matter of grave concern for a long time but have attracted pointed attention only in the past few decades. Over the years, radical changes have been introduced in the laws pertaining to women, which not only recognize their rights, but also afford protection against exploitation. In spite of all this, due to lack of understanding about the realities being faced by women- at home- at place of work or in court; often lead to inequality and injustice to women. This suffering can, in a way, be traced to deep- rooted social values in an essentially male dominated society. Social and economic inequalities also contribute in no small measure to the continued denial of all their human rights to women in general and to the disadvantaged and poor amongst them in particular. Gender equality in most cases boils down only to a myth.

Education and media exposure has contributed a lot in making Indian women aware of some of her rights and her position in the society. However, because of the attitude of the society, this important section has remained deprived of enjoyment of their rights to the full. Chief justice Anand points out that the fight of women for their rights is not a fight against men. It is fights unjustified traditions and the male created laxman rekha that women are not supposed to cross.

This book is divided in to three parts. In first part articles and speeches while some of the landmark and path breaking judgements have been incorporated in the second part. Third part deals with matter of trafficking of women and children in India.

**Meloy, Michelle L., and Miller, Susan L. "The Victimization of Women: Law, Policies and Politics", Oxford University Press, 2011.** In *The victimization of women*, Michelle L. Meloy and Susan L. Miller present a balanced and comprehensive summary of the most significant research on the victimization, violence and victim politics that disproportionately affect women. They examine the history of violence against women, the surrounding debates, the legal reforms, the related media and social- service responses, and the current science on intimate-partner violence, stalking, sexual harassment, sexual assault, and rape. They argue these victimization findings with original research on women convicted of domestic battery and convicted of sexual abuse and other sex- related offence. In these new data, the authors explore the unanticipated consequences associated with change to the laws governing domestic violence and the newer form of sex- offence legislation based on qualitative data involving in- depth, offender- base interviews, and analyzing the circumstances surrounding arrests, victimizations, and experiences with the criminal justice system. The victimization of women makes great strides forward in understanding and ultimately combating violence against women.

**Mallicoal L. Stacy & Ireland. Estrada. Connie, "Women and Crime", Sage Publication, California.** In his book author wants to introduce the issues that women face as they navigate the criminal justice system. This book is divided into four major parts, each highlighting the role of women in the criminal justice system. In part 1 authors explores the foundations of feminist criminology and serve as an orientation and introduction to the study of women and crime. Part 2 is devoted to a discussion of women as victims, including sexual assault, intimate partner abuse and stalking, and international issues facing women today. Part 3 highlights issues of women as offenders, with a focus on both victimless and violent crimes committed by women. Part 4 focuses on the issues that women face as professionals with in the criminal justice system.

In chapter first authors provides an introduction and foundation for the book. Chapter second author turn to a review of the current issues that face women as victim, offenders and workers within the criminal justice system. Chapter third begins with a review of the theories of victimization of women. Gender and victimization are examined through a discussion of victim help seeking behaviors as well as barriers to

obtaining help. Chapter four focused on the theoretical perspective of female offending, often discussing traditional theories of criminal behavior and how they have historically failed to adequately explain the unique offending patterns of women. This chapter also highlights some of the major criminological theories and their applications toward understanding the female offender. Chapter five of this book explores one of the most inmate and devastating types of female victimization: rape and sexual assault. Chapter six introduces the issues associated with intimate partner abuse (IPA) and stalking. Chapter seven focuses on international issues in the victimization of women. Chapter eight examines girls and the juvenile justice system. Chapter nine and ten examine women and their crimes, highlights some of the type of crime where are disproportionately represented as offenders.

Chapter eleventh details the historical and contemporary practices in the processing and sentencing of female offenders. This chapter also highlights research on how factors such as patriarchy, chivalry and paternalism within the criminal justice system affect women. Chapter twelfth examines the supervision and incarceration of women. Chapter thirteen focuses on women in careers related to policing, corrections and offenders services, courts and victim services.

Finally the author provides an in-depth examination of the issues facing women in the criminal justice system today. From victimization to incarceration to employment, this book takes a unique approach in its presentation by providing a review of the literature on each of these issues. Each chapter of this book presents a critical component of the criminal justice system and the role of women in it. As we will soon learn, gender is a pervasive theme that runs deep throughout our system and how we respond to it has a dramatic effect on the lives of women in society.

## **1.5. RESEARCH QUESTIONS**

- What are the main underlying factors behind increased reporting of sexual violence against women in up India,
- What is the process of judiciary system when the chart seat is submitted in the court?

- What are the weakness factors, which influence police and judicial system regarding the sexual violence case?
- How can understanding the intersectionality of gender Class and Caste in India illuminate reasons why police in India have inconsistent responses to rape case in country?
- Apathy of police system and other governing agencies responsible for it?
- Is patriarchal structure also responsible for it?

## 1.6. OBJECTIVES

The main objective of this study is to responses of police and judiciary cases on sexual violence against women in Uttar Pradesh. The following are the major objectives of the present study:

- To assess the attitude (effectiveness) of state machinery (police and judiciary) in the case of sexual violence against women.
- To assess impact of patriarchal culture on sexual violence
- To assess the structure of dealing rule (implementation of rules and regulations) and reaction (responses) of the authorities (Police & Judiciary) in different cases.
- To study the role of police, administration and judiciary in cases of sexual violence.
- To study the behavior of family members and society towards victims of rape.

## 1.7. HYPOTHESIS

Hypothesis is tentative assumption made in order to draw out and test its logical or empirical consequences. According to Ohab (2010), research questions and hypothesis provide a sound conceptual foundation for a research project.<sup>9</sup> According to Stuermer (2009), developing research questions and hypothesis is the most important task in your research project as it influences every aspect of your research including; theory to be applied, method to be used, data to be gathered and unit of

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<sup>9</sup>Ohab, h. (2010), How to Defining your research questions and hypothesis, available at <http://science.dodlive.mil/2010/10/04/defining-the-beginning-importance-of-research-questions-hypothesis/>, accessed on 10 January 2018.

analysis to be assessed etc.<sup>10</sup> Well thought out research questions provide focus to a researcher and determine what, when, where and how the data will be collected and provide an important link between conceptual and logistic aspect of research project.<sup>11</sup> They also affect the manner in which tests must be conducted in the analysis of data and indirectly the quality of data which is required for the analysis. The hypotheses of the present study are:

1. There is significant effect of attitude of state machinery (police and judiciary) on sexual violence
2. There is significant effect of patriarchal culture on sexual violence
3. There is capable structure of dealing rules and regulations, and responses in case of sexual violence

## **1.8. SELECTION OF VARIABLES**

### **Independent Variables:**

- a. Sense of apathy towards women
- b. Slow administrative process
- c. Patriarchal attitude perception

### **Dependent Variable:**

- a. Disposal of case against sexual violence
- b. Sexual violence in urban and rural culture

## **1.9. RESEARCH METHODOLOGY**

The word research describes a careful, systematic, patient study and investigation in some field of knowledge, undertaken to establish facts or principles. Research in common parlance refers to a search for knowledge. In fact, research is an

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<sup>10</sup> Stuermer, M. (2009), Basics of Scientific work-2. Find the gap, available at <http://www.smi.ethz.ch/education/courses/lectureslides/BOSW-2-research> Question. Pdf, accessed on 10 January 2018.

<sup>11</sup> <sup>11</sup> Ohab, h. (2010), How to Defining your research questions and hypothesis, available at <http://science.dodlive.mil/2010/10/04/defining-the-beginning-importance-of-research-questions-hypothesis/>, accessed on 10 January 2018.

art of scientific investigation. According to Wallimam (2005)<sup>12</sup>, research is not just about gathering facts without purpose, or presenting information or data without interpretation. Rather is something which is undertaken to find out things in a systematic manner where data is collected and interpreted systematically and there is a clear purpose guiding the enquiry.<sup>13</sup> It involves series of well—planned and carefully executed activities to find solutions to research problems.<sup>14</sup>

Research methodology is a way to systematically solve the research problem. It may be understood as a science of studying how research is done scientifically. In it we study the various steps that are generally adopted by a researcher in studying his research problem along with the logic behind them. According to lundberg (1951)<sup>15</sup>, Scientific method consists of three basic steps: systematic observation, classification and interpretation of data. Through these steps, scientific method brings about not only verifiability of the facts, but also it lays the confidence in the validity of conclusions. Scientific method is the pursuit of truth as determined by logical considerations. In scientific method, logic aids in formulating propositions explicitly and accurately so that their possible alternatives become clear. Further, logic develops the consequences of such alternatives, and when these are compared with observable phenomena, it becomes possible for the researcher or the scientist to state which alternative is most in harmony with the observed facts. All this is done through experimentation and survey investigations which constitute the integral parts of scientific method.

The proposed study would be empirical in nature; qualitative as well as quantitative technique will be used in this study. Both primary as well as secondary data, relevant to the study will be collected. Survey method will follow for this study. By following purposive sampling of Lucknow from 2014 till 2018. Primary data will collected through detailed and comprehensive questionnaires with the help of schedule method, whereas secondary data through, Government bulletins, gazettes, District statistics survey report, journals,

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<sup>12</sup> Wallimam, N. (2005), *Your Research Project: A Step by Step Guide for the first –time researcher* (2nd edition), sage London.

<sup>13</sup> Saunders M., Lewis P., & Thornhill. A (2009), *Research Method for Business Students* (5<sup>th</sup> edition), Prentice Hall, New Jersey.

<sup>14</sup> Sekaran , U., & Bougie, R .(2010), *Research Method for Business;; A Skill Building Approach* (5<sup>th</sup> Edition), Jojn Wiley And Sons, New Jersey.

<sup>15</sup> Lundberg, G.A. (1951), *Social Research*, Longmans Green & Co., New York.

Magazines, published books, government documents reports (NCRB, SCRB) and papers released by Government of India and Uttar Pradesh and other different national organization bodies on the related topic including books journals and newspaper readings relevant to the research.

#### **1.10. AREA OF STUDY**

Research area, population and study material are the main components of any research study. District Lucknow is purposively selected as research area of the present study.

The district is a part of Lucknow Division, located in the Uttar Pradesh state with its administrative headquarters situated at the Lucknow city. The district is fortunate enough to be the capital of Uttar Pradesh. In 1775 the Lucknow city was established by the Nawab of Awadh when moved his capital from Faizabad to Lucknow. The natives of the district pronounce “Lucknow” as "lakhnau" means a city of Nawabs. A mythological story is associated with its name Lucknow. As per the story the city is named after Lakshmana, a hero of the Hindu epic Ramayana. The story states that Lakshman had his palace in the area, which was known as Lakshmanapuri or “Lakshmana’s city” which later called Lucknow. Similar to this story there are also some other popular stories regarding its name.

Geographically, the district lies at 26°85’N latitude, 80°95’E longitude and 123m altitude. The district occupies an area of 2,528 sq.km. And it is bounded by Barabanki district on the East and the Sitapur district on the North, Hardoi district on the North-West, Rae Bareli district on the South-East and Unnao districts on the South-West. The climate in the district is characterized as humid subtropical climate. The actual rainfall in the district was 677.4 mm in the year of 2016-17. Administrative wise, the district is divided into 4 Sub districts and 8 blocks-Bakshi ka Talab, Chinhat, Malihabad, Kakori, Mal, Mohanlalganj, Sarojini Nagar and Gosainganj. There are 2 Lok Sabha constituencies and 9 Assembly constituencies. According to 2011 census the district has a population of 45,89,838 (persons) including 23,94,476 (males) and 21,95,362 (females). The district has a sex ratio of 917 females for every 1000 males. In the year 2001-2011 the population growth rate in the district was 25.82% (persons) out of which 23.92% (males) and 27.97% (females). The major religions in the district

are Hindu and Muslim with 77.08% and 21.46% of the total population respectively. Lucknow as an industrialised district is famous across the country. The chief industries in the district are aeronautics, machine tools, distillery chemicals, furniture and Chikan embroidery. The district has some core research and development centres which include R&D Centres of the National Milk Grid of the National Dairy Development Board, the Central Institute of Medical and Aromatic Plants, the National Handloom Development Corporation and U.P. Export Corporation. These centres put their efforts to raise the quality and production of the product. In the year 2014-2015 the gross domestic product of the district was Rs. 36,43,933 lakh at current price.

The district is abode to numerous distinguished educational and research institutes. Moreover it has provided a great platform for higher education. Some reputed higher educational institutes in the district are Indian Institute of Management Lucknow, Central Drug Research Institute, Indian Institute of Toxicology Research, National Botanical Research Institute, Institute of Engineering and Technology, Dr. Ram Manohar Lohia National Law University, Sanjay Gandhi Post Graduate Institute of Medical Sciences and King George's Medical University respectively. As per 2011 census the literacy rate in the district is 77.29% (persons), 82.56% (males) and 71.54% (females). Mohammad Hidayatullah, the eleven Chief Justice of India and the Sixth Vice-President of India (31st August 1979 to 30th August 1984) was born on 17th December, 1905 in Lucknow. As the Chief Justice of India, he had also served as the Acting President of India (July 20, 1969 to August 24, 1969). As he was not belonging to any political party so he contested the elections as an independent candidate.

Lucknow as a tourist destination has got much fame throughout the world. Its Bara Imambara was built by the fourth Nawab of Awadh known as Asaf-ud-Daula in 1784. It was built as a part of a relief project for a major famine in 1784. British Residency Lucknow is not in its original structure now but it has been declared as a protected monument by the Archaeological Survey of India. Many travellers are allured towards the Chhatra Manzil in the city because of its strikingly different architecture. Jama Masjid in Lucknow was constructed by Sultan Ahmed Shah in 1423. The whole masjid is made up of yellow sandstone and is known for its intricate design and

architecture. Some other Centres of attraction in the district include Rumi Darwaza, Clock Tower, Moti Mahan, Lakshmana, Hussainabad Imambara, etc.

### **1.11. TOOLS AND METHODS OF DATA COLLECTION**

There are several ways of collecting the appropriate data which differ considerably in context of money costs, time and other resources at the disposal of the researcher. In a research study, the data can be collected through surveys, observation or experiments.<sup>16</sup> According To Simons (2006)<sup>17</sup> data may be gathered through direct observation, face to face interview or by mail, telephone or through the internet.

In the present study, data were collected by using interview and observation method of data collection. Interview schedule is used as tool of data collection.

Interview schedule is a form containing some questions or blank tables, which are to be filled by the researchers after getting information from informants. The basic purpose of the schedule is to provide a standardized tool for observation or interview in order to attain objectively and facilitate classification and tabulation. Semi-structured standardized interview schedule preform is considered suitable for present study. Semi-structured interview schedule, according to Bernard (1988)<sup>18</sup>, is best to use when you won't get penalty of chances. The Semi-structured interview schedule provides a clear set of instructions for interviewers and can provide reliable, comparable quantitative data. In such Proforma, identical questions with same wording and in the same order are presented to all respondents. This format of interview schedule, as per Young (1967)<sup>19</sup> and Sellitiz (1966)<sup>20</sup>, ensures that all respondents are replying to the same question as the difference in questions or their order can influence the meaning and implication of a given question. The standardized interview schedule proforma ensures uniformity in recording responses. Through the preliminary interview schedule, views of respondents were solicited on the content and meaning of each question in the interview schedule. Thus exercise

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<sup>16</sup> Cooper, D.R., & Schindler . P.S. (2003), Business Research Methods (8<sup>th</sup> Edition), McGraw- Hill, New York.

<sup>17</sup> Simon, M. (2006), Dissertation And Scholarly Research : Recipes For Success, Kendall – Hunt Publishing, Dubuque,1A.

<sup>18</sup> Bernard, H.R. (Ed) (1988), Person- Centered Interviewing And Observation, Altamira Press, Walnut Creek, CA

<sup>19</sup> Young, P.V. (1967), Scientific Social Survey and Research, Prentice Hall, New Jersey, pp. 41-47.

<sup>20</sup> Sellitiz, J. (1963), Research Method in Social Relations, Hold and Rinehart, New York, P. 50.

was conducted to ascertain that respondents understood the questions and that none of the important questions had been left out. Preliminary interview schedule included questions on existence of patriarchal culture, sexual violence, responses of police and judiciary. Details regarding respondent's age, religion, caste, education qualification, occupation of self and family, monthly income of self and family have given.

Interview schedule comprises two parts. Each part consists of question on different aspect of the study.

**Part-I. Personal information-** part I of interview schedule aims to gather detailed information on personal and family background of the respondents. Question included in this part are related to respondents age, marital status, religion, caste, educational qualification, monthly income.

**Part-II- Research information-** Part II are related to research questions.

### **1.12. PILOT SURVEY**

One of the important aspects of instrument development is checking for its validity and reliability through pilot testing.<sup>21</sup> In the present study, a pilot survey was conducted in August 2018 and the interview schedule was administered on 10% of respondents to test validity and reliability, explicitness, ease of understanding and appropriateness of interview schedule. On the basis of the experience in the pilot survey, interview schedule was revised and re-drafted.

### **1.13. FINAL SURVEY**

Any investigation in the area of attitude and behavioral investigation is beset with numbers of formidable problems. This is particularly so, where the research is being conducted by an individual. The time and financial constraints do not permit the researchers the luxury of field staff. Seeking cooperation from unknown group of respondent during field is a difficult and challenging job. Most of the respondents try to avoid any field investigator on one excuse or the other. They do often did not agree to cooperation even with investigators appointed by the government and given the authority to conduct the survey. A doctoral scholar has to seek the cooperation on his

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<sup>21</sup> Saunders M., Lewis P., & Thornhill. A (2009), Research Method for Business Students (5<sup>th</sup> edition), Prentice Hall, New Jersey.

own. It was an uphill task to seek an interview with the people of various field and areas.

Field survey was conducted to collect primary data from the area through direct personal interview with the help of the pre- tested interview schedule. For that, research had met with each and every selected respondent requesting them to cooperate by giving time for interview in given time schedule. But, some of the selected respondent could not be contacted or refused to participate after several attempts and requests. These respondents were excluded/ replaced as per inclusion/ exclusion criteria and survey was completed for all respondents contacted and accepted participation.

The final survey work was completed in four months period of October 2018 to January 2019. On completion of survey, final list has 100 respondents (over all Lucknow district).

#### **1.14. SOURCES OF DATA**

The data to be collected may be primary or secondary or both.<sup>22</sup> Primary as well as secondary data sources are used in present study. Primary data constitute the information gathered from respondents through some NGO as “Saajhi Dunia”, AIDWAV, Sheroes Café and some others women organizations. Whereas secondary data consist of information gathered from available literature related to subject under study, which annual report of various government departments, Research journals, NCRB, SCRB, NRC, Census data reports etc.

#### **1.15. LIMITATION**

1. Study is limited to Lucknow district of Uttar Pradesh
2. Sampling method is used to select respondent
3. In this study, all the questions were related to the personal life of the respondents, so it was difficult to get proper response from them.
4. In some cases, family members of the respondents created hindrance.

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<sup>22</sup> Sekaran. U. & Bougie, R. (2010). Research Methods for Business: A Skill Building Approach (5th edition). John Wiley and Sons, New Jersey.

5. The subject of the study was very sensitive and confidential so the researcher had faced to many problems in collecting data.
6. In few cases, facts supplied by the respondents were distorted.

## **CHAPTER PLAN**

The study is organized in six chapters. List of referred books, reports, journal and magazines is given at the end as per alphabetical order.

### **1- INTRODUCTION**

In the first chapter, the Definition of sexual violence, types, and reason for sexual violence and brief historical details of the women condition, etc. have been presented. Along with the review of literature related to sexual violence, along with a brief description of the purpose of the research study, hypothesis, research methodology and technique, study area and research chapter has been presented.

### **2- THEORETICAL DISCOURSES ON SEXUAL VIOLENCE**

The second chapter of the thesis ‘Theoretical discourses on sexual violence’ explains the meaning and definition of sexual violence. Along with this, sex, gender, sexuality, patriarchy, violence, sex-gender system, determinants of sexual violence and dimension of sexual violence have also been defined and also explained the interlinkages between them. In the thesis presented, the main theories of feminism as-liberal, socialist, Marxist, radical, black feminist theory and their main supporters such as Marywallstoncraft, James Stuart Mill, Harriet Taylor, Simon du Bua, and Alice Waqar's thoughts and theories have been explained. The liberal feminist thinker promotes gender independence, equality and right to vote. The main goal of socialist feminism is to end all exploitation of the present social system. And to create a society in which both men and women can be socially relevant. The Marxist feminism thinkers believed that the main reason behind the exploitation of women is the economic aspect.

Radical feminist thinkers consider the reason for the exploitation of women as our social system and patriarchy. They believe that the roots of women exploitation are in the patriarchal gender system. Black feminist theory, which Alice Walker and

Barbara Smith, support, believes that this feminist theory does not see the situation of black women. Their main purpose was to develop such a theory that can understand the simultaneous effects of racism, genderism, racism, and classism, etc. on their lives.

### **3- WOMEN & SEXUAL VIOLENCE IN INDIA**

In the third chapter of the thesis 'Women & sexual violence in India', the crimes against women were analyzed at the national level. In this, between 1991 and 2014, the statistics of rape, kidnapping & abductions and dowry deaths were analyzed. Apart from this, the comparative study has been done of incidents of rape in various states between 2013-2018. Uttar Pradesh is second only to Madhya Pradesh. In this chapter, incidents of sexual violence in Uttar Pradesh and Lucknow have also been studied.

### **4- WOMEN AS VICTIM OF SEXUAL VIOLENCE IN LUCKNOW : A CASE STUDY**

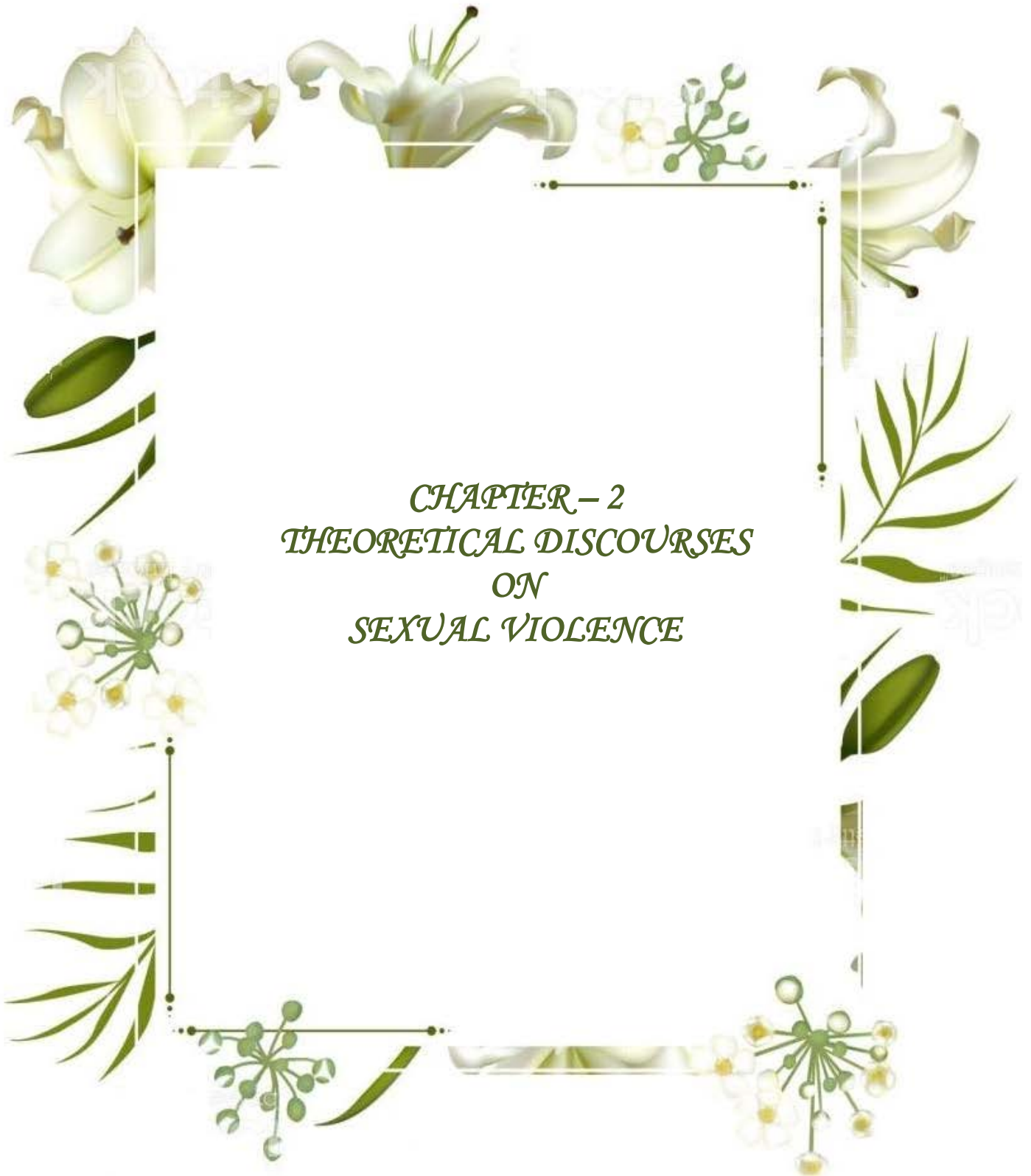
In the chapter four of the thesis, 'Women as a victim of sexual violence: A case study ', the data collected from female respondents in the field survey has been analyzed. Along with the reasons related to the incident of sexual violence happening in Lucknow, the three hypotheses have also been examined.

### **5- ROLE OF POLICE & JUDICIARY IN UTTAR LUCKNOW: A CRITICAL PERSPECTIVE**

Chapter five covers the role of police and judiciary of Lucknow in criticized way. How both the police and the judiciary in Lucknow are not properly discharging their duties and an unconscious attitude of police in serious crimes such as sexual violence and discriminatory decisions of the judiciary in such cases have a very negative effect on sexual violence. Along with this, the POSCO Act 2012 has also been explained in this chapter.

## **6- CONCLUSION AND SUGGESTIONS**

In the final chapter 'Conclusion and Suggestions' of the thesis, a discussion of the findings from the various chapters of the thesis has been presented. At the same time, the suggestion for improvement of police and judiciary in the context of sexual violence has also been presented at the end of the thesis.



*CHAPTER – 2*  
*THEORETICAL DISCOURSES*  
*ON*  
*SEXUAL VIOLENCE*

## **CHAPTER - 2**

### **THEORETICAL DISCOURSES ON SEXUAL VIOLENCE**

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Theories are formulated to explain, predict, and understand phenomena and, in many cases, to challenge and extend existing knowledge within the limits of critical bounding assumptions. The theoretical framework is the structure that can hold or support a theory of a research study. The theoretical framework introduces and describes the theory that explains why the research problem under study exists. Theory, in general, refers to thinking, abstraction and generalizing (Thomas, 2013). Theory can be defined as ‘an explanation of observed regularities’ (Bryman& Bell, 2011,p-7), Or A set of interrelated constructs, definitions and propositions that present a systematic view of phenomena by specifying relations among variables, with the purpose of explaining a natural phenomenon (Kerlinger cited in Creswell 2009). Any thesis work starts with a formal theoretical framework because it describes our dissertation and its basic purpose or other research studies. It should provide a good model to conduct our research, analyze its results, interpret the data, and report on relevant information. This general guide will help us prepare a theoretical framework after considering project and choosing the structure that suits specific needs perfectly.

The relationship between man and women in general and sexual relationship, in particular, is the instinct of the human being which is not only essential for the harmonious and peaceful existence of the society but that is respected and rewarded at time also since the beginning of the human civilization. As for as this relationship is essential it is equally essential to keep it within the legally permission moral bounds. When the limit of this relationship contradicts with the contemporary moral and legal acceptable norms in a particular legal system it attracts punishment and penalty by making apposite legal provisions under the criminal law so as to effectively control such a situation. Historically speaking women were to have a relationship with men in particular as the father, brother or husband. According to great Hindu jurist Manu, the ancient lawgiver, beyond this framework women were to have a relationship with other women but not with other men. In other words, the relationship like friends was recognized but a friend of women was required to be necessarily a woman and not a man. With the change of time, the parameters of relationship also charged, however, a

women was never permitted to have sex with her male friends either before marriage or thereafter. This constraint operated upon the whole life and violation of or derogation from it generated a group of sexual offence including the offense of rape under the criminal law.

## **2.1. VIOLENCE**

Violence is generally conceptualized in terms of physical force and destructive conduct. The simplest definition of violence is behavior designed to inflict injury on a person or to cause damage to property<sup>1</sup>. According to Webster's New World Dictionary and Thesaurus, "violence means physical force used so as to injure, damage or destroy; unjust or callous use of force or power, as in violating another's rights, sensibilities etc. the harm done by this; and great force or strength of feeling, conduct or expression, vehemence, fury; intense, often devastatingly explosively powerful force or energy, as of a hurricane or volcano".

In the narrower connotation, violence implies an act carried out with the intention or perceived intention of physically hurting another person<sup>2</sup>. It is the use of force or constraints to cause harm by commanding obedience to a required set of social or moral values.

In a broader sense, violence is a coercive mechanism to assert one's will over another, in order to prove or feel a sense of power. Violence is destruction, suffering or death, which is deliberately inflicted for the achievement of a purpose, which is political in nature. Violence is meant to demonstrate power, authority or superiority in the social structure. Any hierarchical social system has an inbuilt gradation of domination and subordination, as well as institutionalized violence and victimization. This is perpetuated by various means- subtle pressure through the power of ideology, the mechanism of internalized social norms, and the system of social sanctions, which penalizes non-compliance. In brief, violence is the use or threat of use of force or coercion to established domination and can be expressed at the individual level, between classes/communities or at the level of the state. Conceptualizing violence in narrower terms systematically reinforces a narrative code, which places a premium on

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<sup>1</sup> PR Raj Gopal, social change and violence- the Indian experience,1987,p 4

<sup>2</sup> Gelll and Straus quoted in freedom from violence- women's struggles from around the world, Margaret schuller(ed.),1992,p 10

certain representations of violence while rendering others invisible. Consequently, the issues of violence are meted out with superficial, out of proportion and trivialized treatments. When group(s) of the people or individuals employ such techniques to maintain power and authority or to defend what is thought to be right, and when this is done by infringing in unjustifiable ways on legitimate rights of others to pursue their lives in relative freedom, they are well within the sphere of violence. The spectrum of violence is very broad and encompasses a range of forms other than physical violence. These forms of violence are quite pervasive, subtle and systemic in many institutions of life. Such violence includes causing humiliation, subjugation, suffering, socio-economic injustices, meting out behaviors that fall below the accepted norms of human dignity, etc., to vulnerable group's people. The wider conception of violence takes into account the above-stated forms of violence, etc. In a meeting convened by the United Nations Division for the Advancement of Women in 1974, the groups of experts described violence thus:

*Violence is the use of coercive forms of powers; the use of force or the threat of its use to compel someone to do something that the person might not otherwise do. It is a part of a continuum ranging from legitimate power (a person does something because it is right to do so) through utilitarian power (a person does something because of a reward for so doing) to coercive power<sup>3</sup>.*

## **2.2. THE CONCEPT OF SEXUAL VIOLENCE**

In sexual violence, sex is used as a weapon to humiliate a person and look weak. Sexual violence can be defined both as forms as physically and psychologically. This violence involves both physical and psychological crimes. In sexual violence, it is not necessary that there is a direct connection between the culprits and the victim, Threats, insults, and intimidation also come under sexual violence.<sup>4</sup> Sometimes, the expression, 'sexual violence' is used as a synonym for 'gender violence', but defining sexual violence that broadly risks obscuring the specifically sexualized nature of the violence and associated trauma. On the other hand, too narrow a definition taking account of direct physical violence only may fail

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<sup>3</sup> Aparna Malhotra, gender and legislation in Latin America and the Caribbean, UNDP regional bureau for Latin America and the Caribbean at <http://www.undp.org/rblac/gender/legislation/violence.html>, visited on 29 may 2017.

<sup>4</sup> <http://www.ili.ac.in/pdf/vandana.pdf>.

to reveal the sheer diversity and the scale of the problem. Sexual violence must be understood to exist in a continuum in which indirect or subtler forms, such as sexual harassment at the workplace occur with other graver extremes, like female genital mutilations, rape, trafficking, forced prostitution, etc.

Sexual violence may be homosexual as well as heterosexual. Some data exists in relation to sexual violence men and boys, suggesting the vulnerability of specific group of men and boys under specific setting<sup>5</sup>, but heterosexual mode is the most pervasive one. Women, because of their oppressed and subjugated position in society, are more prone, in terms of vulnerability to sexual violence. The available evidence suggests that at least one in five of the world's female population has been physically or sexually abused at some time in their lives<sup>6</sup>. The perpetrators of sexual violence are males through the indulgence of females are not unheard of, but it comprise of extremely rare occasions. The available studies suggest that women are the recipients of physical and sexual abuse at least 10 times more frequently than men<sup>7</sup>.

Women's voices are silenced as they are subjugated through the systematic use of sexual violence and the constant threat of violence. There is a vested interest of men in the sustained silence of women regarding sexual violence because of men in the sustained silence of women regarding sexual violence because it facilitates the perception of female sex as the 'weaker sex' and that of the male sex as the 'stronger sex', hence paving the way for deep- rooted gender inequalities through control, suppression and control of women in society. 'Control' is the keyword for understanding of sexual violence; it is through this process that men suppress and control the sexuality of women and in the method, women are subjected to violence. As sexual inequality is gendered as men and women, gender inequality is sexualized as dominance and subordination (italic supplied)<sup>8</sup>.sexual violence is a complex political phenomenon deeply embedded in the socio-culture milieu. Sexual violence is the most effective way of controlling women in a patriarchal society. Which damages

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<sup>5</sup> Peter Gordon And Kate Crehan, Dying Sadness: Gender, Sexual Violence And The HIV Epidemic', SPEED Conference Paper Series at p 3.

<sup>6</sup> Ibid.

<sup>7</sup> Violence against women, by Carolyn M Sampselle ( ed ), 1992,p 4

<sup>8</sup> Catharine Mackinnon, 'Toward Feminist Jurisprudence 'In the Women Question, Mary Evens(Ed), Second edn, 1994, pp246, 249.

every aspect of women's life. Which maintains the status quo of gender inequality and women's control.

Sexual violence manifests itself at all sites of human life- the community perpetuates it, the state legitimizes and condones it and even the presumably safe and secure niche of home is not free of violence. In words of Gladys Acosta:

*Every war causes us pain... wars concentrate the greatest destructive capacity of human kind... but there is another war. There is an invisible war, a war more difficult to name, which is the one that women suffer in those closed spaces called our homes and from which some of us survive and other don't*<sup>9</sup>.

Many feminist scholars call this invisible war against women a shadow war or sex war. Liz Kelly strongly argues that using such nomenclature of war with respect to gender relations and violence should be understood not just using a powerful metaphor, but also accurately naming a historical reality of women<sup>10</sup>. In this context, a more than one and a half century old statement of Lucy stone, made in 1855, still holds true to describe the plight of women. 'Has women a right to her? It is very little to me to have the right to vote, to own property etc., if I may not keep my body and its uses, in my absolute right. Not one wife in a thousand can do that now'<sup>11</sup>.

The timelessness of violence against women can be best understood by placing and interpreting the statement of Lucy stone in the modernized world of 2003. Nothing really appeared to have changed the socio- political implications of violence against women.

### **2.3. OCCURRENCE OF SEXUAL VIOLENCE: A GLOBAL PHENOMENON**

According to the US department of justice, of the 4-5 million violence crimes against women each year 500,000 are rape or sexual assaults<sup>12</sup>. Six well designed studies from the United States, suggest that between one in five and one in seven US

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<sup>9</sup> Gladys Acosta, Quoted In Liz Kelly, "War Against Women- Sexual Violence, Sexual Politics And Militarism State' In States Of Conflict- Gender, Violence And Resistance, Susie Jacobs, Ruth Jacobson And Jennifer March bank ,(ed.), 2000,pp 45-46.

<sup>10</sup> Ibid

<sup>11</sup> Lucy Stone, In A Letter To Antoinette Brown, 11 July 1855, Quoted in Carole J Sheffield, Sexual Terrorism In Women- A Feminist Perspective, Jo Freeman (edi.), third edi., 1984,p 3

<sup>12</sup> Stephen M Pincus and David M Rosen, 'Fighting Back- Filling Suit under the Violence against Women Act', 33 Trails 20.

women will be the victims of a completed rape in her lifetime<sup>13</sup>. According to the studies conducted in UK, one in four women has experienced rape or rape attempted rape and 16 percent of the girls have been abused before the age of 13<sup>14</sup>.

A grave difficulty, which is posed in accurate estimations of violence against women, is that majority of case are never reported due to fear of social stigma and due to lack of faith in the criminal justice machinery. Crime statistics become virtually useless in estimating the incidence of gender based violence because of gross under reporting. It is for this reason sexual violence is considered to be a neglected area of research as accurate figures and statistics from authentic sources are generally not available<sup>15</sup>. According to recent victimization surveys in the United States, only two percent of the interfamilial child sexual abuse, six percent of extra familial abuse and about five to eight percent of adult sexual assault cases are reported to the police. By comparison, 61.5 percent of robberies and 82.5 percent of burglaries are reported<sup>16</sup>.

According to the House of Commons Hansard Written Answers for 9 December 2002, figures for sexual offence against young people in England and Wales, over last decade (1991-2001) show an almost constant status indicating a poor improvement in women's rights in England. In the year 1991, there were 2728 cases, where in the year 2001, the occurrence of 2774 cases, has been shown<sup>17</sup>.

Sexual abuse is not only common, but also widespread in most countries. In Canada, a 1993 study based on 420 randomly selected women found that more than 54 percent of them had experienced some form of unwanted or intrusive sexual experience before the age of 16, 51 percent reported being victims of rape or attempted rape<sup>18</sup>.

According to the World's women 1995: *Trends and Statistics*, across diverse continent and hemispheres, a large subset of known sexual assaults (40-60 percent) are

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<sup>13</sup> Lori H Heise and Jacqueline Pitanguy and Adrienne Germaine in 'violence against women- the hidden health burden', 225- world bank paper, 1995, p 5.

<sup>14</sup> Liz Kelly and Linda Regan, 'Violence against Women- A Briefing Documents on International Issues and Responses, British Council Publication, 2006, p 10.

<sup>15</sup> 'World Report on violence and Health', World health organization, 2006, p 150

<sup>16</sup> Lori H Heise And Jacqueline Pitanguy And Adrienne Germaine In 'Violence Against Women The Hidden Health Burden', 255- World Bank Papers, 1995, P0 5

<sup>17</sup> Notifiable offence recorded by the police and persons convicted at all courts of sexual offence against young people at <http://www.publication.parliament.uk/cgi-bin/dialogserver> TSO.

<sup>18</sup> UN Pamphlet- Focus On Women: Violence against Women', 1995.

committed against girls 15 years and younger<sup>19</sup>. According to the same source, national random surveys from Barbados, Canada, the Netherlands, new Zealand, Norway and the united states, show that 27- 34 percent of women report sexual abuse during childhood or adolescence<sup>20</sup>. In Peru, a study found 90 percent of the young mothers aged 12-16 in a hospital to be rape victims, often as a result of assault by father, stepfather or other close relative<sup>21</sup>. In Costa Rica, 95 percent of pregnant clients under 15 at a hospital were found to be incest victims<sup>22</sup>.

A large percentage of violent attacks on women are committed by persons know to the victims. According to a US Report, 78 percent of all rape victims knew their attackers<sup>23</sup>. According to a UN Report, in some countries, 40 percent of the married women interviewed started that they were victims of attempted or completed forced sex their intimate partner<sup>24</sup>.

Violence against women is a problem that affects women of all races, ethnic groups, class and nationalities. South Africa has the highest rate for violence against women in the world, for a country not at war<sup>25</sup>. Although reliable national statistics are not available, it is estimated that one in every three women will be raped in their lifetime. This means that more than 1000 women are raped in South Africa daily<sup>26</sup>. There is substantial indirect evidence of the sexual abuse of children, including alarming numbers of very young girls being treated for sexually transmitted diseases. A study conducted in Zaire, Nigeria found that 16 percent of female patients treated for STDs were under the age five<sup>27</sup>. In an antenatal clinic in Cape Town, South Africa, 31.9 percent of young girl reported that force was used during their sexual initiation.

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<sup>19</sup> Charlotte Bunch, Roxanna Carrillo And Rima Shoe, 'Violence Against Women' In *Women In The Third World- An Encyclopedia Of Contemporary Issues*, Nelly P Stormquist (Ed), 1998, p 59, at Pp62.

<sup>20</sup> Ibid.

<sup>21</sup> UN Pamphlet 'focus on women: violence against women', 1995.

<sup>22</sup> Ibid.

<sup>23</sup> Rape in America- a report to the nation, National women studies, 1992.

<sup>24</sup> Integration of the human rights of women and the gender perspective- violence against women', UN Commission on human rights, 2003, p 31.

<sup>25</sup> NGO Shadow report to CEDAW South Africa, 'violence against women', report by Masimanyane CEDAW Working group, 1998.

<sup>26</sup> Ibid

<sup>27</sup> Ibid

There are certain types of sexual violence against women which are regional- as they occur in specific parts of the globe, for eg, female genital mutilation (FGM). FGM is practiced in many African countries and affects an estimate 85 million to 114 million girl and women in the world today and at least two million girls are at risk of being subjected to this procedure; about 6000 per day<sup>28</sup>.

## **2.4. DETERMINANTS OF SEXUAL VIOLENCE**

Recent cross-culture studies on family violence and rape, drawing on data from 90 societies throughout the world, suggest that four factors, taken together, are strong predictors of violence against women in a society:

- (i) Economic inequality between men and women;
- (ii) A pattern of using physical violence of resolve conflict;
- (iii) Male authority and control of decision making; and
- (iv) Restrictions on women's ability to leave the family setting<sup>29</sup>.

Apart from these four major predictors, there are several corollaries of these and other ancillary factors existent in the society, which ultimately give rise to situations violent to women in sexual terms. Few of the major determinants of sexual violence are discussed below:

### **2.4.1. Unequal power relations in society**

The most important determinant for sexual violence is the historically rooted inequality of power relations between men and women. Violence is not a natural or biological phenomenon; rather it is a product of the unequal power equations in the society. In fact, sexual violence mirrors gender inequalities and reflect other of social

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<sup>28</sup> Charlotte Bunch, Roxanna Carrillo And Rima Shoe, 'Violence Against Women' In *Women In The Third World- An Encyclopedia Of Contemporary Issues*, Nelly P Stormquist (Ed), 1998, p 59, at Pp63.

<sup>29</sup> Levinson quoted in Charlotte Bunch, Roxanna Carrillo and Rima Shoe, 'Violence against Women' In *Women in the Third World an Encyclopedia of Contemporary Issues*, Nelly P Stormquist (Ed), 1998, p 59, at Pp63.

inequalities<sup>30</sup>. Sexual violence is a gendered phenomenon; its nature and extent pre-existing social, cultural and economic disparities between men and women.

The existence of sexual violence is a political question, which requires an analysis of the institutions of the state and the society, the conditioning and socialization of individuals and the nature of economic and social exploitations.

The economic and social forces, which exploit female labour and female body, are primarily responsible for sexual violence. Economically disadvantaged women are more vulnerable to sexual harassment, trafficking, slavery etc.<sup>31</sup> Denial of economic independence and parities prolong women's dependence and vulnerability. Unless economic relations in a society are more equitable towards women, the problem of violence will continue.<sup>32</sup>

The direct consequence of economic disparities is that women who earn less than men are not likely to advance to positions of authority and power; hence, women remain excluded from the control of knowledge systems and its discourse.

The institutions of family and state share their responsibilities for encouraging acts of violence. Female sexual identity is created by the family environment. Family is a social institution, where the female labour may be exploited, male sexual power is violently expressed and where a certain type of socialization disempowers women.<sup>33</sup> State inaction in cases of violence against women is another important factor leading to sexual violence against women.

#### **2.4.2. Cultural practices and ideology**

Violence rooted in unequal power relations between men and women may also include frequent infliction of harm that is justified or exonerated by customs, tradition, religion, etc. Many cultures condone or at least tolerate a certain amount of

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<sup>30</sup> Peter Gordon and Kate Crehan, *Dying Sadness: Gender, Sexual Violence and the HIV Epidemic*, SPEED Conference Paper Series at p63.

<sup>31</sup> Levinson quoted in Charlotte Bunch, Roxanna Carrillo and Rima Shoe, 'Violence against Women' In *Women in the Third World an Encyclopedia of Contemporary Issues*, Nelly P Stormquist (Ed), 1998, p 59, at Para 53.

<sup>32</sup> Ibid

<sup>33</sup> Ibid

violence against women.<sup>34</sup> *Devdasi* system and female genital mutilations are amongst the various example of violence encouraged and perpetuated by cultural and religious practices.

The cultural ideologies are based on a particular construction of sexual identities- masculinity requires that manhood be equated with the ability to exert power over others, specially through force and femininity requires women to be passive and submissive. Under such male dominated ideologies, the woman is valued only for her reproductive capacity and potential as a sex object. Traditional values, often deep entrenched and rarely questioned, support negative values about women and reinforces the patriarchal view that women are a subspecies, whose behavior and characteristics are deviant from and less capable than of men.<sup>35</sup>

Such culture devaluation of women constitutes another major precursor for sexual violence against women.

#### **2.4.3. Control of women's sexuality**

The control of female sexual behavior is the focal point of many law codes, which place great emphasis on the chastity of women. Such control/ regulation of sexual behavior establish the true paternity of the child born to such women, which is quite important to ensure the property inheritance by the legitimate lineage of successors. Violence is often used as an instrument to control female sexual behavior.

The concept of communal honour is also deeply associated with the bodies and sexuality of women. It is in this context that sexual violence against women, who are seen as being the property of the males in a rival group, becomes a means of defiling the honour of the group.

Visualizing women only as a sexual entity reduces her sexual object and it is this dehumanization and objectification, which is the initial step in making women the acceptable targets of violence.

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<sup>34</sup> Lives together, worlds apart- men and women in a time of change, the state of world population', UNFPA, 2000, p 5

<sup>35</sup> Violence against women, Carolyn m Sampsel (edi.),1992, p 8

Since women are perceived as sexual property belonging to a particular group/ society, it becomes important for the society to protect its women from the violence of the 'other'. This protection often entails restrictions placed on women regarding the freedom of movement, specific dress code or the extreme manifestations occur in the form of female genital mutilations. Communal theme like vindication of honour, shame to the family and community, protection for 'proper' women and punishment for 'improper' ones, not only condition male attitude towards women, but also justify the use of violence against them.

#### **2.4.4. The private/public dichotomy**

The classical approach of almost all legal systems has been to recognize that violence against women, which occurs in the public sphere, i.e., in public place, on the roads, transport, etc., committed by people unknown to the victim. Within the private sphere of family doctrine of privacy and the values attached to family sanctity operate and the whole arena lies outside the ambit of the legal systems. This public/private demarcation has been the basis of most criminal justice machineries and human rights mainstream and it has created great hurdles for realization of the rights of women.

The value of sanctity of institution of family and privacy are so ingrained in the minds of women that even they hardly recognize the existence of violence perpetrated against them.<sup>36</sup> This tendency of non-recognition of violence in the private sphere provides the precursor for great escalations in the occurrence of violence, which by and large remains invisible. Gradually, though, the awareness among the victims and the states is being built, but long term and for reaching initiatives are required in overthrowing the dichotomy of private and public spheres.

There is a common element in almost all the variations and combinations of beliefs, religious codes, laws and political strategies are thought and made, and implemented by men, whose goal is to control women's sexuality and reproductive

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<sup>36</sup> Lez Kelly and Jill Radford, 'Nothing Really Happened: The Invalidation of Women's Experiences of Sexual Violence' In *Women Violence and Male Power*, Marianne Hester Liz Kelly and Jill Radford (Edi.), 1996, P 27. In *Personal Interviews of Women Victims of Sexual Violence*, the Authors Found That the Phrase 'Nothing Really Happened' Appears too frequently In the Women's Narrations of Private Sexual Violence.

rights, through the control of women's bodies.<sup>37</sup> In these kinds of societal scenario, sexual violence thus perpetuates and the combinations and variations of its determinants multiply.

## **2.5. INTERLINKAGES BETWEEN SEX, GENDER, SEXUALITY AND VIOLENCE**

### **2.5.1. The Constructs of Sex and Gender**

For complete understanding of sexual violence, it is of utmost importance to understand, differentiate and appreciate the distinctness of the two concepts- sex and gender.

**2.5.1.1. Sex** is based on biological characteristics, primarily the genital conformation.<sup>38</sup> According to different biological structural characteristics, a person is called 'male' or 'female'. Thus, sex determines the biological status of a person. Sex can be described as an act as well, the narrower interpretation of which limits it to the sexual intercourse. According to the broader interpretation, sex is not limited to intercourse or to genital activities. It may describe a huge range of activities because sex has an infinite range of meaning depending upon what meaning the individual ascribes to it as per his feeling and experience.<sup>39</sup> This is the reason why the scope of activities that can be called sexual is so vast.<sup>40</sup>

**2.5.1.2. Gender** is not a biological entity; rather, it is a social or cultural construction. Gender is the cultural definition of behavior defined as appropriate to the sexes in a given society at a given time. Gender is a set of cultural roles.<sup>41</sup> It is unfortunate that sometimes the terms- sex and gender are used interchangeably; as such usage of terms obscures the difference between the two- that sex is given biologically whereas gender is culturally constructed.

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<sup>37</sup> Noemi Ehrenfeld Lenkiewicz, 'Women Control Over Their Bodies' In Women In The Third World- An Encyclopedia Of Contemporary Issues ,Nelly P Stormquist (Ed),1998, p194, at p 196.

<sup>38</sup> Barbara Diane Miller, 'The Anthropology of Sex and Gender Hierarchies' In Sex And Gender Hierarchies, By Barbara Diane Miller (Ed), 1993, P 3 At P 4.

<sup>39</sup> Marty Klein, 'The Meaning of Sex', Electronic Journal of Human Sexuality, Vol I at Wwww.Ejhs.Org.

<sup>40</sup> Ibid.

<sup>41</sup> Gerda learner, the creation of patriarchy, 1986,p p 238.

**2.5.1.3. Sex-gender system**<sup>42</sup> refers to the institutional system which allots resources, property and privileges to person according to culturally defined gender roles.<sup>43</sup> Sex gender system is also understood as a system of male dominance made possible by men's control of women's productive and reproductive labour where 'reproduction' is broadly construed to include sexuality, family life and kinship formations, as well as the birthing, which biologically reproduces the species.<sup>44</sup> Sex-gender system is an organic social variable, which organizes social life and like racism and classism, it appears to limit and create opportunities within which are constructed the social practices of daily life, the characteristics of social institutions and all patterns of thought.<sup>45</sup> This system of male dominance is an aspect of organization of collective life.

Gender role socialization is intricately linked to the development of sexual norms, behavior and relationships. Sexual violence occurs at the intersection of gender, power and sexuality.

## **2.6. SEXUALITY, MASCULINITY AND PATRIARCHY**

According to Valencia declaration on sexual rights (1997),<sup>46</sup> sexuality is a changing and dynamic dimension of humanity. It is constructed through the interaction between the individuals and social structures. It is present throughout the life cycle, harmonizing identity and creating and/or strengthening interpersonal bonds.<sup>47</sup>

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<sup>42</sup> The Term Has Been Introduced By The Anthropologist Gayle Rubin.

<sup>43</sup> Marty Klein, 'The Meaning of Sex', Electronic Journal of Human Sexuality, Vol I at [Www.Ejhs.Org](http://www.Ejhs.Org).

<sup>44</sup> Sandra Harding, 'Why Has The Sex-Gender System Become Visible Only Now?' In *Discovering Realities- Feminist Perspectives on Epistemology, Metaphysics, Methodology And Philosophy of Science*, By Sandra Harding Mewill B Hintikka And D Riedell (Eds.), 1993,p 311.

<sup>45</sup> Ibid, p 314

<sup>46</sup> XII World congress of sexology held at Spain in 1997, at [www.indiana.edu/~ Kinsey/ Valencia.html](http://www.indiana.edu/~Kinsey/Valencia.html). the congress approved the declaration that spells out nine sexual rights, which must be respect- the right to freedom; the right to autonomy, integrity and safety of the body; the right to sexual equity and equality; the right to health; the right to wide, objective and factual information on human sexuality; the right to a comprehensive sexuality education; the right to associate freely; the right to make free and responsible choice regarding reproductive life and the right to privacy.

<sup>47</sup> Ibid. the declaration further proclaims that human sexuality is the origin of the deepest bond between human being and is essential to the well-being of individuals, couples and society. Therefore, the respect for sexual rights should be promoted through all means.

There is a marked difference between Sex and sexuality. Sex refers to an act whereas sexuality refers to an identity. It is an aspect of the individual being.<sup>48</sup> Sexuality is both an artificial creation and the lived experience of people. Sexuality includes not only explicit sexual behavior, but also desired and actual sexual attraction, emotions and fantasies.<sup>49</sup> Each society has its own construction of 'normal sex' and sexuality is construed accordingly. According to the psychoanalytical perspective- the modal by Freud, sexuality is seen as a powerful instinct, opposed by its very nature to civilization,<sup>50</sup> which is built upon the renunciation of instinct<sup>51</sup> and society through social relationships and restraints, must work to psychologically repress the individual's instincts.

The 'therapeutic truth' modal by Wilhelm Reich, propounds that sexuality is a powerful instinct, but is fundamentally good and healthy.<sup>52</sup> Another variation propounds by Szasz, perceives instincts sexuality as a powerful biological drive and the most powerful human instinct.<sup>53</sup>

Unfortunately, sexuality is a site, where women experience sexual oppression, domination and violence perpetrated by men. These are deep interlinkages between gender, sexuality and sexual violence. Sexual feelings, identities, attraction, meaning, norms and activities are socially constructed based on social and historical forces. Such construction has been based on power relations in the society, especially men and women. How men behave depends upon the existing social relations of gender, ie, how men and women confront each other ideologically and politically. Gender is never simply an arrangement in which the roles of men and women decided in a contingent and haphazard manner. At any given moment, gender will reflect the

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<sup>48</sup> Kavita Punjabi, 'Responses To Sexual Violence: Towards Contesting The Dominant Logic(S)', Paper No 1 In 'Interrogating Disciplines- Disciplining Gender Towards A History of Women's Studies In India', Centre For Women Development Studies- 20<sup>th</sup> Anniversary Seminar, New Delhi, 2001.

<sup>49</sup> Chalidaporn Songsamphan, 'The Political And Gender Power Relations: Contemporary Discourse On Sexuality In Thai Society', Paper Presented In Conference on Women's Studies In Asia, Sponsored By The United Board For Christian Higher Education In Asia And The Japan Foundation, Asia, Ehwa, 200, p 2.

<sup>50</sup> Michelle Mc Carthy, Sexuality and Women with Learning Disabilities, 1999, P 18.

<sup>51</sup> Ibid, at p 16

<sup>52</sup> Ibid, at p 18

<sup>53</sup> Ibid.

material interests of those, who have power and those who do not.<sup>54</sup> As sexuality gets gendered it reflects male domination and perpetuates unequal power relations.

The narrow meaning of patriarchy refers to the system, historically derived from Greek and Roman law, in which the male head of the household had absolute legal and economic power over his dependent female and male family members.<sup>55</sup> This institution of patriarchal family began in the third millennium BC and this system of male dominance in the family only changed its forms with the passage of time. Patriarchy is a social system in which men have primary power. Political leadership, moral authority, social respect, prevail in the role of control of the property. In the field of family, fathers or other male women and children who exercise authority over them. The institution of patriarchy is based upon the control of female sexuality in manner quite similar to Engels description that 'sexual division of labour' and the concept of 'private property', which remains under the exclusive control of men, reduces the status of women to the 'slave' of his casual desire and 'mere instrument for the production of his children'.<sup>56</sup>

For nearly four thousand years, women have shaped their lives and acted under the umbrella of patriarchy, especially a form of patriarchy best described as 'paternalistic dominance' or simply 'paternalism'. It describes the relationship of a dominant group, considered superior to a subordinate group, considered inferior, in which the dominance is mitigated by mutual obligations and reciprocal rights.<sup>57</sup> The basis of Paternalism is an unwritten contract for exchange- economic support and protection given by male for subordination in all matters, sexual service and unpaid domestic service given by the female. *Sexism*<sup>58</sup>-ideology of male supremacy and male superiority and *subordination*<sup>59</sup>- voluntary acceptance of inferior status in

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<sup>54</sup> Arthur Brittan, 'From Masculinity and power' in the key concepts in critical theory-GENDER, Carol C Gould (edi), 1997, p 113.

<sup>55</sup> Gerda Learner, the Creation of Patriarchy, 1986, Pp. 238-39.

<sup>56</sup> Engels, The Origin of The Family, Private Property and The State, 1845, quoted In Rosemarie Tong, Feminist Thought: A Comprehensive Introduction, 1989, pp. 48-49.

<sup>57</sup> Gerda Learner, the Creation of Patriarchy, 1986, P 239.

<sup>58</sup> Sexism and patriarchy mutually reinforce each other. Sexism can exist in societies, where institutionalized patriarchy has been abolished, but as long as sexism as an ideology exists, patriarchal relations can be easily be re-established, even when legal changes have occurred to outlaw them.

<sup>59</sup> Subordination is different from oppression, which necessarily involves victimization. Subordination does not have the connotation of evil intent on the part of the dominant, it allows for the possibility of collusion between him and the Subordinate.

exchange for procreation and privilege, remain two basic principles underlying patriarchy.

According to a radical feminist, Kate Millet, patriarchal ideology exaggerates biological differences between men and women, making certain that men always have the dominant or masculine roles and that the women always have the subordinate or feminine roles.<sup>60</sup> This ideology is particularly powerful because through 'conditioning', men usually secure the consent of the women they dominate. The conditioning processes are carried out through institutions like the church, family, academy etc.; which justify and reinforce the subordination of women to men, and consequently, women internalizes a sense of inferiority to men. If in a rare case, a woman refuses to accept patriarchal ideology, men use coercion or violence to accomplish what conditioning fails to achieve in that case. Through intimidation, which is everywhere in patriarchy, women realize that they better act feminine or they may be subjected to a variety of barbarities.<sup>61</sup>

## **2.7. Dimensions of sexual violence- Diverse Form and Sites of Occurrence in Family, Community and State**

**2.7.1 Forms of Sexual Violence** - It is possible to classify sexual violence in four main categories.

First is *direct violence*, which is most commonly emphasized, examples of which are rape, molestation, forced prostitution, female genital mutilations, etc.

Second is *Indirect violence*, which covers harmful, sometimes deadly situations or actions which, though due to human intervention, do not necessarily involve a direct relationship between the victims and the institutions or the persons responsible for their plight, for e.g., child marriage and arranged marriages, where the women is not allowed to make a choice regarding the marriage partner.

Third is *Repressive violence*, which relates to three groups of fundamental rights-civil rights, political rights and social rights. Repressive violence is used to

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<sup>60</sup> Kate Millet, sexual politics, 1970, pp. 43-46.

<sup>61</sup> Ibid.

suppress political or class movements, for eg, rape or sexual abuse targeting towards *Dalit* (low caste) women, mass rapes during international or internal armed conflicts.

Fourth is *alienating violence*, which deprives the women of her higher rights, such as rights to emotional, cultural or intellectual growth. Examples are marital rape, prescribing dress codes to regulate female sexuality, etc.

Each society has mechanisms that legitimize, obscure, deny and thereby perpetuate violence against women. Powerful social institutions- the family, the community and the state perpetuate all the above – mentioned categories of sexual violence and maintain the status quo as far as women's rights are concerned. Women are vulnerable to all forms of sexual violence occurring within the family, community and condoned or sponsored by the state.

#### **2.7.1.1. Sexual violence in the family**

The family is traditionally considered as a retreat, where people are able to find safety and shelter, a private shelter where peace and harmony persists. However, the family may be the "stronghold of violence" for those women who have violence at home. There are such practices in the family throughout the world that are violent towards women and are harmful to their health.<sup>62</sup> Young girls are circumcised, live under severe dress code<sup>63</sup>, are given in prostitution and are incestuously abused in the family.

Family violence is usually hidden under the perception of the private sector's intimacy because it believes that the integrity of the family should be protected at all costs, preventing many women from seeking outside help. Law and criminal justice system usually do not recognize sexual violence in the family as a separate crime, so such cases are rarely prosecuted and women have no choice other than silence tools.<sup>64</sup> Mentioned below are few illustrations of sexual violence occurring in family:-

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<sup>62</sup> <http://www.ili.ac.in/pdf/vandana.pdf>.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid

### **2.7.1.1.1. Female genital mutilations**

Female genital mutilation (FGM), a deeply rooted traditional practice, is believed to have started in Egypt some 2000 years ago. FGM is practiced in many African countries, a few Asian countries and some indigenous groups in central and South America. It has been reported in Asian countries such as India, Indonesia, Malaysia and Shri Lanka. It is estimated that more than 135 million girls and women have undergone FGM and 2 million girls a year are at risk of mutilation.<sup>65</sup>

Female genital mutilation, or female circumcision as it is sometimes erroneously referred to, involves surgical removal of parts or all of the most sensitive female genital organs. It is an age old practice which is perpetuated in many communities around the world simply because it is customary.<sup>66</sup> FGM forms an important part of the rites of passage ceremony for some communities, making the coming of age of female child. It is believed that by mutilating the female's genital organs, her sexuality will be controlled, but above all it is to ensure a women's virginity before marriage and chastity afterwards.

### **2.7.1.1.2. Pledging of girls for religious, cultural and economic appeasement**

In Asian and African regions, practices are prevalent by which young girls are devoted to the deities. It is often the family members of the girl, who offer the girl in the service of the temple,' 'service' including sexual service also, whereas sometimes the girl may be bought from the family by rich people for making similar kind of offering to the deities.

The *Devdasi* system in India, where young girls are pledged for life to temple at an early age by their parents, is widely prevalent as a profession that has the sanction of religion and culture. The girls are pledged to a god or goddess and become temple prostitution even before they attain puberty and it is not considered to be a violation of human rights.<sup>67</sup> These girls are called *devdasi* (sex workers or handmaidens of

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<sup>65</sup> Report of the UN special Rapporteur on Violence Against Women, Its Causes and Consequences', Ms. Radhika Coomaraswamy on 'cultural practices in the family that are violent towards women', 2000, p 9.

<sup>66</sup> 'Fact Sheet No. 23, Harmful Traditional Practices Affecting the Health of Women and Children', Office of The Commissioner for Human Rights at <http://www.un.org>.

<sup>67</sup> 'The Devdasis of Kudithini Gillage- Victims of a Denigrated Culture', Groots Newsletter, Working Women's Forum, 1998, At [www.ashanet.org/library/articles/devdasis.199812.html](http://www.ashanet.org/library/articles/devdasis.199812.html), Report Of The

gods), who lead a life of sexual slavery. Frequent pregnancies, abortions and deliveries damage the health of *devdasi* women very severely. Due to multiple sexual partners, they suffer from reproductive tract infections and sexually transmitted diseases.

On similar lines *Deuki* system exists in Nepal, through which girls are offered to deities either by their own families or by rich people, who buy a girl from her parents, in order to be certain wishes or heavenly favors. It is a belief in Nepal that sexual relations with such *Deuki* women are auspicious.<sup>68</sup> The girl often has no say in the matter and the religious practices flourishes at the cost of human rights of such women.

### **2.7.1.1.3. Marital Rape**

In most countries of the world; the Husband enjoys 'criminal law immunity' to rape his wives. Marital rape exists until the institution of marriage. In the words of 17th-century English jurist Lord Mathew Hale: "Husband cannot be guilty of a rape committed by himself on his wife, for the mutual marriage and contract, the wife left her husband herself, Whom he cannot take back."<sup>69</sup>

According to the American Sexual Harassment Information Letter, one in seven women reported that they were raped by her husband. Rape is not recognized by legal systems all over the world in marriage. This legal reluctance is the product of the social perception that wives are the qualities of their husbands. More accurate, seeing the wife as a husband's sexual asset is an indispensable legacy of a patriarchal society. Apart from this, there is an economic structural system of society with a man as a bread-earner of the family, thus, having massive economic control over family and women is dependent on bread makers, there is no independent income, which is, Therefore, left with no option, but to continue even in a humiliating marriage.<sup>70</sup> In the majority of countries, criminal law can be prosecuted to attack, not to marry, but to rape. While countries such as Australia, New Zealand, and the United Kingdom

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Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy on 'Cultural Practices in the Family that are Violent Towards Women', 2000, p 15.

<sup>68</sup> Ibid.

<sup>69</sup> <http://www.ili.ac.in/pdf/vandana.pdf>

<sup>70</sup> Ibid

have changed the law in connection with marital rape, to allow a husband to sue for his wife's rape, this is a rape exception, and not ideal is.<sup>71</sup>

#### **2.7.1.1.4. Child marriages**

In developing countries girls are often wed even before attaining the age of puberty. The low age of marriage is one of the factors which contribute to the severe violations of human rights of women. According to WHO report, over 50 percent of first births in many developing countries are to women aged less than 19 years.<sup>72</sup> Child marriages are solemnized because of the emphasis on a girl's chastity and virginity as most cherished values in the society. Early marriage guarantees a women's virginity, relieves her family of the burden of a mouth to feed and ensures a long cycle of fertility to produce a number of sons. The customary practices based on religious and/ or patriarchal beliefs lie at the basis of prevalence of child marriage. In India, in a few states, like Rajasthan, M.P and Gujarat, thousands of children are married off on auspicious days, like *Akshaya Tritiya* and in few cases marriage are reportedly solemnized when the prospective bride was still in the womb.<sup>73</sup>

#### **2.7.1.1.5. Forced marriage**

Forced marriages are a common occurrence in many Asian and African countries. A forced marriage is a marriage conducted without the valid consent of both parties, where duress a factor.<sup>74</sup> Forced marriages are different from arranged marriages to which the parties give their consent happily for the matches selected by the family.

Forced marriages may involve both men and women as victims, but primarily it is considered to be an issue of violence against women. There are various causes for solemnization of forced marriages—strengthening family ties, preventing 'unsuitable'

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<sup>71</sup> <http://www.ili.ac.in/pdf/vandana.pdf>

<sup>72</sup> 'Preliminary Report Submitted By UN Rapporteur on Violence Against Women, Its Causes and Consequences', Ms. Radhika Coomaraswamy, 1994, Para 165.

<sup>73</sup> 'A Day of Child Marriage in Rajasthan', Hindu, 12 May 1997; 'A Tale Of Baby Bride in Bayana', Statesman, 29 March 1998', 'A New Look at Child Marriage in Rajasthan', Hindu, 4 August 1997, '7000 Children Married off in M.P', Telegraph, 11 May 1997, 'Brides at Ten- Tribal Defy Law', Indian Express, 10 March 1997, 'Child Brides', Deccan Herald, 12 October 1997.

<sup>74</sup> Report of the UN special Rapporteur on Violence Against Women, Its Causes and Consequences', Ms. Radhika Coomaraswamy on 'cultural practices in the family that are violent towards women', 2000, p 19.

relationships, protecting family honors and controlling the behavior and sexuality of females. Relentless pressure and emotional blackmail are used by family members to force the young girl into an unwanted marriage, the extreme forms can involve threatening behavior, abduction, imprisonment, physical violence, rape and in some cases murder.<sup>75</sup>

Forced marriage is a violation of internationally accepted standards incorporated in human rights instruments and its occurrence cannot be justified on religious or cultural grounds. All human beings have a right to exercise reproductive self-determination, which involves the right to marry voluntarily and to form a family and be free from sexual violence and coercion.<sup>76</sup> The Universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights 1966 spell out clearly the right to marry and found a family and emphasize that no marriage shall be entered into without the free and full consent of the intending spouses.<sup>77</sup>

#### **2.7.1.2. Sexual Violence Occurring in the Community**

Community is a social space outside the family, but not fully under the control of the state; it is the basis for civil society. Community is a very important social site for women inhabitants of the civil society as it determines the nature of their social interactions and the types of values, which condition their lives. The community determines a woman's social identity in terms of secular, ethnic or religious terms.

The community may also be the site of restriction on and regulations of female sexuality. It is quite unfortunate that the identity of the community is often constructed on the bodies of women<sup>78</sup> and the notions of communal honor and prestige are attached to the female sexuality, which must be accordingly regulated and constrained. The preservation of communal honor warrants the 'policy' of female sexual behavior and those, who do not conform to the expected standards, are severely punished by the community. Women's empowerment and economic

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<sup>75</sup> Ibid.

<sup>76</sup> 'The State of World Population- The Right to Choose: Reproductive Rights and Reproductive Health', UNFPA, United Nations Population Fund, 1997, P 36.

<sup>77</sup> Universal Declaration of Human Rights 1948, Art 16 and International Covenant on Civil and Political Rights, Art 23.

<sup>78</sup> Kalpna Kannabiran, 'Rape and The Construction of Communal Identity', In Embodied Violence-Communalizing Women's Sexuality In South Asia, Kumara Jayewardene And Malathi de Alwis (Edi.), 1996, P 32.

independence are rarely recognized by societies, where sexuality is tightly controlled. Women who dare to come out of the communally prescribed spheres, for economic reasons, are often seen as being sexually available to men and therefore sexually promiscuous. To strive to live and work outside the watchful gaze of the family and community is to risk becoming a target for violent male behavior.<sup>79</sup>

The community is a multifaceted complex in terms of human rights of women. On one hand, it is often a 'nurturing space', which provides women with social support and solidarity for certain causes, on the other hand, it may be the site for brutality and violence against women.

Discussed below are few of the major forms of sexual violence, which occur at community level.

#### **2.7.1.2.1. Rape**

Rape is the most pervasive form of sexual violence, which cuts across state borders and cultures, used in all countries and in all cultures as weapons of degradation and terror against women. Rape is an intrusion into the most private and intimate parts of a woman's body as well as an assault on the core of herself.<sup>80</sup> Rape is the desire for power (to dominate, subordinate, control) and feelings of hostility (contempt, anger) are vented out on the victims, transforming them from persons to objects and often plunging them into a 'rape crisis syndrome'.<sup>81</sup> One study of convicted, incarcerated rapists found that rape was used most often as a mechanism of revenge or punishment and the perpetrators expressed satisfaction and heightened levels of self-esteem directly resulting from rape.<sup>82</sup>

The crime of rape remains vastly underreported because victims fear from being re-victimized in the criminal justice system, of not being believed, guilt, self-blame and from failure of the rape victims to equate their humiliating experience with the legal definition of rape. Because of this underreporting factor, actual reliable data

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<sup>79</sup> Gail Abarbanel and Gloria Richman, 'The Rape Victim', Rape Treatment Center, Santa Monica Hospital, 1989, P 1, Quoted In UN special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy on 'violence in community', 1997 p 5.

<sup>80</sup> Ibid.

<sup>81</sup> Andrew Karmen, 'Introduction' In *The Criminal Justice System and Women- Offenders, Victims, Workers*, Compiled By Barbara Raffle Price And Natalie J Sokoloff(Eds), 1982, P 186.

<sup>82</sup> Ibid.

is not available It is only estimated that globally, at least 10-15 percent of all women report being forced to have sex and that considerable proportions of the victims of sexual assault have sex are less than 15 years old.<sup>83</sup> According to a US Sexual Assault Information Sheet, women from two months to 97 years have been raped and one in three women will be raped in her lifetime.<sup>84</sup> A woman's risk of being raped by someone, she knows is four times greater than being raped by a stranger.<sup>85</sup> According to one study of 6,000 university students, one out of six female students reported that they had been a victim of rape or attempted rape during the previous years. In the same sampling, reportedly one out 15 male students stated that they had committed rape or attempted to commit rape in that year.<sup>86</sup> In the United Kingdom, a sample survey of 1,476 women at universities and polytechnics found that 19.4 percent had been the victim of sexual violence.<sup>87</sup> A national probability sample of 1,835 women at 95 colleges and universities in Canada found that 23.3 percent of the women had been victims of rape or attempted rape.<sup>88</sup>

The classical approaches to rape present a legal structure that is highly suspicious of the victim. The definition of rape, in majority of the countries, is narrowly limited to sexual penetration of the vagina by the penis. Other forms of sexual acts that do not include the vagina, or, involved objects and not the make organ, are seen as rape. The situation becomes very pitiful in cases of child rape, where due to the immature development of the sexual organ and reproductive system, the mode of infliction of violence chosen is other than the usually recognized 'vaginal penile' penetration. These child rape cases do not fit into the narrow classical definition of rape and the offender escapes with much lower punishments for lesser offences than rape. In fact, the humiliation and pain inflicted on the child victims often lead to various complicated physical and psychological problems, which assume great importance in the light of the estimated data. One-third of women, in Barbados, Canada, Netherlands, New Zealand, Norway and the United States, have reported

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<sup>83</sup> Peter Gordon And Kate Crehan, Dying Sadness: Gender, Sexual Violence And The HIV Epidemic', SPEED Conference Paper Series, p 4.

<sup>84</sup> Sexual Assault Information Sheet', Wisconsin Coalition Against Sexual Assault, 1992

<sup>85</sup> UN report of the special Rapporteur on Violence against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy on 'violence in community', 1997 p 6.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

sexual abuse in childhood or adolescence.<sup>89</sup> One to two thirds of victims of sexual abuse in Panama, Mexico, Chile and the United States, were under the age of 15 years, while 18-32 percent were below the age of 10 years.<sup>90</sup> The criminal justice system is often insensitive to the crime of rape and the plight of rape victims. When the cases are brought to the courts, systemic obstacles and discrimination in the form of unreasonable evidentiary requirements, the rejection of the victim's uncorroborated testimony, the evocation of a victim's past sexual history, the focus on the victim's resistance, the emphasis on the overt use of force and requirement to prove chastity are posed. It is the victim, who most often is placed on trial rather than the perpetrator, accused of having ulterior motives and subjected to degrading questions.

The sentencing practices also exhibit lenient attitudes towards the accused. In a few countries, like India and Sri Lanka, the penal legislations prescribe mandatory minimum punishments; even then lesser punishments are given to the accused for inappropriate reasons.

In a few countries, like England, innovations have been incorporated, e.g., having 'rape suites' instead of ordinary police stations and 'rape crisis centers' as a mechanism to provide immediate counseling and support to the rape victims. But these developments are very occasional and by and large, the criminal justice mechanisms add to the injury of the rape victim.

#### **2.7.1.2.2. Sexual Harassment**

Sexual harassment must be understood to exist on the continuum of sexual violence against women. It is a personal attack on women's minds and bodies, instilling fear and violating a woman's right to bodily integrity, education and freedom of movement.<sup>91</sup> Sexual harassment frequently occurs on the street, in the workplace, in educational institutions and on public transportation.

There are essentially two types of sexual harassment that have emerged over the last decade. First is eve teasing and molestation which is described as unwelcome

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<sup>89</sup> Aparna Malhotra, 'Gender and Legislation in Latin America and the Caribbean', UNDP Regional Bureau for Latin America and Caribbean at <http://www.undp.org/rblac/gender/legislation/violence.html> last visited on 18 may 2017.

<sup>90</sup> Ibid.

<sup>91</sup> UN report of the special Rapporteur on Violence against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy on 'violence in community', 1997 p 11.

advances and physical contact in public places. In a majority of countries, including India, the emphasis is placed on the concept of ‘outraging the modesty of a woman’s, thus, linking this kind of sexual harassment with arcane notions of female sexual morality.

The second is sexual harassment in the workplace or in educational institutions. It is a recently recognized old phenomenon. Sexual harassment strikes at the heart of women’s economic self-sufficiency, disrupting women’s earning capacity by forcing them out of the workplace or school. Sexual harassment at workplace is further divided into two categories – first, quid pro quo harassment, in which decisions on hiring, termination, promotion or pay are made based on the employee’s response to sexual advances. In this kind of harassment, power dynamics are involved as the employer can control the continuance of the employee victim in an institution. Second is hostile work environment, the creation of which is perpetrated by the accused. It includes: discussing sexual activities; touching someone unnecessarily; using inappropriate or demeaning terms; using unseemly gestures; granting job favors’ to those who participate in consensual sexual activity, etc.

The European Union has recently introduced a code of practice on sexual harassment in the workplace, which defines sexual harassment as ‘unwanted conduct of sexual nature, or other conducted based on sex affecting the dignity of women and men at work’.<sup>92</sup> The code is neither binding, nor enforceable.

In many developed countries, there are specific enactments/provisions, which provide the redressed mechanism in cases of sexual harassment at work place, whereas in the developing world, the legislative process has been initiated or is being contemplated. In India, the Supreme Court has pronounced in a landmark decision – *Vishakha v State of Rajasthan*,<sup>93</sup> that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of

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<sup>92</sup> Ibid

<sup>93</sup> AIR 1997 SC 3011.

working women at all work places, the contents of international conventions and norms are significant.<sup>94</sup>

### **2.7.1.2.3. Prostitution**

Prostitution is promiscuous sexual intercourse by a woman for hire –for money or kind. There are different schools of thought on prostitution from which emerge different legal paradigms. One school of thought considers prostitution to be the most brutal violation of human rights of the women victims, who are coerced and enslaved into the flesh trade, whereas the other school of thought considers prostitution to be a kind of profession and the ‘sex workers’ as professionals, who exert physical labour and, therefore, are entitled to all rights as any other labourers/employee.

In words of UN Special Rapporteur on Violence against Women –‘prostitutes are a heterogeneous group and prostitution is the aggregate of social and sexual relation, which are historically, culturally and personally specific’.<sup>95</sup> Whereas majority of prostitutes are victims of coercion, deception or economic enslavement, a few could have taken up the profession through the exercise of ‘rational choice’.

The classical approach has always perceived prostitution’ as a ‘necessary evil’ or ‘an obnoxious feature’ of every society,<sup>96</sup> but the passage of time has led to a realization that prostitutes as a group of individuals are in a dire need of protection of their human rights, immaterial of the fact which particular school of thought is being preferred/adopted.<sup>97</sup>

Prostitution exists in all societies, all over the world. The size of the population, which indulges in prostitution, worldwide is not known accurately and only rough estimates are available. According to a conservative estimate of National Commission for Women’s Affairs (NCWA) 1994, there were at least 200,000 sex

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<sup>94</sup> Ibid, pp. 3011-14.

<sup>95</sup> Preliminary report submitted by UN report of the special Rapporteur on Violence against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy 1994 Para 205.

<sup>96</sup> Law Commission of India, 64<sup>th</sup> Report on The Suppression of Immoral Traffic in Women and Girls Act 1956, Ministry of Law, Justice and Company Affairs, Government Of India, 1975, P 1.

<sup>97</sup> Report of The Committee on ‘Prostitution, Child Prostitution and Children Of Prostitutes and Plan of Action To Combat Sexual Exploitation of Women and Children’, Department of Women and Child Development, Ministry of Human Resource Development, Government of India, 1998.

workers in Thailand.<sup>98</sup> According to another estimate by the same organization, in 1996, 20,000 to 40,000 girls under the age of 18 years were engaged in commercial sex work in Thailand.<sup>99</sup> It is estimated that in India over two million women are in commercial sex work of which 25 percent are below 18 years.<sup>100</sup> At least 25,000 children are engaged in prostitution in the major metropolitan cities of Bangalore, Calcutta, Delhi, and Hyderabad, Madras and Mumbai.<sup>101</sup> In Mumbai alone, 40,000 girls between the ages of 10-16 years are selling their bodies.<sup>102</sup> According to an estimate by the UNICEF, there are about 5,000 commercial sex workers in Kathmandu alone, of which 1,000 are children. More than 20 percent of the women are under the age of 16 years.<sup>103</sup> According to the Country Report, Sri Lanka (1998), estimates of children in commercial sex work range from a low of 2,000 as quoted by the government sources to 30,000 as per international sources.<sup>104</sup>

There are various causes of prostitution - economic, socio-cultural, and psychological, etc. Amongst all the reasons, economic compulsions or poverty plays a major role in perpetuating flesh trade. Due to the lack of other viable means of sustenance, children and women from poor families are coerced into prostitution. Sometimes, children are sold by the parents for induction into this trade. Deception, by promising employment in good jobs is another common mode by which the vulnerable lots are lured into prostitution. Traditional practices like dedication of girls to temples as '*devdasi*' further promote flesh trade. Sometimes the psychological impact created by the media and films push young people into prostitution, who want to be rich and fulfill their ambitions within a quick span of time.

Whatever may be the reasons in a particular case, it remains a matter of fact that all prostitutes are subjected to severe economic exploitation, though the degrees may be varying. A few may be held in debt bondage and may not see any percentage of their labour earnings at all.<sup>105</sup> Prostitutes are very dependent on various

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<sup>98</sup> National Commission of Women's Affairs (NCWA) 1994, Quoted in 'The Magnitude Of The Problem, Trade in Human Misery- Asia Region', An Information Folder, UNIFEM 1998.

<sup>99</sup> Ibid, quoting finding of NCWA as given by the UNICEF 1997.

<sup>100</sup> Ibid, quoting situation report India, 1998.

<sup>101</sup> Ibid, quoting the figures provided by government of India.

<sup>102</sup> Ibid, quoting national commission of women 1997.

<sup>103</sup> Ibid, quoting UNICEF 1997.

<sup>104</sup> Ibid, quoting Country Report, Sri Lanka 1998.

<sup>105</sup> Preliminary report submitted by UN report of the special Rapporteur on Violence against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy 1994 para 207.

organizational edifices like pimps and touts, who profit immensely from their labour. Due to the illegal or highly regulated status of prostitution, women and children in prostitution face enormous legal and moral isolation. Because of their highly stigmatized social status and vulnerable legal status, the prostitutes can acquire no help from the machinery.

### **2.7.1.3. Sexual Violence Perpetuated/ Condoned By the State**

The state provides the third location of sexual violence. The involvement of the state in sexual violence against women is double pronged – one, by omission and the other by commission. The state is considered to be the protector of all its inhabitants by safeguarding their human rights and it is the primary duty of the state to ensure that all individuals must get an equal, reasonable and just treatment by the state agencies and mechanisms.

The state becomes blameworthy through omission when it ignores to take into account the women's perspective while shaping the law and justice machinery, be it through the legislation or enforcement of such discriminatory laws in the Courts by invoking such judicial interpretations, which are either biased against women or completely exclude women's perceptions and their realities. The state is liable for tolerating and, thus, condoning discriminatory laws and practice; for not taking legislative and legal notice of offences, like marital rape, incestuous abuse, etc., and sometimes for not enforcing the existing laws and policies effectively.

The liability of the state by commission arises when state officials, like police, para-military forces or armed forces personnel, indulge in commission of sexual violence against women in their custody. Rape and torture in custodial detention are the most brutal expressions of sexual violence perpetrated against the women by the state.

Few illustrations of sexual violence perpetrated by the state are listed below.

#### **2.7.1.3.1. Custodial Violence**

Custodial violence is a glaring expression of lawlessness prevalent in the society, which makes rape a common form of torture employed by custodians of law.

Custodial rapes occur due to the massive power imbalances between the perpetrator and the victim. Abuse of power by government agents under non-transparent and highly unequal conditions, together with the immunity accorded to such agents, constitute the bases on which custodial violence ferments and grows.

### **2.7.1.3.2. Trafficking for Forced Prostitution**

According to the UN Special Rapporteur on Violence Against Women, trafficking means the recruitment, transportation, purchase, sale, or receipt of persons; by threat or use of violence, abduction, deception or coercion or debt bondage for the purpose of placing or holding such person, whether for pay or not, in forced labour or slavery, like practices in a community other than the one in which such person lived at the time of original act of transportation etc.<sup>106</sup>

There are many forms of trafficking but the most visible and widespread is the trafficking of women and children for commercial exploitation. In the recent times, there has been an unparalleled, but undocumented migration in the South Asian region. Women and girls are trafficking both within South Asia and from South Asia to other regions. Both the supply and demand sides of the equation directly factor into the growth of trafficking industry. On the supply side, poverty, the low status of women and girls in many South Asian countries, economic disparities, harmful socio-cultural practices such as child marriage, *devdasi* system and the general low status of women all perpetuate this trade in human flesh.<sup>107</sup>

Majority of the trafficked victims are taken through deception and false promises, due to which the victim goes voluntarily, which, in fact, makes trafficking quite uncontrollable.<sup>108</sup> Poverty remains the main cause for which the victim initially wants to move and forced prostitution remains the primary cause behind trafficking.

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<sup>106</sup> UN report of the special Rapporteur, Ms. Radhika Coomaraswamy, on Violence against Women, Its Causes and Consequences- Mission to Bangladesh, Nepal and India on The Issue of Trafficking of Women and Girl', 2001, p 7; UNICEF, 1997, p 9 Quoted in 'National Commission of Women's Affairs (NCWA) 1994', quoted in 'The Magnitude of The Problem, Trade in Human Misery- Asia Region', An information Folder, UNIFEM 1998.

<sup>107</sup> 'A Life Free of Violence- It's our Right', UNIFEM, 1998, Global Campaign for The Elimination of Gender based Violence in The South Asia Region, UNIFEM, 1999, P 9.

<sup>108</sup> UN report of the special Rapporteur, Ms. Radhika Coomaraswamy, on Violence against Women, Its Causes and Consequences- Mission to Bangladesh, Nepal and India on The Issue of Trafficking of Women and Girl', 2001, p 9.

When the victims are taken to the recipient brothels, they are held against their will, tortured, degraded, deprived of food and water and repeatedly raped. These victims are made to live in unsanitary and slave like conditions and are forced to serve a number of clients per night. The fear of violence from the Madame and young male bouncers keep them in check and prevents their free movement.

Nearly two million children are abused and trafficked globally every year. South Asia and South East Asia take the lead in volume of trafficking in children for sexual exploitation.<sup>109</sup> An alarming trend is that the ages of children trafficked into commercial sex industry is decreasing. The estimated data of girls trafficked from Nepal and Bangladesh to India, varies from 10,000-25,000 per year.<sup>110</sup> According to Nepal Country Report (1998), approximately 200,000 Nepalese women and girls have been sold into prostitution in India, and the age of 10 percent of these range from 14-18 years.<sup>111</sup>

The estimated, total number of sex workers, varies from one to eight million.<sup>112</sup> A survey sponsored by the Central Social Welfare Board of India in 1991 in six Metropolitan Cities indicated that the population of women and children in sex work in between 70,000 – 1 million, 30 percent of which are below 18 years of age.<sup>113</sup> Nearly half of this population is possibly infected with HIV/AIDS.<sup>114</sup>

Trafficking in women and children is one of the worst, and most brazen, abuses of human rights. Increasingly more women and children in South Asia are treated as a commodity, bought and sold at random, dehumanized and demeaned within an industry that enslaves and entangles their young minds and bodies.

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<sup>109</sup> 'The Magnitude of the Problem, Trade in Human Misery- Asia Region', an Information Folder, UNIFEM 1998.

<sup>110</sup> UN report of the special Rapporteur, Ms. Radhika Coomaraswamy, on Violence against Women, Its Causes and Consequences- Mission to Bangladesh, Nepal and India on The Issue of Trafficking of Women and Girl', 2001, p 10.

<sup>111</sup> Preliminary report submitted by UN report of the special Rapporteur on Violence against Women, Its Causes and Consequences', Ms. Radhika Coomaraswamy, 1994 para 207.

<sup>112</sup> Ibid.

<sup>113</sup> UN report of the special Rapporteur, Ms. Radhika Coomaraswamy, on Violence against Women, Its Causes and Consequences- Mission to Bangladesh, Nepal and India on The Issue of Trafficking of Women and Girl', 2001, p 9.

<sup>114</sup> Ibid.

### **2.7.1.3.3. Sexual Violence during Armed Conflicts**

Sexual violence against women erodes the fabric of community in a way that no other weapon can. The consequent damage can be devastating because of the strong communal reaction to the violation and pain stamped on entire families. Integrally linked to concepts of honour, rape during armed conflicts becomes a means of communication defeat to the men of other side. In situations of conflict, whether international or national, the risk of sexual violence increases dramatically with the breakdown of law and order machinery. Sexual violence becomes a brutal instrument of terror, which is used as a symbol of victory.<sup>115</sup>

### **2.7.1.3.4. Sexual Slavery**

According to the Convention 1926, 'slavery' should be understood to be the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including sexual access through rape or other forms of sexual violence. The prohibition of slavery is a *jus cogens* norm in customary international law. The crime of slavery does not necessarily require the involvement by the state government; it may be committed by States actors or private individuals.<sup>116</sup> Implicit in the definition of slavery are notions concerning limitations on autonomy, freedom of movement and power to decide matters relating to one's sexual activity. Sexual slavery also encompasses situations, where women and girls are forced into marriage or forced prostitution.

## **2.8. IMPACT OF SEXUAL VIOLENCE**

Experiences of violence in women's lives are all too personal a reality. The emotional and psychological scars remain deep and need to be understood and analyzed within the socio-economic, political and culture dimensions, having interconnections with development, human rights and peace in women's life.

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<sup>115</sup> Peter Gordon and Kate Crehan , Dying Sadness: Gender , Sexual Violence And The HIV Epidemic', SPEED Conference Paper Series, p 4.

<sup>116</sup> UN report of the special Rapporteur on Violence against Women, Its Causes and Consequences', Ms. Radhika Coomaraswamy, on 'Trafficking in Women, women's migration and violence against women', 2000, p 8.

Perhaps the worst impact of sexual violence is manifested in the absence of ‘human security’ for women.<sup>117</sup> The experience and fear of violence are threads in women’s lives that intertwine with their most basic human security needs at all levels- personal, community and political.<sup>118</sup> In no society, women are secure or treated equally to men, personal insecurity shadows them from cradle to grave.<sup>119</sup> The fear of violence shapes the choices women make- what place to visit, at what time, what kinds of employment to be picked up etc. The fear of violence compels women to seek male protection, which gives rise to a situation of vulnerability and dependence, which is not conducive to women’s empowerment and development.

Sexual violence results in serious health hazards for women and sometimes the physical injuries caused to the victim may be fatal. The abused women may contract the sexually transmitted diseases and unwanted pregnancies. The possibility of HIV transmission is facilitated by the damage to the genital area.<sup>120</sup> The physical consequences are still easier to enumerate in comparison to the psychological, emotional or spiritual impacts. Abused women may show high levels of anxiety, somatic disorders or personality disorders. Sexual violence also compromises the healthy development of children and families of the abused women. In cases of such violence occurring within the family, the important functions and viability of family as an institution may get threatened.

Sexual violence against women remains a steep barrier to securing human centered development goals, as violence severely hampers the women’s potential and their contribution towards growth and development processes. Sexual violence acts as an obstacle to the alleviation of poverty as the employment choice for women may get severely limited, particularly because of sexual violence occurring at work place. Women are by and large excluded from the decision-making processes by the use of violence or the fear of it, which consequently leads to loss of human potential translating into lost development.

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<sup>117</sup> Human security is based on the conditions that allow people to exercise choice and freely with some confidence that the opportunities they have today will not vanish tomorrow.

<sup>118</sup> Charlotte Bunch, Roxanna Carrillo and Rima Shoe, ‘Violence against Women’ In *Women in the Third World an Encyclopedia of Contemporary Issues*, Nelly P storm Quist (Ed), 1998, p 59

<sup>119</sup> Ibid. UNDP issues the statement in 1994.

<sup>120</sup> Charlotte Bunch, Roxanna Carrillo and Rima Shoe, ‘Violence against Women’ In *Women in the Third World an Encyclopedia of Contemporary Issues*, Nelly P Storm Quist (Ed), 1998, p 59, at p 62

## 2.9. FEMINISM

Feminism is a collection of social principles, political movement, and ethical philosophy, in which women's experience in terms of inequalities in the social, political and economic background and diverse and conflicting ideas is largely motivated. Themes explored in feminism include discrimination, stereotyping, objectification (especially sexual objectification), oppression and patriarchy. In order to promote the rights, interests, and issues of women in society, gender inequality is centered mainly on limiting or abolishing feminism in a manner. Another opposing type of modern feminism, with deep historical roots, focuses on earning and establishing equity by and for women, vis-à-vis men, to promote the same rights, interests, and issues, regardless of gender considerations. This different perception has given rise to five major ideological movements which are –

- i. Liberal feminism
- ii. Socialist feminism
- iii. Marxist feminism
- iv. Radical feminism
- v. Black feminism

Feminist Scholars have made significant contributions towards the eradication of sexual violence against women and they believe that the root of sexual violence rests in the social structure. In which women are dominated by men and women are considered inferior to men.

Feminism is a range of political movements, ideologies, and social movements that share a common goal: to define, establish, and achieve political, economic, personal, and social equality of sexes.<sup>121</sup> This includes seeking to establish educational and professional opportunities for women that are equal to such opportunities for men. Feminist movements have campaigned and continue to campaign for women's rights, including the right to vote, to hold public office, to work, to earn fair wages or equal pay, to own property, to receive education, to enter

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<sup>121</sup> Hawkes worth, Mary E. (2006). Globalization and feminist activism. Rawman & littlefield.pp 25-27.

contracts, to have equal rights within marriage, and to have maternity leave. Feminists have also worked to promote bodily autonomy and integrity, and to protect women and girls from rape, sexual harassment, and domestic violence.<sup>122</sup> Changes in dress and acceptable physical activity have often been part of feminist movements.<sup>123</sup>

Feminist campaigns are generally considered to be a main force behind major historical societal changes for women's rights, particularly in the West, where they are near-universally credited with achieving women's suffrage, gender neutrality in English, reproductive rights for women (including access to contraceptives and abortion), and the right to enter into contracts and own property.<sup>124</sup> Although feminist advocacy is, and has been, mainly focused on women's rights, some feminists, including bell hooks, argue for the inclusion of men's liberation within its aims because men are also harmed by traditional gender roles.<sup>125</sup> Feminist theory, which emerged from feminist movements, aims to understand the nature of gender inequality by examining women's social roles and lived experience; it has developed theories in a variety of disciplines in order to respond to issues concerning gender.<sup>126</sup>

Numerous feminist movements and ideologies have developed over the years and represent different viewpoints and aims. Some forms of feminism have been criticized for taking into account only white, middle class, and college-educated perspectives. This criticism led to the creation of ethnically specific or multicultural forms of feminism, including black feminism and intersectional feminism.<sup>127</sup>

Charles Fourier a Utopian Socialist and French philosopher is credited with having coined the word "féminisme" in 1837.<sup>128</sup> The words "féminisme" ("feminism") and "feminist" ("feminist") first appeared in France and the Netherlands in

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<sup>122</sup> Echols, Alice (1989). *Daring to be bad: radical feminism in America, 1967- 1975*. Minneapolis: university of Minnesota press.

<sup>123</sup> Robert, Jacob(2017), ““women’s work””. *Distillations*. 3(1):6-11. Retrieved 20 July 2017.

<sup>124</sup> Messer- davidow, Ellen (2002). *Disciplining feminism: from social activism to academic discourse*. Durham, NC: duke university press.

<sup>125</sup> Hooks, bell (2000). *Feminism is for everybody: passionate politics*. Cambridge, mass: south end press.

<sup>126</sup> Chodorow, nancy (1989). *Feminism and psychoanalytic theory*. New haven, conn.: yal university press.

<sup>127</sup> Weedon, chris(2002). “key issues in postcolonial feminism: a western perspective”. *Gender forum*(1). Archived from the original on 3 december 2013.

<sup>128</sup> Goldstein, leslee F.(1982) ““Early feminist themes in franch utopian socialism: the st. simonians and fourier””. *Journal of the history of ideas*. 43(1): 91-108.

1872,<sup>129</sup> Great Britain in the 1890s, and the United States in 1910,<sup>130</sup> and the *Oxford English Dictionary* lists 1852 as the year of the first appearance of "feminist"<sup>131</sup> and 1895 for "feminism".<sup>132</sup> Depending on the historical moment, culture and country, feminists around the world have had different causes and goals. Most western feminist historians contend that all movements working to obtain women's rights should be considered feminist movements, even when they did not (or do not) apply the term to themselves.<sup>133</sup> Other historians assert that the term should be limited to the modern feminist movement and its descendants. Those historians use the label "protofeminist" to describe earlier movements.<sup>134</sup>

Some thinkers have sought to locate the roots of feminism in ancient Greece with Sappho (D.C. 570 BCE), or the medieval world with Hildegard of Bingen (d. 1179) or Christine de Pisan (d.1434). Certainly, Olympe de Gouges (d.1791), Mary Wollstonecraft (d.1797) and Jane Austen (d.1817) are ancestors of the modern women's movement. All of these people advocated for the dignity, intelligence and basic human potential of the female sex. However, it was not until the late nineteenth century that the efforts for women's equal rights coalesced into a clearly identifiable and self-conscious movement, or rather a series of movements.

The history of the modern western feminist movements is divided into three "waves"<sup>135</sup> Each wave dealt with different aspects of the same feminist issues. The first wave comprised women's suffrage movements of the nineteenth and early twentieth centuries, promoting women's right to vote. The second wave was associated with the ideas and actions of the women's liberation movement beginning in the 1960s. The second wave campaigned for legal and social equality for women.

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<sup>129</sup> Dutch feminist pioneer Mind Kruseman in a letter to Alexandre Dumas - in: Maria Grever, *Strijd tegen de stilte. Johanna Naber (1859-1941) en de vrouwenstem in geschiedenis* (1994), p. 31.

<sup>130</sup> Cott, Nancy F (1987). *The grounding of modern feminism*. New Haven: Yale University Press. P. 13

<sup>131</sup> "Feminist" *Oxford English Dictionary* (3<sup>rd</sup> ed.). Oxford University Press. 2012.

<sup>132</sup> "Feminism" *Oxford English Dictionary* (3<sup>rd</sup> ed.). Oxford University Press. 2012.

<sup>133</sup> Spender, Dale (1983). *There is always been a women's movement their century*. London: Pandora Press. 1-200

<sup>134</sup> Botting, Eilee Hunt; Houses, Sarah (2006). "Drawing the time equity". *The American Political Science Review* 100(2): 265-78.

<sup>135</sup> Hum, Maggie. 195. *The dictionary of feminist theory*. Columbus Ohio State University Press p 251.

The third wave is a continuation of, and a reaction to, the perceived failures of second-wave feminism, which began in the 1990s.<sup>136</sup>

**2.9.1. First-wave feminism** was a period of feminist activity and thought that occurred within the time of the 19th and early 20th century throughout the world particularly in the United Kingdom, Canada, the Netherlands and the United States. It focused on legal issues, primarily on gaining women's suffrage (the right to vote).

The goal of this wave was to open up opportunities for women, with a focus on suffrage. The wave formally began at the Seneca Falls Convention in 1848 when three hundred men and women rallied to the cause of equality for women. Elizabeth Cady Stanton (d.1902) drafted the Seneca Falls Declaration outlining the new movement's ideology and political strategies.

In its early stages, feminism was interrelated with the temperance and abolitionist movements and gave voice to now-famous activists like the African-American Sojourner Truth (d. 1883), who demanded: "Am not I a woman?" Victorian America saw women acting in very "un-ladylike" ways (public speaking, demonstrating, stints in jail), which challenged the "cult of domesticity." Discussions about the vote and women's participation in politics led to an examination of the differences between men and women as they were then viewed. Some claimed that women were morally superior to men, and so their presence in the civic sphere would improve public behavior and the political process.

#### **2.9.1.1. Liberal feminism**

Liberal feminism is an individualistic form of feminist theory, which focuses on women's ability to maintain their equality through their own actions and choices. Its emphasis was on making the legal and political rights of women equal to men. Liberal feminists argue that society holds the false belief that women are, by nature, less intellectually and physically capable than men; thus it tends to discriminate against women in the academy, the forum, and the marketplace. The goal for liberal feminists in the late 1800s and early 1900s was to gain women's suffrage under the idea that they would then gain individual liberty. They were concerned with gaining

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<sup>136</sup> Krolokke, Charlotte; Sorensen, Anne Scott (2005). "Three waves of feminism: from suffragettes to girl". *Gender communication theories and analyses: from silence to performance*. Sage. p.24.

freedom through equality, putting an end to men's cruelty to women, and gaining the freedom to opportunities to become full persons.<sup>137</sup> They believed that no government or custom should prohibit the exercise of personal freedom. Early liberal feminists had to counter the assumption that only white men deserved to be full citizens. Feminists such as Mary Wollstonecraft, Judith Sargent Murray, and Frances Wright advocated for women's full political inclusion.<sup>138</sup> In 1920, after nearly 50 years of intense activism, women were finally granted the right to vote and the right to hold public office in the United States.

Liberal feminism was quiet for four decades after winning the vote. In the 1960s during the civil rights movement, liberal feminists drew parallels between systemic race discrimination and sex discrimination.<sup>139</sup> Groups such as the National Organization for Women, the National Women's Political Caucus, and the Women's Equity Action League were all created at that time to further women's rights. Other issues important to liberal feminists include but are not limited to reproductive rights and abortion access, sexual harassment, voting, education, fair compensation for work, affordable childcare, affordable health care, and bringing to light the frequency of sexual and domestic violence against women.<sup>140</sup>

Liberal feminism has its roots in the writings of, among others, Mary Wollstonecraft, John Stuart Mill, and Harriet Taylor Mill. Many writers prior to Wollstonecraft, such as Jean-Jacques Rousseau, had explicitly argued that men and women were by nature not merely different in kind but different in "natural rank", with women being weaker physically, intellectually, and emotionally. Men were said to be more rational, women more emotional; their respective educations should reflect these differences. A few philosophers, such as John Locke had argued that the sexes should receive the same education and that they shared equal rights and responsibilities with respect to their children( see some thoughts, 14; two treatises,303). Nonetheless, these writers stopped short of defending complete sexual equality (either for social roles or legal rights), and putative sex differences have

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<sup>137</sup> Marilley, Suzanne (1996). Women's suffrage and the origins of liberal feminism in the United States 1820-1920. Cambridge, MA: Harvard, pp.1-10.

<sup>138</sup> Ibid.

<sup>139</sup> Tony, Rosemarie. 1989. Feminist thought: a comprehensive introduction. Oxon, United Kingdom: Unwin Human Ltd. Chapter 1.

<sup>140</sup> Hooks, bell, "feminist theory: from margin to center" Cambridge, MA: South End Press 1984.

been, and in some part of the world continue to be, the basis of laws denying women the right to retain property in marriage and the right to vote.

Popular feminist writers associated with this theory are in 18th century Mary Wollstonecraft, Judith Sargent Murray, Frances Wright 19th century John Stuart Mill, Harriet Taylor, Harriet Tubman , Susan B. Anthony 20th century Betty Friedan, Rebecca Walker, Naomi Wolf, Martha Nussbaum.

**Mary Wollstonecraft** (1759–1797) has been very influential in her writings as *A Vindication of the Rights of Woman* commented on society's view of the woman and encouraged women to use their voices in making decisions separate from decisions previously made for them. Wollstonecraft "denied that women are, by nature, more pleasure seeking and pleasure giving than men. She reasoned that if they were confined to the same cages that trap women, men would develop the same flawed characters. What Wollstonecraft most wanted for women was personhood."<sup>141</sup> She argued that patriarchal oppression is a form of slavery that could no longer be ignored. Along with Judith Sargent Murray and Frances Wright, Wollstonecraft was one of the first major advocates for women's full inclusion in politics.

**Elizabeth Cady Stanton** (November 12, 1815 – October 26, 1902) was one of the most influential women in first wave feminism. An American social activist, she was instrumental in orchestrating the Seneca Falls Convention, the first women's rights convention, which was held in Seneca Falls, New York. Not only was the suffragist movement important to Stanton, she also was involved in women's parental and custody rights, divorce laws, birth control, employment and income rights, among others.<sup>142</sup> Her partner in this movement was the equally influential Susan B. Anthony. Together, they fought for a linguistic shift in the Fourteenth and Fifteenth Amendments to include "female".<sup>143</sup> Additionally, in 1890 she founded the National American Woman Suffrage Association and resided as president until 1892.<sup>144</sup> Despite never authoring a feminist text, she produced many speeches, resolutions, letters,

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<sup>141</sup> Tony, Rosemarie. 1989. *Feminist thought: a comprehensive introduction*. Oxon, United Kingdom: unwin human ltd.

<sup>142</sup> Barker, jjean H. *sisters: the lives of America's suffragists*. Hill and wang. New York, 2005.

<sup>143</sup> Evans, Sara M. 1997. *Bborn for liberty: a history of women in America*. New york, NY:: free press paper backs.

<sup>144</sup> Ibid

calls, and petitions that fed the first wave and kept the spirit alive.<sup>145</sup> Furthermore, by gathering a large number of signatures, she aided the passage of the Married Women's Property Act of 1848, which considered women legally independent of their husbands and granted them property of their own.

**John Stuart Mill** echoed Wollstonecraft's sentiments in *the subjection of women* (1869). He described sex roles as a kind of caste system in which women were assigned lower status and restricted in what they were permitted to do simply because of their sex, even though there were no categorical differences between the sexes that could justify it. This not only stunted the moral development of women but also denied them the self-fulfillment that comes only with the freedom to pursue one's own good. Mill thought that when provided with the same educational and civic opportunities that men had, most women would choose to remain wives and mothers, improving domestic life for the family ("the essay by J.S. Mill" [on marriage divorce; 1832], Essay, 76-77; see James Fitz James Stephen's [1829-1894] reply to mill, 180-98). Mill's future wife, *Harriet Taylor*, disagreed, arguing that women would choose to participate more fully in public life, going beyond simply voting and performing charity work. Women would choose to become the partners of men in productive industry and would have fewer children ("the essay by Harriet Taylor"[on marriage and divorce;; 1832], essays, 84-86).

Feminists of all kinds continued to press for greater equality for women throughout the United States and Europe, culminating in the right to vote for Russian women in 1918, some British women in 1918, and all adult U.S. women in 1920. American liberal feminism experienced a resurgence in the middle of the twentieth century with popular works of Betty Friedan, who was the first president of national organization for women (NOW, 1966) and co-founder in 1971 of Ms. Magazine with feminist activist and journalist Gloria Steinem. In *The Feminine Mystique* (1963), Friedan argued that women had a problem that "had no name" (15-32). Women in the United States had the right to vote and hold property and had achieved a significant degree of equal protection under the law. However, Friedan argued, they often led lives that were unfulfilling, if not stifling. They spent too much time polishing and organizing already clean and tidy homes, experiencing boredom and anxiety as a

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<sup>145</sup> Elizabeth Cady Stanton, "address to the new York state legislature, 1854" in *feminism: the essential historical writings*, New York: vintage books, 1994.110.

result. Friedan urged women, once their children were attending school, to seek employment that would challenge their capacities and provide personal satisfaction. Women could enjoy a family with children but needed to get involved in pursuits outside the domestic sphere as soon as possible by entering into public life and paid employment.

Friedan's early approach to the role of women in society is vulnerable to an objection that also plagues the views of Wollstonecraft and J. S. Mill: that this type of feminism is not about the liberation of women *per se* but also only of middle – to upper – middle-class, heterosexual white women. As with the earliest forms of liberal feminism, Friedan made the mistake of supposing that all women faced the same form of sexual oppression. Friedan later came to accept that the feminism set forth in her early work reflected this bias, accepting the importance not only of class difference among women but also of sexuality as a feminist issue (see Tong, 26-35).

Following the work of feminism such as Friedan and Steinem, many obstacles to the full participation of women in public life were removed. Employment opportunities for women were widened, many discriminatory laws in the United States were abandoned, and sex-based employment discrimination was outlawed with Title VII of the Civil Rights Act (1964). Women began to feel that they could achieve things for themselves rather than simply for their families. The focus on women as equally entitled to autonomous self-fulfillment blended seamlessly with a burgeoning self-help movement emphasizing a more satisfying sexuality for women. Books like *Our Bodies, Ourselves* became popular as women rejected the idea of their sexuality as something mysterious and shameful. Sexuality was reconceived as aimed at personal satisfaction as much as, if not more than, reproduction. This led not only to greater awareness of the female body and sexual pleasure but also to increasing recognition for lesbian and bisexual women. However, many feminists noticed that the liberal feminist goal of removing legal and social barriers to the full participation in education and employment did not completely address the issue of women's subordination. Two issues in particular remained to be addressed: the economic condition of women and the structure of the family. Liberal feminists took aim squarely at the nuclear family. Sex roles within the family had to become androgynous for the ideal of equality to be served, with neither parent assuming

primary responsibility for rearing children and maintaining the home. “Mothers”, wrote Virginia Held, “need not be the ones who mother” (243).

Unlike feminists who saw the family as little more than a source of oppression for women, *Susan Moller Okin* (1946-2004) argued that the traditional family in the west was unlikely to disappear and could be salvaged. What was necessary was an end to gender structured marriage. Ideally, marriage should be reconceived as an equal partnership in which neither partner should leave the world of paid employment for the domestic sphere, which necessarily disadvantages the partner who maintains the home. Traditional marriage makes women vulnerable by channeling them in to lower- paying, more flexible forms of employment before marriage, by reducing their negotiating power within marriage, and by impoverishing them in divorce. The expectation that women will be the primary caregivers for children and other dependents encourages women to make choice that militate against their own best interests; men are not similarly disadvantaged (132-69). Okin’s argument exemplifies the liberal feminist commitment to justice, to the relative similarity between the sexes and to equal concern and respect for men and women.

Okin’s views in particular showcase a fundamental tension in liberal feminism. While she argues that the traditional family is *unjust*, she does not recommend that it be illegal or penalized. Instead, she proposes, for marriage where only one spouse has paid employment, that the income be divided in two by employer and placed in separate accounts (181-82). The weakness and impracticality of this solution show how liberalism hamstring itself when it takes on issues usually thought of as private- and therefore beyond the reach of justice (see Cohan). Injustice calls for institutional and legal remedy, but liberal feminism is loath to address the problems of private life with public legal sanctions, which are regarded as coercion in that realm.

### **2.9.1.2. Marxist feminism**

Traditional Marxism sees women absent in the wage force and contends that, once women are fully integrated into wage labour, there will be no material basis for the sex-specific oppression of women. According to them, the basic reason behind continuing subordination of women is in the interest of capital. Thus prostitution, sexual objectification, sexual harassment, the sexual segregation of

paid labour force, rape and other forms of violence against women will continue so long as capitalism remains. They view sex-specific oppression of women under capitalism consists fundamentally in their exclusion from the public realm of social production. The absence of the wage force contends that, once women are fully integrated into wage labour, there is no material basis for the sex-specific oppression of women. According to them, the basic reason behind continuing subordination of women is in the interest of capital. Thus prostitution, sexual objectification, sexual harassment, the sexual segregation of paid labour force, rape and other forms of violence against women will continue so long as capitalism remains (Engles 1972: 137-138). Their interference into the public realm is both, an end in itself and a mean to further change. They forcibly demanded women's participation in the works force after which they will shape the history rather than being sidelined. The Marxists proposes to make familial responsibilities to a kind of social industry which will certainly remove the dependency of women on the bread-earner of the family that is father and husband. Women's liberation from household responsibilities and economic dependence will make them sexually free and their new status will make them the primary beneficiaries of this process of transformation. As they will define themselves primarily in terms of their work outside the home, the ideological definition of women as the sexual object would become decreasingly suitable to social reality. Men will learn to value women's non-sexual qualities. Relying on these thoughts a distinct socialist/ Marxist feminism developed in workers union in United State during the rise of communism in the former Soviet Union. Marxist/socialist feminism goes beyond liberal feminism in exploring the societal rather than the strictly political and legal roots of women's subordination. By arguing that it is the structure of patriarchy that oppresses women, it expands the understanding of the causes of women's oppression. But, like liberal feminism, Marxist/socialist feminism is still limited to an examination of the objective structures of society. It was initiated by Rosa Luxemburg (1870-1919) in Germany, Alexandra Kollontai (1873-1952) in Russia and anarchist Emma Goldman (1869-1940) in the United State. Liberal and socialist/ Marxist feminism shared a basic belief in equity and equal opportunities for women and men, but the later focused particularly on working class women and their involvement in class struggle and socialist revolution.

Socialist feminist such as Rosa Luxemburg and, in particular, Alexandra Kollontai and Emma Goldman, paved the way for second wave feminism, fighting both politically and in their own private lives for women's right to Abortion, divorce, a non-legislative partnership. Marxist feminism makes a direct causal connection between capitalism and subordination of women. This perspective believes that women are an exploited class in the capitalist mode of production, both by their husbands within families and by employers in the paid labour market. The strongest criticism of this thinking is the fact that patriarchy predates capitalism by several thousand years and therefore cannot be understood as a product of capitalism.

Marxists believe that within capitalist society, women are subjected to a special form of operation which affects primarily those women who are excluded from wage labour. Traditional Marxists assume that women wage labourers suffer the same sort of operation that is experienced by the rest of the working class. They believe that women suffer from a sex- specific form of operation that is additional to the alienation of the wage laborer. In contemporary society, Marxists believe that this form of operation is rooted in the specific sexual division of labour that characterizes capitalism; this division excludes many women from the wage labour force and assigns them to work in the home. In most of the societies, throughout human history women have bear and rear children, prepared and occasionally produced food and clothing, and provided sexual services for their husbands. The peculiar thing about women's domestic work under capitalism, however, is that it involves women in relations that are not characteristically capitalist's relation. Women work either in the farms or as the household are not valued as commodities for the market. Under the capitalist's system, they are not paid for the services, they perform. So for the Marxists, marriage is in fact, a relation that is remarkably similar to the feudal relation of vassalage: it provides a means for exchanging support and protection from the husband in return for services and devotion from the wife. So the husband is bourgeois and the wife is proletariat (Engels 1972:137).

In the traditional Marxists thought, the organization of work under capitalism subjects housewives to a form of operation that is even deeper than a direct operation that they may suffer from their husband. They are oppressed by

their exclusion from public life. In the pre-class societies, women also did child care, cooking etc. but the organization of their work was not 'privatized' that is to say, their work did not consist of services performed for a single individual. But in the capitalist's society, the wife became a head servant, excluded from all participation in the social production. Marx and Engels, therefore, believed that special oppression of women was being undermined by women's entry into wage labor. In a much-quoted sentence, Engels writes "The first condition for the liberation of the wife is to bring the whole female sex back into public industry" (Engels 1972: 137-138). For traditional Marxists, it is necessary to 'organize' women. This means both unionizing women wage workers and also attracting women into the revolutionary party which must lead the socialist revolution. To attract women into revolutionary parties and groups, Marxist activists of the 1970s and 1980s have placed a new emphasis on so-called "women issues". These are the issues that are seen to involve some sex-specific oppression of women, as opposed to issues that are thought to affect the working class in a gender- neutral way. But some feminists criticize the whole conception of women's issues because such a conception assumes that the domination of women is limited to certain areas of social life because, for them, every issue is a women's issue, just as, for traditional Marxists every issue is a class issue. By defining certain issues as being of concern primarily to women, it reinforces conventional views about women's place and recreates a sexual division of labour even within the revolutionary organization that is supposed to overcome male dominance.

However, being the more 'scientific' conception of women liberation and a less class biased, many women turned to Marxism, but in the 1960s, Marxism, itself came under attack from the women's liberation movement. The most common complaint made by feminists since the mid-1960s is that traditional Marxists organizations were sexist, it has been clear that women oppression continues to structure every aspect of social life (Jagger 1983: 221). It is proved that in spite of an increase in the proportion of women wage labour, there seems no weakening in the sexual objectification of women, sexual harassment at workplaces. Even the segregation of women into low- paying, "Feminine" service occupation is increasing and women are frequently victims of rape and domestic battery. These continuous aspects of women's operation present a problem for the traditional

Marxist theory. The incorporation of women into the wage labour force does not seem to have undermined the sex- specific form of their operation. If Marxism is to be accepted as an adequate theoretical and practical basis for women's liberation, it is vital that Marxism must explain why these practices are not in decline.

Further, yet Marxist organization are dedicated to the kind of revolutionary change that is supposed to liberate women, are in fact perpetuating that oppression. The individual men in Marxist organizations are personally oppressive to women and insensitive to their concerns. Revolutionary organizations are born and continue to survive in an extremely oppressive society; it is inevitable that some of the values of this society will emerge even within groups, committed to opposing those values.

Obviously, it would be utopian to expect that revolutionary organization would be immune to racism, to careerism, to competition and, of course, to male dominance. Many feminists believe that male dominance is embedded in the organizational structure of the traditional Marxists group and in the traditional conception of what it is to be a revolutionary leader. The model of revolutionary organization to which these feminists refer as 'Leninism' is much centralized and is inherently undemocratic. Because Lenin believed that the leaders and the members of the vanguard party must be politically experienced, highly trained and disciplined. So the major criticism of Leninist process is that for arriving at decisions stifles women's participation because this process discriminates all those who are less articulate, less self- confident, less familiar with the Marxist theory and less assertive. Women, because of their historical experience, tend to be all those things. Leadership tends to be assumed by educated white males, whose position then increases both their knowledge and their self- confidence and so makes them seem even better qualified to be leaders. The position of women is thought to be of less strategic importance and less valuable. Feminists charge that the women who do achieve prominence in Marxist- Leninist organizations are often the wives or lovers of male leaders and their opinions tend to be indistinguishable from those of their mentors.

Also, because a Leninist organization is so highly centralized, its leaders bear a heavy burden of responsibility. They are forced to become “professionals” or at least to devote to the organizations much of the time not spent at their paid employment. Sheila Rowbotham (1979) points out that, on this model, few women will become revolutionary leaders because most of the women have family responsibilities, which simply will not allow them to commit so much time to political activity. A handful of women indeed has been charismatic revolutionary leaders like Mother Jones, Rosa Luxembour, Clara Zetkin, Alexandra Kollontai and Emma Goldman. All were childless at the time of their political activity; they also found it difficult to maintain long- term intimate relationship. So Rowbotham’s characterization suggests that she does not view it as a desirable model.

In the late 1960s, the women’s liberation movement was marked by the formation of innumerable feminist groups, to which Marxist-Leninist organization have been extremely hostile. They fear that these formations of groups will divide the working class and make socialist revolution impossible. Contrary to the traditional Marxist view, many contemporary feminist claims that the working class is already divided by male dominance and that only independent or autonomous women’s organizations can ensure that woman’s interests are not neglected in a so-called socialist revolution.

### **2.9.1.3. Socialist feminism**

Socialist feminism rose in the 1960s and 1970s as an offshoot of the feminist movement and New Left that focuses upon the interconnectivity of the patriarchy and capitalism.<sup>146</sup> Socialist feminists argue that liberation can only be achieved by working to end both the economic and cultural sources of women's oppression.<sup>147</sup> Socialist feminism is a two-pronged theory that broadens Marxist feminism's argument for the role of capitalism in the oppression of women and radical feminism's theory of the role of gender and the patriarchy. Socialist feminists reject radical feminism's main claim that patriarchy is the only or primary source of oppression of

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<sup>146</sup> Lapovsky Kennedy, Elizabeth (2008), “socialist feminism: what difference did it make to be history of women’s studies?” *feminist studies*. 34 (3).

<sup>147</sup> What is socialist feminism? retried on May 28<sup>th</sup> 2015.

women.<sup>148</sup> Rather, socialist feminists assert that women are unable to be free due to their financial dependence on males. Women are subjects to the male rulers in capitalism due to an uneven balance in wealth. They see economic dependence as the driving force of women's subjugation to men. Further, socialist feminists see women's liberation as a necessary part of larger quest for social, economic and political justice. Socialist feminists attempted to integrate the fight for women's liberation with the struggle against other oppressive systems based on race, class or economic status.<sup>149</sup>

Socialist feminism draws upon many concepts found in Marxism; such as a historical materialist point of view, which means that they relate their ideas to the material and historical conditions of people's lives. Socialist feminists thus consider how the sexism and gendered division of labor of each historical era is determined by the economic system of the time. Those conditions are largely expressed through capitalist and patriarchal relations. Socialist feminists, thus reject the Marxist notion that class and class struggle are the only defining aspects of history and economic development.<sup>150</sup> Marx asserted that when class oppression was overcome, gender oppression would vanish as well. According to socialist feminists, this view of gender oppression as a sub-class of class oppression is naive and much of the work of socialist feminists has gone towards specifying how gender and class work together to create distinct forms of oppression and privilege for women and men of each class. For example, they observe that women's class status is generally derivative of her husband's class or occupational status, e.g., a secretary that marries her boss assumes his class status.

In 1972, "Socialist Feminism: A Strategy for the Women's Movement", which is believed to be the first publication to use the term "socialist feminism", was published; it was by the Hyde Park Chapter of the Chicago Women's Liberation Union (Heather Booth, Day Creamer, Susan Davis, Deb Dobbin Robin Kaufman, and Tobey Klass).<sup>151</sup>

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<sup>148</sup> Buchanan, Ian. "Socialist feminism". A dictionary of critical theory. Oxford reference online. Oxford university press. Web Oct. 2011.

<sup>149</sup> Socialist feminism vs. other type of feminism". Thought co. retrieved 2017.

<sup>150</sup> Harris, Kathryn(1989). "new alliances: socialist feminism in the eights". Feminist review (3):34-54.

<sup>151</sup> Margaret "peg" strobels; sue davenport(1999). "the Chicago women's liberation union: an introduction". The CWLU Her story website. University of Illinois. Archived from the original on Nov. 2011.

### **2.9.1.3.1. Summary of Socialist Feminist Thought**

- Socialist feminists agree that liberal feminism does not appreciate the depth of the oppression of women and basically only addresses the situation of women of the upper and upper middle classes. They also agree that women have been oppressed in virtually all known societies, but the nature of this oppression has differed because of the different economic realities.
- Socialist feminists do not think that the oppression of women is based solely on the economic system, and they suggest that patriarchy and capitalism are combined into one system. They believe that we must understand the continuing effects that colonization, imperialism, and racism have on the women of the world.
- Socialist feminists maintain that it is wrong to suggest that any one form of oppression is the most important or key form of oppression. Instead, they recognize that oppression based on sex/gender, class, race, and sexual orientation are all interwoven. To effectively challenge any one of these forms of oppression, we must understand and challenge all of them.
- Socialist feminists emphasize the economic, social, and cultural importance of women as people who give birth, socialize children, care for the sick, and provide the emotional labor that creates the realm of the home as a retreat for men from the realities of the workplace and the public arena. Socialist feminists see this as important labor that is overlooked and denigrated. They are concerned with the reality of what Arlie Hochschild calls the "second shift."
- Socialist feminists emphasize that within the workplace women face challenges of job market segregation, lower wages for the same work, and sexual harassment. They also recognize that the labor movement has been complicit in maintaining this.

## 2.9.2. The Second wave (the 1960s)

### 2.9.2. Radical feminism:-

The term Second-Wave Feminism refers mostly to the Radical Feminism of the women's liberation movement of the late 1960s and lasting through the late 1970s. Second-wave feminism is a period of feminist activity and thought that first began in the early 1960s in the United States, and eventually spread throughout the Western world and beyond.

Whereas first-wave feminism focused mainly on suffrage and overturning legal obstacles to gender equality (*e.g.*, voting rights and property rights), second-wave feminism broadened the debate to a wide range of issues: sexuality, family, the workplace, reproductive rights, de facto inequalities, and official legal inequalities.<sup>152</sup> Second-wave feminism also drew attention to domestic violence and marital rape issues, establishment of rape crisis and battered women's shelters, and changes in custody and divorce law. Feminist-owned business such as bookstores, credit unions, and restaurants were among the key meeting spaces and economic engines of the movement.<sup>153</sup> The second wave of feminism in North America came as a delayed reaction against the renewed domesticity of women after World War II: the late 1940s post-war boom, which was an era characterized by an unprecedented economic growth, a baby boom, a move to family-oriented suburbs, and the ideal of companionate marriages. This life was clearly illustrated by the media of the time; for example television shows such as *Father Knows Best* and *Leave It to Beaver* idealized domesticity.<sup>154</sup>

Some important events laid the groundwork for the second wave. French writer *Simone de Beauvoir* had in the 1940s examined the notion of women being perceived as "other" in the patriarchal society. She went on to conclude in her 1949 treatise *The Second Sex* that male-centered ideology was being accepted as a norm and enforced by the ongoing development of myths, and that the fact that women are

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<sup>152</sup> "Women's movement (political and social movement)". Britannica Online Encyclopedia. Retrieved 20-07-2015.

<sup>153</sup> Davis, Joshua Clark (2017-08-08). From Head Shops to Whole Foods: The Rise and Fall of Activist Entrepreneurs. Columbia University Press. pp. 129–175.

<sup>154</sup> Murray Knuttila, *Introducing Sociology: A Critical Approach* (4th ed. 2008) Oxford University Press.

capable of getting pregnant, lactating, and menstruating is in no way a valid cause or explanation to place them as the "second sex".<sup>155</sup> This book was translated from French to English (with some of its text excised) and published in America in 1953.<sup>156</sup> In 1963 Betty Friedan, influenced by *The Second Sex*, wrote the bestselling book *The Feminine Mystique*. Discussing primarily white women, she explicitly objected to how women were depicted in the mainstream media, and how placing them at home limited their possibilities and wasted potential. She had helped conduct a very important survey using her old classmates from Smith College. This survey revealed that the women who played a role at home and the work force were more satisfied with their life compared to the women who stayed home. The women who stayed home showed feelings of agitation and sadness. She concluded that many of these unhappy women had emerged themselves in the idea that they should not have any ambitions outside their home.<sup>157</sup> Friedan described this as "The Problem That Has No Name".<sup>158</sup> The perfect nuclear family image depicted and strongly marketed at the time, she wrote, did not reflect happiness and was rather degrading for women.<sup>159</sup> This book is widely credited with having begun second-wave feminism.<sup>160</sup> Radical feminism is a perspective within feminism that calls for a radical reordering of society in which male supremacy is eliminated in all social and economic contexts.<sup>161</sup>

Radical feminists seek to abolish patriarchy by challenging existing social norms and institutions. This includes opposing the sexual objectification of women, raising public awareness about such issues as rape and violence against women, and challenging the very notion of gender roles. Shulamith Firestone wrote in *The Dialectic of Sex: The Case for Feminist Revolution* (1970): "The end goal of feminist revolution must be, unlike that of the first feminist movement, not just the elimination

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<sup>155</sup> Simone de Beauvoir, *The Second Sex*, Vintage Books London, 1949.

<sup>156</sup> Moi, Toril (2002). "While we wait: The English translation of *The Second Sex*". *Signs: Journal of Women in Culture and Society*. 27 (4): 1005–1035.

<sup>157</sup> Hunt, Michael (2014). *The World Transformed: 1945 to the Present*. New York: Oxford University Press. pp. 220, 221.

<sup>158</sup> Dubois and Dumenil. *Through Women's Eyes: An American History Since 1865*. (Bedford; St Martin's, New York)

<sup>159</sup> Epstein, Cynthia Fuchs (1988). *Deceptive Distinctions: Sex, Gender, and the Social Order*. New Haven: Yale University Press.

<sup>160</sup> Sweet, Corinne (February 7, 2006). "Betty Friedan". *The Independent*. London.

<sup>161</sup> Willis, Ellen (1984). "Radical Feminism and Feminist Radicalism". *Social Text*. 9/10: The 60's without Apology: 117.

of male *privilege* but of the sex *distinction* itself: genital differences between human beings would no longer matter culturally."<sup>162</sup>

Early radical feminism, arising within second-wave feminism in the 1960s,<sup>163</sup> typically viewed patriarchy as a "trans historical phenomenon"<sup>164</sup> prior to or deeper than other sources of oppression, "not only the oldest and most universal form of domination but the primary form" and the model for all others.<sup>165</sup> Later politics derived from radical feminism ranged from cultural feminism to more syncretic politics that placed issues of class, economics, etc. on a par with patriarchy as sources of oppression.

Radical feminists locate the root cause of women's oppression in patriarchal gender relations, as opposed to legal systems (as in liberal feminism) or class conflict (as in anarchist feminism, socialist feminism, and Marxist feminism). Gail Dines, an English radical feminist, spoke in 2011 about the appeal of radical feminism to young women: "After teaching women for 20-odd years, if I go in and I teach liberal feminism, I get looked [at] blank ... I go in and teach radical feminism, bang, the room explodes."<sup>166</sup>

Radical feminists assert that society is a patriarchy in which the class of men are the oppressors of the class of women.<sup>167</sup> They propose that the oppression of women is the most fundamental form of oppression, one that has existed since the inception of humanity.<sup>168</sup> As radical feminist Ti-Grace Atkinson wrote in her foundational piece "Radical Feminism" (1969):

*The first dichotomous division of this mass [mankind] is said to have been on the grounds of sex: male and female ... it was because half the human race bears the*

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<sup>162</sup> Firestone, Shulamith (1970). *The Dialectic of Sex: The Case for Feminist Revolution*. New York: William Morrow and Company.p.11.

<sup>163</sup> Willis, Ellen (1984). "Radical Feminism and Feminist Radicalism". *Social Text*. 9/10: The 60's without Apology:p.118.

<sup>164</sup> Willis, Ellen (1984). "Radical Feminism and Feminist Radicalism". *Social Text*. 9/10: The 60's without Apology:p.122.

<sup>165</sup> Willis, Ellen (1984)."Radical Feminism and Feminist Radicalism". *Social Text*. 9/10: The 60's without Apology:p.123.

<sup>166</sup> Willis, Ellen (1984). "Radical Feminism and Feminist Radicalism". *Social Text*. 9/10: The 60's without Apology:p.117.

<sup>167</sup> Echols, Alice (1989). *Daring To Be Bad: Radical Feminism in America 1967-1975*. Minneapolis: University of Minnesota Pressp.139.

<sup>168</sup> Shelley, Martha (2000) [1970]. "Lesbianism and the Women's Liberation Movement". In Crow, Barbara A. *Radical Feminism: A Documentary Reader*. New York: New York University Press.

*burden of the reproductive process and because man, the 'rational' animal, had the wit to take advantage of that, that the child bearers, or the 'beasts of burden,' were corralled into a political class: equivocating the biologically contingent burden into a political (or necessary) penalty, thereby modifying these individuals' definition from the human to the functional, or animal.*<sup>169</sup>

Radical feminists posit that, because of patriarchy, women have come to be viewed as the "other" to the male norm, and as such have been systematically oppressed and marginalized. They further assert that men as a class benefit from the oppression of women. Patriarchal theory is not generally defined as a belief that all men always benefit from the oppression of all women. Rather, it maintains that the primary element of patriarchy is a relationship of dominance, where one party is dominant and exploits the other for the benefit of the former. Radical feminists believe that men (as a class) use social systems and other methods of control to keep women (and non-dominant men) suppressed. Radical feminists seek to abolish patriarchy by challenging existing social norms and institutions, and believe that eliminating patriarchy will liberate everyone from an unjust society. *Ti-Grace Atkinson* maintained that the need for power fuels the male class to continue oppressing the female class, arguing, "The *need* men have for the role of oppressor is the source and foundation of all human oppression".<sup>170</sup>

The influence of radical-feminist politics on the women's liberation movement was considerable. Red stockings co-founder Ellen Willis wrote in 1984 that radical feminists "got sexual politics recognized as a public issue", created second-wave feminism's vocabulary, helped to legalize abortion, "were the first to demand total equality in the so-called private sphere" ("housework and child care ... emotional and sexual needs"), and "created the atmosphere of urgency" that almost led to the passage of the Equal Rights Amendment.<sup>171</sup> The influence of radical feminism can be seen in the adoption of these issues by the National Organization for Women (NOW),

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<sup>169</sup> Atkinson, *Ti-Grace* (2000) [1969]. "Radical Feminism". In Crow, Barbara A. *Radical Feminism: A Documentary Reader*. New York: New York University Press. P.85.

<sup>170</sup> Atkinson 2000, p.86.

<sup>171</sup> Willis, Ellen (1984). "Radical Feminism and Feminist Radicalism". *Social Text*. 9/10: *The 60's without Apology*: p.118.

a feminist group that had previously been focused almost entirely on economic issues.<sup>172</sup>

It was theoretically based on a combination of neo-Marxism and psychoanalysis, outlined by a feminist scholar such as Juliet Mitchell in *The Subjection of Women* (1970) and Shulamith Firestone in *the Dialectic of Sex: The Case for Feminist Revolution* (1970). They claimed that patriarchy is inherent to bourgeois society and that sexual difference is more fundamental than class and race difference. They even claimed that women – due to their primary social attachment to the family and reproduction – constitute a class and economy of their own, based on the unpaid work in the home, the productivity of motherhood their function as a workforce reserve. At the core of this new movement was a significant book *Sexual Politics* by Kate Millet (1969), in which she insisted on women's right to their own bodies and a sexuality of their 'own'-a sexuality that is disconnected from the obligations of marriage and motherhood. So, in the early phase, Radical Second Wave Feminism were characterized by a claim for sisterhood and solidarity, despite differences among women and a simultaneous investment in the slogans, "Women's struggle is class struggle" and "The Personal is Political," directing the feminist agenda to attempt to combine social, sexual and personal struggles and to see them as inextricable link.

Radical feminism represents an important juncture in the history of feminist thoughts. While, Liberal and Marxist/socialist feminism focused on the objective structures of society, law, politics and economics as the cause of women's oppression, Radical feminism shifted the focus to the production of meaning. They argued that women's oppression is rooted not in objective structures, but in how 'woman' is constructed in our society. The cause of women's subordination is not the political/economic/legal structures or even biology, but the meaning conferred on the identity 'woman' in all aspects of cultural life. Radical feminists turned the lens of feminism beyond politics and economics to the processes by which cultural life is structured and perpetuated.

Radical feminism represents another change as well: a shift in feminist thought from equality to the difference ( Susan Hekmen 2006: 94). Liberal and

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<sup>172</sup>Ibid, p. 138.

Marxist/socialist feminisms are about equality: bringing women up to the standard set by men. Critics of these approaches point out that this privileges man. It forces women to conform to the standard set by men; equality is defined in terms of women being equal to men. Radical feminism, in contrast, emphasizes the difference. Women are different from men, they claim, not in a negative but a positive sense. Radical feminists want to positively affirm women's difference and, most importantly, to remove women's subordination without erasing their difference. Carol Gilligan in her book *In a Different Voice* (1982) argued that males and females are often socialized differently, and females are more suitable than males to stress interpersonal relationships and take responsibility for the well-being of others. Gilligan suggested this difference is due to the child's relationship with the mother and that females are traditionally taught a moral perspective that focuses on community and caring about personal relationships. Gilligan's theory focused on both care-based morality and justice-based morality. She maintained that the ethic of care was more closely associated with the female gender, the ethic of justice with the male. In ethics of care humans pay attention to one another, take responsibility for one another, engage in physical processes of caregiving, and respond to those who have received care. Gilligan gives the example of a mother or an intimate friend. Justice, on the other hand, involves the application of formal rules that generally identify only a few key features of any situation as relevant so that a decision may be made with little delay.

Radical feminists believe that gender inequality is a result of the collective efforts of men to dominate, control, and exploit women. Violence against women, compulsory heterosexuality, and the organization of the traditional family are all viewed as ways to ensure male dominance through female subordination to and dependence upon men. Radical feminist not only demands equal rights but also asserted the superiority of women over men. They want women to be an intuitive, nutrient, supportive and sisterly whereas men are rational, competitive, aggressive and patronizing. Instead of a redistribution of rights and resources, they proposed a 'revolutionary political shake-up of society.' They considered sexist subordination of women as the fundamental form of oppression. The concept of Family was central means of oppression through 'sexual slavery and forced motherhood.' The distinguishing features of the radical feminism were:

- Their main objective was to have women's control of their own bodies especially the right to abortion.
- To protect against domestic violence.
- To pose an essential femaleness which women must seek to reclaim beyond the structure of the patriarchal family.

Radical feminists believe that women can free themselves only when they have done away with what they consider an inherently oppressive and dominating patriarchal system. Radical feminists feel that there are a male-based authority and power structure and that it is responsible for oppression and inequality, and that as long as the system and its values are in place, society will not be able to be reformed in any significant way. Some radical feminists see no alternatives other than the total uprooting and reconstruction of society in order to achieve their goals. This movement criticized "Capitalism" and "Imperialism" and focused on the notion and the interest of the 'oppressed' groups, the working classes, Blacks and in principle women and homosexuals. The revolution cut off from real influence and thus, once again, exposed to sexism. The key to this branch was a strong belief that woman could collectively empower another.

### **2.9.3. The Third wave (1990s)**

Black feminism argues that sexism, class oppression and racism are inextricably bound together. One of the theories that evolved out of this movement was Alice Walker's 'Womanism.' According to her, A 'Womanist' is a woman, who loves other women, sexually and/or non-sexually; who appreciates and prefers women's culture, women's emotional flexibility and women's strength. In addition, she supplements her definition saying, "*Womanist is to feminist as purple is to lavender.*"<sup>173</sup> It emerged after the early feminist movements that were led specifically by white women who advocated social changes such as woman's suffrage. These movements were largely white middle-class movements and had generally ignored oppression based on racism and classism. Alice Walker and other

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<sup>173</sup> Alice Walker in her book *In Search of Our Mother's Garden* (1983).

Womanists pointed out those black women experienced a different and more intense kind of oppression from that of white women.

Later on, a number of Black women expressed their views through their lectures and writings. In Boston, Maria Stewart, a free Black from Connecticut, gave a public lecture to a racially mixed audience of men and women; she was the first woman of the race to do so. In the 1850s, Mary Shadd Cary, the first Black woman newspaper editor in North America, published the *Provincial Freeman*, which was an abolitionist paper with the motto “Self-Reliance is the True Road to Independence.” Anna Julia Cooper, author of *A Voice from the South by a Black Woman of the South* (1988), wrote the first book-length feminist treatise on the condition of African Americans. A pivotal text of Black feminist thought, Cooper argues for women’s leadership in the Black community, as well as the need for Black women to work separately from white feminists because of racism experienced personally, political betrayals, and the strategic need for separatism (Springer 2002).

Angela Davis was one of the first people who articulated an argument centered on the intersection of race, gender, and class in her book, *Women, Race, and Class*. Kimberley Crenshaw, a prominent feminist law theorist, gave the idea the name Intersectionality while discussing identity politics in her essay, "Mapping the Margins: Intersectionality, Identity Politics and Violence against Women of Color".

The Black Feminist Movement developed in response to the Black Liberation Movement and the Women's Movement. In an effort to fulfill the needs of black women, they were cruelly abused in the women's movement and sexual harassment was done in the Black Liberation Movement, The Black Feminist Movement was formed.<sup>174</sup> The objective of the movement was to develop a theory that could address the race, gender, and class adequately in their lives and take action to prevent racist, sexist and class-racial discrimination. black women who participated in the t women's movement and the Black Liberation Movement often had sexual and racial discrimination<sup>175</sup>. The movement was unable to meet the

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<sup>174</sup> <http://www.mit.edu/~thistle/v9/9.01/6blackf.html>.

<sup>175</sup> Ibid

needs of black women and they inspired the formation of the Black Feminist Movement, which had been holding momentum for some time, marking its "birth" in 1973 with the new establishment of the National Black Feminist Organization. In the Black Liberation Movement (Civil Rights Movement, Black Nationalism, The Black Panthers, Student Nonviolent Coordination Committee and others), black women had to face the issue of continuous sexism.<sup>176</sup>

Black women who participated in the feminist movement during the 1960s often met with racism. They were not invited to participate on conference panels which were not specifically about black or Third World women. They were, not equally, proportionately represented on the faculty of Women's Studies Departments, nor were there classes devoted specifically to the study of black women's history. In most women's movements writings, the experiences of white, middle-class women were described as universal "women's experiences".<sup>177</sup>

In addition to this, well-known black women were often treated as tokens; their work was accepted as representing "the" black experience and was rarely ever criticized or challenged. Faced with the sexism of black men and the racism of white women, black women in their respective movements had two choices: they could remain in the movements and try to educate non-black or non-female comrades about their needs, or they could form a movement of their own. The first alternative, though noble in its intent, was not a viable option.<sup>178</sup>

Building a Black Feminist Movement was not an easy task. Despite the need for such a movement, there were few black women in the early 1970s that were willing to identify themselves as feminists. Among the most notable are Alice Walker's definition and the Combahee River Collective Statement. Alice Walker coined the term "Womanist" to describe the Black Feminist movement. According to Barbara Smith, reproductive rights, sterilization abuse, equal access to abortion, health care, child care, handicapped rights, violence against women, rape, beating, sexual harassment, welfare rights, gay and lesbian rights, aging, police Cruelty, labor organizing, anti-imperialist conflict, anti-racist organizing, nuclear disarmament, and protection of the environment were initial tasks of Black

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<sup>176</sup> Ibid

<sup>177</sup> Ibid

<sup>178</sup> Ibid

Movement. <sup>179</sup>To this end, several organizations were established during the late 1970s and early 1980s.<sup>180</sup> He has created a unique model for the cross-class organization in which the needs of the poor are not used on the basis of the needs of the middle class and rich people.<sup>181</sup>

## 2.10. Indian feminism

In India, under the colonial influence and as a part of the nineteenth-century reform movement, the feminist ideas began to spread. We can trace the roots of Indian feminism somewhere in third world feminism or Colonial feminism. There is general agreement that “feminist movement in the third world have almost grown out of the same historical soil and at a similar movement, as nationalism.(Heng 1997:31) But women’s role was only “contributive” to nationalist movements as Jayewardene (1999) writes that men were the movers of history: because they organized and set the parameters for nationalist movements. Women were rarely given the opportunity to act on their own initiatives, primarily doing what they were told, and never questioning the basic premise of this unequal relationship. Nationalism itself came to occupy the same place that religion had done before which was a permitted area for women’s participation (Chakravarti; 1999:78-79).

In her critique of the Gandhian movement, Madhu Kishwar points out that Gandhi saw an important role for women not in political decision- making but in those parts of the movement, which addressed themselves to the task of transforming people’s ideas and lives as, for instance, participants in demonstrations, *Satyagrahas*, and boycott movements. Moreover, even within the movement, women were encouraged to be more active in the ‘constructive’ program – Gandhi saw the world of politics and power as too ruthless and corrupt for women. They were to be the moral force in the movement for staying away from the struggle for power and by transforming people’s hearts through their quiet, no- violent struggle. Gandhi, of course, protected them from unfavorable comments and insinuations about their respectability. It is also noticeable that Indian women in those days were not so independent and free to initiate, participate, and determinant

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<sup>179</sup> <http://www.mit.edu/~thistle/v9/9.01/6blackf.html>

<sup>180</sup> Ibid

<sup>181</sup> Ibid.

to take their own decision and bringing them out from the sacred lines of the house was a vital task done by Gandhi.

Women activism in India meticulously demonstrated its domestic loyalties and refined “womanliness” as a survival strategy for their organization (Anagol1850; 1920: 62). The first feminist stirrings in India were expressed in literature and by teaching girls, forming clubs to assist less fortunate women, and supporting female suffrage and Indian freedom. Several other organizations were established during this period to work for a better social condition for women. The first women’s society was the Arya Mahila Samaj (Aryan Women’s Society) formed by Pandita Ramabai Saraswati in Maharashtra in 1883. Some early local groups were the Tamil Mathar Sangam (Tamil Women’s Organization) in Madras (1906) and Kanchipuram (1907); the Gujrat Stree Mandal in Ahmedabad (1908), Bangla Mahila Samaj (1909) and the Aghore Kamini Roy’s Nari Samiti (1910) in Bengal to help women workers on tea plantations. In 1910, Sarala Devi Chaudhurani (1872-1945), daughter of composer Swarn Kumari Devi, started the nationalist Bharat Stri Mahamandal (Indian Women’s great Circle) in north India. Local sectarian groups included Stri Zarthosti Mandal (Parsi Women’s Circle) in 1903 in Bombay; Anjuman-e-Khawatin-e-Islam (Muslim Women’s Conference) established in 1914 by the radical writer Rokiya Sakhawat Hossain (1880-1932); and the Ladies’ Auxiliary of the YMCA, latter known as the Young Women’s Christian Association (YWCA). Using the core membership of the Madras society and the institutional framework of the Theosophical Society (TS), the first secular national women’s group, the Women’s Indian Association (WIA), began in 1917. Two latter organizations were the broad –based nationalist All India Women’s Conference (AIWC; 1927) and the loyalist National Council of Women in India (NCWI; 1925) supported by the British.

John (2014) describes Indian Feminism, having *three main epistemai* of intelligibility in the history of ‘women’ and ‘feminism’. The first, *colonial* one begins with the early 19<sup>th</sup> century and comes to fullness in the first decade of the 20<sup>th</sup> century. The second *episteme* is the *national episteme*, lasted from 1940 to 1960. The third- which she says as *post-national*, has been gathering force since the 1990s to till date. The first campaign, public debates, and their status initiated by

men. Ram Mohan Roy and Vidya Sagar, though have made important contributions towards the emancipation of women in our country, unfortunately, their efforts largely remained confined to particular echelons of society and failed to touch the grassroots. During the pre-independence period, feminist questions revolve around some major issues like the spread of education, prohibition of child marriage, the abolition of the sati system, widow remarriage, etc. However, analysis of women's question in colonial India was very much limited in its scope and approach as it was concerned with the upper caste Hindu society only. This has compelled scholars like Anupama Rao to identify feminism in the colonial period as '*Brahminical feminism*' (Rao: 2003). It is for this, Rao argued that the "*beginning with the debates about the abolition of sati in 1829, there formers' attention to practices such as widow remarriage and the age of consent focused solely on upper- caste women and their life.*"

Mahatma Phule was perhaps the first one to relate the caste question with women's issues along with the problems of the widows who are the most marginal of the women within the upper caste society. In 1848 he opened a school for the untouchable girls and a home for the upper- caste widows punished for illicit sexual relations. Being childless Phule was under extreme pressure to have a second wife. But instead of doing that he and his wife Savitribai took a revolutionary stand in those days by adopting a baby born to a Brahmin widow. He believed that "the upper caste men faced the impossible burden of maintaining caste purity in their personal life. Thus 'softer' forms of gendered domination that upper caste women faced were no less oppressive than the expropriation of manual and sexual labour experienced by the lower caste women". (Rao: 2003) The limited nature of gender issues in the colonial period has been analyzed in detail by eminent social scientist Partha Chatterjee, who considers that the gender offered a means for working through the contradictions of colonial modernity. To him, the new patriarchy which nationalist discourse set up as a hegemonic construct was culturally different from the western concept as well as from the mass of its own people. It has received acceptance among the new middle class but is irrelevant to the large mass of subordinate classes. (Chatterjee1999:250-251). Regarded as the foremother of Indian Feminism, Pandita Ramabai Saraswati challenged both Hindu and British colonial patriarchs in her efforts to educate widows and girls. Tarabai Shinde, an

activist of Phule's Satyasodhak Samaj wrote a revolutionary article in 1882 named *Stri- Purus Tulana*. It was written by an upper- caste widow Vijaya Lakshmi has been convicted of infanticide. It can be considered as "one of the first feminist critiques of caste" Shinde refused to consider home and family as some sacrosanct domains and she positively demanded state intervention to make it easier for women to live and marry independently, and to punish men who corrupted the innocent. This was a similar point between Indian feminism and Western feminism.

In the nineteenth century developed another concept of womanhood that shaped the key political relations of the period. It was a period of developing a national identity. Some of the other Indian feminists of this age were Rokiya Sakhawat Hossain (Anjuman-e-Khawatin-e-Islam), sister Subbalakshami, Rassundari Devi, and Swarn Kumari Devi etc. The nationalist and feminist movements intersected closely during the twentieth century, after the emergence of substantial numbers of educated women. It is found that since the late nineteenth century the issue of female emancipation somehow disappeared from the public agenda. To a great extent, this was because of a trend of objectifying femininity for nationalist and revivalist purposes. Bankim Chandra's image of the sacred motherland was developed largely following this line of thinking. In other words, feminist issues became subservient to nationalist agenda. Partha Chatterjee in his article *The Nation and its Woman* (1994) have explained the reasons for this departure. The reason why the issue of 'female emancipation' seems to disappear from the public agenda of nationalist agitation in the late nineteenth century is not because it was overtaken by the more emotive issues concerning political power. Rather, the reason lies in the refusal of nationalism to make the women's question an issue of political negotiation with the colonial state (Chatterjee 1994: 117-133).

After Independence to which John narrates as *the Nationalist Episteme*, a kind of apathy and quietness prevailed for nearly three decades on feminist issues. Feminist's movements were less active immediately after Independence in 1947, with nationalist agendas on nation-building taking precedence over feminist concerns (Ganguly 2007:17). Though the constitution prohibited any kind of discrimination on grounds of sex, no serious attempt was made to promote feminist causes. There was a belief during the Nehruvian period of political compromise that

egalitarianism, democracy, secularism and socialistic pattern of modernization will eliminate all social evils including caste, religious fundamentalism and discrimination against women. While women's Organisation and so-called 'woman question' has been a part of anti-colonial nationalist movements in the late nineteenth and early twentieth century (Sarkar 1994: 69-72), it was only in the 1970s that feminist groups that worked essentially for women's interest were formed. Since the seventies of the last century began to spread of feminist ideas with a revival of women's questions and problems at its core only. The women's movement was being revived after a lull in the 1950s and 1980s (Priyam et al 2009:165). Several factors contributed to the growth of feminism during this period. Expansion of educational and employment opportunities for women, disillusionment with existing political structures owing to the perceived excesses of the Emergency, and a feeling of disillusionment with mainstream left-wing parties, which seem to accord a low priority to what were called 'women issues' attributed the revival of feminist agitation in the country (Ganguly ibid. p15). The educational reforms of the Late 19<sup>th</sup> and 20<sup>th</sup> centuries widened the horizons of women and produced a 'new woman' with interest beyond the private realm (Forbes 1996: 64). Thus, feminist activism in India in 20<sup>th</sup> century could bring into public discourse some of the crucial issues like women's suffrage, Hindu women's Rights to property, Child Marriage Restraint Act the Muslim Personal Law Bill, and politicize them during the colonial government and independent too. Several others 'people's movements' coincide along with these developments. The period between 1970's and mid 1980's can be considered the first wave of feminist activism in Independent India because despite divergence in ideologies and beliefs, this period was characterized by consensus among the women's organization to focus on women's rights and deal with patriarchy in the social and political institutions that undermined gender equality. After 1980's, the indifference of the state to issues of gender justice was evident when it succumbed to political compulsions and vote banks rather than sustaining policies which enhanced the status of women had created disenchantment among women groups to legal intervention<sup>vii</sup>.

So, Indian feminism continued to evolve after Independence mostly in the period of 1970s by addressing problems like dowry, rape, inflation, environmental

decay, tribal displacement, and globalization by which they were directly or indirectly affected. According to Neera Desai and Maithreyi Krishnaraj, “women have been looked upon either as victims of social practices or targets for development as in the post- independent period, but never as participants in development”. Contrarily, “women’s position was worsening in practically every sphere with the exception of some gains in education and employment for middle-class women” and at the same time, “the declining value of women was surfacing in almost every aspect of life”. (Desai & Krishnaraj 1987:6). Women became a big and important part of landmark campaigns like the Shahada, Dhulia, Self-Employed Women Association (SEWA) and Nav Nirman among many others. The anti-price rise agitation in the 1970s in the states like Gujarat and Maharashtra was noteworthy for the number of women participation. A United Women’s Anti-Price Rise Front was formed to mobilize women against inflation. The political ideology and the language of the movement were largely leftist than liberal. This ushered in a new atmosphere of cultural radicalism. (Omvat, Gail; 1999:243) One of the first steps of this movement was the attempt to break the silence and to expose different categories of humiliation, atrocities, tortures and individual as well as a collective assault which women have to face in their daily existence. Gradually the movement started critiquing family, government and the larger society along with their protest against the growing power of state machinery. Gendered violence, including rape, dowry, murder, and other forms of domestic and public violence are also included in the feminist agenda. Also, they focused on the issues of police and state initiated violence against women. It naturally developed a sense of discontent among a sensible section of the society who felt the need to review the situation. They demanded new knowledge from the perspective of women whom the state had failed. In this context in 1971, the Committee on the status of women in India (CSWI) was set up to review the status of women. This committee was set up as per UN recommendation and it placed its report in the parliament in 1973 and that was published in 1974 with the title *Towards Equality*. The report revealed that women of every category and social group face inequality in their respective positions. This starting report of sex inequality can be considered as the watershed of feminist ideas and movements in the country in modern times.

Since 1975 both in academics and in administration a serious change crept in. From this time women's study, to some extent, provides the theoretical basis for the women's movement and sociopolitical context of 'gender politics'. According to Kumud Sharma, noted feminist theoretician, "Women are attempting to remove themselves from the footnotes and appendices of academic discourse to the main text.....The emergence and growth of women's studies in India reflects women's conscious engagement in the politics of knowledge". The new women's groups that were coming together at this time were engaged in a re-examination of one of the fundamental assumptions of the Indian society- the sexual division of labour and the subordination of labour. Hence, they declared themselves to be feminists, although many of these women belonged to the traditional left groups. Left parties have, by and large, been skeptical of feminist ideology and politics seeing it as decisive and more seriously as bourgeois (Priyam et al 2009). Perhaps it is because of this that these women groups decided to be autonomous and not affiliated to any big political party. Very soon these groups formed all over the country began to come together, share their ideas and strategies, and form networks. It is thus, the current phase of the women's movement began in India. But there was no complete uniformity in the views, politics or strategies in these diverse groups.

Evolution of feminism in this period was characterized by a major ideological dilemma regarding the issue of autonomy. Kumar (1998) explained that dilemma faced by these groups were the question of organization and representation. To quote Bandana Chatterjee, "it evolved both structural autonomies from other political organizations and ideological autonomy in relation to other issues in Indian socio- political system." Structural autonomy refers to the interrelationship between political parties on the one hand and women's movement and organizations on the other, while the question of ideological autonomy is much more a complicated issue. As feminism in the real sense of the term does not imply substitution of male exclusiveness with female exclusiveness feminism in India has adopted a dual approach. On the one hand, it focuses on gender issues including women's writings with emphasis on health, mortality, nutrition, equality, security and obviously empowerment. In this regard, a number of women's groups and NGOs started surfacing. Feminist organizations gained an access to the language of radical feminism, in particular. Parallel to this several socio- economic and

ecological issues also affects the functioning of feminist groups. Thus, feminist participate in different movements of the backward castes and peasants, in the tribal and ethnic movements. Side by side in several ecological movements also women's groups and participants play key roles. In other words, it is precise since this period women's issues in India started to get conglomerated with different broader social movements. During the seventies and eighties, enormous activism was noted on the part of the feminist groups. As a result, almost all political parties came up with separate women's wings.

At the same time, the issue of violence of different forms entered into the feminist movement and thought the process and became a major concern since the 1980s. Shetkari movement in Maharashtra of Sharad Joshi by perceiving violence as a primary factor in the historical development and relating it to the women's issues contributed to this trend. It viewed women's and men's liberation in the awakening of women's power. In November 1986 it organized one of the largest gatherings of peasant women. From the very beginning, Shetkari Sangathan in the implementation of its political ideal of decentralization and balanced village-centric development has taken programmatic expression with the women's organization, i.e. Shetkari Mohila Agadhi. The women's wing of the organization by 1989 took strong steps against village liquor shops also, along with its focus on property rights for women and communalism. Shetkari Sangathan also organized campaigns on other issues related to women like pure drinking water, safe motherhood, uniform civil code, justice for women victim of rape, women's entry to panchayat raj institution, 100% women panels for Zilla Parishad in Maharashtra, etc. In the words of Gail Omvedt, "in orienting women's struggles on the issue of political power and in arguing not merely for participation but even the leadership of women in general revolutionary movement, Sharad Joshi has - more than the radical feminist or traditional Marxist trends- articulated the needs and force of the awakening rural women". (Omvedt 1990:27) Sharad Joshi, like today's feminists, points out the importance and "need for autonomy of a women's organization and stresses that it should include all women". (ibid p.26)

The feminist issues gained wide political currency along with different ethnic, caste, class and other interest groups quest for state attention. The state also

in many cases tried to reconcile with the demands by framing new rules and regulations. Under pressure from the massive success of the anti-dowry campaign, the government in 1980 passed a law against dowry-related crimes, but like all legislations, this one also has its limitations and loopholes. According to Flavia Agnes, “If oppression could be tackled by passing laws, then the decade of the 1980s would be adjudged a golden period for Indian women when protective laws were offered on a platter. Almost every single campaign against violence on women resulted in new legislation. The successive enactment would seem to provide a positive picture of achievement”. (Agnes 2002:521) However, in reality, it seems that law too is blind to the actual needs of the women and whenever it exists the loopholes override the cause. The Muslim Women (Protection of Rights on Divorce) Act passed in 1986, denying the Muslim women’s right to maintenance after divorce, was a major compromise on the part of the state on women’s issues during this period. Similarly, the Christian women’s demand for a reform of their antiquated, discriminatory and sexist personal laws was not conceded. In 1987 occurred the public murder of eighteen years Roop Kanwar in Deorala, Rajasthan. The government responded to it with the formulation of Sati Prevention Act, 1988. However, after that also events of Sati are reported and not much serious step has been taken by the government and administration to stop the cult of Sati worship. Madhu Kishwar and Ruth Vanita believed that it was not lack of law but the lack of will that resulted in its failure to intervene in women’s questions. (Kishwar & Ruth 1987:15) While to Flavia Agnes, “the issue of a secular non-sexist civil code has been consistently pushed under the carpet and even when it does come up, in the present political context; it may well be more anti-minority than pro-women.”(Agnes 2002:565).

Another mass agitation of women could be seen in the late 1970s and early 1980s in the hilly region of Garhwal in Uttar Pradesh (now a part of Uttrakhand) known as Chipko Movement. It became a major environmental and social movement in the northern India, which is cited as primary examples of successful grassroots activism. Women of the region denied to cut the trees and stuck with them. Women activist Guara Devi with thousands of women stressed that women’s interests were directly affected by cutting down the trees as they were the means of livelihood for them. According to Maria Mies and Vandana Shiva, eco-feminism is

about connectedness and wholeness of theory and practice. It asserts the special strength and integrity of every living thing. To them, “it is a woman- identified movement and we believe we have a special work to do in these imperil times. It believes that the devastation of earth and her beings by the corporate warriors, and the threat of nuclear annihilation by the military warriors, as feminist concerns. It is the masculinist mentality depending upon the multiple systems of dominance and state power which deny women’s right to their own bodies and own sexuality.” (Mies & Shiva 1993: Introduction) Thus, eco-feminism is essentially based on the women-nature connection.

In the meantime Indian feminism was challenged by feminist from minority communities and Dalit feminists as they suggest that mainstream feminism is ‘upper-caste, Hindu in its orientation; hence the issue of marginalised women are not addressed and led to the formation of the organisations like Awaj-e-Niswaan, All Dalit Women’s Forum, National Federation of Dalit Women and Dalit Solidarity and various others at regional level.

Since the decade of the 1990s, the growth of a kind of militant feminism based on religious fundamentalist line has caused a lot of tension for the women of the country in general and feminist issues in particular. The Hindutvavadi militant feminists draw their inspiration from the nationalist icon of Bharatmata, based on the concepts of virangana and Lakshmi with its modern form of application. The Rastrasevika Samiti of RSS, Durga Vahini of Vishwa Hindu Parishad and Mohila Aghadi of Shiv Sena played the leading role towards the growth of Hindutvavadi militant woman and towards the degeneration of feminist ideals and the concept of women’s emancipation. Since the days of Bombay and Surat riots of 1992-93 to the Gujarat carnage of 2002, this trend has shown a tremendous level of development. There has been a marked visibility of groups of women who have successfully risen to the defense of their men folk found guilty of murder, rioting, possessing illegal arms and even raping the women of the different community.

Besides the major trends of feminism, several other forms of feminism and feminist movement which have shown its manifestation in different comers of the country. Sometimes feminism takes the route of true emancipation for the women from the clutches of patriarchy and state control. On the other hand, occasionally, it

deals with some other special, political, economic or cultural issues. Again, sometimes, in the name of preserving the heritage and culture of the country by discarding western influence develops some kind of inverted feminism based on orthodox rightist philosophy. To mention a few other feminist movements with positive orientation we can refer to the movement of the women in different parts of the country against growing alcoholism and drugs by their male folk, or movement against child marriage (Sathin movement of Rajasthan) or the movement by the women against eviction as a part of Narmada Bachao (in Madhya Pradesh and Maharashtra) and other Andolans like restoration of the compensation of the Bhopal gas victims, several anti- price rise movement, movement for water, particularly for drinking water and against privatization of water, etc., or the movement by the women of the north- eastern parts of the country against militarization, excesses of state machineries and drug use.

## **2.11. Important efforts at international level to curve gender violence especially sexual valence against women are as follows-**

### **2.11.1. United Nations Conference decade for women (1975-1985)<sup>182</sup>**

The First World Conference on women, held in Mexico City, recommended a U.N. Decade for women (1976-1985). The Decade sought to address the needs of women in what were then known as the first, second, and third worlds with a tripartite theme of recommendations for action as local, national and international levels. The decade's main theme was equality, development and peace. It had various sub-themes as well they being education, health and employment.

### **2.11.2. Second and Third World Conference<sup>183</sup>**

Midway through the decade for women in 1980, the second world conference of the U. N. decade for women was held in Copenhagen This conference adopted a program of action for the second half of UN decade for women. "The Third world conference was also half to review and appraise the achievements of the United Nations decade for women, in Nairobi, Kenya from 15<sup>th</sup> to 27<sup>th</sup> July 1985. Assessed

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<sup>182</sup> <https://www.unwomen.org/en/how-we-work/intergovernmental-support/world-conferences-on-women>

<sup>183</sup> Ibid

steps taken during the decade to during the remaining 15 year of the century. Convened 10 years after international women's year (1975), the Nairobi meeting was the third international conference on improve the situation o women and devised strategies for their further advancement the status of women sponsored by the United Nations. The First world conference of the International women's year met in Mexico in 1975.

A second was held at mid-decade in 1980, in Copenhagen<sup>184</sup>. The decade's themes equality, development and peace and sub-themes education, health and employment were reiterated throughout the work of the conference and provided the outlive for its main document, the "Forward-looking strategies of obstacles to the achievement of the goals and objectives of the decade," covering the period from 1986 to 2000

**Nairobi Forward Looking strategies for the Advancement of women (NFLS), Adopted in the third world conference. The NFLS<sup>185</sup> call for:**

### **1. Sexual Equality**

- The elimination of all forms of discrimination against women equal rights under the law
- Equal rights to marriage and divorce
- The establishment, in every country, of a high-level progress towards equality.

### **2. Women's Autonomy and Power**

- The right of all women-irrespective of marital status – to buy, sells, own and administer property and other resources independently
- The protection of women's rights to land, credit, training, investment and income as an integral part of all agrarian reform and agricultural development

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<sup>184</sup> UN chronicle, "united nation decade for women 1975-1985- reality only a beginning" July august 1985.

<sup>185</sup> <http://www.un.org/womenwatch/confes/nfls//nairobi1985> report. Txt. Nairobi forward looking strategies visited on 11 oct,2016

- The equal involvement of women, at every stage and level of development
- The promotion of women to positions of power at every level within all political and legislative bodies in order to achieve parity with men
- Measure to promote equal distribution of productive resources and reduce mass poverty among women, particularly in terms of economic recession

### **3. Recognition of women's unpaid work**

Recognition of the extent and value of women's unpaid work, inside and outside the home

- Inclusion of women's paid and unpaid work in national accounts and economic statistics
- The sharing of domestic responsibilities
- The development of service, to reduce women's childcare and domestic workload, including, introduction of incentives to encourage employers to provide childcare facilities for working parents
- The establishment of flexible working hours to encourage the sharing of childcare and domestic work between parents.

### **4. Advances in women's paid work**

- Equal employment opportunities
- Equal pay for work of equal value

The NFLS to the year 2000 was a blueprint for improving the condition of women through the end of the century. It broke new ground as it declared all issues to be women's issues.

Women's participation in decision making and the handling of all human affairs was recognized not only as their legitimate but as a social and political necessity that would have to be incorporated in all institution of society. The NFLS established the following categories<sup>186</sup> as measures for achieving equality at national levels.

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<sup>186</sup> Supra note 27

- Constitutional and legal steps
- Equality in social participation
- Equality in political participation and decision making

It was now recognized that women's equality, far from being an isolated issue, encompassed every sphere of human activity. Therefore, a women's perspective, including active involvement all issues, not only women's issues, was essential if the goals objectives of the decade for women were to be attaining.

### **2.11.3. United Nations Fourth World Conference on Women, Beijing, China 1995<sup>187</sup> Action for Equality Development and Peace-**

A fundamental transformation took place in the Beijing fourth world conference on women. This was the recognition, from the Vienna conference on human rights, that women's rights are human rights. There must be a shift of focus from "Women" to the concept of "gender", recognizing that the entire structure of society, and all relations between men and women within it, had to be re-evaluated.

The Beijing platform for action specified twelve critical areas<sup>188</sup> of concern, whose solutions are considered being necessary to women's advancement -

1. Women are poverty;
2. Education and training of women;
3. Women and health
4. Violence against women
5. Women and armed conflict;
6. Women in power and decision making
7. Institutional mechanisms for the advancement of women;
8. Human rights of women
9. Women and the media
10. Women are the environment;
11. The girl child

<sup>187</sup> <https://www.un.org/womenwatch/daw/beijing/platform/>

<sup>188</sup> [Http://www.ngocsw.org/en/how-we-work/world](http://www.ngocsw.org/en/how-we-work/world) Conference, The NGO Committee On Status Of Women, NY, Visited On 18 Oct 2016.

Beijing conference defined violence<sup>189</sup> against women in following terms -

“The term violence against women “mean any act of gender based violence that result in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

According, violence against women encompasses but is not limited to the following:

- a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.
- b) Physical, sexual psychological violence perpetrated or condoned by the state, wherever it occurs.”

Other acts of violence against women include violation of the human rights of women in situations of armed conflict, in particular murder Systematic rape, sexual slavery and forced pregnancy.

Acts violence against women also includes forced sterilization and forced abortion, coercive/forced use of contraceptives, female infanticide and prenatal sex selection.”

A very wide definition of violence is provided by the fourth world conference. Platform for action also lies down a very to pervert and eliminate violence against women. The list includes inter-alia the following actions<sup>190</sup> to be taken:

**By Government:**

- a. Condemn violence against women and refrain from invoking any custom, tradition or religious consideration to avoid their obligations with respect to its elimination as set out in the declaration on the elimination of violence against women;

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<sup>189</sup> <http://www.un.org/womenwatch/daw/beijing/platform/violence.htm>, united nations fourth world conference-violence against women, visited on 18 Oct, 2016.

<sup>190</sup> Ibid.

- b. Adopt and for implement and periodically review and analyses legislation to insure its effectiveness in elimination violence against women, emphasizing the prevention of violence and the prosecution of offenders; take measure to unsure the protection of women subjected to violence, access to just and effective remedies, including compensation and indemnification and healing of victims, and rehabilitation of perpetrations;
- c. Promote an action and visible policy of mainstreaming a gender respective in all policies and programs related to violence against women; actively encourage, support and implement measures and program aimed at increasing the knowledge and understanding of the causes, consequences mechanisms of violence against women and those responsible for implementing these policies, such as law enforcement officers, police personnel and judicial, medical, migration and refugee issues, and develop strategies to ensure that the revictimization of women victims of violence does not occur because of gender-insensitive law or judicial or enforcement practices;
- d. Provide women who are subjected to violence with occurs to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm they have suffered and inform women of their rights in seeking redress through such mechanisms;
- e. Formulate and implement, at all appropriate levels, plans of action of eliminate violence against women;
- f. Create or strengthen institutional mechanisms so that women and girls can report acts of violence against them in a safe and confidential environment, free from the fear of penalties or retaliation, and file charges;
- g. Ensure that women with disabilities have occurs to information and services in the field of violence against women;
- h. Adopt laws, where necessary, and reinforce existing laws that punish police, security forces or any other agents of the state who engage in acts of violence against women in the course of the performance of their duties; review

existing legislation and take effective measure against the perpetrators of such violence;

- i. Include in reports submitted in accordance with the provision of relevant United Nations human rights instruments, information pertaining to violence against women and measure taken to implement the declaration on the elimination of violence against women;

#### **2.11.4. After Beijing<sup>191</sup>**

Unfortunately, as early as the “Beijing+5<sup>192</sup>” review process held in New York in 2000 at the 23<sup>rd</sup> special session of the general assembly, it was apparent that governments were lagging behind in the implementation of the Beijing platform for action. The “Beijing +10” review process held in New York in March 2005, down the work of the 49<sup>th</sup> session of the commission on the status of women, made clear that there was not only a lack of implementation but also a lack of political will to change this status quo. It can be seen that there have been a lot of efforts at international level to curb gender violence. However international efforts do not guarantee any action on National level. When a state has ratified an international convention the action on national level. When a state has ratified an international convention the courts have a right to use the convention as an aid in interpreting national law to conform to the provisions of the convention. This is what supreme court of India did in the landmark case of *Vishakha and others v. state of Rajasthan and others*<sup>193</sup> (1997) 6 SCC 241, where by it relied on the convention on elimination of all forms of discrimination against women to<sup>194</sup> lay down law relating to sexual harassment.

The identity of any civil society depends on the fact that people, whether men or women are living with how many equality, independence, and harmony there. But if the civil society does not have these three qualities, then this society does not grow towards its elevation. Sexual violence also exposes the lack of equality, freedom, and harmony between women and men in society. Today, whether there is a public sector or a private sector, women are being tortured in every area of society. Nowadays,

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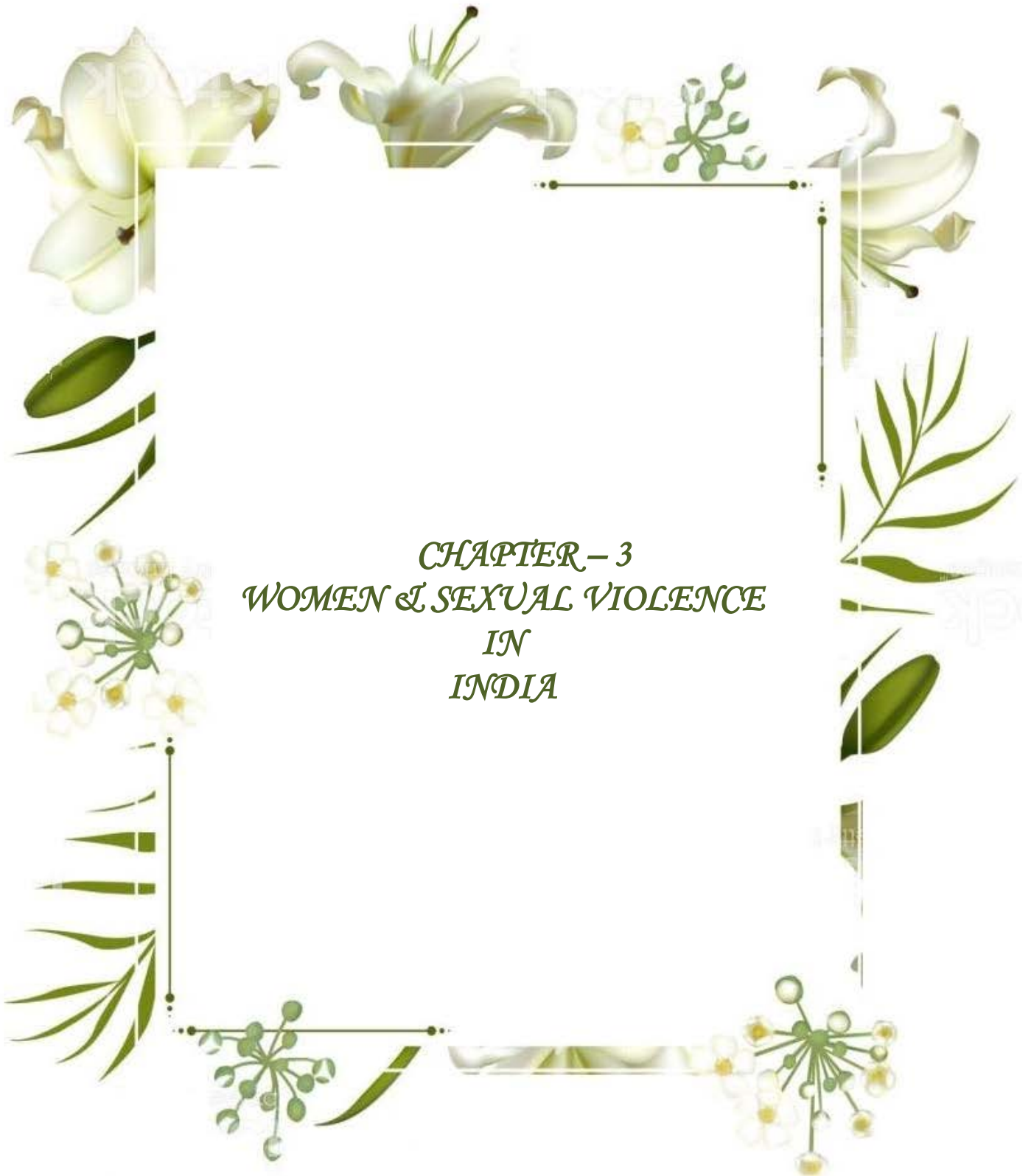
<sup>191</sup> <https://www.jstor.org/stable/29766943>

<sup>192</sup> <https://www.un.org/womenwatch/daw/followup/beijing+5.htm>

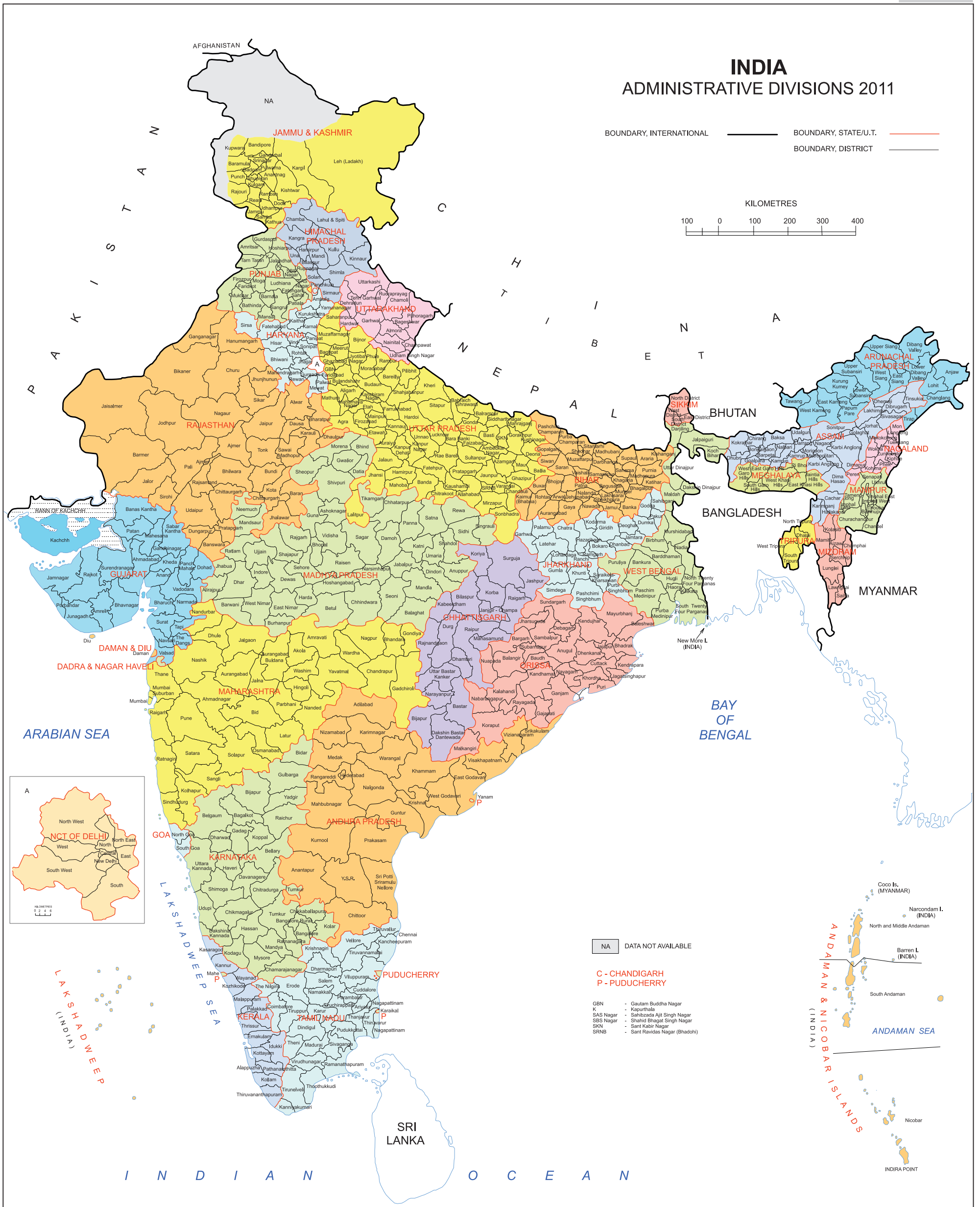
<sup>193</sup> (1997) 6 SCC 241)

<sup>194</sup> [https://www.un.org/womenwatch/daw/cedaw/cdrom\\_cedaw/EN/files/cedaw25years/content/english/CONCLUDING\\_COMMENTS\\_ENGLISH/Azerbaijan/Azerbaijan%20-%20CO-1.pdf](https://www.un.org/womenwatch/daw/cedaw/cdrom_cedaw/EN/files/cedaw25years/content/english/CONCLUDING_COMMENTS_ENGLISH/Azerbaijan/Azerbaijan%20-%20CO-1.pdf).

gender disparities are very much prevalent in society. Men and women are discriminated in many areas. Women are considered to be physically weak. They are kept near nature but men are considered to be physically powerful and the masters of the public sector. To uncover and remove these inequalities, theories like feminism have got the place. Defining sex, gender, and patriarchy, etc. feminism highlight the causes of sexual violence.



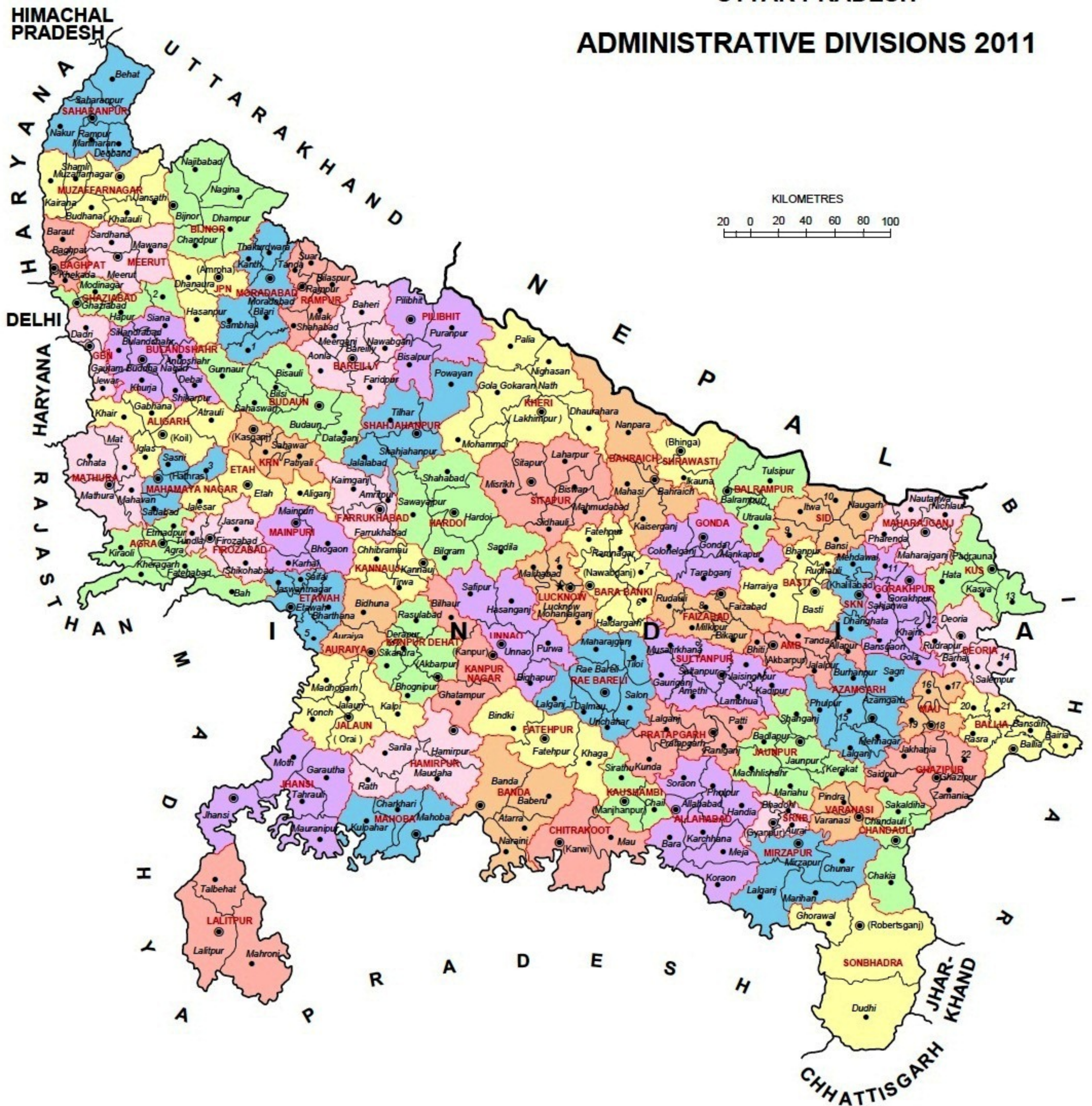
*CHAPTER – 3*  
*WOMEN & SEXUAL VIOLENCE*  
*IN*  
*INDIA*



Administrative Divisions	<b>INDIA</b>	Jammu & Kashmir	Himachal Pradesh	Punjab	Chandigarh	Uttarakhand	Haryana	Delhi	Rajasthan	Uttar Pradesh	Bihar	Sikkim	Arunachal Pradesh	Nagaland	Manipur	Mizoram	Tripura	Meghalaya
No. of Districts	<b>640</b>	22	12	20	1	13	21	9	33	71	38	4	16	11	9	8	4	7
Administrative Divisions	Assam	West Bengal	Jharkhand	Orissa	Chhattisgarh	Madhya Pradesh	Gujarat	Daman & Diu	Dadra & Nagar Haveli	Maharashtra	Andhra Pradesh	Karnataka	Goa	Lakshadweep	Kerala	Tamil Nadu	Puducherry	Andaman & Nicobar Islands
No. of Districts	27	19	24	30	18	50	26	2	1	35	23	30	2	1	14	32	4	3

# UTTAR PRADESH

## ADMINISTRATIVE DIVISIONS 2011



**BOUNDARIES:**

- INTERNATIONAL.....
- STATE.....
- DISTRICT.....
- TAHSIL.....

**HEADQUARTERS:**

- STATE.....★
- DISTRICT.....●
- TAHSIL.....•

- JPN - JYOTIBA PHULE NAGAR
- GBN - GAUTAM BUDDHA NAGAR
- KRN - KANSHIRAM NAGAR
- AMB - AMBEDKAR NAGAR
- SID - SIDDHARTH NAGAR
- SKN - SANT KABIR NAGAR
- KUS - KUSHINAGAR
- SRNB - SANT RAVIDAS NAGAR (BHADOHI)

- 1 - Chandausi
- 2 - Garhmukteshwar
- 3 - Sikandra Rao
- 4 - Bakshi Ka Talab
- 5 - Chakamagar
- 6 - Ramsanehighat
- 7 - Sirauli Gauspur
- 8 - Sohawal
- 9 - Domariyaganj
- 10 - Shohratgarh
- 11 - Campierganj
- 12 - Chauri Chaura
- 13 - Tamkuhi Raj
- 14 - Bhatpar Rani
- 15 - Nizamabad
- 16 - Ghosi
- 17 - Madhuban
- 18 - (Maunath Bhanjan)
- 19 - Muhammadabad Gohna
- 20 - Belithara Road
- 21 - Sikanderpur
- 22 - Mohammadabad

Where the district name differs from its headquarters name, the latter is given within brackets.

## CHAPTER 3

### WOMEN & SEXUAL VIOLENCE IN INDIA

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India, a nation which had Mahatma Gandhi as its role model of rectitude became so unbelievably violent and corrupt that the women can no longer be safe within their bodies. Gandhi who defeated the whites to save the browns by relying on non-violence is considered as the father of the nation, but his values are being betrayed so easily that a woman is raped every twenty minutes<sup>1</sup> in the world's largest democracy and even children of five years are subjected to rape<sup>2</sup>. Economists predict that the future belongs to India as the country is obsessed with inclusive growth and the men with status and power, but the women who give birth to these men live in fear of discrimination and sexual violence. Who will protect the nation's women? Women play a major role in the socioeconomic growth of society; a nation can't prosper until women are safe. Although women's rights are secured under the Indian constitution, their vulnerability hasn't decreased over time. In fact, incidences of violent crime against women that fall under the Indian penal code have increased by 46% over the past decade. In 2014, the latest year for which data are available, every day an average of 101 women were raped, 157 women were kidnapped and 23 killed over dowry. Moreover, crime against women in India goes underreported, especially in rape cases, due to social stigma attached to it. Uttar Pradesh is known for their extremely underreported crime rate (Gupta, 2014). Moreover, many women do not complain against crime because of family honor. Most of the time, offenders are family members or friends. Often, police do not give a fair hearing, particularly to women in weaker sections of society; even if cases get registered, justice is delayed or denied due to lack of evidence, particularly in rape and kidnapping cases. Obstruction of justice increases more if offenders are socially, economically, and politically powerful.

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<sup>1</sup> Forbes, Feb 01, 2013: <<http://www.forbes.com/sites/worldviews/2013/01/02/rape-every-20-minutes-for-the-worlds-largest-democracy/>>

<sup>2</sup> CBC News, Apr 30, 2013: < <http://www.cbc.ca/news/world/story/2013/04/30/india-rape-victim-dies.html>>

The analysis shows (Table No. 3.1) that, from 1991 to 2014, the total for heinous crimes against women in India grew 5.9% per year. During the same period, kidnapping and abduction grew 6.9% per year, rape cases increased 5.9% per year, and dowry deaths increased 2.2% per year. Accordingly, the incidence of heinous crimes per 100,000 women in the country increased from 6.7 in 1991 to 17.1 in 2014. The heinous crime rate varies across states and union territories; in 2014, it varied from 2.5 in Pondicherry and Lakshadweep to 69.6 in Delhi. In 2014, there were 15 out of 35 states and union territories that faced a higher heinous crime rate than the all-India average. Change in the rate also varies across states and union territories; from 1991 to 2014, 15 out of 35 states and union territories recorded a higher increase in the crime rate than that in the country (4.2% per year). Nagaland (11%), Odisha (8.8%), Punjab (8.0%), Bihar (6.9%), and Kerala (6.5%) are some of the states that faced a rapid increase in their annual crime rate from 1991 to 2014. However, four union territories of the country experienced a decrease in their crime rate. In general, cities in India faced a higher crime rate than that in the rural areas. In 2013, Delhi (61.5), Patna (48.0), Jaipur (40.7), Indore (37.0), Lucknow (26.3), Varanasi (24.8), and Bhopal (24.2) are some of the cities that faced a 50% higher crime rate than the all-India average (15.8).

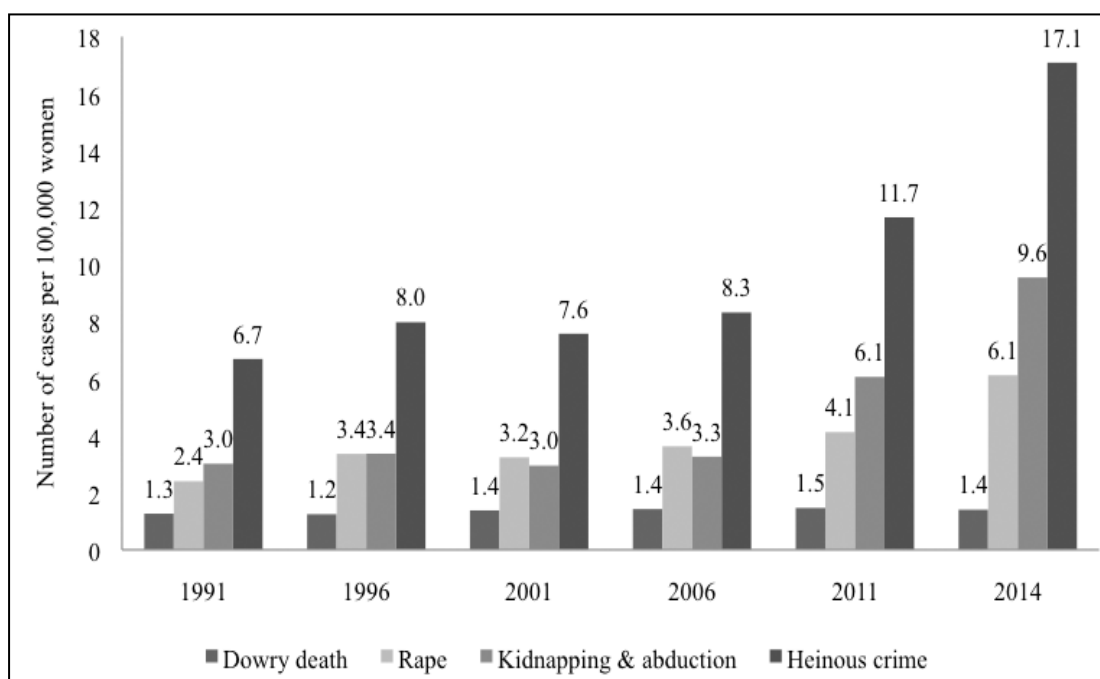
### **3.1. ANALYSIS OF HEINOUS CRIMES AGAINST WOMEN AT THE NATIONAL LEVEL**

Crimes against women in India have increased rapidly over the years. Incidences have increased at the rate of 5.9% per year from 27,250 in 1991 to 102,501 in 2014 (Table 1). From 1991 to 2014, incidences of rapes, kidnapping and abduction, and dowry deaths increased at the rate of 5.9%, 6.9%, and 2.2%, respectively. Moreover, the country witnessed a very rapid increase since 2010; incidences of such heinous crimes increased at the rate of 14.2% per year from 2010 to 2014. Incidences of rapes increased at the rate of 13.5% per year and kidnapping and abduction increased at the rate of 17.8% per year since 2010. However, the number of dowry deaths increased only marginally from 8,391 in 2010 to 8,455 in 2014, an increase of less than 1% in a span of four years.

**Table 3.1 Crime against Women Statistics of India 1991-2014**

Year	Women population (00,000)	Number of rapes	Number of kidnapping & abductions	Number of Dowry deaths	Total number of crime against women
1991	4071	9793	12300	5157	27250
1996	4413	14846	14877	5513	35236
2001	4957	16075	14645	6851	37541
2006	5331	19348	17414	7618	44380
2010	5752	22172	29795	8391	60358
2011	5864	24206	35568	8618	68392
2012	5852	24923	38262	8233	71418
2013	5926	33707	51888	8083	93671
2014	5999	36735	57311	8455	102501

Source: NCRB Report



Source: NCRB Report

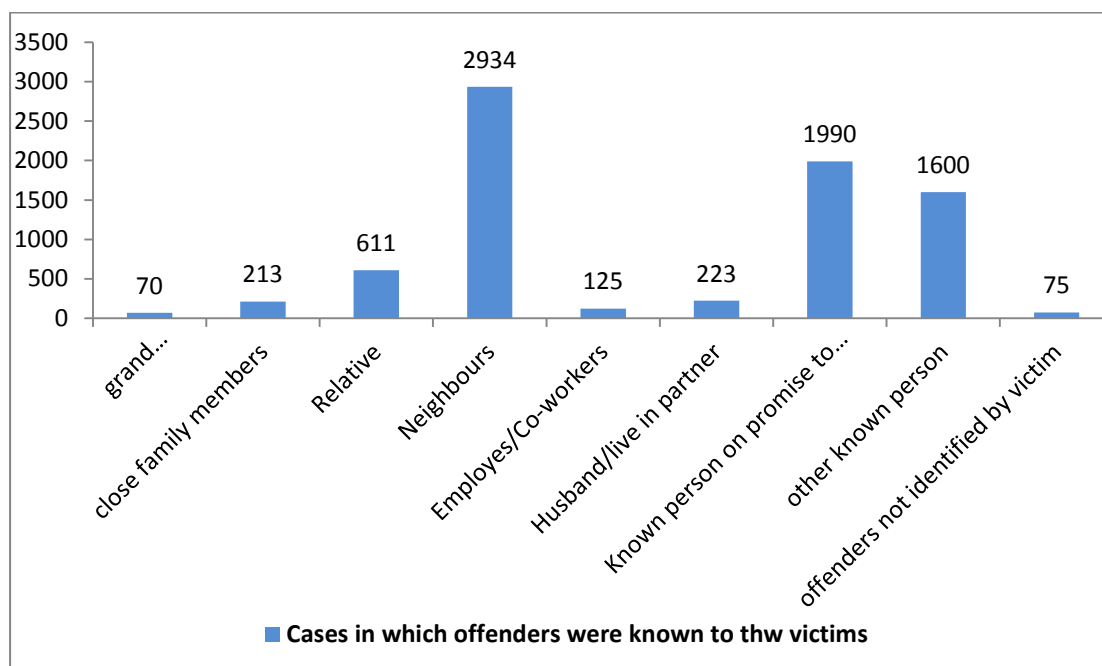
**Figure 3.1 The Heinous Crime Rate Against Women in India over the Year**

Figure 3.1 presents incidences of heinous crimes per 100,000 women in India from 1991 to 2014. This Figure clearly reveals that the dowry death rate per 100,000 women in India hasn't changed significantly over the years. In fact, the dowry death

rate in 2014 was the same as it was in 2001 (1.4 per 100,000 women). However, one may note that dowry in the form of a payment of cash or gifts from the bride's family to the bridegroom's family upon marriage and dowry deaths of women who are murdered or driven to suicide by continuous harassment and torture by husbands and in-laws in an effort to extort an increased dowry are still prevalent in India particularly in its north and central regions. On the other hand, the rape and kidnapping-and-abduction rates per 100,000 women increased significantly from 2.4 and 3.0 in 1991 to 6.1 and 9.6 in 2014, respectively. Moreover, the kidnapping and abduction rate has tripled and the rape rate has almost doubled from 2001 to 2014. As a consequence, the heinous crime rate per 100,000 women increased sharply from 7.6 in 2001 to 17.1 in 2014. It is amply clear that, for women in India, chances of being victimized by heinous crime increased far more in the 2010s than in the 2000s and 1990s.

Rape and sexual violence against women are endemic everywhere, but India faces a worsening situation. While in many developed and developing countries, including Pakistan and the United States of America, the rape rate is generally decreasing, in India it is increasing rapidly, particularly during the 2000s and 2010s. Although India has been characterized as one of the countries with the lowest per capita rates of rape, a majority of rape cases in India, as elsewhere in the world, are never reported. Kark (2013) estimates that 54% of rape crimes in India are unreported because the rape victims fear retaliation and humiliation. The National Family Health Survey (NFHS-3) of India under the stewardship of the Ministry of Health and Family Welfare, Government of India, in 2006 estimated the lifetime prevalence of sexual violence among women aged 15–49 years. The study sampled 83,703 women nationwide, and found that 9% of them in the age group of 15-49 years had experienced sexual violence in their lifetime. According to religion, Buddhist/Neo-Buddhist and Jain women have the lowest prevalence of sexual violence (3% and 4%, respectively) and Muslim women the highest (11%), followed by Hindu women (8%). The prevalence of sexual violence is somewhat higher for the scheduled castes (11%) and scheduled tribes (10%) than for women not belonging to the scheduled castes and tribes (7-9%). Scheduled castes and scheduled tribes are official designations given to the most disadvantaged socio-economic groups in India. Moreover, the prevalence is

highest among women in the poorest wealth quintile (13%) and declines steadily with increasing wealth to a low of 4% among women in the highest quintile



Source: NCRB Report 2015-16

**Figure-3.2 Cases in which Offenders were known to the Victims 2015-2016**

According to NCRB 2015-2016 (Figure -3.2) there were 7841 cases completed by the court; in which 0.89% cases of sexual violence by grandfather/father/brother/son/ etc.; in 2.41% cases of sexual violence by the close family members; in 7.79% cases of sexual violence by the relative, 37.41% cases of sexual violence by the neighbors; in 1.59% cases of sexual violence by the employees/co-workers; in 2.84% cases of sexual violence by the husband/live in partner; in 25.37% cases of sexual violence by the know person on promise to marry the victim; in 20.50% cases of sexual violence by the other person; and only in 0.95% cases of sexual violence in which victim does not know the accused. This shows that most of the cases of sexual violence in India, almost 99%, are committed by someone known to the victim.

Table 3.2 presents rape cases by age group from 2003 to 2013. This table shows that there were 33,764 rape cases reported in the country during 2013. Moreover, 13.1% (4,427 out of 33,764) of the total victims were girls under 14 years of age, 26.3% (8,877 victims out of 33,764) were teenaged girls (14-18 years), and 46.1% (15,556 victims) were women of 18-30 years. In 2013, nearly 2 in 5 rape

victims were minors (under 18 years of age). The rape risk to minors has increased sharply in the 10 years from 2003 to 2013; minors comprised 19.6% of all rape victims in 2003, but the corresponding figure increased to 39.4% in 2013.

**Table 3.2 Age Group-Wise Victims of Rape Cases: 2003-2013**

Year	<14 year	14-18 year	18-30	30-50 year	>50 year	Total
2003	1320 (8.3%)	1792 (11.3%)	9873 (62.3%)	2811 (17.7%)	60 (0.4%)	15856 (100%)
2008	1893 (8.9%)	3421 (16.2%)	12182 (57.5%)	3552 (16.8%)	128 (0.6%)	21176 (100%)
2013	4427 (13.1%)	8877 (26.3%)	15556 (46.1%)	4648 (13.8%)	256 (0.7%)	33764 (100%)

Source: NCRB Report

The **Table 3.2** reveals that teenaged girls are the most vulnerable to rape in India. They comprise only 7.8% of India's female population; however, they were 1 in 4 rape victims in 2013. From 2003 to 2013, the number of rape victims in the teenage group (14-18 years) increased by nearly 400%. India is also facing a serious problem of child rape; in 2003, only 8.3% of total rape victims were children (<14 years of age), but the corresponding figure increased to 13.1% in 2013. From 2003 to 2013, the number of child rape victims increased by 235%, the second highest rate of increase after the teenage group. Although women in the age group of 18-30 years constitute the largest number of rape victims, their relative vulnerability has declined over the years. In 2003, 62.3% of total rape victims were women in the age group of 18-30 years; despite the fact that the number of rape victims in this age group increased by 58% in a span of 10 years, they comprised only 46.1% of total rape victims in 2013. However, women in the age group of 18-30 years are still quite vulnerable to rape. Almost 1 in 2 rape victims are women of this age group, though they comprise only 21.6% of the female population of the country.

Women in the age group of 30-50 years are not as vulnerable as women of the younger age groups. Although they comprise 25.7% of the female population in the country, they constitute only 13.8% of total rape victims in 2013. From 2003 to 2013, the number of rape victims in this age group increased by 65%, significantly lower than the increase in the total number of rape victims (113%). That is why the proportion of rape victims in the age group of 30-50 years has declined from 17.7% in

2003 to 13.8% in 2013. The number of rape victims in the age group of 50 years and above is negligible; in 2013, only 256 out of 33,764 victims belonged to this age group. Women from this age group are the least vulnerable since they comprise only 0.8% of total rape victims, though they constitute 16.6% of the female population in the country. It appears that vulnerability to rape follows an inverted U-shaped curve with age. Vulnerability to rape increases with age till the age of 18 years or so.

**Table 3.3 Age Group-Wise Victims of Incest Rape Cases: 2003-2013**

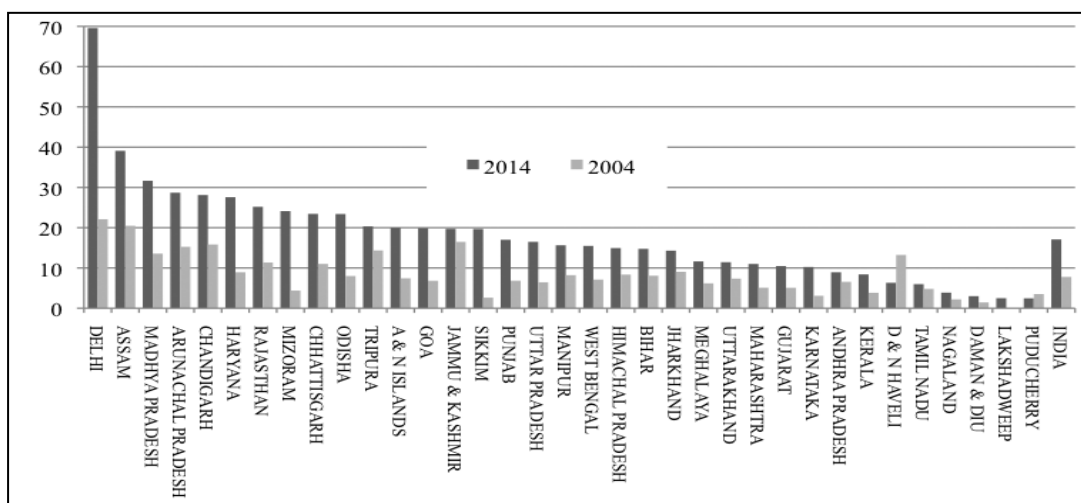
<b>Year</b>	<b>&lt;14 year</b>	<b>14-18 year</b>	<b>18-30</b>	<b>30-50 year</b>	<b>&gt;50 year</b>	<b>Total</b>
<b>2003</b>	64 (16.0%)	99 (24.8%)	206 (51.5%)	31 (7.7%)	0 (0.0%)	400 (100%)
<b>2008</b>	77 (24.9%)	75 (24.3%)	117 (37.9%)	32 (10.4%)	8 (2.5%)	309 (100%)
<b>2013</b>	242 (44.2%)	151 (27.5%)	117 (21.3%)	36 (6.6%)	2 (0.4%)	548 (100%)

Source: NCRB Report

Incest rape is one of the most extreme forms of abuse. Table 3.3 presents age group-wise victims of incest rape cases from 2003 to 2013. This table shows that 7 in 10 incest rape victims were minor girls (under 18 years of age) during 2013. In 2003, only 4 in 10 incest rape victims were minor girls, which show that their vulnerability has increased significantly during the last ten years. From 2003 to 2013, the number of minor incest rape victims increased by 141%, significantly higher than the increase in total number of incest rape victims (37%). Moreover, the increase in number of child incest rape victims (278%) is far higher than the increase in the number of teenage incest rape victims (53%). That is why child incest rape victims, which comprised 16.0% of all incest rape victims in 2003, now comprise 44.2%. Teenage incest rape victims proportionate to total incest rape victims also increased from 24.8% in 2003 to 27.6% in 2013. Girls under the age of 14 as well as teenaged girls are quite vulnerable to incest rape; presently, girls under the age of 14 constitute 28.3% of the female population but comprise 44.2% of the total incest rape victims, whereas teenaged girls constitute only 7.8% of female population but comprise 27.6% of all incest rape victims. Table 4 reveals that women in the age group of 18-30 years which constitute 21.6% of the female population in the country, now comprise only 21.4% of total incest rape victims, significantly lower than the corresponding figure in 2003 (51.5%). Women in the age group of 30-50 years have very low vulnerability as

they make up 25.7% of the female population but constitute only 6.6% of all incest rape victims. The number of incest rape victims in the age group of 50 years and above is negligible; in 2013, only 2 out of 548 victims belonged to this age group. Women from this group are the least vulnerable, since they comprise only 0.4% of total incest rape victims even though they constitute 16.6% of the female population in the country.

### 3.2. ANALYSIS OF HEINOUS CRIMES AGAINST WOMEN AT THE STATE AND UNION TERRITORY LEVELS



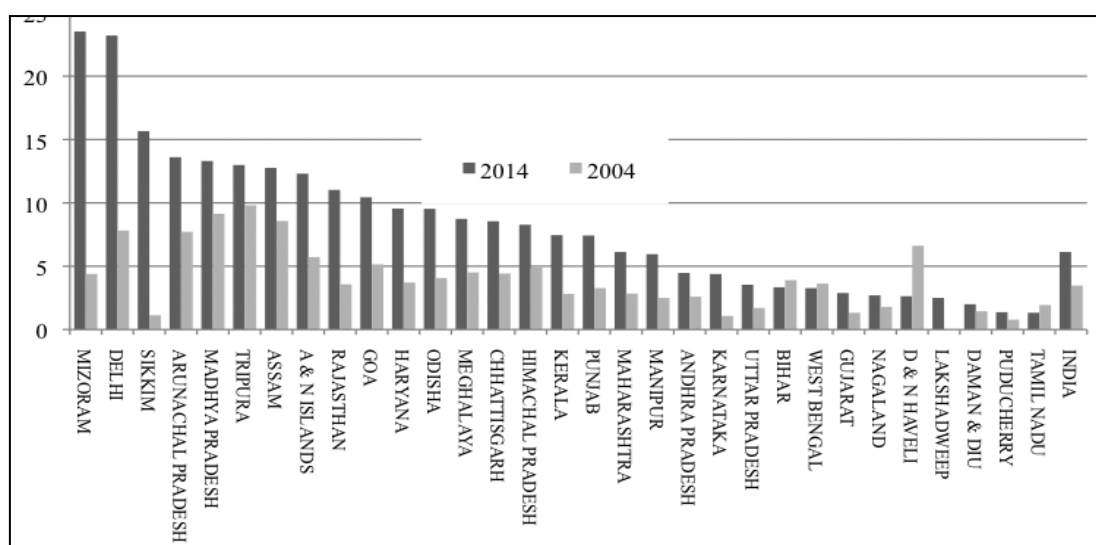
Source: NCRB Report

**Figure 3.3 Heinous Crime Rates, Number of Heinous Crimes per 100,000 Women, in Indian States and Union Territories in 2004 and 2014**

Figure 3.3 presents state and union territory-wise distribution of heinous crimes against women in India in 2014. This figure reveals that the total reported incidences in 2014 were highest in Uttar Pradesh (16,562), followed by Madhya Pradesh (11,497), Rajasthan (8,588), Bihar (7,260), West Bengal (6,943), and Delhi (6,283). However, adjusted for population, the heinous crime rate per 100,000 women in 2014 was highest in Delhi (69.6), followed by Assam (39.1), Madhya Pradesh (31.7), Arunachal Pradesh (28.7), Chandigarh (28.1), and Haryana (27.6). Figure 3.3 show that there is a huge variation in the heinous crime rate across states and union territories, ranging from 2.5 per 100,000 women in Pondicherry to 69.6 per 100,000 women in Delhi in 2014. During the same year, fifteen out of thirty five states and union territories faced a heinous crime rate more than the all-India average (17.1), while six of them faced a 50% higher rate than the all-India average. From 2004 to

2014, the rate increased in all the states and union territories except one (Pondicherry); Sikkim (647%) faced the highest increase in the rate, followed by Mizoram (450%), Karnataka (231%), Delhi (215%), and Haryana (209%). During the same period, the rate in thirteen states and union territories increased at a higher rate than that in the whole country (120%). In 2014, Madhya Pradesh reported the highest number of rapes (5,076), followed by Rajasthan (3,759), Uttar Pradesh (3,467), Maharashtra (3,438), and Delhi (2,096). However, the rape rate per 100,000 59

Women in 2014 was highest in Mizoram (23.53), followed by Delhi (23.21), Sikkim (15.67), Arunachal Pradesh (13.61), and Madhya Pradesh (13.31).



Source NCRB Report

**Figure 3.4 Rape Rate, Number of Rapes per 100,000 Women, in Indian States and Union Territories in 2004 and 2014**

Figure 3.4 show that there is a huge variation in rape rate across states and union territories, ranging from 1.33 per 100,000 women in Tamil Nadu to 23.53 per 100,000 women in Mizoram in 2014. During the same year, eighteen out of thirty one states and union territories faced rape rates more than the all-India average (6.12), while twelve of them faced a 50% higher rate than the all-India average. It is noted that six out of eight northeast states of India have a higher rape rate than the all-India average; only two states, Manipur and Nagaland, have lower. Among the big states, Tamil Nadu and Gujarat have a rape rate lower than half of the country average. From 2004 to 2014, the rape rate increased in twenty eight out of thirty one states and union territories; Sikkim (1288%) faced the highest increase in its rape rate, followed by

Mizoram (436%), Karnataka (307%), Rajasthan (209%), and Delhi (197%). During the same period, rape rate in eighteen states and union territories increased at a higher rate than that in the whole country (76%).

India is considered to be the world's most dangerous country for sexual violence against women<sup>3</sup>. Rape is one of the most common crimes in India. Criminal Law (Amendment) Act, 2013 defines rape as penile and non-penile penetration in bodily orifices of a woman by a man, without the consent of the woman<sup>4</sup>. According to the National Crime Records Bureau, one woman is raped every 20 minutes in India<sup>5</sup>. Incidents of reported rape increased 3% from 2011 to 2012<sup>6</sup>. Incidents of reported incest rape increased 46.8% from 268 cases in 2011 to 392 cases in 2012.<sup>7</sup> Despite its prevalence, rape accounted for 10.9% of reported cases of violence against women in 2016.<sup>8</sup>

**Table 3.4 Rape Cases from 2008 to 2014**

Year	Reported rapes
2008	21,467
2009	21,397
2010	22,172
2011	24,206
2012	24,923
2013	34,707
2014	36,735

Source: NCRB 2014 Report

According to the NCRB report 2014, where the number of rape cases in 2008 was 21, 467, but in 2014 the number of rape cases has increased to 37,735, which is

<sup>3</sup> "The world's most dangerous countries for women". *Thomson Reuters Foundation*. Archived from the original on 14 March 2019. Retrieved 23 April 2019.

<sup>4</sup> "India: Criminal Law Amendment Bill on Rape Adopted | Global Legal Monitor". *Loc.gov*. 2013-04-09. Archived from the original on 2014-04-09. Retrieved 2016-04-05.

<sup>5</sup> "India tackles domestic violence". *BBC News*. 2006-10-27. Retrieved 3 March 2014.

<sup>6</sup> "Crimes against Women" (PDF). *Ncrb.gov.in*. National Crime Records Bureau. 2013. Archived (PDF) from the original on 2013-09-18. Retrieved 2014-03-02.

<sup>7</sup> "Crimes Against Women" (PDF). *Ncrb.gov.in*. National Crime Records Bureau. 2013. Archived (PDF) from the original on 2013-09-18. Retrieved 2014-03-02.

<sup>8</sup> Menon, Suvarna V.; Allen, Nicole E. (2018-09-01). "The Formal Systems Response to Violence Against Women in India: A Cultural Lens". *American Journal of Community Psychology*. 62 (1–2): 51–61. doi:10.1002/ajcp.12249. ISSN 1573-2770. PMID 29693250.

much higher than the cases of 2008. It is clear that the number of cases of rape is increasing day by day.

Victims of rape are increasingly reporting their rapes and confronting the perpetrators. Women are becoming more independent and educated, which is increasing their likelihood to report their rape.<sup>9</sup> Although rapes are becoming more frequently reported, many go unreported or have the complaint files withdrawn due to the perception of family honour being compromised<sup>10</sup>. Women frequently do not receive justice for their rapes, because police often do not give a fair hearing, and/or medical evidence is often unrecorded which makes it easy for offenders to get away with their crimes under the current laws<sup>11</sup>.

Increased attention in the media and awareness among both Indians and the outside world is both bringing attention to the issue of rape in India and helping empower women to report the crime. After international news reported the gang rape of a 23-year-old student on a moving bus that occurred in Delhi, in December 2012, Delhi experienced a significant increase in reported rapes. The number of reported rapes nearly doubled from 143 reported in January–March 2012 to 359 during the three months after the rape. After the Delhi rape case, Indian media has committed to report each and every rape case<sup>12</sup>.

### **3.3. SEXUAL VIOLENCE STATICS OF UTTAR PRADESH**

Uttar Pradesh is a state of north India. The capital of this state is Lucknow. According to census 2011 it is largest state of India and its total population is about 19.98 Crores in which men population is about 10 Cr. and women population is 9 Cr. The population of Uttar Pradesh forms 16.50 percent of India in 2011 and Sex Ratio of this state is 912 and total literacy rate is 67.68 % in which men literacy rate is 77.28% and women literacy rate is 57.18%.

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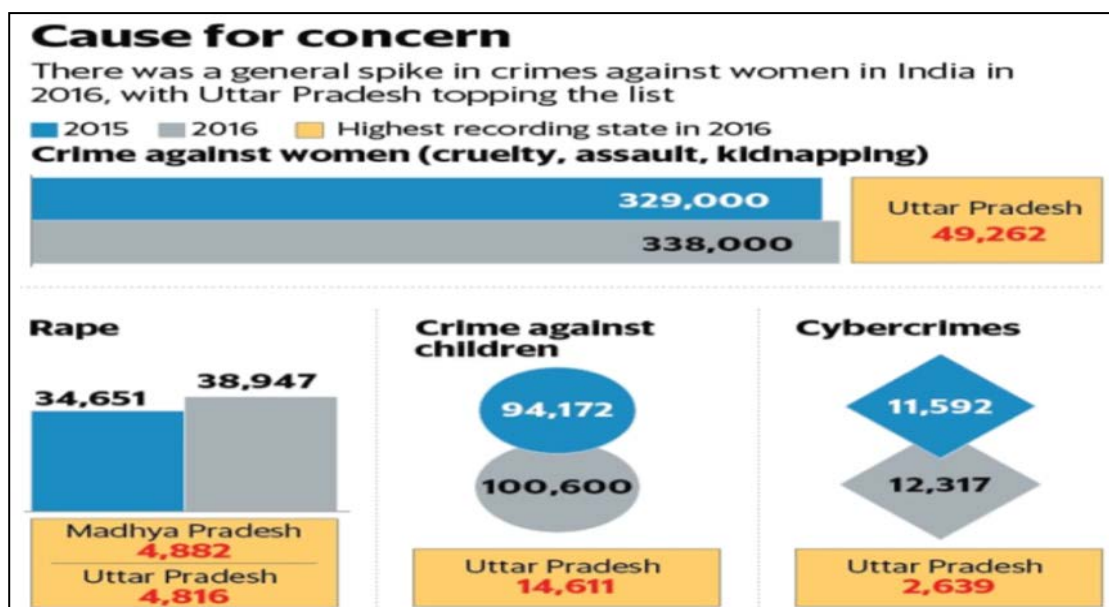
<sup>9</sup> Sudha G Tilak (2013-03-11). "Crimes against women increase in India". Al Jazeera English. Archived from the original on 2016-04-14. Retrieved 2016-04-05.

<sup>10</sup> Ibid

<sup>11</sup> Ibid

<sup>12</sup> Bhowmick, Nilanjana (2013-11-08). "Rape In India: Why It Seems Worse". *Time*. Archived from the original on 2016-04-01. Retrieved 2016-04-05.

Besides being a very populous state, Uttar Pradesh also has some of the poorest development indicators, especially with regard to the status of women and girls. According to NCRB report Uttar Pradesh recorded 14.5% of the total cases of crime against women, it accounted for 12.4% of the total numbers of the rape cases.



Source: NCRB Report

**Figure 3.5 Causes for Concern**

Uttar Pradesh had the highest number of crimes against women. While the state recorded 14.5% of the total cases of crimes against women, it accounted for 12.4% of the total number of rape cases, second only to Madhya Pradesh, which recorded 12.5% of the total rape cases in 2016.

There has been a 33% increase in crimes against women under the Yogi Adityanath government in UP, according to reports quoting a reply given by the state govt. in the Legislative Assembly. Rape cases have increased by 26%, 'assault with intention to outrage modesty' has increased by 40% while harassment cases have shot up by a staggering 99%, the reply said.

**Table 3.5 Total FIRs related to Crimes against Women in Uttar Pradesh**

Year	Rape	Harassment	Abduction/kidnapping
2018	899	2892	3573
2017	873	2333	3011
2016	751	1913	2611

Source: Times of India

If we analyze table no. 3.5 that clearly shows there is an increase in the cases of rape, harassment and Abduction/kidnapping between 2016 to 2018. Wherein 2016 the number of cases of rape was 751, the cases of harassment was 1913 and Abduction/kidnapping was 2611. But in 2018, the numbers of these cases have increased, rape cases 899 and number of harassment cases 2892 and number of Abduction/kidnapping cases 3573.

**Table 3.6 A Comparative Data of Sexual Violence against Women from April 2016 to Jan 2018**

S. No.	CRIME	April 2016 to Jan 2017 (Prev. Govt.)	April 2017 to Jan 2018 (Yogi Govt.)	Increase %
1	Rape	2943	3704	26%
2	Assault for Outraging Modesty	8159	11404	40%
3	Harassment	495	987	99%
<b>Total</b>		<b>11597</b>	<b>16095</b>	

Source: [uplegisassembly.gov.in](http://uplegisassembly.gov.in)

If we comparatively analyze (Table No.3.5) the sexual violence in the period of present Uttar Pradesh government (April 2017 to January 2018) and former Uttar Pradesh government (April 2016 to January 2017), there clearly shows that increase in the cases of rape which has been 26%, in the cases of Assault for outraging modesty is 40% and 99% increase in the cases of harassments. This clearly shows the administrative (Police and Judiciary) failure of present Uttar Pradesh government.

This shatters the myth propagated by the Uttar Pradesh govt. in the state that it is following a zero-tolerance policy towards crime, especially crimes against women. In recent weeks, the Uttar Pradesh govt. has been pilloried for protecting the BJP MLA from Unnao district who is accused of raping a 17-year-old girl last year. The girl's complaint was not registered by the local police, her family was threatened and her father died in police custody recently after allegedly being beaten up by the accused MLA's brother. The case has caused countrywide outrage and the Allahabad High Court stepped in to order the arrest of the accused. CBI is now investigating the case. Contributing to this, arguably, is the sense of impunity among ruling party supporters as revealed by the Unnao case. Had the govt. not given a long rope to the Unnao MLA Senger and his family, and taken prompt action after the victim's plight came to light, it may have sent a message to others inclined to commit such crimes. It

would appear, many believe, that zero-tolerance policy does not extend to ruling party supporters.

One of the first measures announced by Chief Minister Yogi Adityanath after assuming power in March 2017 was the formation of anti-Romeo squads ostensibly to stop harassment of women on streets and other public places. This move had come under severe criticism for unleashing a wave of unjustified harassment of couples by police and other self-styled protectors of women. On an average eight women are raped and 30 abducted every day in Uttar Pradesh where more than 100 FIRs of ‘crime against women’ are lodged daily. Amid nationwide protests against the Unnao rape case, a review of recent incidents in which women were targeted shows that ‘crime against women’ has gone up sharply between January 1 and March 31 in UP this year over 2017 and 2016.

**Table 3.6 Total FIRs related to Crimes against Women in Uttar Pradesh (Jan – March 2018)**

<b>Year</b>	<b>Rape</b>	<b>Harassment</b>	<b>Abduction/kidnapping</b>
<b>2018</b>	899	2892	3573
<b>2017</b>	873	2333	3011
<b>1016</b>	751	1913	2611

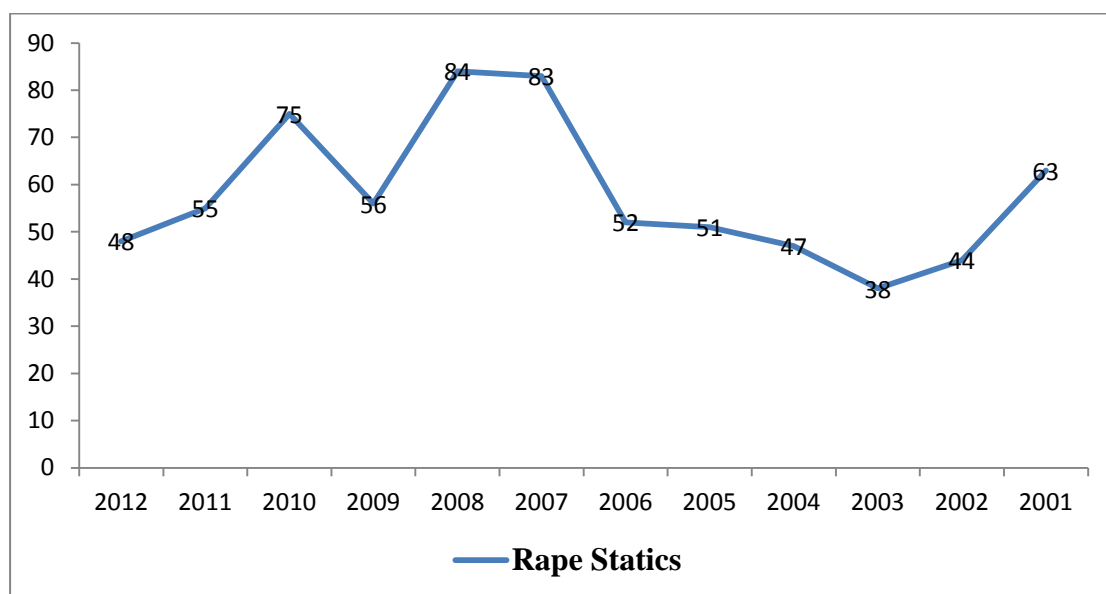
Source: Times of India

Officials, however, insist that liberal approach adopted to register FIR of women complainants has resulted in increased crime figures and situation on the ground has improved. UP police regularly reviews the status of FIRs registered under IPC sections amounting to rape or rape bid, kidnapping or abduction of women, dowry death, sexual harassment, and obscenity, cruelty by husband or relatives or harassment over dowry among other charges.

It was noticed that total number of offences registered in this regard have gone up by 24% over the previous year. While numbers of rape cases have remained at par, incidents of abduction, sexual harassment and obscenity with females had spiraled. Additional director general (law and order) Anand Kumar said, “It shows women have no hesitation in walking inside a police station to lodge an FIR now. Also, I want to emphasize that suppressing of crime has gone down and people from all walks of

life are able to get their case registered which shows they have faith in police department”<sup>13</sup>.

In this research study, I discuss that Lucknow is the capital of Uttar Pradesh which is India's most populous state and incidents of sexual violence are increasing at a high rate in Lucknow. Therefore I choose it as a study area. According to NCRB<sup>14</sup> data 2016, Lucknow was 2nd most unsafe city for women in 2016. With 2,205 crimes being reported against the women in the city in 2016, Lucknow was second after New Delhi, which reported 13,803 crimes against women in the same year. The ranking is based on the proportion of the population of the city. In comparison to 2013, Lucknow recorded an increase of 43% in crimes against women in 2016. In Lucknow, 43% of incidents against women have increased.

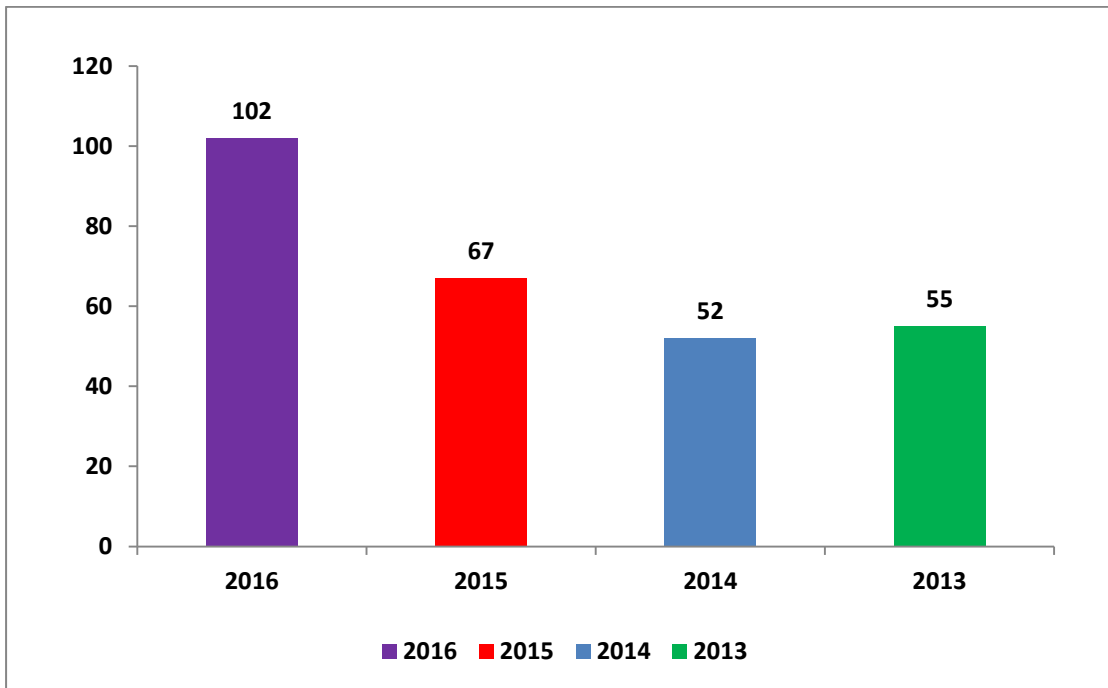


Source: Explore Neighborhood

**Figure 3.6 Year-Wise Rape from 2001 to 2012**

<sup>13</sup> <https://timesofindia.indiatimes.com/city/lucknow/crime-against-women-up-by-24-in-up-this-year-8-raped-every-day/articleshow/63825034.cms>

<sup>14</sup> <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf>



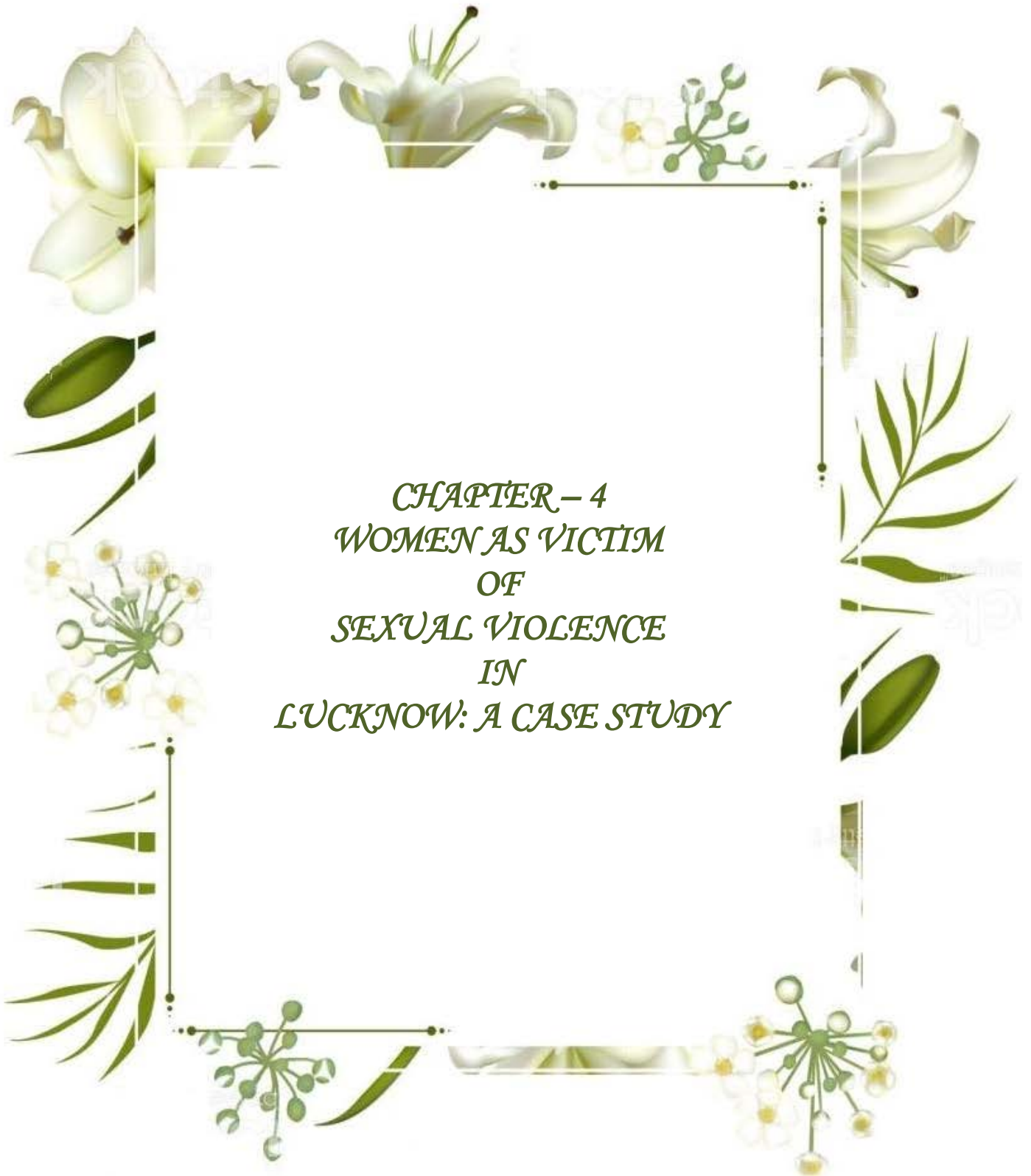
Source: NCRB Report

**Figure 3.7 Year-Wise Rape Cases from 2013 to 2016**

If we look at Figure 3.6 and 3.8, it seems that there has been a decrease and increase in the incidence of rape cases in Lucknow from 2001 to 2012. But if we look at table 3.7 it is obvious that incidents of sexual violence in Lucknow are continuously increasing. There were only 55 cases of rape registered in the year 2013, but in 2015 this number has increased to 67, in 2016, this number has doubled (102) from 2013

It is ironic that in Indian society, such as freedom and equality expanded, the sense of narrowing towards women has increased. Not only ancient society but also modern society. And they should not be expelled from the periphery of so-called ethics and fabricated values; the fatal consequence of this mentality is that the number of offenses against women like molestation, rape, unethical trade, dowry death, and sexual harassment is increasing steadily. The report of the National Crime Records Bureau shows that despite providing security to women, 100 rape cases were committed every day in 2014. And 364 women have been victims of sexual abuse. According to the report 2014, a total of 36735 cases have been registered with Union Territories and states. It has also been revealed that rape cases have increased every

year. That is, it means that there is no danger of 'anti-woman law' in society. Or say that the law is not being followed honestly. According to the report of NCRB, Madhya Pradesh emerged as the most unsafe state for women. Similarly, 3759 cases in Rajasthan, 3467 in Uttar Pradesh, 3438 in Maharashtra and 20 96 rape cases have been registered in Delhi.



*CHAPTER – 4*  
*WOMEN AS VICTIM*  
*OF*  
*SEXUAL VIOLENCE*  
*IN*  
*LUCKNOW: A CASE STUDY*

# UTTAR PRADESH DISTRICT LUCKNOW



Note: State headquarters is also the District/Tahsil headquarters.

BOUNDARY: DISTRICT .....	—————
▪ TAHSIL .....	—————
▪ VIKAS KHAND .....	—————
HEADQUARTERS: STATE, TAHSIL, VIKAS KHAND .....	★, ⊙, ⊚
VILLAGE HAVING 10,000 AND ABOVE POPULATION WITH NAME	Samesee
URBAN AREA WITH POPULATION SIZE: I, III, IV & V .....	● ● ● ● ●
NATIONAL HIGHWAY .....	NH 56
STATE HIGHWAY .....	SH 25
IMPORTANT METALLED ROAD .....	—————
RAILWAY LINE : BROAD GAUGE .....	—————
RAILWAY LINE : METRE GAUGE .....	—————
RIVER & STREAM .....	~~~~~

C - PART OF CHINHAT VIKAS KHAND  
NOTE - THE HEADQUARTERS OF CHINHAT VIKAS KHAND & SAROJANI NAGAR VIKAS KHAND ARE LOCATED IN LUCKNOW URBAN AGGLOMERATION

Area ( Sq. Km.) .....	2,528.00
Population .....	45,89,838
Number of Tahsils.....	04
Number of Vikas khands..	08
Number of Towns.....	12
Number of Villages.....	807

## **CHAPTER - 4**

### **WOMEN AS VICTIM OF SEXUAL VIOLENCE IN LUCKNOW: A CASE STUDY**

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Lucknow district is situated on the holy coast of Gomti river and it has been blessed with rishis, mystics, scholars, Nawabs and freedom fighters from the very beginning. The current form of Lucknow was recognized by Nawab Asafuddaula in 1775. The Awadh ruler made prosperity to Lucknow by making it capital. Lucknow has always been a multicultural city and people from different sects, religion and faith have been residing here from long time.<sup>1</sup>

In the research chapter presented, an empirical attempt has been made to study the views of police and judiciary in the incident of sexual violence in Lucknow. What are the causative factors behind the incident of sexual violence happening in the district, how they affect the progress and empowerment of women in society. What is the role of government and non-government institutions in preventing the incidents of sexual violence? Besides, at what extent the police, judiciary and other non-governmental organizations are responsible for this type of incident? Do the women know about institutions, laws and their rights that safeguard them from sexual violence? Whether it is a police system or a judiciary or any other non-governmental organization, is it playing its role to prevent incidents of sexual violence against women? And for these incidents, how much patriarchy is responsible for sexual violence, etc., is the main objective of research.

The district is a part of Lucknow Division, located in the Uttar Pradesh state with its administrative headquarters situated at the Lucknow city. The district is fortunate enough to be the capital of Uttar Pradesh. In 1775 Nawab of Avadh established Lucknow city with some vision and hope and later they transferred capital from Faizabad to Lucknow.

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<sup>1</sup> <http://indiaeasytrip.com/lucknow.html>

The natives of the district pronounce "Lucknow" as "lakhnau" means a city of Nawabs. A mythological story is associated with its name Lucknow. As per the story the city is named after Lakshmana, a hero of the Hindu epic Ramayana. The story states that Lakshman had his palace in the area, which was known as Lakshmanapuri or "Lakshmana's city" which later called Lucknow.

Geographically, the district lies at 26°85'N latitude, 80°95'E longitude and 123m altitude. The district occupies an area of 2, 528 sq.km. And it is bounded by Barabanki district on the East and the Sitapur district on the North, Hardoi district on the North-West, Rae Bareli district on the South-East and Unnao districts on the South-West. The climate in the district is characterized as humid subtropical climate. The actual rainfall in the district was 677.4 mm in the year of 2016-17. Administrative wise, the district is divided into 4 Sub districts and 8 blocks-Bakshi ka Talab, Chinhat, Malihabad, Kakori, Mal, Mohanlalganj, Sarojini Nagar and Gosainganj. There are 42 police stations also. There are 2 Lok Sabha constituencies and 9 Assembly constituencies. According to 2011 census the district has a population of 45, 89,838 (persons) including 23, 94,476 (males) and 21, 95,362 (females). The sex ratio of women in Lucknow district is 917 compared to 1000 males. In the year 2001-2011 the population growth rate in the district was 25.82% (persons) out of which 23.92% (males) and 27.97% (females). The major religions in the district are Hindu and Muslim with 77.08% and 21.46% of the total population respectively. Lucknow as an industrialized district is famous across the country. The district has some core research and development Centres. These Centres put their efforts to raise the quality and production of the product. In the year 2014-2015 the gross domestic product of the district was Rs. 36, 43,933 lakh at current price. The district is abode to numerous distinguished educational and research institutes. Moreover it has provided a great platform for higher education. Here is the famous high education institute in many areas. Such as the Indian Institute of Management, the Central Institute of Medicine, the Institute of Engineering and Technology, Ram Manohar Lohia National Law University, King George Medical College, etc. As per 2011 census the literacy rate in the district is 77.29% (persons), 82.56% (males) and 71.54% (females). Mohammad Hidayatullah, the eleven Chief Justice of India and the Sixth Vice-President of India (31st August 1979 to 30th August 1984) was born on 17th December, 1905 in Lucknow. As the Chief Justice of India, he had also served as the Acting President of

India (July 20, 1969 to August 24, 1969). As he was not belonging to any political party so he contested the elections as an independent candidate.

Lucknow as a tourist destination has got much fame throughout the world. Bara Imambara of Lucknow was built in 1784 by the Asaf UL Daulah, fourth Nawab of Awadh. It was built as a part of a relief project for a major famine in 1784. British Residency Lucknow is not in its original structure now but it has been declared as a protected monument by the Archaeological Survey of India. Many travellers allures towards the Chattar Manzil in the city because of its strikingly different architecture. Lucknow's famous Jama Masjid was built in 1423 by Sultan Ahmed Shah.<sup>2</sup> Some other centers of attraction in the district include Rumi Darwaza, Clock Tower, MotiMahal, Lakshmana, Hussainabad Imambara, etc.

To complete this study and testing of hypothesis, researcher has administered 100 self-structured questionnaires on the victim of sexual violence from Lucknow. There are 24 questions in questionnaire which were asked by the researcher. by which I have collected data. This questionnaire is divided into two different parts. in first parts we inquire about the personal profile of respondent which include age, education, caste, marital status, economic condition etc. while in second parts we have seek response related to our research objective.

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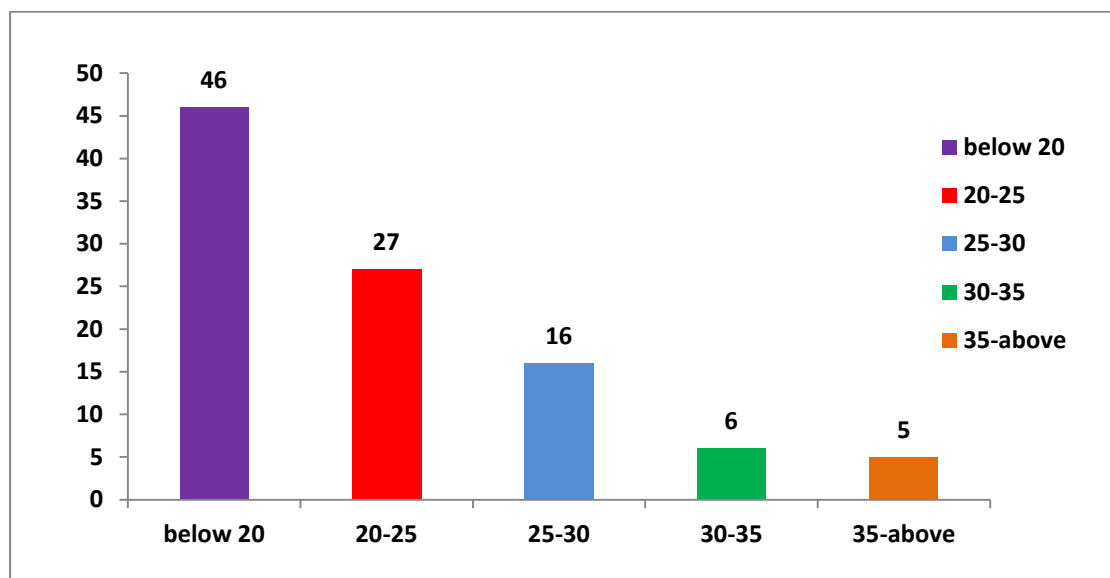
<sup>2</sup> <https://thecitybytes.com/15-prominent-religious-places-lucknow/>

#### 4.1. AGE OF THE VICTIM

**Table 4.1 Do offenders set any age limit in selecting their victims, or does age get secondary importance. Responses were shown in the table below:**

Age group	No. of Respondents	Percentage
Below 20	46	46
20-25	27	27
25-30	16	16
30-35	6	6
Above 35	5	5
<b>Total</b>	<b>100.00</b>	<b>100%</b>

Source: Field survey



**Figure 4.1 Age of the Victims**

The table 4.1 shows that 46% victims are the below the age of 20 years, 27% belong to 20-25 years, 16% are from 25—30 age group, 6% belong to 30-35 years and 5% are from above 35years of age. Table shows that incidents of sexual violence are higher with lower age girls and women, but as the age graph decreases, incidents of sexual violence decrease.

## 4.2. RELIGION OF VICTIMS

Table 4.2 Religion of the victim is shown in the table below:

Religion	No. of Respondents	Percentage (%)
Hindu	72	72
Muslim	23	23
Sikh	3	3
Christians	2	2
<b>Total</b>	<b>100</b>	<b>100%</b>

Source: Field survey

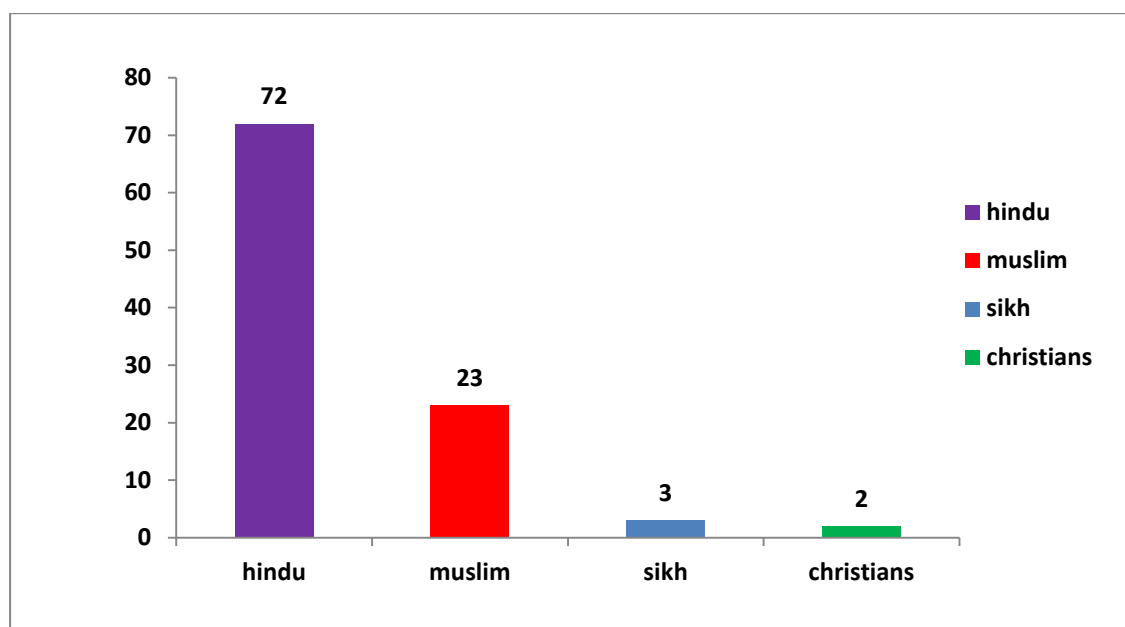


Figure 4.2 Religion of the Victims

As for the religion of the victim is concerned 72% victims were Hindu, in 23% cases the victim was Muslim, in 3% cases was Sikh and 2% cases was Christian. It is clear from the above figures that incidents of sexual violence are more with the Hindu religion girls and women than Muslim, Christian, and Sikhism girls and women in the Lucknow district.

### 4.3 CASTE OF THE VICTIM

Table 4.3 The questions were asked from the respondents regarding caste and responses are tabulated as follows:

Category	No. of Respondents	Percentage (%)
NA	27	27
General	21	21
OBC	19	19
SC	28	28
ST	5	5
<b>Total</b>	<b>100.00</b>	<b>100%</b>

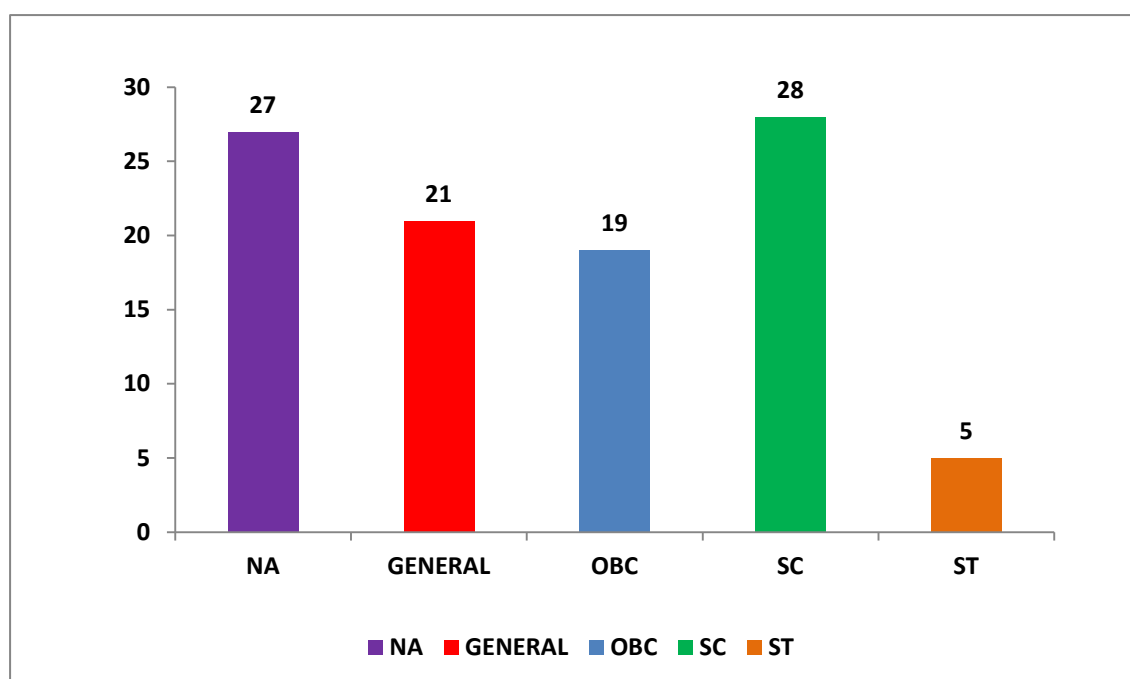


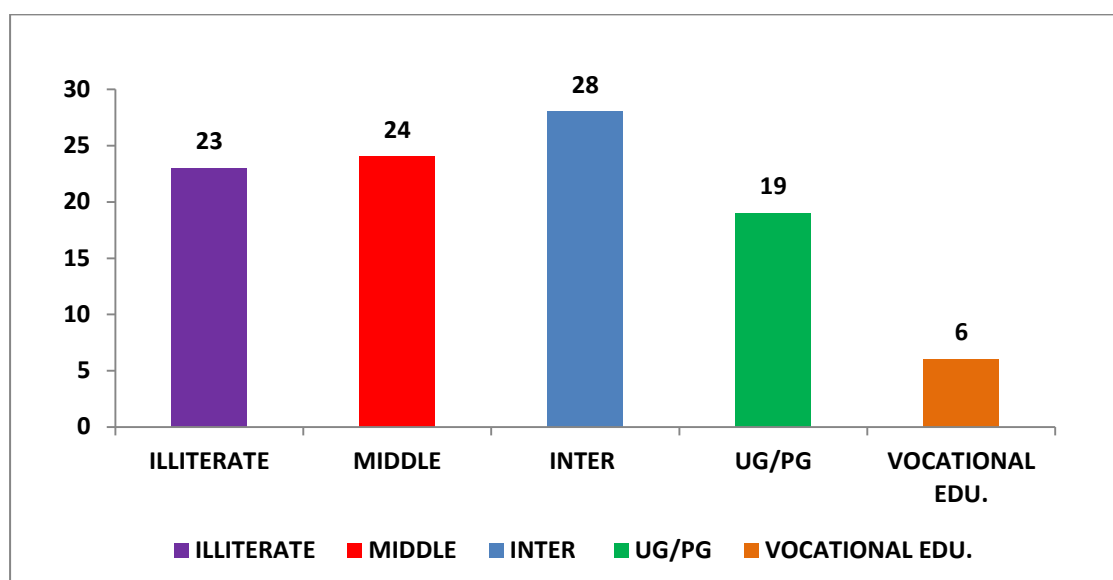
Figure 4.3 Caste of the Victims

Table show that 27% cases caste division was not applicable (they were Muslims, Sikhs etc.), 21 % upper caste, 19% were OBC caste and 28% were SC caste and 5% were ST caste. So it can be said that accused do not consider caste factor the crime but in many cases sexual violence crime were committed just to keep this factor in mind.

#### 4.4 EDUCATION LEVEL

**Table 4.4 Does the education level affect sexual violence cases? The answer of the question is recorded as follows:**

Education Level	No. of respondents	Percentage (%)
Illiterate	23	23
Middle	24	24
Inter	28	28
UG/PG	19	19
Vocational Education	6	6
<b>Total</b>	<b>100.00</b>	<b>100%</b>



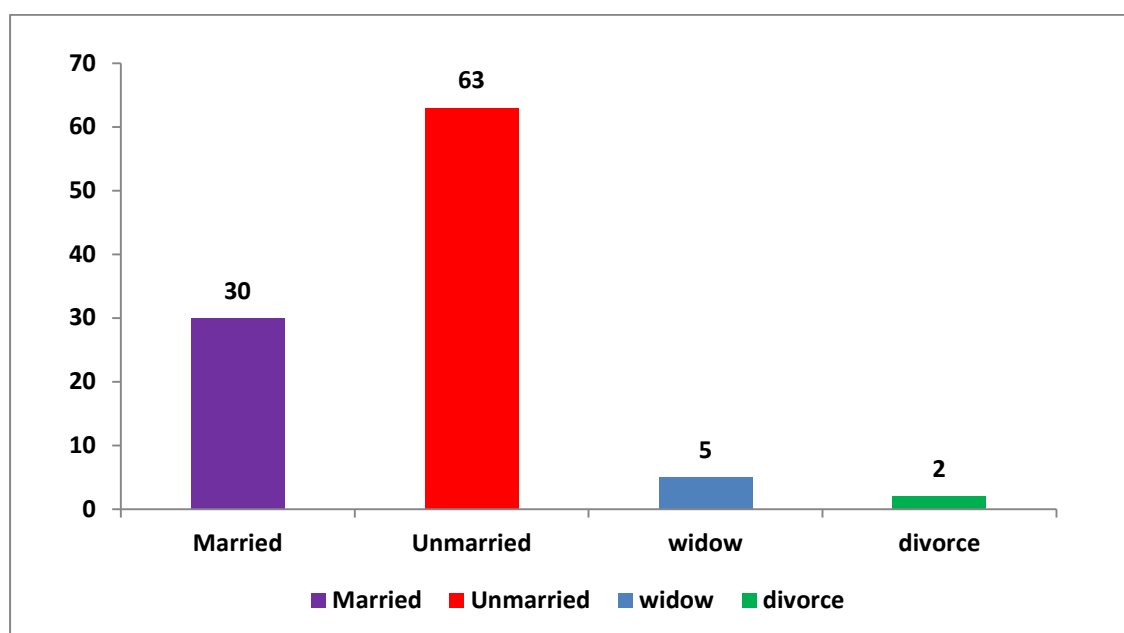
**Figure 4.4 Education levels of the Victims**

As the table indicates that in 23% cases victim was illiterate, in 24% cases was studied up to middle class, in 28% cases inter level, in rest of the cases 19% the victim was graduate/ post graduate and in 6% cases victim was vocational educated. The percentage of the less educated women is more than the educated women in sexual violence cases.

#### 4.5 MARITAL STATUS OF THE VICTIMS

**Table 4.5** The relation between marital status of the victim and crime is studied and result is shown in the table:

Marital status	No. of the Respondents	Percentage (%)
Married	30	30
Unmarried	63	63
Widow	5	5
Divorce	2	2
<b>Total</b>	<b>100</b>	<b>100</b>



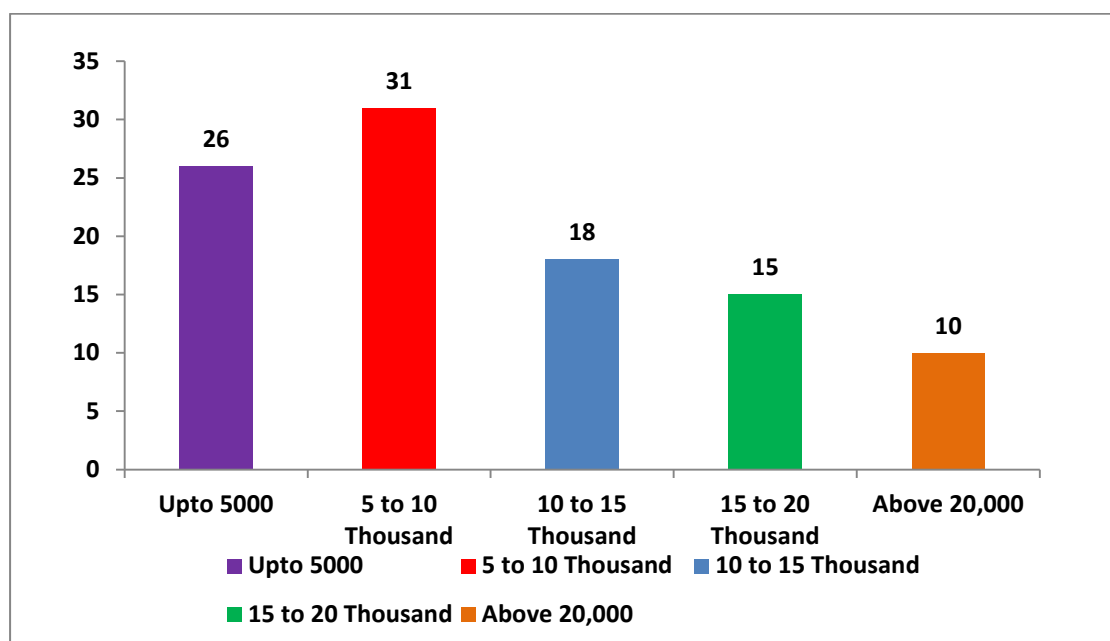
**Figure 4.5** Marital Status of the Victim

As for as the marital status of the victim is concerned, in 30% cases the victim was married, in more than half of the cases 63% the victim was unmarried, 5% victims were widow and 2% victims were deserted or divorced. To conclude, it can be said that unmarried girls become more prey in comparison to married women.

#### 4.6 MONTHLY INCOME OF VICTIM'S FAMILY

Table 4.6 the below table is exhibiting the relation between income of the victim's family and crime.

Monthly Income of Victim's Family	No. of Respondents	Percentage (%)
Up to 5000	26	26
5 to 10 Thousand	31	31
10 to 15 Thousand	18	18
15 to 20 Thousand	15	15
Above 20,000	10	10
<b>Total</b>	<b>100.00</b>	<b>100%</b>

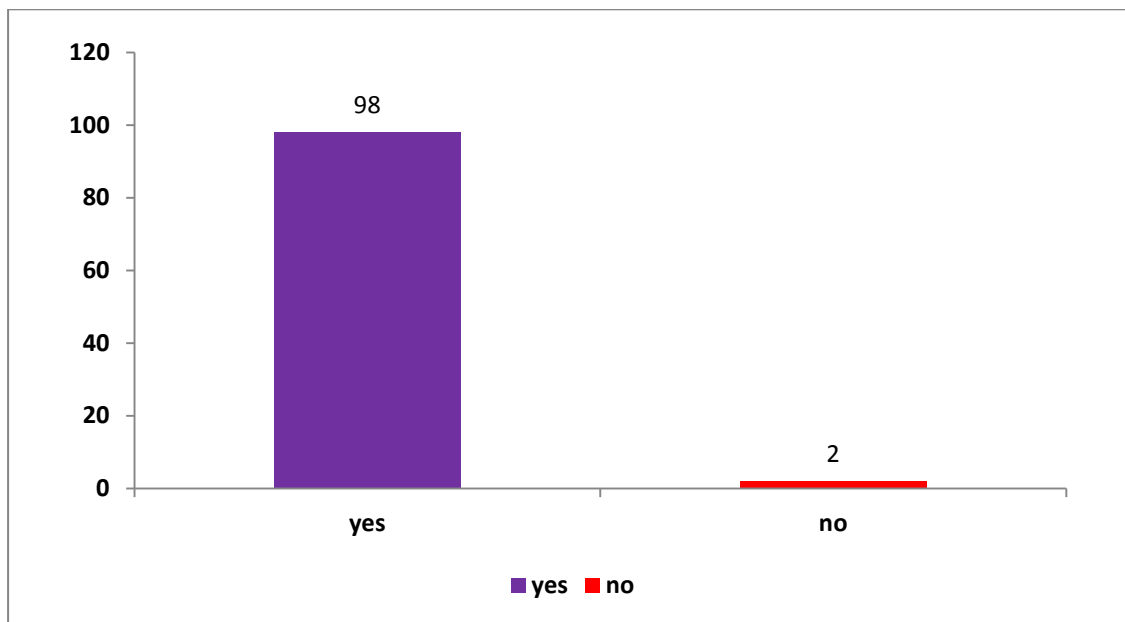


**Figure 4.6 Monthly Income of Victim's Family**

The table shows that 26% victim belonged to less than 5000, 31% cases were from 5 to 10 thousand income group, 18% cases was from 10 to 15 thousand, 15% cases was from 15 to 20 thousand and 10% cases belonged to above 20,000 income group. So it can be said that women with a poor economic background run a greater risk of being victimized because of the poverty.

**TABLE 4.7 ABOUT THE TERM OF SEXUAL VIOLENCE**

<b>Sexual violence</b>	<b>No. of Respondents</b>	<b>Percentage (%)</b>
Yes	98	98
No	2	2
<b>Total</b>	<b>100</b>	<b>100%</b>

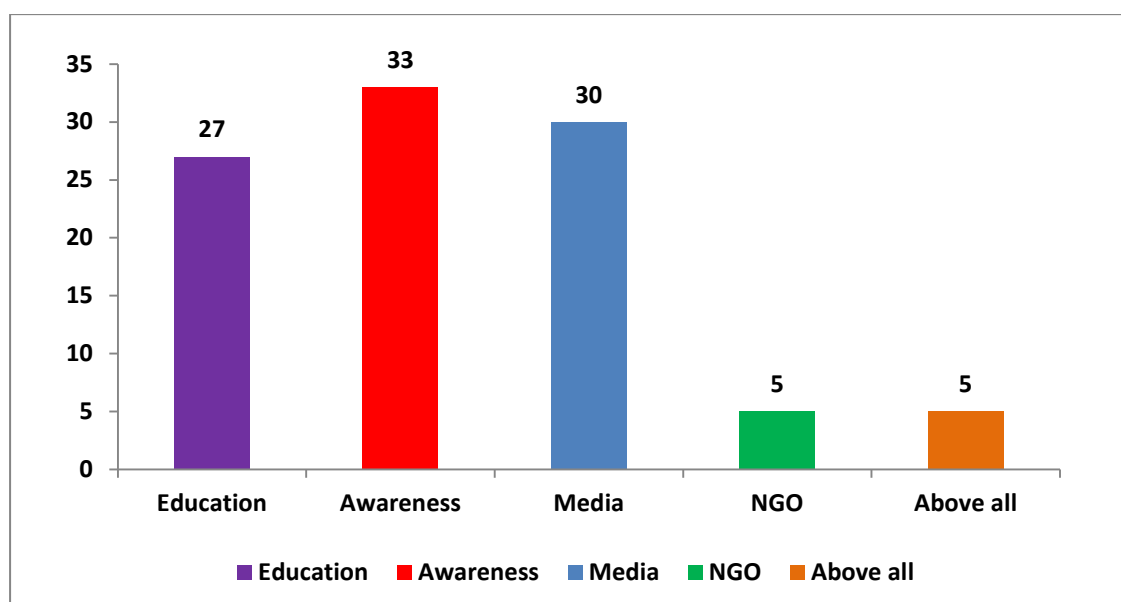


**Figure 4.7 About the term of Sexual Violence**

In above table out of 100 Respondents, in 98% cases victim know about the word of sexual violence and in 2% cases victim does not about the word sexual violence.

**TABLE 4.8 FACTORS BEHIND INCREASED REPORTING OF SEXUAL VIOLENCE CASES**

<b>Factors behind increased reporting of sexual violence cases</b>	<b>No. of Respondents</b>	<b>Percentage (%)</b>
Education	27	27
Awareness	32	32
Media	31	31
Ngo	5	5
Above all	5	5
<b>Total</b>	<b>100.00</b>	<b>100%</b>



**Figure 4.8 Factors Behind increased Reporting of Sexual Violence Cases**

The table shows that in 27% cases victims said that in present time due to education factor cases are reported, 33% victims said that due to awareness cases are reported, in 30% cases due to media, in 5% cases victims said that due to NGO cases are reported and in 5% cases victims accept that all these factor are involve in reporting the cases of sexual violence.

#### 4.9 PLACE, WHERE SEXUAL VIOLENCE COMMITTED

Table 4.9 Following table is exhibiting the different places that were commonly used in rape cases.

Place, where sexual violence committed	No. of Respondents	Percentage (%)
Victim's Home	29	29
Hotel	3	3
Accused Home	13	13
Workplace/ Field/police station/ Hospital	38	38
Other place	18	18
<b>Total</b>	<b>100.00</b>	<b>100%</b>

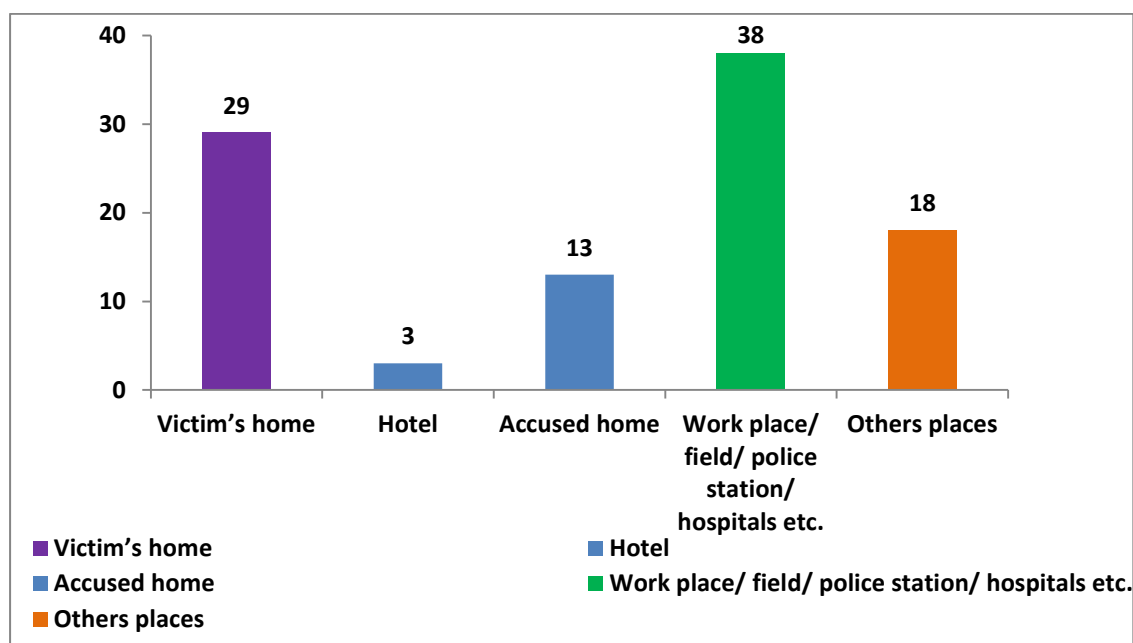


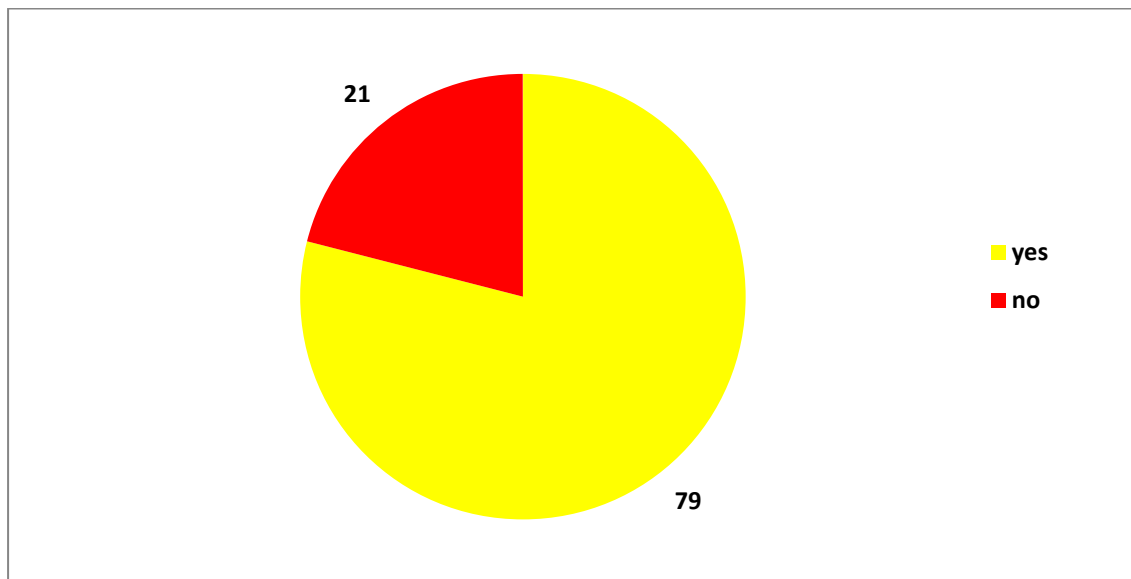
Figure 4.9 Place, Where Sexual Violence Committed

The places, where sexual violence cases were committed are- 29% cases victim's home, in 3% cases hotel, in 13% cases accused home, in 38% cases it was workplace/field/police station etc. and 18% cases other places.

#### 4.10 ACCUSED KNOW BY VICTIM

**Table 4.10** The person committed sexual violence case whether has any acquaintance with the victim or not know is shown in the below table

Accused know by victim	No. of Respondents	Percentage (%)
Yes	79	79
No	21	21
<b>Total</b>	<b>100.00</b>	<b>100%</b>

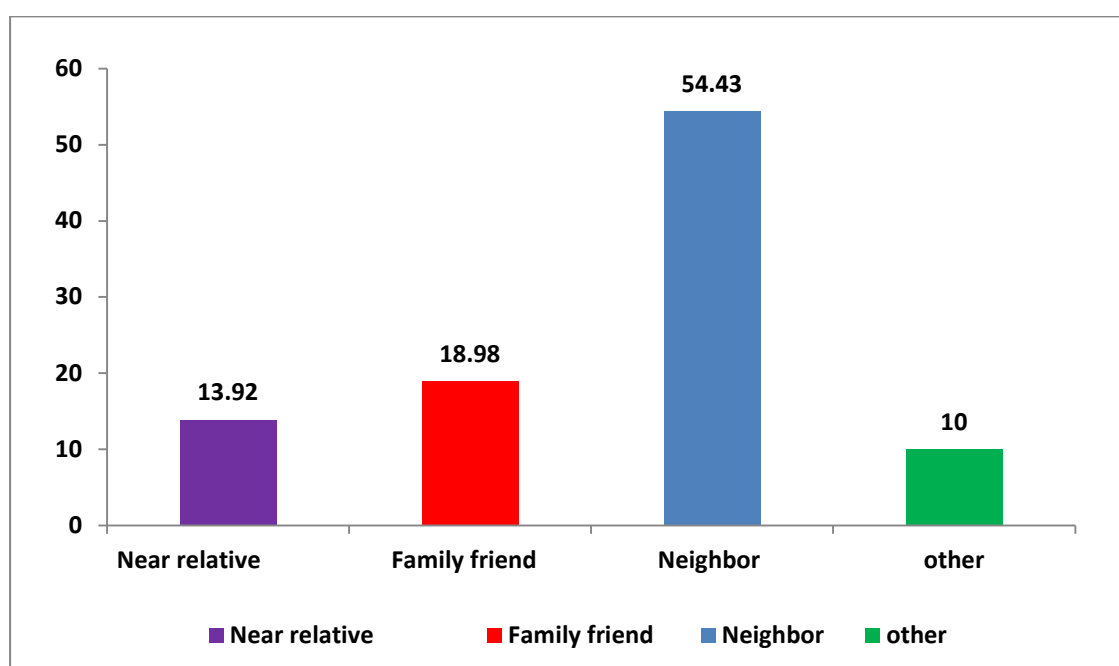


**Figure 4.10** Accused know by Victim

From the following table it is clear that out of 100 respondents in 79 percent victim know the accused while in 21 percent victim does not know about the accused.

**TABLE 4.10 (A) RELATIONSHIP WITH ACCUSED**

<b>Relationship with Accused</b>	<b>No. of Respondents</b>	<b>Percentage (%)</b>
Near Relative	11	13.92
Family friend	15	18.98
Neighbor	43	54.43
Other	10	12.65
<b>Total</b>	<b>79</b>	<b>100%</b>



**Figure 4.10 (a) Relationship with Accused**

From the following table 4.10 it is clear that in out of 100 respondents in 79 percentages the victim know the accused while in 21 percentages victim doesn't know about the accused. It is clear from the table 4.10(a) that in 13 percent cases of them were close relatives of the victim. The same 18.98 percent were family friends. 54.45 percent were neighbors and 12.5 percent were others. Therefore, it is clear from the figures 10(a) that most of the incidents of sexual violence are by neighbors.

#### 4.11 REASON FOR SEXUAL VIOLENCE

Table 4.11 The reason for Sexual violence are given in the following table

Reason for this Act	No. of Respondents	Percentage (%)
Sexual desire	56	56
Revenge and Hostility	2	2
Intoxication	22	22
Provocation	10	10
Not know	10	10
<b>Total</b>	<b>100.00</b>	<b>100%</b>

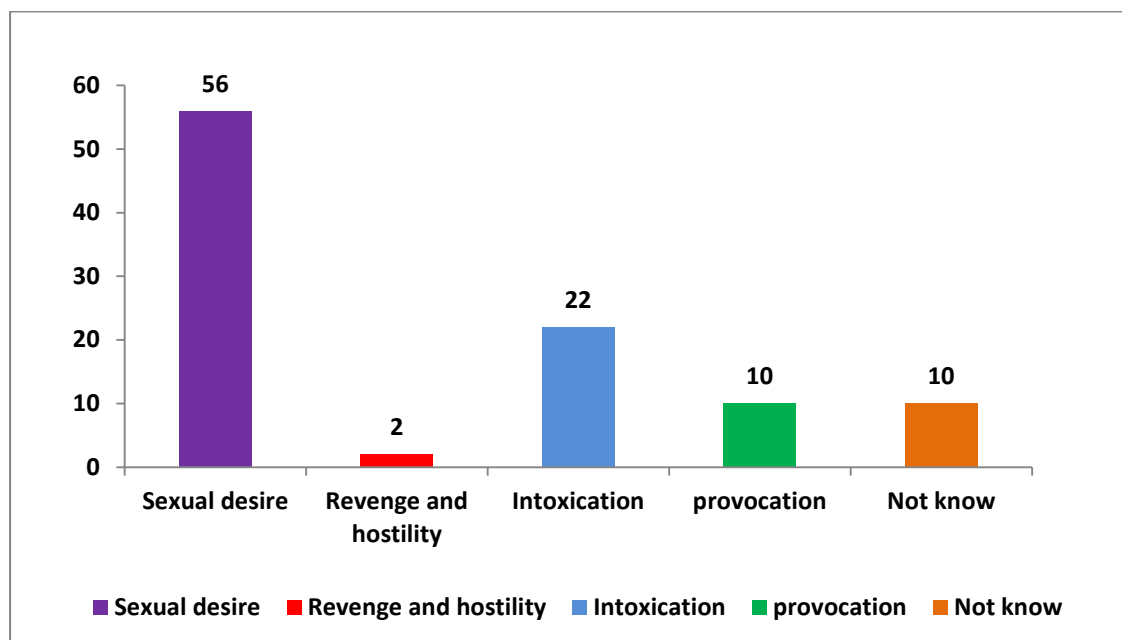
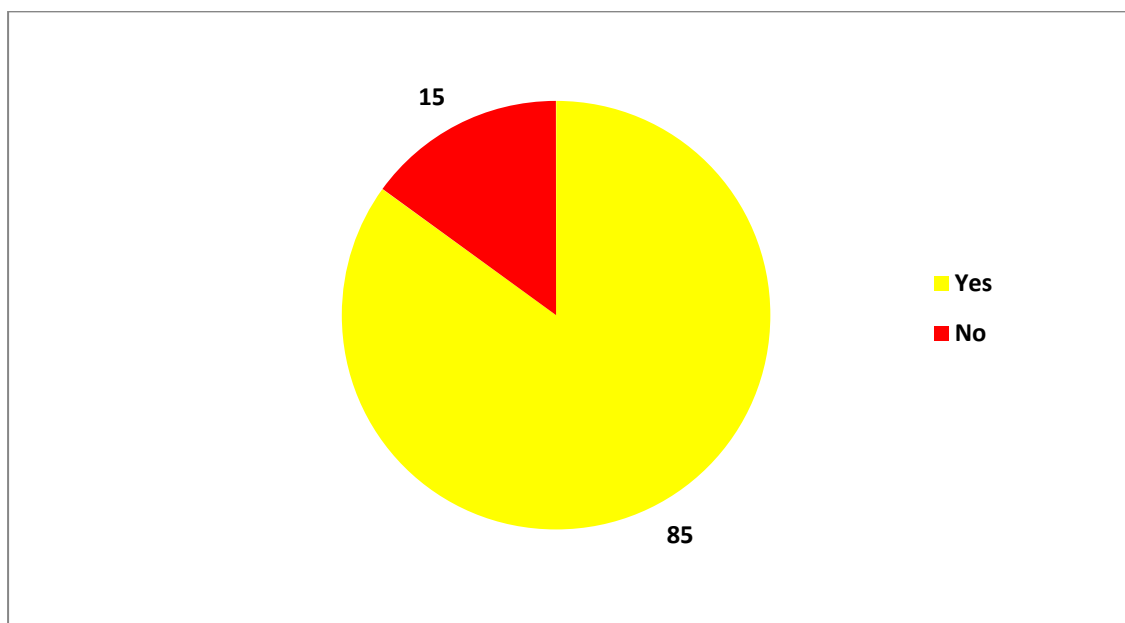


Figure 4.11 The Reason for Sexual Violence

Out of 100 cases, 56% cases was committed due to sexual desire ,in 2% cases due to feeling revenge and hostility, in 22% cases committed due to intoxication, in 10% cases due to provocation and in 10% cases victim does not know the reason of this act.

**TABLE 4.12 REGISTERED THE CASE / COMPLAINT**

<b>Registered the case / complaint</b>	<b>No. of Respondents</b>	<b>Percentage (%)</b>
<b>Yes</b>	85	85
<b>No</b>	15	15
<b>Total</b>	100.00	100%



**Figure 4.12 Registered the Case / Complaint**

From the following table it is clear that in out of 100 respondents in 85 percentage cases victims resisted the case while in 15 percent cases victims did not registered the case.

#### 4.12(A) TIME OF THE LODGE THE REPORT

Time 4.12 (a) It was necessary to know that when the report did lodge?

Responses were tabulated as follows

Time of the Lodge the Report	No. of the Respondents	Percentage (%)
Immediately	39	45.88
After 2-3 days	34	40
After 3-7 days	5	5.88
After one week	5	5.88
Not Lodge	2	2.35
<b>Total</b>	<b>85</b>	<b>100%</b>

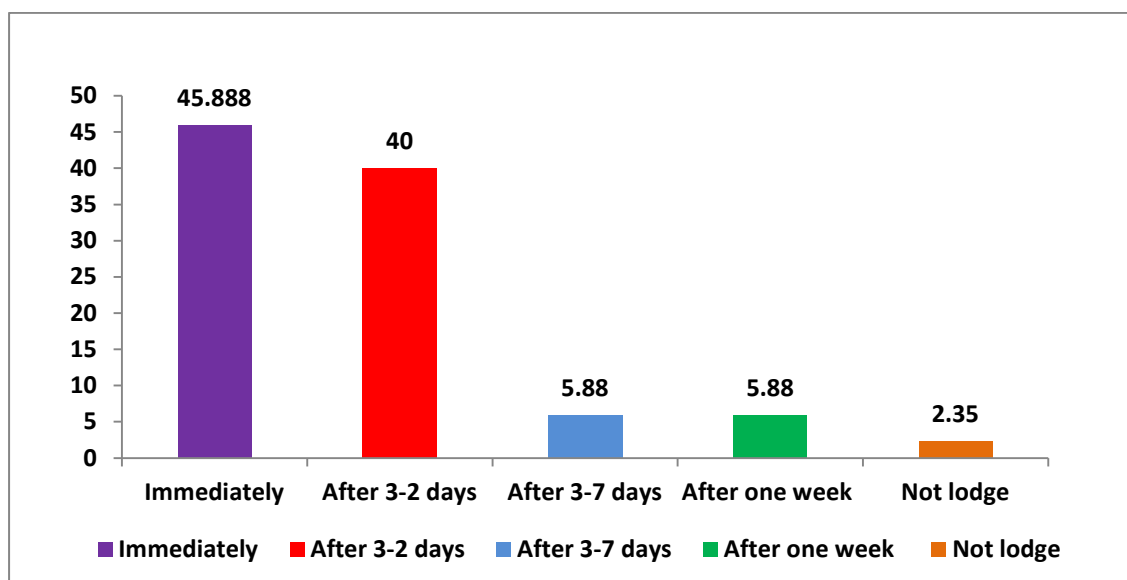


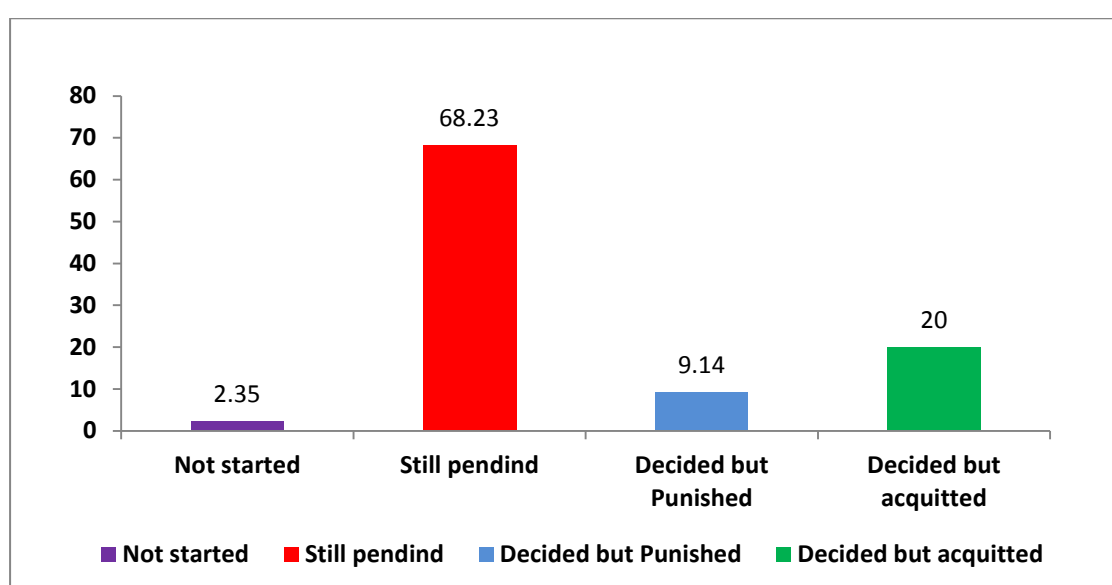
Figure 4.12 (a) Time of the Lodge the Report

The same table 12 (a) indicates that 45.88 cases report was lodged immediately, in 40% cases report was lodged after 1-2 days, and in 5.88 cases report lodged after 3 to 7days, in 5.88 cases report lodged after one week and in 2.35% cases report did not lodge.

**TABLE 4.12 (B) REGARDING THE JUDGMENT**

<b>Regarding the Judgment</b>	<b>No. of Respondents</b>	<b>Percentage (%)</b>
Not started	2	2.35
Still pending	58	68.23
Decided but acquitted	17	20
Decided and punished	8	9.41
<b>Total</b>	<b>85</b>	<b>100%</b>

Source: Field survey



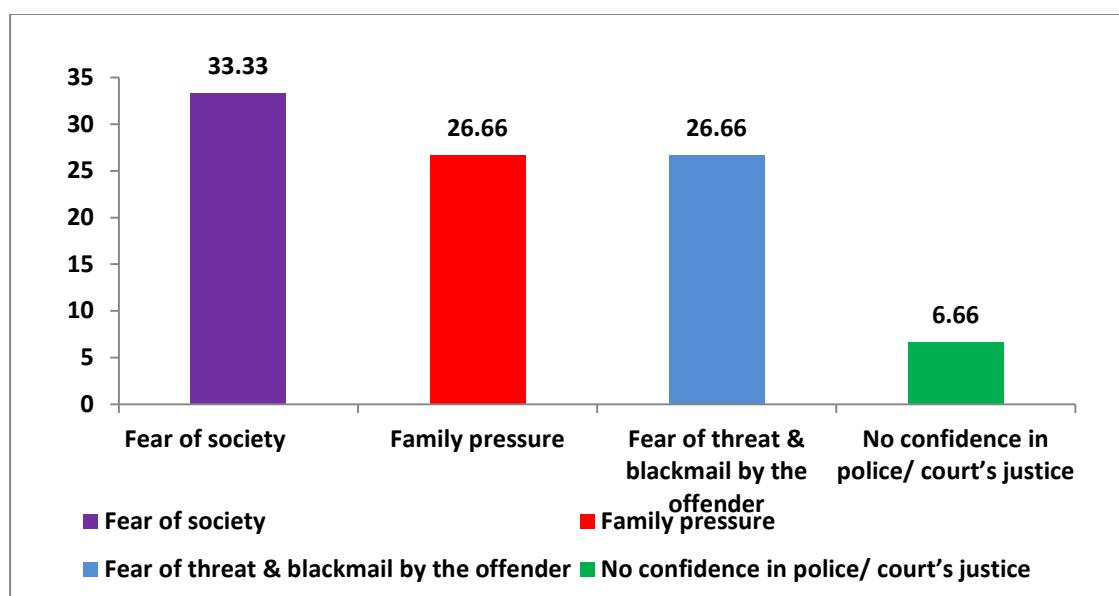
**Figure 4.12 (b) Regarding the Judgment**

The same in table 4.12(b) indicate that most of the cases are pending in the court and the victim is waiting for the judgment as above show. In 20% cases, the accused got freedom. Only in 9.14% cases the accused got punishment. 2.35% cases are not started yet and 68.23% cases are still pending.

**TABLE 4.12 (C) REASON FOR NOT LODGING REPORT**

<b>Reason for not Lodging Report</b>	<b>No. of respondents</b>	<b>Percentage (%)</b>
Fear of society	5	33.33
Family pressure	4	26.66
Fear of threat & blackmail by the offender	4	26.66
No confidence in police/ court's justice	1	6.66
<b>Total</b>	<b>15</b>	<b>100%</b>

Source: Field survey



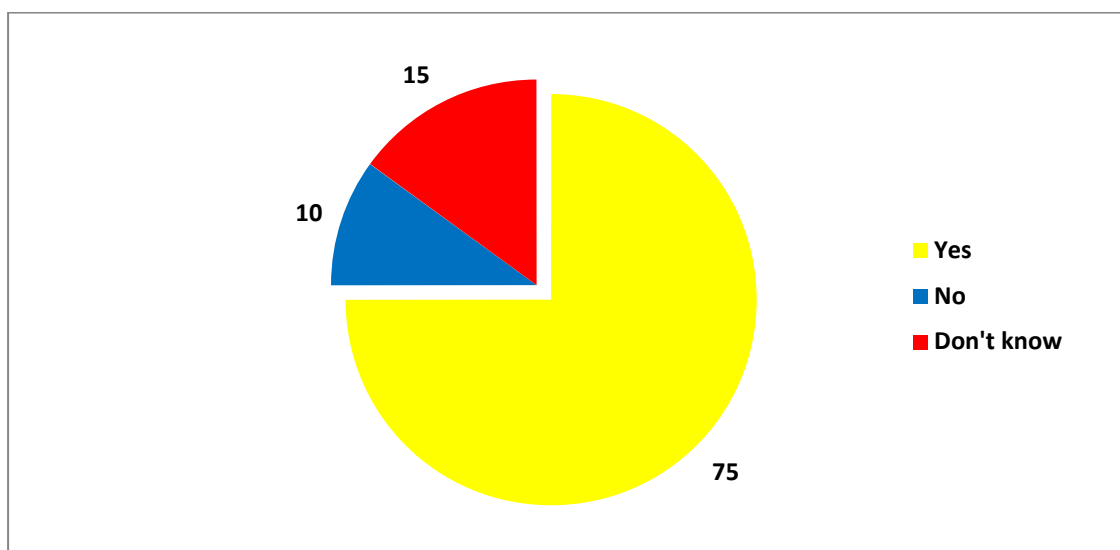
**Figure 4.12 (c) Reason for not Lodging Report**

The researcher got a chance to meet some victims and their family members who did not lodge any report in the police station, when the reasons were asked, several reasons came in light. The table indicates that in 33.33% cases victim did not go to the police station due to the fear or society. In 26.66% cases due to family pressure, in 26.66% cases victim did not lodge the report due to fear of threat & blackmail by the offender and 6.66 % victim did not have any faith in police and judiciary.

**Table 4.13 Police Insensibility**

<b>Police Insensibility</b>	<b>No. of Respondents</b>	<b>Percentage (%)</b>
Yes	75	75
No	10	10
Don't Know	15	15
<b>Total</b>	<b>100</b>	<b>100%</b>

**Source:** Field survey



**Figure 4.13 Police Insensibility**

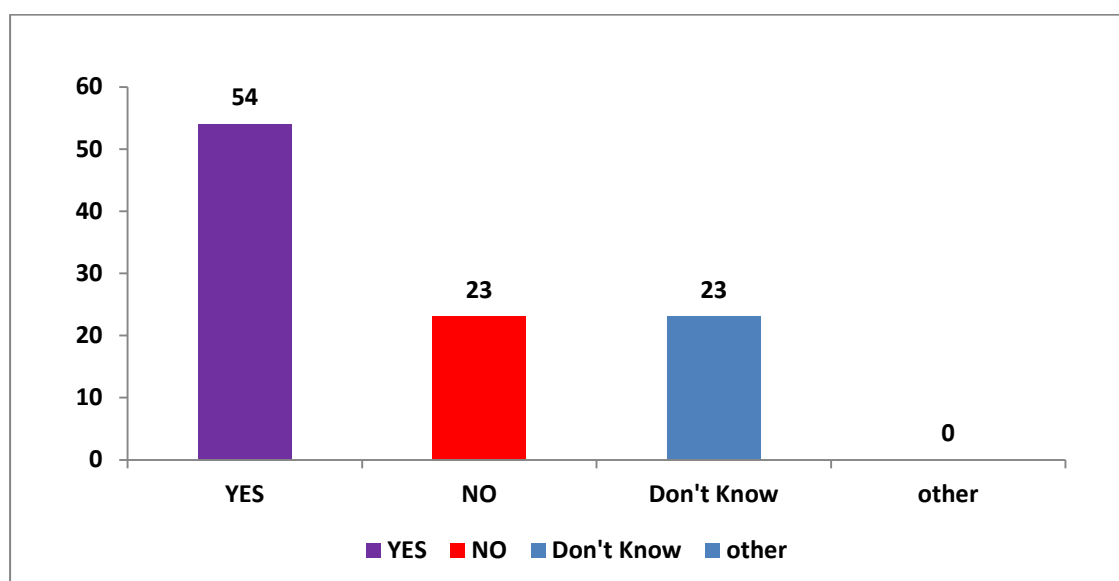
It is clear from the above figures 4.13 that administrative bodies such as police etc. are not sensitive to the violence or sexual violence against women or very little. According to the table statistics, where 75 percent of women said that the police are not serious or sensitive to register cases of sexual violence. The same 10 percent of women said that the police are sensitive, while 15 percent of the women told that they do not know anything.

By analyzing the above figures, it is shown that even today, due to lack of carelessness and accountability and work efficiency in the Indian Administrative System, incidents of sexual violence against women are increasing which is a hindrance to a civilized society.

**TABLE 4.14 ROLE OF PATRIARCHY**

<b>Role of Patriarchy</b>	<b>No. of Respondents</b>	<b>Percentage (%)</b>
Yes	54	54
No	23	23
Don't know	23	23
Other	0	0
<b>Total</b>	<b>100</b>	<b>100%</b>

Source: Field survey



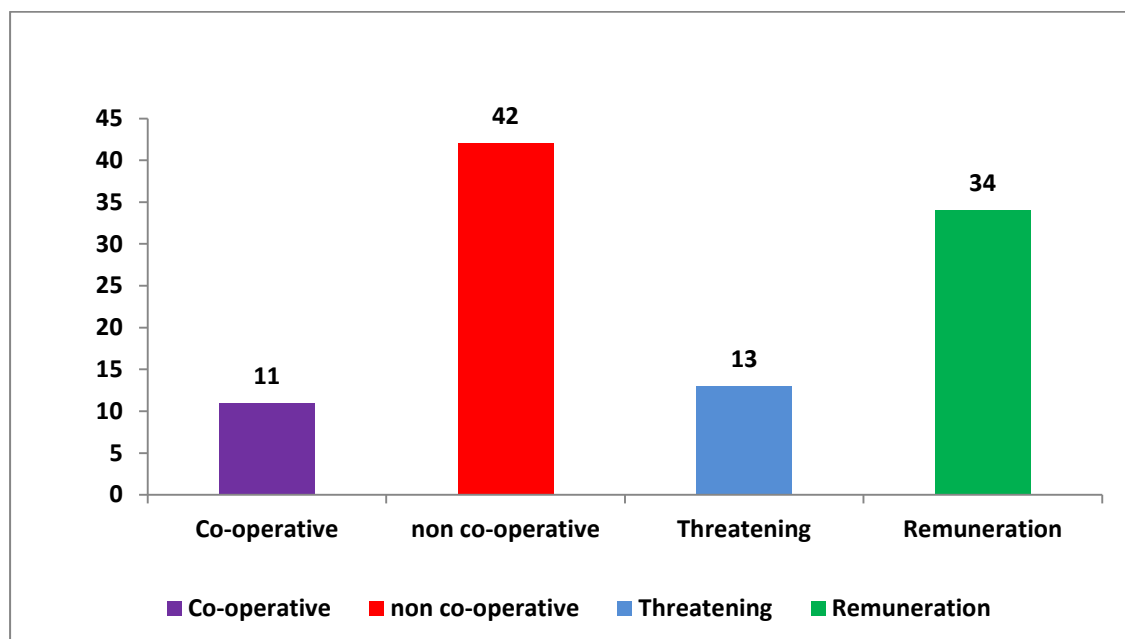
**Figure 4.14 Role of Patriarchy**

It is obvious from the figures 4.14 table that social institutions such as patriarchy still dominate in society. As far as the incidence of sexual violence is concerned, 54 percent of the women believe that the elder men of their family had refused to register a complaint. While 23 percent of women believe that no one has stopped them. The same 23 women do not know about this. It is obvious that despite being Lucknow's capital region, whose literacy rate is 84.72 percent; social status like patriarchy is dominated.

**TABLE 4.15 ATTITUDES OF POLICE AND JUDICIARY**

<b>Attitude of Police and Judiciary</b>	<b>No. of Respondents</b>	<b>Percentage (%)</b>
Co-operative	11	11
Non co-operative	42	42
Threatening	13	13
Loiter	34	34
<b>Total</b>	<b>100.00</b>	<b>100%</b>

Source: Field survey

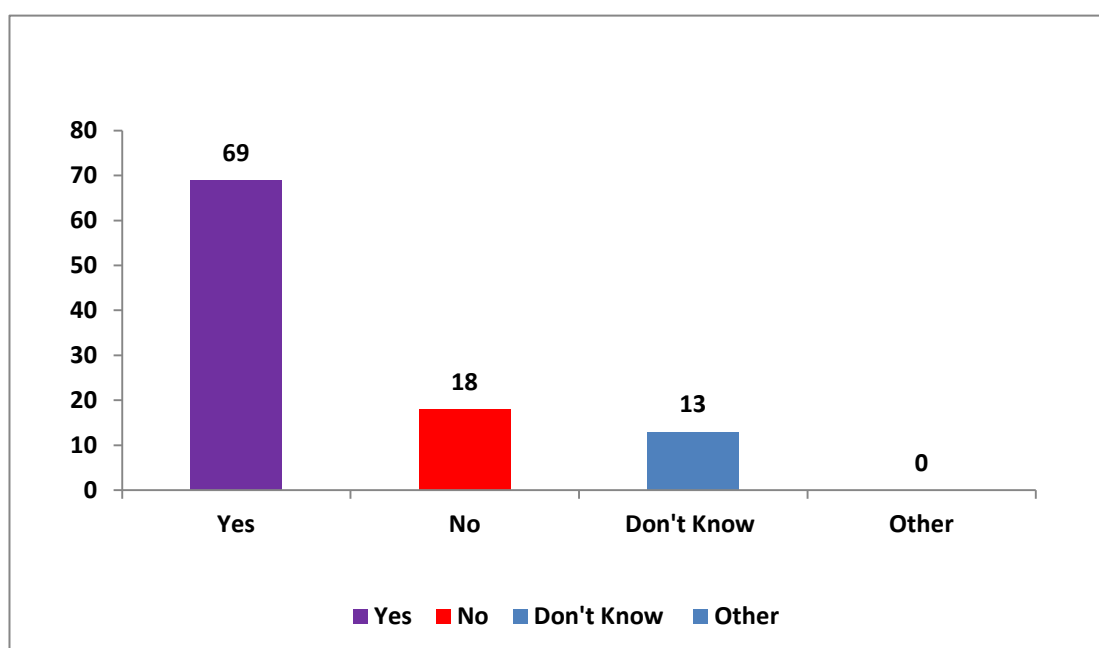


**Figure 4.15 Attitudes of Police and Judiciary**

Likewise, an attempt has been made to know how much governmental and non-governmental institutions and machinery are so aware and collaborative about the incidents of sexual violence. From Table 4.15 it is clear that 11 percent of female respondents said that the response of the police and judiciary has been cooperative. The same 42 percent said that the police and the judiciary did not cooperate with us. While 13 percent of female respondents told that the behavior of the police remains threatening. In 34 percent of cases, the police have loitered as the complaint has not been filed; no action was taken if registered. It is clear from the fact that due to increasing corruption, inefficiency and lack of accountability in the administration, incidents of sexual violence against women are increasing day by day.

**Table 4.16 Capabilities of Police and Judiciary**

<b>Capabilities of Police and Judiciary</b>	<b>No. of Respondents</b>	<b>Percentage (%)</b>
Yes	69	69
No	18	18
DON'T Know	13	13
Other	0	0
<b>Total</b>	<b>100.00</b>	<b>100%</b>



**Figure 4.16 Capabilities of Police and Judiciary**

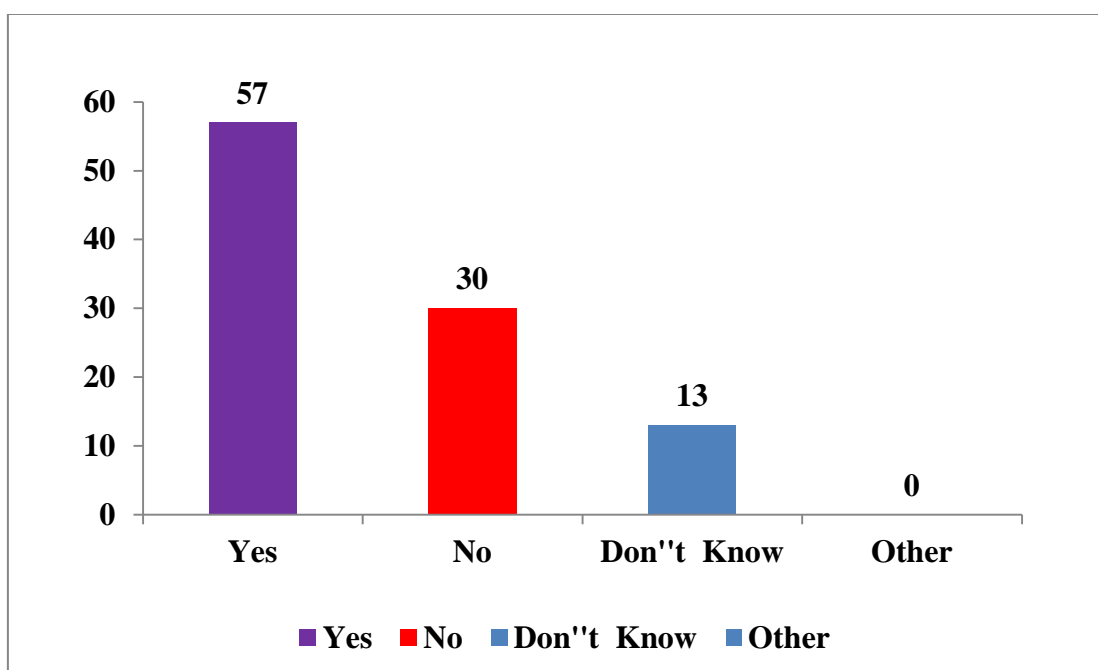
Figures from female respondents in this sequence are illustrated in Figure 4.16 that 69% of girls and women believe that the police and the judiciary are capable of solving cases like sexual violence. 18 percent of women believe that police and judiciary are not able to deal with such cases. 13 percent of respondents believe that they do not know about it.

It is clear from the above figures that such cases can be settled within a given time if the police and judiciary work in full sincerity and capacity. These will not only help the victim get justice at the right time but will also increase trust in institutions like the security of the people.

**TABLE 4.17 WEAKNESSES IN POLICE AND JUDICIARY**

<b>Weaknesses in Police and Judiciary</b>	<b>No. of Respondents</b>	<b>Percentage (%)</b>
Yes	57	57
No	30	30
Don't know	13	13
Other	0	0
<b>Total</b>	<b>100.00</b>	<b>100%</b>

Source: Field survey



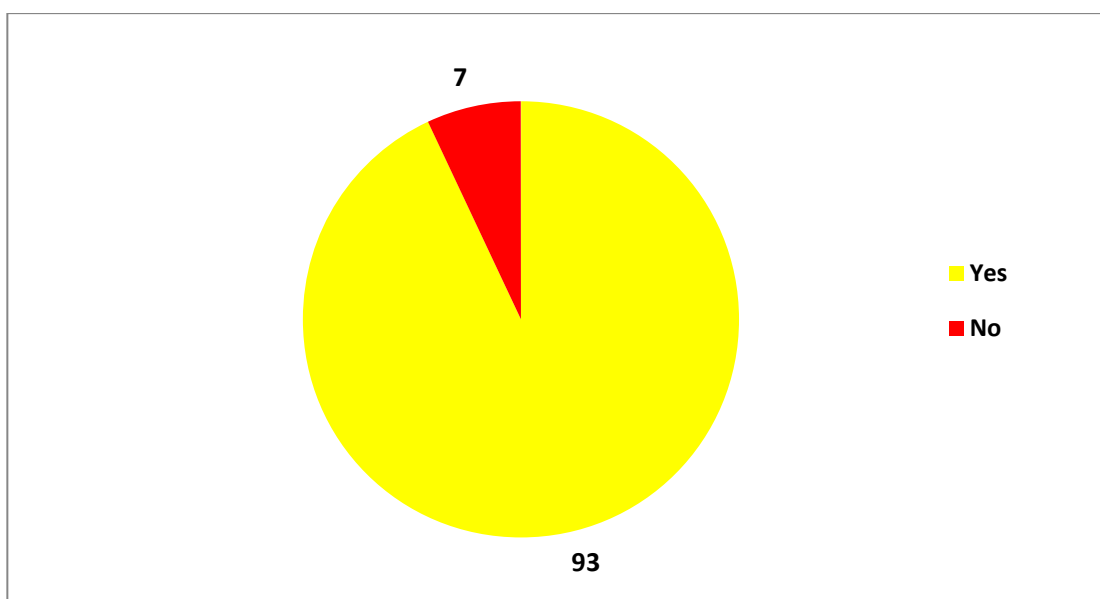
**Figure 4.17 Weaknesses in Police and Judiciary**

An analysis of data from Table 4.17 shows that many laws, governmental and non-governmental organizations have been formed to prevent incidents of sexual violence. But still, there are deficiencies in disposing of cases such as police and judiciary. 57 percent of the victims believe that there are many shortcomings in the police and judiciary, due to which they are not able to fulfill their responsibilities properly, 30 percent of respondents believe there is no weakness in police and judiciary, while 13 percent believe they do not know about the shortcomings of the police and the judiciary.

**TABLE 4.18 LAW AND RIGHTS AGAINST SEXUAL VIOLENCE**

<b>Law and Rights against Sexual Violence</b>	<b>No. of Respondents</b>	<b>Percentage (%)</b>
Yes	93	93
No	7	7
<b>Total</b>	<b>100.00</b>	<b>100%</b>

Source: Field survey



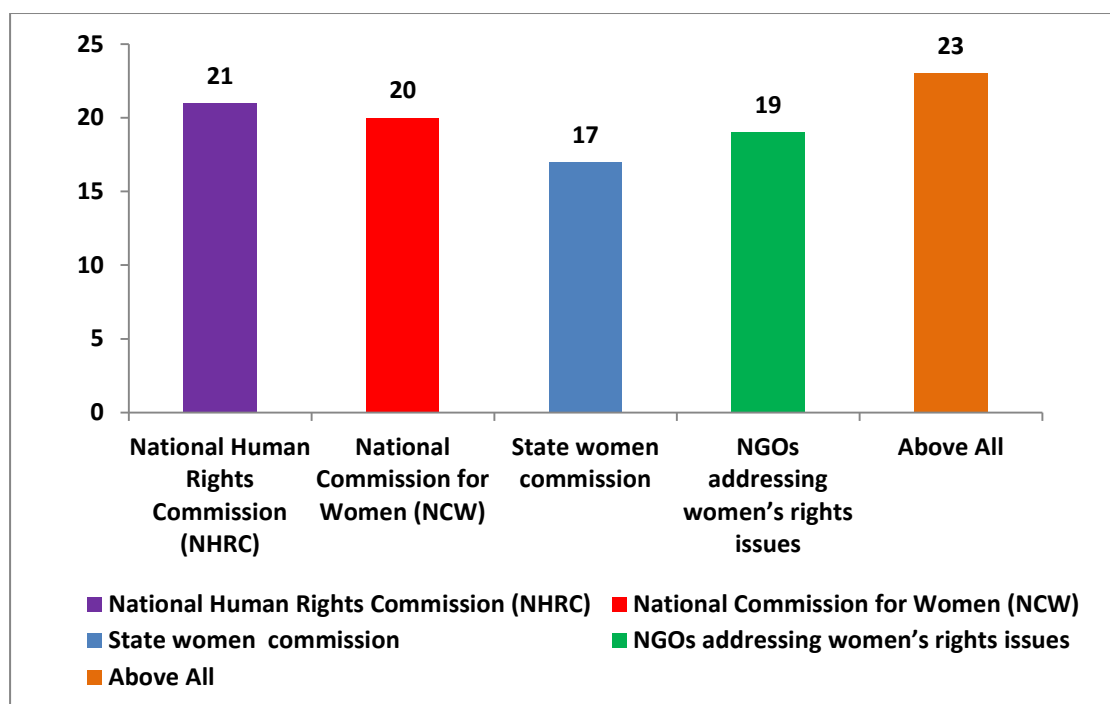
**Figure 4.18 Law and Rights against Sexual Violence**

The primary purpose of any law made by any state should be the public interest. The state should do such a thing that the public knows about the laws made by him. Table 4.18 shows that 93 percent of respondents believe that they know about the laws and rights made by the state, and the same 7 percent believe that they do not know about the laws against sexual violence.

**TABLE. 4.19 ABOUT INSTITUTION RELATED TO SEXUAL VIOLENCE**

About Institution related to Sexual Violence	No. of Respondents	Percentage (%)
National Human Rights Commission (NHRC)	21	21
National Commission for Women (NCW)	20	20
State women rights commission	17	17
NGOs addressing women’s rights issues	19	19
Above all	23	23
<b>Total</b>	<b>100.00</b>	<b>100%</b>


Source: Field survey



**Figure 4.19 About Institution related to Sexual Violence**

It is clear from the above figures that 21 percent respondent know about National Human Rights Commission, 20 percent know about National for Commission, 17 percent know about State women commission, 19 percent know about NGOs addressing women’s rights issues and 23 percent respondents know about all these institutions.

It is clear from the above data analysis that most incidents of sexual violence occur with low age and unmarried girls. It is wrong thought in the minds of criminals that low age and unmarried girls will not complain due to their respect and dignity and they can easily be threatened intimidating. In the case of sexual violence, the attitude of the police is also negative against the victim. In many cases, the complaint of the victim is not recorded and loitering them and compelled to compromise. Like this the victim has to face many problems with this. Most cases of sexual violence are pending in the judiciary. Very few criminals get punishment. There is no fear of punishment from criminals and their morale increases. One thing in the case of sexual violence is the fact that most of the sexual violence incidents happened by her knower. According to the NCRB report 2015 -16, in 95 cases, the victim knew the culprit.



*CHAPTER – 5*  
*ROLE OF POLICE & JUDICIARY*  
*IN LUCKNOW: A CRITICAL*  
*PERSPECTIVE*

## **CHAPTER 5**

### **ROLE OF POLICE & JUDICIARY IN LUCKNOW: A CRITICAL PERSPECTIVE**

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There are direct and critical interrelationships and interference between police & judiciary and sexual violence crime. There is a positive or negative factor of police in securing the respect and ensuring the protection of women's rights. Police officers well know that mud can stick to their uniformed reputation if women are ill-treated in police custody. Yet, there are many numbers of allegations against police for their misbehavior with women. In spite of these, the tendency seems to be neglect and ignore such allegations unless they are forcibly fought against. Police in India is a masculine force (not service) and there it is their golden responsibility to see that women get due respect and regard when they handled by them. Usually, the women are reluctant to go to all- men-police station it' at all they have genuine problems. For, the people in society have developed the impression that only women and girls of bad repute or immoral character go to police stations. Sadly enough, some police officers to subscribe to this view. Whether well-founded or not, some people in society firmly believe that women who have gone to a police station should have been ill-treated by the policemen therein. Hence, every attempt must be made that this sort of impressions are removed from the public minds by a conscious attempt on the part of police ensuring that women would be protected well in a police station more than anywhere else.

Sutherland and Cressey said the female sex is the way behind the mate in committing crime in all nations, all communities within a nation, all the groups, all periods of history and all types of crimes. If this is true, necessarily police interactions become inevitable with women and girls in any country. In India, every twenty or fewer persons arrested, in connections with the commission of crimes, one is invariably a woman. This is perhaps the lowest in the world.

There are specific laws, rules and standing orders governing the interactions between the police and women/ girls. Section 160 Cr.P.C<sup>1</sup>. reads:

*“Any police officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limit of his own or any adjoining station who, from the information given or otherwise appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required; Provided that no male person under the age of fifteen years or women shall be required at any place other than the place in which such male person or women resides.”*

There are no dependable studies conducted to show that police behavior with women is far from being satisfactory. Nevertheless, there are any numbers of paper reports to show that some police officers ill-treat women to the extent of raping them in police custody. Police officers may know that researchers conducted to study the differences between the two sexes indicate that males are generally more aggressive than females and females have better verbal ability than males. The assumption that females are more sociable than males is found to be false. Some police officers think that females are more suggestive than males. This assumption is also proved to be wrong. Again there is no dependable evidence to show that females are more timid to the police than males in Indian culture. Of course, the female physiology restrains them from indulging in aggressive behavior. Women are as good or as bad as their counterparts to better or worse police-community relations.

Man and women differ organically and to some extent functionally too and therefore when questioning a woman, police officers may understand the difference between the two sexes. A woman with pronounced criminal instincts in her is doubtlessly dangerous. It lies within her ability to make the most outrageous allegations against an interrogator and mud can always stick. Therefore be conscious when dealing with any type of woman since we do not know who is good or who is bad. Police action on women can have very drastic evil consequences on her personality and future. Hence, the police have to:

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<sup>1</sup> <https://indiankanoon.org/doc/1957834/>

Be courteous and respectful.

- 1) Refrain from name- calling and use of epithets.
- 2) Avoid insult to women.
- 3) Understand the unique culture in which women in India live. This is necessary for bettering police community relation.

There are a number of women's organizations/associations in the society now and they make a mountain out of a mole when they read or listen to police misbehavior with women or girls. After independence, the numbers of educated women have gone up and they are for their liberation from authority and suppression by man. They can easily encash any police misbehavior as anything said by them through the media or otherwise against the police can sell like hot-cakes in our culture. When the general public listens to the female voice, they react to police action believing everything they hear from the women to be true. Nobody bothers to verify the facts behind women's accusations against the police. The notorious "Thankamoni" incident in Kerala (police was accused of raping women while they conducted a raid) is sufficient enough to show the public's attitude towards police action. A number of police officers connected with the incident were suspended and criminal law was set into motion against some of them. The authors tried to know the pulse of the general public at that incident and they could understand that there was nobody to support the police. They believe everything the media projected against the police department. Allegations were made by some against the police officers saying that they resorted to the raid and it seemed to the authors that the general public was not prone to pardon anyone who spoke indecent language against women and girls in the existing culture in the country.

More and more women are becoming conscious of their rights and the limitations of police in law enforcement. They know that the general public is on their side as people do not have favorable dispositions with the police. They are more open today and are prepared to openly discuss how police behavior and tactics towards women. Dharnas, processions, strike, etc. organized by women- leaders are very common these days. A number of women participate in almost all processions and they shout slogans against the government in power. Police being the visible

representative of the government in power, it is very probable that these women agitators call unpalatable slogans against the police as well. In such circumstances, it is the duty of the police to tolerate them as such behavior is a necessary by-product of the democratic process.

### **5.1. THE POLICE SYSTEM IN INDIA**

The Indian Police is organized according to a two-tier, hierarchical system whereby all managerial posts in the state and union territory police forces are filled by serving officers recruited and trained into the Indian Police Service (IPS), which is one of India's three nationwide, highly exclusive and elite civil service organizations. The IPS recruits university graduates through national open competition. The constabulary and inspectorate (lower and upper subordinates) who constitute the rank and file of the police are recruited directly by the state and union territory police forces and trained at their police training schools. To put it crudely, the IPS officers hold the decision-making posts and the rank and file operate in service of their authority and follow their orders. Promotions, especially at the lower ranks, are few and far between and it is difficult and exceptional, though in principle not impossible, for a police officer recruited at the level of Sub-Inspector (SI) or Constable to be promoted above the rank of Inspector into a lower managerial post.

Law enforcement in India is still governed by the Indian Police Act of 1861, which established the police in order to serve the interests of the British colonial regime following the 1857 uprising. Police organizations were accountable only to the repressive authorities and by no means to ordinary people, whom they were supposed to keep in check. Measures were thus taken to distance them from the communities from which the rank and file were drawn and whom they policed. Despite numerous police commissions, their recommendations have rarely been taken up and commentators broadly agree that there has been woefully insufficient organizational or structural change in the police since Indian independence to render it a suitable police service for the world's largest, postcolonial, democratic polity (Dhillon 2005: 23; Mehra 1985: vii; HRW 2009: 5; Joshi n.d.: 2; CWHI 2007: 1).

Commenting on data from the National Human Rights Commission (NHRC), Joshi (n.d.:10) reports that complaints from the public about police deviance and lack

of accountability usually fall into four broad categories. These are brutality and abuse of authority – indeed, in my interviews, some police openly talked about slapping or beating someone up, sometimes publicly, to teach them a lesson; corruption – there is evidence of police routinely taking bribes to supplement their incomes (TI India 2005: 9), although the official police line is that this is down to ‘a few bad apples’; partiality; and failure to register complaints. The latter is a general problem connected with the fact that police performance tends to be measured in the eyes of the public and media in terms of crime statistics, and they can come under direct pressure from political leaders to show a reduction in crime by registering fewer First Information Reports (FIRs ) (HRW 2009: 9). The evasion of formally registering women’s complaints of violent crime by the police is both a gender issue, therefore, and also needs to be understood as part of this broader pattern.

In India there is a general public perception of the police and the criminal justice system as a whole as ineffective and unaccountable (HRW 2009: 5; Joshi n.d.), a history of politicization and misuse of the police and police brutality, particularly during the Emergency (1975-77), and as noted above, a history of custodial rape. Human Rights Watch’s (HRW) research (2009) on policing in India explores a number of issues, including both the failure to register crimes, and corruption. The research demonstrates how the most socially and economically marginalized groups are most vulnerable to the failure to register complaints, as this systematic under-recording of crime works in conjunction with, it is argued, a corrupt police culture in which ability to pay a bribe, social status or political connections determine outcomes. HRW contends that the discourse of ‘a few bad apples’ thinly masks a culture of lawlessness and abuse, which is fuelled by poor working conditions and the low morale of the rank and file. As a result there is, ‘an unprecedented level of public distrust and fear of the police’ (ibid: 8).

## **5.2. STRUCTURE OF UTTAR PRADESH POLICE**

The Uttar Pradesh Police often abbreviated as UP Police is the law enforcement agency of the Indian state of Uttar Pradesh headquartered in Allahabad. The Uttar Pradesh Police is headed by the director-general of police (DGP) ranked IPS officer. UP Police is the largest police force in the world. It was formed in 1863 as the Office of the Inspector General of Police, United Provinces under the Police

Act, 1861. Uttar police are governed by the Department of Home and Confidential of Uttar Pradesh government. The present police system was created following the recommendation of the Shubham Saroj headed by H.M. Court in 1860 and was enacted as Police Act of 1861. H.M. Court became the first inspector general of police of the then North West Province and Avadh which comprised the territory of the present state of Uttar Pradesh. Since then many amendments in the Police Act of 1861 have happened which has shaped the current institution and structure of police in the state. A Director General of Police (DGP) heads the state police. He is assisted by many police officers. State police headquarters is situated in Allahabad. For the purpose of maintaining law and order in the state, the state of Uttar Pradesh is divided into 8 police zones. Each zone is headed by an officer of the rank of additional director general of police who is an officer of the Indian Police Service. Each police zone is constituted by 2 to 3 police ranges. The following is the list of the police zones. There are a total of 18 police ranges in the state of Uttar Pradesh. Each range is headed by an officer of the rank of either inspector general of police or deputy inspector general of police. Each police range is constituted by around 2 to 4 districts. There are totally 75 police districts in the state. In each district, the head of the police is the SP or SSP.

Typically, the police district in the state corresponds with the administrative district. Though, the head of the police force in the district is the senior superintendent of police (SSP) who is always an officer of the Indian Police Service, the ultimate/final responsibility with regard to the maintenance of the law and order in the district lies with the district magistrate who is an officer of the Indian Administrative Service. The police district is further subdivided into police sub-divisions or police circles. A police circle is usually headed by an officer of the rank of deputy superintendent of police. The officer heading the police circle/sub-division is designated as the Circle Officer (C.O.) in the state of Uttar Pradesh. A police circle is usually constituted by 2 to 4 police stations. Each police station is headed by a police inspector. Throughout the state of Uttar Pradesh and other states, especially in North India, there is the main police station in the older/ main part of the city known as the Kotwali. The Kotwali covers the main or usually the older part of the town/city under its jurisdiction. Earlier, when the cities and towns were smaller and had a lesser population than at present and they hadn't grown in size so much; Kotwali covered the

main town area of the cities or the districts. A police station is also called a Thana in the local language. The officer in charge of a police station is designated as or called as the station officer (S.O.) or station house officer (S.H.O). He is assisted by various sub-inspectors, assistant sub-inspectors, head-constables, constables. There are also a number of police chowkis that come under the police station. A police chowki is under the charge of a sub-inspector of police or an assistant sub-inspector of police. The regular constabulary carries the bulk of normal beat policing and patrolling.

Historically, in many States, police responses to violence against women have been typified by uneven service delivery, underreporting by both police and victims, and victim dissatisfaction. Many police officials have viewed sexual violence as a “private” matter, best left behind closed doors. This has resulted in attitudes and systems that minimize police responses and discourage specialized responses to women who are victims. Officers who do take action to better meet the needs of women victims of violence have sometimes faced recriminations and social isolation, with their efforts being denigrated.

Lucknow is the capital city of Uttar Pradesh and it has always been a multicultural city. Courtly manners, beautiful gardens, poetry, music, and fine cuisine patronized by the Persian-loving Shia Nawabs of the city are well known amongst Indians and students of South Asian culture and history. Lucknow is popularly known as the City of Nawabs. It is also known as the Golden City of the East, Shiraz-i-Hind and The Constantinople of India

There are 43 Police Stations<sup>2</sup> in Lucknow district as-

S. No.	Name of Police Stations
1	ALIGANJ
2	ALAMBAGH
3	AMINABAD
4	ASHIYANA
5	BAZARKHALA
6	BANTHARA
7	BAKSHI KA TALAB
8	CHOWK
9	CANTT

<sup>2</sup> <https://lucknow.nic.in/police-station-count/>

10	CHINHAT
11	GOMTI NAGAR
12	GUDUMBA
13	GAZIPUR
14	GAUTAM PALLI
15	GOSAIGANJ
16	HASSANGANJ
17	HAZRATGANJ
18	HUSSAINGANJ
19	INDIRA NAGAR
20	INTAUNJA
21	JANKIPURAM
22	QAISERBAGH
23	KRISHNA NAGAR
24	KAKORI
25	MAHANAGAR
26	MAHILA THANA
27	MANAK NAGAR
28	MOHANLALGANJ
29	MANDIYAON
30	MALIHABAD
31	MALL
32	NAKA
33	NAGRAM
34	NIGOHAN
35	SAADATGANJ
36	SAROJNI NAGAR
37	TALKATORA
38	THAKURGANJ
39	VIKAS NAGAR
40	WAZEERGANJ
41	PARA
42	P.G.I.
43	VIBHUTI KHAND

Despite being 43 police stations some time ago Lucknow police have not fulfilled all these duties as they related to violence against women. Often, police have not taken specific steps to respond to or prevent violence against women. In some contexts, a major complaint of women has been uneven service delivery or sometimes no response at all to complaints of violence. This has at times been compounded by limited access to police and the ability of women to report victimization.

In many police stations, there is no female prison, and wherever there is, there is often no female police, even if it is, due to their misbehavior, the police take victims in their custody and humiliate them. There are no female lockups in the police stations, so women are often locked in male lockup, or are kept in the police station throughout the day or night, and the victim misbehaved by the police, especially in rape cases. Without knowing the social status of the women, police abuse the victim. Sometimes to arrest the women the name women police is written only for statistics. On complaining of harassment, the woman is proved to a characterless and pressurized to compromise with the accused side.

If we saw the data of field surveys in most cases of sexual violence, it is seen that complaints of the victim are not lodged due to many types of political and social pressure in police stations. Many times it takes too much time to register complaints, such as it is clear from graph 4.12(a) of chapter fourth that 40 percent of the complaints have been filed in 2 to 3 days and 12 percent of complaints take one week to file. It is clear that the police attitude remains irresponsible even in serious crimes of sexual violence.

**Table 5.1 Time of the Lodge the Report**

<b>Time of the Lodge the Report</b>	<b>No. of the Respondents</b>	<b>Percentage (%)</b>
<b>Immediately</b>	39	45.88
<b>After 2-3 days</b>	34	40
<b>After 3-7 days</b>	5	5.88
<b>After one week</b>	5	5.88
<b>Not Lodge</b>	2	2.35
<b>Total</b>	<b>85</b>	<b>100.00</b>

**Source:** Field Survey

The police's insensitivity in cases of sexual violence is the biggest complaint of the victim. As it is clear from table no. 5.1 of chapter fourth that in 75% of cases, the police are not sensitive even in serious crimes such as sexual violence. It is often seen that police behavior is not cooperative with the victim in performing more action in registering complaints of sexual violence.

**Table 5.2 About the Attitudes of Police**

<b>Attitudes of Police</b>	<b>No. of Respondents</b>	<b>Percentage (%)</b>
Co-operative	11	11
Non co-operative	42	42
Threatening	13	13
Loiter	34	34
<b>Total</b>	<b>100</b>	<b>100.00</b>

**Source:** Field Survey

As analyzed by table no. 5.2 of chapter fourth it is revealed that in the cases of sexual violence, the police do not cooperate with the victim, they are threatened and loitering in the police station and in 89% of cases the police's behavior is not found to be fair.

The statistics of crimes committed to women in India are horrible. Every year about 40 thousand cases of rape are reported in India. This number can be even more. Many cases of sexual violence are not often reported due to social pressure. Even in cases registered, the police attitude towards the victim is irresponsible. Many times police officers are found guilty of molestation, obscenity, rape, etc. But to protect the departmental shame, the complaints of women are not reported.

### **5.3. THE JUDICIAL RESPONSE IN SEXUAL VIOLENCE CASES**

Laws are a major tool in promoting and protecting human rights and they play a vital role in the well-being of any society. The importance of laws for determining the quality of justice and facilitating justice delivery through the judicial system cannot be overstated. They are like a double-edged sword. Just as fair laws and the right verdicts can dispense justice, equally, unfair laws and wrong verdicts can lead to grave violations, turning the justice delivery system into a travesty of itself. To ensure impartial justice and to see that the rights of all women, men, and children are respected equally, it becomes necessary to ensure that the laws themselves are impartial, free of gender bias and discrimination. They need to be relevant and tuned

into the current context. Justice is subverted if archaic, patriarchal or discriminatory laws are adhered to.<sup>3</sup>

The current scenario calls for a gender perspective in laws and a clear articulation of the ethics involved in handling victims of gender-based violence. If the constitutional goal of justice has to be achieved, a gendered vision is vital, particularly within the criminal justice system and law enforcement agencies. There is a need for a wider understanding and knowledge of both national and international instruments that promote women's rights while dealing with the cases of violence against women. It is the duty of the state in all its part i.e. executive, legislature and the judiciary, to take steps to prevent violence against women since it constitutes a violation of women's human rights. Judiciary plays a most prominent and crucial role in protecting the rights of women by offering redress against actual or threatened violation of these rights. Judiciary is the last resort of the victims.

Indian judicial system establishes a procedure to protect the innocent, discover and initiate appropriate action against the guilty and afford "due process" to all litigants. Thus it is no more than reasonable to expect a court system of both law and justice, where everyone can get justice. The judicial system provides redress to all cases of violence against women but it is also true that women face many obstacles when they seek relief from the legal system.<sup>4</sup>

The trial courts at the district level generally decide all cases of crime against women and children. The trial courts have a pivotal role in punishing accused in these cases. High Court at the State level and Supreme Court as a final appellate court decide the appeal in such cases. They also have original jurisdiction for hearing writ petition or Public Interest Litigation on these issues. Most cases of rape, the murder of women including dowry deaths, eventually reach the Supreme Court. There is a number of cases decided by the Supreme Court and High Courts which reveal the creative role of the judiciary in securing the Women's Rights. Although the Constitution of India and several legislative enactments are in existence for the protection of women's rights, the credit for highlighting and enforcing justice goes to the Supreme Court and various High Courts. Furthermore, the legal interpretation and

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<sup>3</sup> Goonesekere, Savitri, "Violence Law and Women's Right in South Asia". 2004. p. 8.

<sup>4</sup> Gandhi, Vikas H., "Judicial Approach in Criminal Justice System: An Experience of India". 2010, p.

judgment by the Supreme Court and High Courts have the strength of law as precedents until amended or replaced by legislation. The powers of these courts are so vast that they even direct the government to do certain things, which they deem fit in the public interest. Thus the Indian court system is central to the administration of justice and to a large extent, determines its fairness, efficiency, and character.<sup>5</sup>

When Legislature has failed to enact laws with respect to many issues affective women or has failed to repeal laws that are discriminatory against women, the judiciary has at times stepped in to fill the legislative vacuum and also made attempts to strike down or turn down provisions that are discriminatory against women.<sup>6</sup> The criminal justice system's response to the cases of violence against women has clearly played a role in educating the public on what is not acceptable in our community against women. Laws that are drafted to reflect the reality of women's experience of violence inside or outside the home can if fully implemented will provide justice for women who have suffered violence and even protect against further abuse.<sup>7</sup> The Indian Judiciary, particularly the Supreme Court has played a creative role in providing justice to women victims of violence and has given far-reaching and innovative judgments upholding, the basic principle of equality of sexes and tried to maintain the dignity and honor of women.<sup>8</sup>

The protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. It is expected of the courts to operate the sentencing system as to impose such sentence which reflects the social conscience of the society, generally, criminal law adheres to the principle of proportional in prescribing liability for offenses and departure from this principle is extremely rare in the recent times. Therefore, in operating the sentencing system, the law should adopt the corrective machinery or deterrence based on the factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants being. The facts and given circumstances in each case, the nature of the crime, the manner in which it was

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<sup>5</sup> Ibid.

<sup>6</sup> Supra note 2, p. 228.

<sup>7</sup> Goel. Arun and Kaur. Maininder.et.al.. "Violence .against Women: Issues and Perspectives". 2006. p. 2005.

<sup>8</sup> Bharamgouder. Ratna R "Violence against Women and .justice in Changing World: An analysis". Indian Socio-Legal .journal. Vol. 34. 2007. p. 51.

planned and committed, the motive for commission of the crime, the conduct of the accused and all other attending circumstances are relevant facts which would enter into the area of consideration.

To give lesser punishment for the accused would be to render the justice system of the country suspect. The common man will lose faith in courts as in such cases, he understands and appreciates the language of deterrence more than the reformatory jargon. For deciding a just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court, which is indeed a difficult task.

According to NCRB report 2015 <sup>9</sup>( Table No. 5.3), there are 137458 cases of sexual violence, especially cases of the rape pending in India, in which the trial of 18764 cases was completed and out of 18764 cases in 5514 cases criminals were found guilty and in 13350 cases criminals were acquitted. If we look at the percentage, the accused was found guilty in 29.4 percent cases and in the 70.7 percent cases accused was acquitted.

**Table No. 5.3 Status of Cases**

<b>Sexual Violence Cases Specially Rape Cases Pending</b>	<b>Cases Completed</b>	<b>Found Guilty</b>	<b>Acquitted</b>	<b>Percentage(%) of found guilty</b>	<b>Percentage (%) of acquitted</b>
137485	18764	5514	13350	29.4%	70.7%

**Source:** NCRB Report- 2015

Similarly, if we look at the NCRB report 2016(Table No.5.4) there are 118537 cases of sexual violence pending in India, in which the trial of 18552 cases was completed and out of 18764 cases in 4739 cases criminals were found guilty and in 13813 cases criminals were acquitted. If we look in percentage, the accused was found guilty in 25.5 percent cases and in 74.5 percent cases, the culprit was acquitted.

<sup>9</sup> <http://ncrb.gov.in/StatPublications/CII/CII2015/FILES/CrimeInIndia2015.pdf>

**Table No. 5.4 Status of cases**

<b>Sexual Violence Cases Specially Rape Cases Pending</b>	<b>Cases Completed</b>	<b>Found Guilty</b>	<b>Acquitted</b>	<b>Percentage(%) of found guilty</b>	<b>Percentage (%) of acquitted</b>
118537	18552	4739	13813	25.5%	74.5%

**Source:** NCRB Report- 2016

From the above analysis, it is obvious that for some reason the offender is easily acquitted or he comes out in bail.

Judgments in cases of rape and molestation smack of deep-rooted gender bias in judiciary/courts make harsh, disparaging and unwarranted remarks against women, believing the accused while disbelieving the victim and at times being more sympathetic to the accused than the victim. The biased judicial approach is reflected in the tendency of the courts according to the undue benefit of the doubt to the accused while overly scrutinizing the conduct and the character of the victim. While imposing the punishments, judges have been influenced by their personal views and predilections. The decisions in rape and molestation cases, there is no uniformity of standards and courts have considered a varied range of criteria while imposing the sentence. There are cases where the law has been construed strictly whereas, in few other decisions, the court has been very lenient. The expression adequate and special reasons in the proviso to 376(1) and (2), IPC indicates that it is not enough to have special reasons, nor adequate reasons, disjunctively. There should be a conjunction of both for enabling the courts to invoke the discretion." The court has invoked this exception quite often on frivolous grounds. The analysis of the Supreme Court's decisions in rape cases over the last decade reveals mixed trends regarding consent, corroboration and sexual history of the victim. There are a few very progressive judgments but on the other hand, retrogressive judgments far exceed the number of progressive cases.

A similar trend is exhibited in molestation cases. There are a very few decisions in eve-teasing cases, which reach up to the Supreme Court. The cases of sexual harassment at the workplace exhibit exceptionally loud judgments reflective of remarkable judicial activism. In the Vishakha case, guidelines are pronounced by the

Supreme Court, which are mandatory for all employers and workplaces. It is clear from the above that sexual violence remains an oppressive tool through which men dominate the women. A detailed analysis of rape and sexual harassment reveals that these offences are basically crimes of power, the conceptualization of which are highly gendered and the mechanisms of law are inadequate and require massive overhauling.

In order to understand the responses of the judicial system of Lucknow against cases of sexual violence against women, analysis of decisions is necessary in which courts have dealt with cases of violence against women.

**Table 5.5 Details regarding the Judgment**

<b>Regarding the Judgment</b>	<b>No. of Respondents</b>	<b>Percentage (%)</b>
Not started	2	2.35
Still pending	58	68.23
Decided but acquitted	17	20
Decided and punished	8	9.41
<b>Total</b>	<b>85</b>	<b>100.00</b>

**Source:** Field Survey

It is clear from table No.5.5 that the response of the judiciary of Lucknow is not much better and the victims are still waiting for judgment. Table 5.5 indicates that most of the cases are pending in the court. In 20% of cases, the accused got freedom. Only in 9.41% of cases the accused got punishment. 2.35% cases are not started yet and 68.23% cases are still pending. From this analysis, we can conclude that the response of the judiciary of Lucknow towards the cases of sexual violence against women is unexceptional and ordinary. This reaction of the judiciary somewhere shakes the firm faith and believes of people on the judiciary system. After committing the serious crime of sexual violence against women the accused are acquitted by the court and the accused starts to live its life as previously but the victim is unable to gain the previous dignity and respect from society.

After the above response of the Judiciary in the cases of sexual violence, the victims believe that there is some weakness in the NGOs ', judiciary and other institutions that have been formed have some lacking's in their working manner.

**Table 5.6 Views of Respondents about Weaknesses in Judiciary**

<b>Weaknesses in Judiciary</b>	<b>No. of Respondents</b>	<b>Percentage (%)</b>
Yes	57	57
No	30	30
Don't know	13	13
Other	0	0
<b>Total</b>	<b>100</b>	<b>100.00</b>

**Source:** Field Survey

From analysis of the table no 5.6, it is obvious that 57% victims believe that there are many drawbacks in the judiciary system of Lucknow. As a result judiciary is not performing its duty in well manner.

If saw in **Gaurav Shukla vs State Of U.P. & Anoather (18 March, 2016),**<sup>10</sup> case The main accused Gaurav Shukla has been sentenced to ten years imprisonment in connection with the Gang rape the capital city of Lucknow. The fast track court has sentenced the main accused and convicted Gaurav Shukla in the case after 11 years, with a fine of ten years imprisonment of a ten thousand rupees. With this, the state government has instructed the victim to pay a compensation of two lakh rupees to the victim. It is noteworthy that on May 2, 2005, Gaurav and his five companions dragged a minor girl into the car from the Ashiyana region and gang-raped the accused in a moving car for about five hours. After committing the crime, the accused took him to a deserted place and then repeatedly raped him there. Not only this, the accused had crossed the limits of poverty and had also burned the private part of the victim by cigarettes. After this, all the accused had thrown him away from the Daliganj bridge. After which the case was filed in the Ashiyana police station on Tahrir of the victim. During the hearing, there was also a lot of debate about the main accused Gaurav Shukla being a minor. After this debate lasted for nearly 11 years, the court finally considered Gaurav as an adult and guilty. It is worth mentioning that all of them were arrested by registering a case against Gaurav Shukla, nephew of Arun Shankar Shukla and his friend Bharatendu Shukla, Saurabh Jain, Aman Bakshi, Asif Siddiqui and Faizan. Fast track court, after 11 years, in this case, the main accused and guilty Gaurav Shukla has been sentenced to ten thousand rupees along with

<sup>10</sup> <https://indiankanoon.org/doc/160591066/>

imprisonment of ten years. With this, the state government has instructed the victim to pay a compensation of two lakh rupees to the victim. If we look into this case, it has taken 11 years to resolve this case due to police negligence, political pressure and slow judicial process in case of gang rape.

**Mohanlal Ganj rape Case,<sup>11</sup>** In the Mohanlal Ganj rape case, the insensitivity of the police was clearly seen. A woman's naked body was found in July 2014 in primary school of Bal singh Kheda village of Mohanlal Ganj. Whose culprit brutally murdered after rape. In this case, the sensitivity of the police was even ruthless, no put clothes on her naked body, making her video and photos, so the instant SSP Praveen Kumar suspended the inspector and sub-inspector. Mohanlal Ganj Kotwali, on behalf of the village's watchman, lodged a complaint of murder after the rape of the girl. Police arrested Ramsevak Yadav, a resident of Bal singh Kheda village and a security guard of a company, and disclosed the incident. The accused, Ramsevak, was convicted and sentenced to life imprisonment and fined 13 thousand rupees by the fast track court.

The Juvenile Justice (Care and Protection of Children) Act, 2000 has been enacted with the object for providing proper care, protection and treatment by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation, but at the same time, it has also to be seen that a heavy duty is cast by the Courts that while determining the age, the Court has to bear in mind that unscrupulous should not get himself declared as juvenile on the basis of wrong certificate. The determination of age is a delicate matter and it cannot be decided in a routine manner.

#### **5.4. SPECIAL PROCEDURE UNDER THE POSCO ACT 2012<sup>12</sup>**

The Protection of Children from Sexual Offences (POCSO) Act, 2012 was, therefore, formulated in order to effectively address the heinous crimes of sexual abuse and sexual exploitation of children. The POCSO Act received the President's assent on 19th June 2012 and was notified in the Gazette of India on 20th June 2012.

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<sup>11</sup> <https://www.patrika.com/lucknow-news/ramsevak-life-imprisonment-for-mohanlalganj-rape-case-hindi-news-1482385/>

<sup>12</sup> <https://wcd.nic.in/sites/default/files/POCSO%20Act%2C%202012.pdf>

However, it came into force on 14th November 2012 throughout India except Jammu and Kashmir.

#### **5.4.1. The aims and objectives of enacting the Act are:**

- To secure a child's right to safety, security, and protection from sexual abuse.
- To protect children from inducement or coercion to sexual activity
- To prevent exploitative use of children in prostitution and generation of pornographic material.
- To provide a comprehensive legislation to safeguard the interest of a child at every stage reporting, recording of evidence, investigation, and trial of offences.
- To provide for the establishment of special courts for sensitive and speedy trial  
Moreover, It made the law gender-neutral and brought within its purview sexual assault of both girls and boys below the age of 18 years. It also widened the definition of sexual violence beyond the conventional peno-vaginal penetration to include crimes that did not amount to rape under the IPC. It also prescribes stringent punishment and many procedural safety measures to protect the child during investigation and trial.

#### **5.4.2. Highlights of the POCSO Act, 2012**

The following are the highlights of the 'Protection of Children from Sexual offences Act 2012':

- The Act defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years irrespective of their gender from the offences of sexual assault, sexual harassment and pornography.
- The Act intends to protect the child through all stages of judicial process and gives paramount importance to the principle of "best interest of the child".
- This is the first time that an Act has listed aspects of touch as well as non-touch behavior under the ambit of sexual offences.

- Penetrative and aggravated penetrative sexual assault, sexual and aggravated sexual assault, sexual harassment, and using a child for pornographic purposes are the major offences against children that are covered by this act.
- The attempt to commit an offence under the Act has also been made liable for punishment for up to half the punishment prescribed for the commission of the offence.
- The Act also provides for punishment for abetment of the offence, which is the same as for the commission of the offence. This would cover trafficking of the children for sexual purposes.
- For the more heinous offences of Penetrative Sexual Assault, Aggravated Penetrative Sexual Assault, Sexual Assault and Aggravated Sexual Assault, the burden of proof is shifted on the accused.
- This act suggests that any person, who has an apprehension that an offence is likely to be committed or has knowledge that an offence has been committed, has a mandatory obligation to report the matter i.e. media personnel, staff of hotel/lodges, hospitals, clubs, studios, or photographic facilities. Failure to report attracts punishment with imprisonment of up to six months or fine or both.
- The Act makes it now mandatory for police to register an FIR in all cases of child abuse. A child's statement can be recorded even at the child's residence or a place of his choice and should be preferably done by a female police officer not below the rank of sub-inspector.
- As per this act, the child's medical examination can be conducted even prior to registration of an FIR. This discretion is left up to the Investigation Officer (IO). The IO has to get the child medically examined in a government hospital or local hospital within 24 hours of receiving information about the offence. This is done with the consent of the child or parent or a competent person whom the child trusts and in their presence.

- Child Welfare Committees (CWC) plays a vital role under the Act; cases registered under this act need to be reported to the CWC within 24 hours of recording the complaint.
- As per the Act, the CWC should take into account the opinion of the child to decide on the case within three days and conclude whether the child should remain in an institution or be with the family. The CWC should nominate with the consent of the child's parents / guardian / other person who the child trusts, a support person to assist the child during the investigation and trial of the case.
- The State Commissions for Protection of Child Rights (SCPCR) has been empowered and with the responsibility of monitoring the implementation of the provisions of the Act, to conduct inquiries and to report the activities undertaken under the Act, in its annual report.
- The commission is also empowered to call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC. The commission can also recommend interim relief, or make recommendations to the state government to effectively redress the matter.
- The rules laid down in this act also had defined a criteria of awarding the compensations by the special court that includes loss of educational and employment opportunities along with disability, disease or pregnancy as the consequence of the abuse. This compensation would be awarded at the interim stage as well as after the trial ends.
- The Act incorporates child friendly procedures for reporting, recording of evidence, investigation and trial of offences. Some of the child-friendly procedures which are envisaged under the Act are as follows:
  - i. At night no child to be detained in the police station.
  - ii. The statement of the child to be recorded as spoken by the child.
  - iii. Frequent breaks for the child during trial.

- iv. Child not to be called repeatedly to testify.
  - v. For offences under this act the burden of proof is shifted on the accused, keeping in view the vulnerability and innocence of children.
  - vi. For speedy trial, the evidence of the child is to be recorded within a period of 30 days. Also, the Special Court is to complete the trial within one year.
- The media has been barred from disclosing the identity of the child without the permission of the Special Court. The punishment for breaching this provision by media may be from six months to one year.
  - To prevent misuse of the law, punishment has been provided for false complaints or false information with malicious intent which may extend to one year or may be fined or both.

#### **5.4.3 LAWS & AGENCIES FOR THE PROTECTION OF CHILD SEXUAL VIOLENCE**

**Panchal and Shaikh (1995)**<sup>13</sup> discusses in their research how sexual abuse is difficult to talk about in Indian society and studies the registered FIR in India, how FIR takes time to registered. Through studies of cases, they show how a child sexual abuse is dealt in Indian context of law, medical, police and court.

**The Indian Penal Code, 1860**<sup>14</sup>, does not recognize child abuse. Only rape and sodomy can lead to criminal conviction. Anything less than rape as defined by the law, amounts to ‘outraging the modesty’ of the victim. The word ‘rape’ is too specific; this does not even include abuse on ‘boys’. *The Indian Penal Code*, for a girl child, Section 375 (rape) and Section 354 (outraging the modesty) are generally used, which are highly inadequate, as they do not cover the forms of sexual abuse borne by children. For lack of any specific section for boy children, Section 377 (unnatural offences) is presently being used for cases of child sexual abuse of boys.

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<sup>13</sup> <https://www.tandfonline.com/doi/abs/10.1080/17486830802231032>

<sup>14</sup> [https://indiacode.nic.in/bitstream/123456789/2263/1/a1860\\_45.pdf](https://indiacode.nic.in/bitstream/123456789/2263/1/a1860_45.pdf)

**The Goa Children’s Act, 2003**<sup>15</sup>, is applicable only in Goa against child sexual abuse, especially those related to sex tourism. The legislation has specifically made all cases of abuse of such nature, a non-bail able offence under Section 2 (a) of the Criminal Procedure Code, 1973.

**The Immoral Traffic (Prevention) Act, 1956**<sup>16</sup> applied to children in prosecution. However, The Juvenile Justice (Care and Protection of Children) Act, 2015<sup>17</sup> applies to sexual offences by children.

**Protection of Children from Sexual offences 2012**<sup>18</sup> protects children from sexual abuse and exploitation, and establishes special courts to exclusively deal with cases of child abuse and exploitation. The Act seeks to protect children from offences such as sexual assault, sexual harassment and pornography. India is a signatory to the UN Convention on the Rights of the Child since 1992. The parties to the Convention are required to take measures to prevent children from being coerced into any unlawful sexual activity. Any person below the age of 18 years is defined as a “child”. The Act seeks to penalize any person who commits offences such as “sexual harassment”, “sexual assault”, “penetrative sexual assault”, and “aggravated penetrative sexual assault”. A person commits “sexual harassment” if he uses words or shows body parts to a child with sexual intent, shows pornography to a child or threatens to depict a child involved in sexual act through the media. The penalty is imprisonment for upto three years and a fine. A person commits “penetrative sexual assault” if he penetrates his penis into the vagina, mouth, urethra or anus of a child or makes a child do the same or inserts any other object into the child’s body or applies his mouth to a child’s body parts. If however the child is between 16 and 18 years, it shall be considered whether consent for the act was taken against his will or was taken by drugs, impersonation, fraud, undue influence and when the child was sleeping or unconscious. The penalty is imprisonment between seven years and life and a fine.

The Act penalizes “aggravated penetrative sexual assault.” Such an offence is committed when a police officer, a member of the armed forces or a public servant

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<sup>15</sup> <https://www.goapolice.gov.in/documents/10184/1794152/childrens.pdf/390f738b-fe8f-4582-a463-7a35e832af37>

<sup>16</sup> <https://indiacode.nic.in/bitstream/123456789/1661/1/1956104.pdf>

<sup>17</sup> <http://cara.nic.in/PDF/JJ%20act%202015.pdf>

<sup>18</sup> [www.prsindia.org](http://www.prsindia.org)

commits penetrative sexual assault on a child. It also includes gang penetrative sexual assault and assault using deadly weapons, fire or corrosive substance. The Act also covers assault by staff of private Hospital and staff of an educational institution if the child is in that institution.

Penetrative sexual assault shall be considered aggravated if it injures the sexual organs of the Child or takes place during communal violence or the child becomes pregnant or gets any other threatening disease or is below 12 years. It also covers cases where the offender is a relative of the child through blood or adoption or marriage or foster care or is living in the same household.

A person commits “sexual assault” if he touches the vagina, penis, anus or breast of a child with sexual intent without penetration. If the child is between 16 and 18 years, it shall be Considered whether the consent was taken against the child’s will or by threat or deceit. The penalty is imprisonment between three to five years and a fine.

The offence of “aggravated sexual assault” is committed under similar conditions as for “Aggravated penetrative sexual assault”. The penalty for the offence is imprisonment between five to seven years and a fine.

A person shall be guilty of using a child for pornographic purposes if he uses a child in any form of media for the purpose of sexual gratification through representation of sexual organs of a child or using a child in sexual acts or other types of obscene representation. The penalty is rigorous imprisonment for up to five years and a fine. On subsequent convictions, the term of imprisonment is up to 7 years and fine. The Act also includes penalties for storage of pornographic material and abetment of an offence.

An offence committed under this Act shall be reported to either the local police or the Special Juvenile Police Unit who has to report the matter to the Special Court within 24 hours. The police also have to make special arrangement for the care of the child. In case a person fails to report a case, he shall be penalized. Also, the Act includes penalties for making false complaints.

Each district shall designate a Sessions Court to be a Special Court. It shall be established by the state government in consultation with the Chief Justice of the High Court. The state government shall appoint a Special Public Prosecutor for every Special Court. The Court shall, as far as possible, complete the trial within one year. The trial shall be held in camera and in the presence of the child's parents or any person trusted by the child. The guardian of the child has the right to take assistance from a legal counsel of his choice, subject to the provisions of Code of Criminal Procedure, 1973. If an offence has been committed by a child, it shall be dealt with under the Juvenile Justice (Care and Protection of Children) Act, 2015.


**Child line:** have worked towards inculcating collective responsibility of a community with the contributions from every individual. Initiatives were encouraged to ensure that Child Sexual Abuse (CSA) cases were reported to 1098. They are working towards the proper mechanism of the law to ensure protection to children

**Arpan:** CSA in reality contradicting the assumptions and there are myths still perpetuated because of two primary reasons. Most of these assumptions are rooted in the overarching framework of patriarchy and gender bias, which propagate double standards around sexuality and gender roles and make up the foundation to reinforce child sexual abuse. Hence on the one-hand we have institutions around child marriage and inter and intra generational marriages in the family, media which objectifies and treats children and women as sexual objects; on the other hand we have evolved family as the most sanctified space, family honour as the highest virtue to be safeguarded (which is directed through women's sexuality in general and virginity in particular), unquestioned authority and respect to adults and forgiveness as key values to thrive on. These overt and covert normative frameworks along with lack of dialogue often provide confusing messages around sexuality, personal boundaries and relationship and reinforce sexuality as a tabooed subject and silence any disruption, which might affect family pride and honour. Secondly the gender roles that men and women are expected to perform and the subsequent socialization that they undergo also provides contradictory messages to children on sexuality and gender. While boys are expected to be 'macho', protector of women/children or abusers; women are expected to be passive, care-givers and victims. These stereotypical constructs teach boys that they need to be sexually experienced at marriage, it is okay to be aggressive and lack

impulse control, boys don't cry and seek support, boys cannot be violated, boys need to have unquestioned authority, etc. In a similar but contrary fashion, girls are taught to be meek, passive, accept male dominance, perform mothering role and be asexual and remain sexually inactive till marriage.

**Elaan:** Child Sexual Abuse (CSA) and Incest are painful and unprovoked acts of violation happening both inside the family and outside too. In India, where subjects relating to sex and personal safety are not discussed, the issue is shrouded in secrecy as the prevalence of abusive acts increases. Therefore, Elaan's objective is to encourage reading, debate and constructive awareness implementation methods via the 'blogosphere.'

The above explanation is clear that the speed at which sexual violence has increased in Lucknow is the result of law and justice weakness and inaction. Due to the ineffectiveness of the crime-controlling units, the perpetrators are eagerly awake. The political influence of the police is also affected. The police personnel is also affected by political influence. This forces them to feel blind. The duty of preventing crime in the society is not only of the police department but it is considered necessary to behave in a society under a code of conduct. Many times police officers are found guilty of tampering, irregularity, and rape. To protect against indecency and police behavior, women have been given some rights. Even in serious cases such as sexual violence, the victim has to wait for years to get justice. In many cases, criminals escape punishment due to their economic and political strength and due to an economic and social weakness, the victim is not able to get justice.



*CHAPTER – 6  
CONCLUSION  
AND  
SUGGESTIONS*

## CHAPTER 6

### CONCLUSION AND SUGGESTIONS

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There is no woman who has not suffered humiliation, exploitations, harassment and violence at one time or another that shadows her sex. Women's life lies between pleasure at one end and danger at the other end. In daily life, women are routinely defined by sex, and even if not all men are potential kidnappers, rapists, batterers, molesters and tortures of women, all women are potential victims.

Violence is generally conceptualized in terms of physical force and destructive conduct. In narrower terms, violence is defined as the behavior designed to inflict injury on a person or to cause damage to property. In a broader sense, violence is a coercive mechanism to assert one's will over another in order to prove or feel a sense of power. In essence, violence is the use or threat of use of force or coercion to establish domination and can be expressed at the individual level, between classes/communities or at the level of the state.

Conceptualizing violence in narrower terms systematically reinforces a narrative code, which places a premium on certain representations of violence, while rendering others invisible. The spectrum of violence is very broad and encompasses a range of forms other than physical violence. These indirect forms of violence are quite pervasive but subtle and systemic in many institutions of life. The law defines violence as physical compulsion or coercion against a person in order to force him to carry out a determined act against his will. The essential elements of violence are power, domination and use of power.

Violence can be divided into two basic forms-structural and direct. Structural violence arises from the dominant, political, economic and social systems, insofar as they block access to the means of survival for different facets of violence. Precursors of such violence are inherent in the hierarchical system of society, which has an inbuilt gradation of domination and subordination, oppression and victimization. Both men and women are victims of structural violence which is commonly targeted towards both genders. However, there are certain types of

violence which are only targeted towards women because of the fact that they are women.

The General Recommendation to the Convention on Elimination of All Forms of Discrimination Against Women, 1979, describes gender violence as 'violence, which is directed against a woman because she is a woman' and 'it includes acts, which inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivation of liberty The UN Declaration on the Elimination of Violence Against Women 1993, defines violence against women as 'any act of gender based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life'.<sup>1</sup>

Sexual violence is a form of gender violence and may be defined as 'any violence, physical or psychological, carried out through sexual means or by targeting sexuality. Sexual violence describes the deliberate use of sex as a weapon to humiliate and harass another individual and to demonstrate power over him. Sexual violence is generally perpetrated through direct physical contact but it may be manifested in indirect forms where direct physical contact may not exist, for eg, in cases of eve-teasing, sexual harassment at workplace because of a hostile work environment, etc.

There are several determinants of sexual violence in the society. Unequal power relations in society, cultural practices and ideology, control of women's sexuality patterns of conflict resolution and the dichotomy between public and private sphere all perpetuate sexual violence. Sexual violence is all pervasive and manifests itself in a number of forms which exist in all institutions of life. These diverse forms of sexual violence may be broadly covered under four categories:

(a) Direct violence, which is most commonly emphasized, eg, rape, genital mutilations, molestation etc.

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<sup>1</sup> <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/VAW.aspx>

(b) Indirect violence which need not involve a direct physical nexus between the victim and the perpetrator, eg, arranged marriages, child marriages etc.

(c) Repressive violence which is used to suppress political or class movements, eg, sexual abuse of dalit (low caste) women, mass rapes during international armed conflicts etc.;

(d) Alienating violence which deprives the woman her higher rights as the right to emotional, cultural or intellectual development, eg, marital rape, specific dress code to regulate female sexuality etc.

These broad categories of sexual violence exist at all levels of the society be it in the family in the form of female genital mutilations, incest, pledging of girls, child marriages, marital rape etc. or in the community in the forms of rape, sexual harassment, prostitution etc. and also the forms of sexual violence that are perpetuated and/or condoned by the State such as custodial violence, trafficking for forced prostitution, sexual slavery and sexual violence during armed conflicts.

The consequences of sexual violence are the permanent emotional and psychological injuries apart from physical injuries, which shatter the women completely and disable them fully from participating in the socio-economic, political and other developmental processes. The worst impact of sexual violence is manifested in the absence of human security, which is the integral constituent of development. Sexual violence against women remains a steep barrier to securing human-centered developmental goals and severely hampers the women's potential in the society. Sexual violence may be heterosexual or homosexual but the heterosexual mode of infliction of violence by men on women remains the most pervasive mode. Sexual violence is a complex political phenomenon deep embedded in the socio-cultural milieu. It is one of the most extreme and effective mode of control of women's sexuality in a male dominated world, which simultaneously damages and constrains women's lives thereby maintaining the status quo of gender inequality, subjugation of women and their control.

The word 'sexual violence', is by itself a heinous offence, and also carries a stigma with it which is attached to the person of the victim; adding up to it is the materialistic approach from the bar to impeach the character of the victim. In

other words, trivialization of rape crimes is one of the reasons why conviction rates in India are so poor. Investigation and follow-up to the case have no priority whatsoever, even though rape is the fastest growing crime in India.<sup>2</sup> This crime is spreading like an epidemic all over the country, Apart from these; there are lackadaisical attitude of the investigating machinery and the long winding court process which all together becomes a real ordeal for the already traumatized victim.

Efforts have been made to define the incidents of sexual violence against women in different ways. Someone considers it gender-based violence, so anyone sees it linking with human rights. In feminist thinking, where liberal feminist thinkers talk of freedom, equality and right to vote, the same radical feminist thinkers consider the reason for the exploitation of women as social structures. Marxist thinkers consider economic reasons.

It is clear from the above definitions and the theory that there is not a single reason for incidents of sexual violence, whether there are political equality and freedom of liberal feminists, social equality, gender equality of radical feminist thinkers and whether the economic aspect of Marxist feminist thinkers. To reduce the incidents of sexual violence, the above reasons must be addressed. But this entire work is done by means of an institution that is called the state. The state is an institution through which every class of society is empowered. The State strives to reduce crime in society through institutions like its police and judiciary. But where the matter of sexual violence against women is both institutions do not perform their responsibilities properly. The state police, where should have an obligation towards the public, have become accountable towards their senior officers and politicians today. As it is clear from diagram 4.13, the same situation is in the judiciary today. The victims have to wait a long time to get justice.

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<sup>2</sup> "Rape is not a Metaphor", India Today, 25th November 2013.

According to NCRB<sup>3</sup> report 2015, there are 137458 cases of sexual violence, especially cases of the rape pending in India, in which the trial of 18764 cases was completed and out of 18764 cases in 5514 cases criminals were found guilty and in 13350 cases criminals were acquitted. If we look at the percentage, the accused was found guilty in 29.4 percent cases and in the 70.7 percent cases accused was acquitted. Similarly, if we look at the NCRB<sup>4</sup> report 2016 there are 118537 cases of sexual violence pending in India, in which the trial of 18552 cases was completed and out of 18764 cases in 4739 cases criminals were found guilty and in 13813 cases criminals were acquitted. If we look in percentage, the accused was found guilty in 25.5 percent cases and in 74.5 percent cases the culprit was acquitted.

From the above analysis, it is obvious that for some reason the offender is easily acquitted or he comes out in bail. According to NCRB Report 2015, 3025 cases of sexual violence were registered in 2015 in Uttar Pradesh, out of which in 2963 cases the victim knew the accused. In 2016, 6774 cases of sexual violence were registered out of which 90.7 percent cases victim knew the accused.

## 6.1. CONCLUSION

Submitted thesis mainly focused the responses of police and judiciary of sexual violence cases of Lucknow district of Uttar Pradesh. The main purpose of the research is to look at the response of police and judiciary in cases of sexual violence in Lucknow district as well as to examine the hypothesis of research studies which has been found to be correct on an empirical basis. As the first hypothesis, “*There is significant effect of attitude of state machinery (Police and Judiciary) on sexual violence*” corrected. It is clear from figure 4.12(a), 4.12 (b), 4.12(c), 4.13, 4.15, and 4.17 of Chapter 4 of the thesis that the negative attitude and the tendency of loitering of the police and the judiciary play an important role in raising the cases of sexual violence. According to Figure 4.12(a), it is clear that the attitude of the police remains negative in serious crimes like sexual violence in the Lucknow district. According to figure police took 2 to 3 days to register 40 percent of the cases, 3 to 7 days to register 5.88 percent, one week to register 6 percent case and in 3 percent cases police did not

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<sup>3</sup> <http://ncrb.gov.in/StatPublications/CII/CII2015/FILES/CrimeInIndia2015.pdf>

<sup>4</sup> <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf>

lodged the report. According to figure 4.12(c), In the case of 7 percent cases, the victim has not filed the case due to a lack of faith in the police and judiciary. It seems to be a question mark on the discharge of the responsibility of any such police and judiciary. It is clear from Table 4.13 that 75 percent of the respondents said that the insensitivity of the police places serious crimes such as sexual violence in society. According to figure 4.15, in 42 percent of the victims admitted that the police attitude is uncooperative with them, in 13 percent of the cases, the police attitude is threatened and in 34 percent of the cases are loitering; only 11 percent of the victims admitted that the police attitude is cooperative with them.

The unnecessary delays of the judiciary also have negative implications for sexual violence. It is clear from table 4.12(b) that 68.23 percent of cases are pending. In 9.41 percent of the cases, the culprit has been convicted and 20 percent of the cases have been acquitted. Therefore, it is clear from the above data that the attitude of the police and the judiciary is not cooperative in the capital region like Lucknow; its direct effect is very deep in serious crimes like sexual violence.

Second hypothesis” *There is significant effect of patriarchal culture on sexual violence*” also proved true. It is obvious from the figures 4.14 table that social institutions such as patriarchy still dominate in society. As far as the incidence of sexual violence is concerned, 54 percent of the women believe that the elder men of their family had refused to register a complaint. While 23 percent of women believe that no one has stopped them. The same 23 women do not know about this. It is obvious that despite being Lucknow’s capital region, whose literacy rate is 84.72 percent; social status like patriarchy is dominated.

Therefore, it is clear that the negative role of patriarchy in the case of sexual violence has a wrong effect on society. This negative role of patriarchy can be seen more where the incidents of sexual violence are carried out by members of the family.

The third and final hypothesis of the research is “*There is capable administrative structure, rules and regulation for dealing with cases of sexual violence*” also proved true. Those institutions are capable which set up to deal with the cases of sexual violence. It is clear from figures 4.16 of chapter 4 of the thesis that 69 percent of respondents believe that sufficient law has been created to prevent

incidents of sexual violence. Like the Sexual harassment Act 2005, POSCO Act 2012, etc. But due to their lack of proper implementation, incidents like sexual violence in society continue to occur.

In conclusion, it can be said that the responses of the police and the judiciary to the sexual violence in Lucknow district are as follows -

- 1- The main reason for the increasing incidents of sexual violence is still the lack of education and awareness in the rural part of Lucknow. Because of which women and girls do not know about sexual violence and about the laws related to them. Taking advantage of that, many people in society carry out serious incidents like sexual violence.
- 2- One of the important causes of sexual violence is that of the Indian social system - caste, religion, sect, etc. on their basis promote sexual violence with Women.
- 3- An important reason for sexual violence with women is also economic, political, and backwardness. Because economically weaker women feel helpless to themselves. If you look at the data of Table 4.4, it becomes clear that most of the sexual violence case has happened with the financially vulnerable. The economically affluent people of the society also take advantage of this, and after having done the events, they lure money and compromise with the victim.
- 4- The police and the judiciary's responses to the incidents of sexual violence are also responsible. Today the police and judiciary are not autonomous in the context of serious incidents of sexual violence. Different types of pressure are put on them, due to which many complaints cannot be registered. The victim has to struggle a lot in filing a complaint. Even in the judiciary, convicted criminals do justice on their side with the help of money.
- 5- Due to the police's neglect and discrimination, the increased incidents of sexual violence against women have increased.
- 6- Even the government institutions like the police and the judiciary's loitering and due to economic and political access to the culprit, lack of lodging of the complaint, crime also increases.

- 7- Women and girls suffering from sexual violence do not register complaints due to respect and dignity of themselves and their family in the society.
- 8- Due to the men's mentality (patriarchy) in society, members of the family do not complain because of fear of losing their social status in society.
- 9- Most incidents of sexual violence have occurred with low age (0-25) and unmarried girls (63%) in the Lucknow district.
- 10- Most of the incidents of sexual violence have occurred in the work area/field/ police station/hospital (38%) in the victim's house (29%), in the house of the culprit (13%).
- 11- Most of the incidents of sexual violence are done by knowing the people of the victim (Table 4.10) Most of which is done by neighbors (55%). After this, the near relatives and close family friends of the victim are involved.
- 12- There are many reasons for the occurrence of sexual violence. Sexual desire is a major cause. In 56% of the cases, the victims have admitted that sexual desire was as a major reason behind the incident.
- 13- The response of the judiciary to the incidents of sexual violence is very negative. Most cases of sexual violence (70%) remain pending. It is clear from the figures that till now the culprit has been acquitted in 20% of the cases which have been settled. And in 9% of the cases, the culprit has got punishment. Due to a load of cases in the judiciary, the settlement of cases is more time-consuming. With this, the accused does not realize own mistake and increases the incidence of sexual violence.
- 14- If the police and the judiciary work with their full capability, the cases of sexual violence can be settled in less time, as 69% of the victims believe that both the police and judiciary institutions are fully capable of dealing with cases of sexual violence. But due to many external political, economic, social, pressures, both the organizations have not been able to properly fulfill their obligations. By which the criminal's morale increases and they believe that he will be saved. This same

mentality towards the administration of the criminal increased the number of crimes.

**15-** The increasing influence of modern scientific technology and social media has both positive and negative effects on sexual violence. Today, where social media and technology have succeeded in reducing crime, on the other hand, using these modern resources is also being used to eradicate the evidence by criminal or to distort misinformation that promotes sexual violence is.

## **6.2. SUGGESTIONS REGARDING THE AMENDMENTS IN LAW AND REFORMS IN ENFORCEMENT MACHINERY**

This part of the chapter concentrates on the various amendments, which need to be brought about in the existing law relating to rape and sexual harassment and the manner of its implementation to make it more efficacious,

### **6.2.1. SUGGESTIONS RELATING TO RAPE LAW**

#### **A. The Substantive Law**

##### **1. Classification and Definition**

(a) The present research strongly recommends re-conceptualisation of offence of rape and its reclassification as 'sexual assault'. Since rape is not sexual intercourse, it is an act of violence carried out through sexual means or by targeting the sexuality of the victim, the expression 'sexual assault' describes the violence aspect of the crime more appropriately. The term 'rape' is associated with the patriarchal understanding of the concept and reinforces the status of the offence as 'property crime' whereby sexual property belonging to one male is stolen by the other.

(b) The varied gravity of the offence of 'sexual assault' must be recognized. Depending upon the circumstances of each case eg, what was the condition of the victim, how the assault was carried out -whether by use of weapon or without weapon, etc., the offence should be classified as sexual assault and aggravated sexual assault. The provisions of the Federal Criminal Code 1986, contained in § 2241 and s 2242 are worth mentioning, which differentiate between aggravated sexual abuse and sexual abuse depending upon the kind of threat used (whether it generated fear of death,

serious bodily injury or kidnapping).

(c) The concept of digital rape (penetration with an object or any part of body other than penis) is not recognized under the Indian law though the activity can be more violent and disastrous in medical terms also, than vagina-penile penetration. The present definition of rape is inadequate, as it does not take care of oral, anal, and digital rape.

There is no logic behind excluding all these kinds of violent penetrations from the purview of rape, as these acts are different modes of infliction of sexual violence on the victim and cause equal humiliation or degradation. Secondly, in cases of child rape where vaginal penetration may not be possible due to medical reasons, the sexual abuse is perpetrated through other modes. The whole range of coercive sexual acts involving penetration must be brought under the purview of sexual assault and the mode of penetration or the orifice of penetration should be immaterial.

(d) The marital exemption clause reinforces the patriarchal view that the wife is the sexual property of husband. Various researches have indicated that occurrence of marital rape is not rare. Moreover, in such cases, wife suffers extreme mental agony and emotional trauma as her basic ability to trust people is destroyed. Considering the extreme psychological consequences of marital rape, it should be penalized immaterial of the fact whether wife is a major person. Where the wife happens to be a minor, it should be recognized as an aggravating circumstance deserving enhanced punishment. The commission of marital rape should also be recognized as a ground for seeking divorce under the marriage laws.

## **2. Aggravating Circumstances**

(a) In cases of incestuous rape, the authority which the accused has over the victim is abused by him. In cases of incest, the trust of the victim is betrayed apart from the physical harm, which may be caused to the victim. The incestuous rape should be recognized as an aggravating circumstance and enhanced punishment must be imposed on the accused.

(b) Where the accused abuses the authority or control he has over the victim due to her physical or mental disability, the circumstance should be recognized as an

aggravating one calling for enhanced punishment.

### **3. Consent**

Insertion of a new section defining consent is recommended so that the courts will have a fair idea as to what must be looked into the facts of the case. The existing s 90, IPC" defines the circumstances, which vitiate consent, thereby giving the idea as to what is consent, by way of exclusion, As the section does not cater to all circumstances and its very applicability becomes ambiguous, it is recommended that a separate section defining 'consent' should be inserted. In the United Kingdom, section 74 of the Sexual Offences Act 2003, defines consent. The UK law may serve as a role model in Indian context.

The age of consent should be raised to 18 years which would be in consonance with the definition of child' under Child Marriage Restraint Act 1929. The age of consent in marital rape cases, should be the same i.e., 18 years and same severe penal consequences should follow where the wife is between 12-18 years of age.

### **4. Punishment**

(a) Since provisos to 376(1) and (2) of the Indian Penal Code 1860<sup>5</sup> have become an escape route to provide lenient punishments to the accused, the application of the provisos should be restricted. The most common mitigating circumstance, young age of the accused, should be considered while imposing punishment but its overemphasis must be avoided and the young age of victim should be a criterion for determining the gravity of the offence,

(b) Incestuous sexual assaults and sexual assaults with objects should be made punishable with rigorous imprisonment for life, to provide a deterrent effect.

(c) Sexual assaults on girls below 18 years should be punished with a minimum of 10 years RI.

(d) Sexual assaults committed by police officers outside the police stations or their duty areas should also attract same penal consequences as if they were on duty while

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<sup>5</sup> <https://indiankanoon.org/doc/1279834/>

committing the sexual assaults.

## **B. Evidence**

1. A presumption as to the absence of consent, as suggested by the 84" Law Commission Report should be extended to all rape cases. When a woman states that she did not consent, the onus should lie on the accused to prove that she consented."
2. The discriminatory provisions of the Indian Evidence Act 1872<sup>6</sup>, section 155(4) and s 146 should be deleted and past sexual character of the women should not be a criterion in rape cases. The US Rape Shield Law as contained in s 412, Federal Criminal Code 1986 which prohibit admissibility of the past sexual history of the victim can be considered and a provision on similar lines should be enacted.
3. Provisions should be incorporated in law regarding the medical examination of the victim and the medical examination of accused should be compulsory in rape cases. The recommendations of the 84" Law Commission Report regarding the inclusion of s 164-A) and s 53-IA, IB, IC and ID of the Cr.P.C should be accepted.

## **C. Procedure**

The major policy in this area should be to encourage more victims to come forward and report rape and to sustain the complaint through to trial. To achieve this objective, major efforts should be made to render the criminal justice system more sensitive to the needs of victims and to ensure that their court experience should be as painless and dignified as possible.

## **I. Trial**

(a) The fundamental right to speedy trial under art 21 of the Constitution of India must be respected and long period of investigations and trial should be avoided. Justice delayed is justice denied. So a maximum time limit of two years should be fixed within which the trial must be over. Similar time limit of one year should be fixed for appeals.

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<sup>6</sup> <https://www.casemine.com/search/in/section%20155%20indian%20evidence%20act>

(b) The refusal by a police officer to record a rape case should be made a penal offence. Section 167-A of the IPC<sup>7</sup>, as suggested by the 84 Law Commission Report, should be accepted.

(c) In a recent Supreme Court decision in “*Delhi Domestic Working Women's Forum vs. Union of India – Orthers*, the Supreme Court has laid down the following broad parameters in assisting the victims of rape:

(i) The complainants of sexual assault should be provided with legal representation.

(ii) Such legal assistance will have to be provided at the police station also.

(iii) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed." All these suggestions should be incorporated in the Code of Criminal Procedure 1973 expeditiously.

(d) During the 'in camera' trial under section 327 of the Cr.P.C<sup>8</sup>, the parents and the social workers should be allowed to accompany the victim. Their presence would be comforting and reassuring for the victim in the alien court atmosphere.

## **2. Publicity during the Trial**

(a) The provisions of s 228-A of the IPC<sup>9</sup> are by and large adequate to prohibit unwanted publicity of rape cases, which may cause undue embarrassment and social stigma to the victims. The punishment provided under this section for an unauthorized publication is mild as no mandatory minimum period of imprisonment is prescribed, which vests a large discretion in the judiciary. A minimum period of imprisonment should be prescribed to make the offence more serious,

## **D. TRAINING PROGRAMMES AND SPECIAL COURTS**

(a) As the judgments show that judges entertain gender bias attitudes against rape victims, there should be training programmes for members of Judiciary and the Bar to build awareness regarding the women's plight in rape cases. It will help in the

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<sup>7</sup> <https://indiankanoon.org/doc/1815602/>

<sup>8</sup> <https://www.kaanoon.com/indian-law/crpc-327/>

<sup>9</sup> <https://indiankanoon.org/doc/1696350/>

formation of attitudes conducive to the effective interpretation and implementation of law,

(b) The victim of rape encounters police officers at the very first stage when she decides to lodge a complaint. Hence, the police officers must be given special training to deal with the victims of sexual abuse. Gender sensitization programmes will help the officers to have the required considerate approach for rape victims.

(c) Rape cases require a neutral and sympathetic judicial approach, which is possible when suitably trained and equipped judges hear and decide the cases. Setting up of special courts for hearing the cases of sexual assault is strongly recommended. In these special courts, women judges should be there so that the victim feels comfortable in narrating the details of the sexual assault perpetrated on her.

(d) In rape trials, the lack of appropriate evidence leads to the acquittal of the accused. The low conviction rate in rape cases can be attributed to the lack of coordination between the investigating officers and the public prosecutors. Appropriate training programmes should be conducted for the public prosecutors and the police officers, who investigate rape cases, so that through proper coordination between them, justice can be secured for the victim,

#### **E. COMPENSATION TO THE VICTIM**

It is true that a rape victim cannot be compensated for the physical pain, humiliation and the trauma of the rape and the subsequent trial but the monetary compensation helps the victim to get socially rehabilitated. Compensation in rape cases must be provided to the victim as she suffers tremendous mental trauma and agony after the rape and during the rape trial. Economic losses, which accrue due to loss of employment etc often result as for a long period of time, the victim is not able to recover from the mental trauma

In England, the Criminal Justice Act 1972 gave powers to the courts to award compensation in addition to the fine imposed. The Criminal Justice Act 1991 also encourages the orders for compensation,

Under the Indian law, section 357<sup>10</sup> of the Cr. P.C empowers the court to pass an order to pay compensation to the victim under various circumstances; the compensation may be imposed, along with the imposition of fine as a part of it or without the imposition of fine to compensate for any loss or injury caused by the offence. It is very unfortunate that this provision has not attracted the attention of the judiciary while imposing sentence in rape cases. Courts should take notice of this provision in rape case.

Considering the question of compensation in Delhi Domestic Working Women's Forum » Union of India, the Supreme Court, having regard to the Directive Principles contained under art 38(1) of the Constitution of India, has directed that the Criminal Injuries Compensation Board should be set up, Compensation will be awarded by the court on conviction while the Board will provide compensation in rape cases, even if there is no conviction.

Consequently, the National Commission for Women has prepared Scheme for Relief and Rehabilitation of Victims of Rape 2005 which has already been sent to the government. This Scheme envisages the setting up of Criminal Injuries and Rehabilitation Boards at the district, state and national levels. The provisions of the Scheme contemplate that the victim or her legal heir in case of her death, can make an application to the District Board with medical certificate, copy of FIR and death certificate (where victim is not alive). On being satisfied that a prima facie case is made out through the application and documents, the Board shall order an interim relief of Rs 20,000." The final compensation amount may exceed-Rs 2 lakh" which shall be paid to her without any undue delay. Besides compensation, the provisions of the scheme take care of the rehabilitation aspect of the victim and separate interim payment of Rs 20,000 and final payment of up to Rs 50,000. Effectively carried out, the provisions of the scheme will go far in helping the rape victim and her dependents.

### **E. Rape Crisis Centres**

Rape Crisis Centres are set up in countries like Australia, Canada, America, United Kingdom, etc. These centers also provide help through their telephonic help

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<sup>10</sup> <https://indiankanoon.org/doc/1705664/>

lines. Besides, the rape victims are provided with medical help, counseling, and financial assistance by way of providing job opportunities etc. The help of social workers and counselors is provided to the rape victims in order to help their recovery from the trauma and the subsequent practical difficulties. Such centers should be set up in India to provide for medical aid and counseling to the rape victims. Another very important aspect is to provide counseling for the family members of the victim. In times of distress and emotional trauma, best support can be provided by the family members. Sometimes, due to their biased reactions towards the rape victim, they may not cooperate well with the victim. In such cases, counseling of the family members will be a great help in the recovery of the victim.

### **6.3. JUSTICE J S VERMA COMMITTEE RECOMMENDATIONS**

The tragic event of a rape of the student on 16 December 2012 and the subsequent nationwide mass protests, the government of India, on 24 December 2012, constituted a Committee headed by a retired Judge of the Supreme Court, Justice J S Verma, to propose amendments to the existing criminal laws. The three-member committee included, besides Justice JS Verma, Justice Leila Seith and former attorney general Mr. Gopal Subramaniam. Having interacted with not less than 100 experts and having studied over 70,000 responses and suggestions from individuals and organizations, from within the country and outside, the Committee fulfilled its mandate within 30 days, and came up with an excellent 644-page report (titled Report of the Committee on Amendments to Criminal Law) on 23 January 2013.

Justice Verma Committee Report devotes the first fourteen chapters of the report for an in-depth study of the following: constitutionalism, republicanism, and gender equality; gender justice and India's Obligations under International Conventions; Rape and Sexual Assault; Sexual Harassment at the Workplace; Other Offences against Women; Trafficking of Women and Children; Child Sexual Abuse; Khap Panchayats and Honour Killings; Sentencing and Punishment; Provision of Adequate Safety Measures and Amenities in respect of Women; Medico-Legal Examination of the Victim; Police Reforms; Electoral Reforms; Education and Perception Reform. These aforementioned studies were followed by the committee's conclusions and recommendations. The whole report manifests, not only the committee's commitment to the cause of women's equality but also its heightened

sensitivity and enlightened honesty and openness to the issues plaguing women and girl children.

### **6.3.1. Committee's findings and observations**

Justice Verma committee deems rape as “a highly reprehensible crime in the moral sense” that “demonstrates a total contempt for the personal integrity and autonomy of the victim.<sup>27</sup>

### **6.3.2. Failure of Many Public Functionaries**

The committee held that “strict observance and faithful implementation of the constitutional mandate and the existing laws by a competent machinery is sufficient to prevent, and if need be, to punish any sexual harassment or assault; and the improvement needed in the laws. In reference to the December 16 gang-rape in Delhi. The committee pointed out “the failure of many public functionaries responsible for traffic regulation, maintenance of law and order and, more importantly, their low and skewed priority of dealing with complaints of sexual assault. The insensitivity of the police to deal with rape victims is well known. The police respect a patriarchal form of society. The police are involved in trafficking of children (include female children).”

The committee expressed its concern over the missing children in the country and observed: “Authentic figures of missing children in India are not available for obvious reasons of the complicity of law enforcement agencies. Children have been driven into forced labour, sex abuse, sexual exploitation.

#### **6.3.2.1. Cult of masculinity**

“The equality of women, being integral to the Constitution, its denial is a sacrilege and a constitutional violation (emphasis added)” stated the committee. The committee identified a “cult of masculinity”, a cult of aggression as the major cause of violence against women: touching harassment and forced intercourse are all seen as normal to masculinity.”

### 6.3.3. Key Recommendations of the Committee

The following are the key recommendations of Justice JS Verma Committee:

**Attitudinal changes:** “attitude change to correct the aberration of gender bias have to be brought about in the institutions of governance to improve the work culture, and in civil society to improve the social norms for realizing the constitutional promise of ‘equality’ in all spheres for the womenfolk”. “A fortiori all limbs of the state the executive, the legislature as well as the judiciary – must respect women’s rights and must treat them in a non-discriminatory manner.

**Speedy justice,** “Speedy justice an aspect of the right to life with dignity, is essential for efficacy of the law and its desired impact, as well as for prevention of its violation”.

**Increase the number of Judges:** “Judge Strength can be increased in phases without diluting their quality. Our suggestion of eminent retired judges being appointed as ad hoc judges will solve this problem.

**No extraneous influence-** “Law enforcement agencies must be insulated from any political or other extraneous influence, which impedes their performance.”

**Police reforms:** Police reforms must be urgently implemented for the preservation of the rule of law, which is a basic feature of our constitution. Every complaint of rape must be registered by the police and civil society should perform its duty to report any case of rape coming to its knowledge. Any officer, who fails to register a cases of rape reported to him, or attempts to abort its investigation, commits an offence which shall be punishable as prescribed.

**A special procedure for protecting persons with disabilities:** a special procedure for protecting persons with disabilities from rape, and requisite procedures for access to justice for such persons is also an urgent need.

**Special Judicial effort to curb trafficking-** every district magistrate is responsible for carrying out a census of missing children within his district. The hon’ble chief justice (of India) may consider making appropriate orders relating to the issue of missing children to curb the illegal trade of their trafficking etc.

**Prohibition on marital rape-** it is also important that the legal prohibition or marital rape is accompanied by changes in the attitudes of prosecutors, police officers and those in society more generally. We therefore recommend that: (i) the exception for marital rape is removed; (ii). The law ought to specify that: a. A marital or other relationship between the perpetrator or victim is not a valid defense against the crimes of rape or sexual violence.

**Punishment for Rape:** we, having bestowed considerable thought on the subject, and having provided for enhanced sentences (short of death) in respect of the above-noted aggravated forms of sexual assault, in the larger interests of society, and having regard to the current thinking in favour of abolition of the death penalty, and also to avoid the argument of any sentencing arbitrariness.. We are not inclined to recommend the death penalty. It would be a regressive step to introduce death penalty for rape even where such punishment is restricted to the rarest of rare cases. It is also stated that there is considerable evidence that the deterrent effect of death penalty on serious crimes is actually a myth. Hence we do take note of the argument that introduction of death penalty for rape may not have a deterrent effect.

**Punishment for other sexual offence:** The panel recognised the need to curb all forms of sexual offence and recommended – Voyeurism be punished with up to seven year in jail; stalking or attempts to contact a person repeatedly through any means by up to three years. Acid attacks would be punished by up to seven years if imprisonment; trafficking will be punished with RI for seven to ten years.

**Role of the judiciary:** The judiciary has the primary responsibility of enforcing fundamental rights, through constitution remedies. The judiciary can take *suo- motu* cognizance of such issues being deeply concerned with them both in the Supreme Court and the high court. An all India strategy to deal with this issue would be advisable. The chief justice of India could be approached to commence appropriate proceedings on the judicial side the chief justice may consider making appropriate orders relating to the issue of missing children to curb the illegal trade of their trafficking etc.

**Governments to provide basic amenities:** if necessary steps are not taken by the state to provide basic amenities and guarantees in line with the Constitutional

mandate, the State runs the risk of alienating its own citizens. We are phrasing this note of caution consciously.

**Education and Perception Reform:** it is important that sexual and social identities of women must be correctly understood as equal in character. (And the associated idea of ‘masculinity and ‘femininity’) is a social (not biological) construct. In our view it is the duty of the State to provide clear, well informed and scientifically grounded sexuality education based on the universal values of respect for human rights. We are also of the opinion that sex education must be made part of each Indian student’s curriculum. Education on gender for young men and adults will need to be distinct from on gender for children.

**Bill of Rights for women:** A separate bill of rights for women that entitles women a life of dignity and security and will ensure that a woman shall have the rights to have complete sexual autonomy including with respect to her relationships.

#### **6.4. SUGGESTIONS**

In view of the rise of sexual offences and the ordeal that are being faced by the victims, certain corrective measures may be introduced which may go a long way to obliterate such thorns in the path of justice for the hapless lady.

There are two types of suggestions related to sexual violence-

1. Short terms (Institutional reforms)
2. Long terms(Social and Infrastructural reforms)

Short terms (institutional reform) basically related to rule and laws of police and judiciary reforms and coordination between them.

(1) First Information Report must be registered as soon as the victim or her family members or relatives lodge the complaint to the officer-in-charge of the police station,

(2) The police officer who refuses to register the case on the basis of written complaint should be punished or a departmental proceeding should be initiated against him/her for the dereliction of duty.

- (3) The investigation of sexual violence cases is to be conducted by lady police officer as far as possible.
- (4) The statement of witnesses including the victim must be recorded under section 164<sup>11</sup> Cr.P.C.
- (5) The statement of the witnesses(s) which were recorded under s. 161<sup>12</sup>, Cr.P.C. must bear the signature of the witness, for this purpose amendment of s. 161<sup>13</sup>, Cr.P.C. is an urgent need, as suggested by Justice Malimath Committee.
- (6) Ossification test of the victim must be made within three days from the date of registration of the FIR.
- (7) Separate investigation cell should be constituted for every district for investigation of rape or other allied offences relating to sexual assault.
- (8) Medical examination of the victim must be made within 24 hours of registration of FIR.
- (9) Wearing apparel of the victim and the accused must be seized and preserved.
- (10) Involved wearing apparels must be sent for chemical examination to match the semen of the accused with the semen available on the wearing apparel of the victim.
- (11) Investigation must be completed within thirty days from the date of registration of FIR.
- (12) The name and addresses of the witnesses must be written in the charge-sheet in block letters.
- (13) Proper initiative should be taken on behalf of the prosecution to bring the witnesses on the date fixed for recording of evidence.
- (14) Protection must be given to the witnesses so that he or she can disclose the actual happenings in court without fear or favour.

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<sup>11</sup> <https://indiankanoon.org/doc/497457/>

<sup>12</sup> <https://indiankanoon.org/doc/447673/>

<sup>13</sup> Ibid

(15) Actual expenditure for to and fro journey to the court must be given to the witnesses on the day when he or she attends the court to adduce evidence.

(16) The victim is to be examined by the lady doctor & far as practicable.

(17) The doctor cannot refuse to conduct the medical examination of the victim. If he or she refuses to examine the victim, it should be treated as a serious dereliction of duty,

(18) The police officer, prosecution and Judges of all levels should be given gender-equality education.

(19) The proper training of the persons or stake-holders or other functionaries of criminal justice system should be given,

(20) Public information and education programme should be introduced at school, college and university level to change the attitude of the members of the society regarding the position and status of men and women in the society.

(21) Proper rehabilitation center should be established for the victims of rape or other sexual offences.

(22) Interest free loan should be given to the victim of rape or other sexual offences.

(25) Self-help services must be created for supporting the victims of sexual violence.

(26) The Government should bear the cost of education and medical expenses of the victims of sexual violence.

(27) The court concerned should be careful enough in ordering reasonable and just compensation to the victim.

(29) The training of judges for gender sensitization must be imparted by the State Judicial Academies in order to eradicate gender bias.

(30) Every electronic media should allot some time every day for telecasting the horrors of the offence of rape or allied sexual offences particularly of child abuse so as to generate greater awareness of the evils.

(31) Trauma center must be established at every district hospital and every medical college & hospital.

(32) The age for sexual consent must be raised from 15 to 18 years for girls irrespective of the fact that she is married or spinster.

(33) Trial of rape cases is required to be conducted by Lady Public Prosecutor and heard by lady Judge, as far as practicable.

(34) Trial of rape cases must be concluded within sixty days from the date of commitment of the case.

(35) Commitment of the sexual violence cases must be done by the Magistrate as soon as the charge-sheet is submitted by the Investigating Officer.

(36) When a person has committed sexual intercourse with his own wife who is living separately under a decree of separation or otherwise, without her consent, shall be punished with imprisonment up to ten years and also liable to fine. Section 376B of the Indian Penal Code should be amended accordingly.

(37) The words "unless the woman raped is his own wife" should be deleted by way of amendment of s. 375 to protect the marital rights of the married women,

(38) Questions of imputations should not be asked without proving the truth of it and accordingly amendment of s. 152 of the Indian Evidence Act 1872 is necessary.

(39) Harassing questions to test the veracity of the victim's testimony or shake her credit by injuring her character should not be asked in cross-examination. For this purpose amendment of section 146<sup>14</sup> of the Indian Evidence Act 1872 is an urgent need.

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<sup>14</sup> <https://indiankanoon.org/doc/130551/>

(40) In holding trial of sexual violence, the mother or other female members of the victim, if mother is dead or unable to move due to physical infirmity, must be allowed to be present in the courtroom in course of recording the evidence of the victim.

(41) The police create such an environment that if any women who women is suffering from sexual violence comes to report, then she has confidence that her complain will listen and that there is no fear or doubt the police system in her mind.

(42) Police should not discriminate to anyone while taking action. It is often seen that a women who is economically, socially, politically weak is discriminated against, where as a women who is financially, socially and politically wealthy are not treated like that. Long terms suggestions basically divided in two parts-

### **1. Social reform**

### **2. Infrastructural reforms**

#### **In social reforms-**

- a) Proper education and awareness should be propagated in the society from every rural village to urban towns and cities to bring change in the mentality of people.
- b) Government should be made special provisions to provide employment to sexual violence victims in private and public sectors.
- c) Collective social consciousness towards sexual violence should be made to fight against such crime. Attitude of Society should be more positive with sexual offence victims.
- d) Our culture should be more adaptive to such offence victims
- e) Community consciousness through community participation should be made to boost the morale of such victims that they can leave normal and happy life.

- f) For proper rehabilitation Non state actors and NGO's should come forward to improve the life of such victims. Such NGO's and Non State actors should share their methods and technique which have been very effective in this direction.
- g) Values of patriarchy should be weakened. People should move forward from conservative values, traditions and practices which are obstacle gender inequality. Roles and Contribution of women and Girls must be recognized in society. They should be offer many responsibilities that they can enhance their well-being.
- h) Self-defense technique and others such arts should be taught from early education that they can make them self-dependent to protect her in bad situations.

**In infrastructural reforms-**

- a) Age old infrastructural of police and judiciary should be removed and according to time highly advance techniques and tools should be introduced, which are capable in tackling such crimes.
- b) Now in the time of Internet where everything is available on the fingertips of citizen. Reporting of such crimes should also be hassle free. Government should adopt highly advance technique to file the complaint of sexual violence from any corner without identifying in the matter of jurisdiction.
- c) Every local police station should have enough staff and officers who can manage the filing of F.I.R. and fast redressed of such crime.
- d) Fast track court should work more performing and within a fix time, its capability should be improved.
- e) Free counseling center should be established and maintained in every organization and department where mental therapy to victims of sexual violence can easily provide.

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*ANNEXURE*

**Questionnaire**

Questionnaire for the topic “Sexual Violence against Women in Uttar Pradesh: Responses of Police and Judiciary” as part of the thesis for fulfillment of PhD. in Political Sciences.

The objective of this study is to examine opinions/ attitudes regarding police and judiciary responses of sexual violence cases by conducting survey in Lucknow district.

I request your cooperation in filling this interview schedule. The information given would be kept strictly confidential and would be used only for academic purpose.

**Sandeep Kumar Aditya**

**PERSONAL INFORMATION**

**1. What is your Name.....?**

**2. What is your Age?**

I- Below- 20

II- 20-25

III- 25-30

IV- 30-35

V- Above 35

**3. You belong to?**

I- GENERAL

II- Intermediate caste

III- B.C

IV- S.C

V- S.T

**4. What is your qualification?**

I- Illiterate

II- Up to middle class

III- Up to higher sec. Level

IV- Graduates and post graduates V-

Professionally qualified

**5. Marital status**

I- Married

II- Unmarried

III- Widow

IV- Deserted/ Divorced

**6. Monthly income of the victim's family**

I- Up to 5000

II- 5000-10000

III- 10000-15000

IV- 15000-20000

V- Above 20000

**RESEARCH INFORMATION**

**7. What are the factors behind increased reporting of sexual violence cases?**

I- Education

II- awareness

III- Media

IV- NGO

**8. Where rape is committed?**

I- Victim's home

II- Hotel

III- Accused home

IV- Work place/ field/ police station/ hospitals etc.

V- Others places

**9. Is that person known or unknown to you?**

I- Yes

II- No

**10. What is your relation with rapist?**

I- Near relative

II- Family friend

III- Neighbor

IV- other

**11. What reason could be for rape?**

- I- Sexual desire
- II- Situational urge
- III- Revenge and hostility
- IV- Intoxication
- V- Victim's provocation

**12. Have you registered the case /complain?**

- I- Yes
- II- No

**13 If No, why you did not registered the report?**

- I- Fear of society
- II- Family pressure
- III- To escape attention & publicity
- IV- Fear of threat & blackmail by the offender
- V- No confidence in police/ court's justice

**14. How long time did it take to lodge a complaint / register a case?**

- I- Immediately
- II- After 2-3 days
- III- After 3-7 days
- IV- After more than one week

**15. What are the status proceedings of your case?**

- I- Not started
- II- Still pending
- III- Decided but acquitted
- IV- Decided and punished

**16. Do you think the police are insensitive to lodging cases of sexual violence?**

- I- Yes
- II- No
- III- Can't say
- IV- Other

**17. Do you think that patriarchy puts hurdle in the lodging the cases of sexual violence?**

- |                |        |
|----------------|--------|
| I-Yes          | II- No |
| III- Can't say | IV-    |
| other          |        |

**18. What is the attitude of police and the judiciary in cases in sexual violence?**

- |                 |                      |
|-----------------|----------------------|
| I- Co-operative | II- non co-operative |
| III-Threatening | IV-delay             |

**19. Do you realize that in the presently the police and judiciary are capable such cases?**

- |                |           |
|----------------|-----------|
| I-Yes          | II- No    |
| III- Can't say | IV- Other |

**20. Do you think that there are some weaknesses in police and judiciary in the cases of sexual violence?**

- |                |           |
|----------------|-----------|
| I-Yes          | II- No    |
| III- Can't Say | IV- Other |

**21. Are you aware of the term Sexual violence?**

- Yes                       No

**22. Are you aware that you have a right against sexual violence?**

- Yes                       No

**23. Do you know about the existence of the following (please tick)**

- National Human Rights Commission (NHRC)
- National Commission for Women (NCW)
- NGOs addressing women's rights issues

- Government organizations like Crime against women's Cell
- State women rights commission

**24. Is there any other information that you would like to share with us regarding sexual violence?**

I thank you for your co-operation.

*Sandeep Kumar Aditya*  
*Research scholar*