

# ● VICTIMS PRECIPITATION THEORY, RAPE AND THE JUDICIAL TREND: A STUDY IN FEMINIST CRIMINOLOGY



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## Abstract

Victim precipitation theory deals with role of victim in actual happening of crime. Recent trend shows that considerable importance is now being given to victim precipitation theory in criminal justice system. Therefore, the question is, whether the theory should be applied in all the cases of violence, including rape with women or rape and alike offences should be kept out of the perview of the victim precipitation theory. So far as the origin and development of victim precipitation theory is concerned, it is clear that to have a more fair and just criminal justice system, one should fairly dealt with roles of offenders and their victims in actual crime happening. The propounders of victim precipitation theory have tried to establish that precipitated offender are merely culpable, potentially dangerous and in need of rehabilitation lest their precipitative tendencies lead to further crimes. Present paper is an attempt to hypothesize the implications of victim precipitation theory in cases of victims of rape. What has been the trend of authorities on victimology on this issue and what has been the trend of judiciary while deciding cases of rape. Whether the theory of victim precipitation has eclipsed the decisions of judges or they have still been sincere enough to show their sensitivity towards a victim of rape and considered their statements as sacrosanct statement or gospel truth. Whether judges' own personality matters in deciding the cases of violence against women? Whether an Indian woman who has been perceived to bear with chastity and shame is still continuing the same trend or has changed the mindset in the era of 21st century globalization. With the help of decided cases on rape and victims' version the paper proceeds to analyze the problem.

## Key words

Victimolg, Victim Precipitation, Feminist Criminology and Gospel Truth.

## INTRODUCTION

"Always take no for an answer. Always stop when asked to stop. Never assume no means yes. If her lips tell you no but there is yes in her eyes, keep in mind that her words, not her eyes, will appear in the court transcript"<sup>1</sup>.

Rape<sup>2</sup>, a *mala in se* crime has a chequered history of interpretation. It has been interpreted as most hated crime, a gender neutral crime, a social problem and as a

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<sup>1</sup>Asa Baber, "The Stud Muffin Quiz", Playboy, June 1992, at 36, cited in, Lani Anne Remick, "Read Her Lips: An Argument for a Verbal Consent Standard in Rape", 141(3) University of Pennsylvania Law Review, 1993, pp.1103-1151, at 1103

<sup>2</sup>It is understood that sexual offenders can be male or female, and victims can be of either sex; however, throughout this paper, offenders will be referred to as male, unless otherwise noted.

violent crime. Each interpretation is linked with the views with which woman has been seen and analyzed in a traditional/progressive/feminist/criminological perspective. Criminology as a body of knowledge, regarding crime, as a social phenomenon<sup>3</sup>, is considered to be a development of seventeenth century. From demonological to postmodern criminology, each school is an attempt to understand the etiology of crime, the sociology of law and penology. Victimology is a recent addition of twentieth century dealing with the scientific study of victims of crime. In victimology, the era where all offences were viewed as perpetrated against the king or state, not against the victim or their family is considered as dark age from victim's point of view and the era where victims played a direct role in determining the punishment for actions of another committed against them or their property is considered as golden age from victim's point of view<sup>4</sup>. Victimology on the one hand, deals with sanctity of victimhood, the belief that victims are inherently good, honest, and pure, making those who defend them righteous and morally justified and on the other hand, victimology deals with theories of victimology, in victim precipitation theory attempt is made to establish that either crime is caused or partially facilitated by the victim. The term victimology is so wide to include not only the sufferer of crime but also the perpetrator of crimes, because it is a scientific study of victims and victimization, including the relationships between victim and offender, investigators, courts, corrections, media and social movements, in which there is every possibility that each can become either victim or perpetrator in a given context.

Feminist Criminology deals with three major dimensions *i.e.* women as criminal, women as victim of crime and women in criminal justice system. Victims' precipitation theory concentrates on the role of victim in commission of crime. Objectively, its purpose is either to hold victim responsible to some extent or to lessen the responsibility of the Accused. Against this backdrop, the present paper attempts to discern the approach of the Supreme Court of India on rape victims/survivors as to whether the court has been sensitive to the advancement in legal feminism at the global level while dealing with the cases of rape. The present paper attempts to analyze the value of statement given by a victim of rape in India as to how it should be taken as a sacrosanct or gospel truth or simply as bare statement subject to corroborative evidences.

## **SEXUAL OFFENDERS**

So far as sexual offenders are concerned there is no definitive profile. It is not always a dirty old man reading erotica material in the back of a book store, a stranger in dark clothing lurking behind the bushes, a respected priest, and a decorated scout leader? The truth about sex offenders is that each of these individuals fits the profile of a sex offender. In reality, sexual offenders are not just socially displaced strangers. They are more commonly our teachers, our bankers, our fathers, children and friends.<sup>5</sup> Sexual offending crosses the barriers of gender, race, socio-economic status, age, religion and sexual orientation. There is no typical offender and no typical victim.

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<sup>3</sup>Edwin H. Sutherland And Donald R. Cressey, *Criminology And Criminal Law: Principles of Criminology*, the Times of India Press, Bombay, 1968

<sup>4</sup>Hoyle, C. And Young, R., "Restorative Justice: Assessing the Prospects and Pitfalls", in M. Mc Convile And G. Wilson (eds.) *The Handbook of The Criminal Justice Process*, Oxford University Press, Oxford, 2002. Cited In Tony Kearon and Barry S. God Frey, "Setting the Science: A Question of History", in Sandra Walklate (eds.) *Handbook of Victims and Victimology*, William Publishing, 2007

<sup>5</sup>Fenton Z., "Faith in Justice: Fiduciaries, Malpractice and Sexual Abuse by Clergy", 8 *Michigan Journal of Gender Abuse and Law*, 2001 at 45, cited in Brent E. Turvey Wayne Petherick, "Sexual Offenders and Their Victims", *Forensic Victimology*, 2009, pp.445-471, at 446



Subsequently, no one is immune to the devastating impact that sex crimes can inflict, and most of us know someone who is a victim of sexual assault.

Rapes are of various kinds like rape by stranger, date rape, gang rape, statutory rape, partner rape etc. Stranger rape means rape by stalkers, guys in the bushes, the repairmen in the house, thieves who find a women at home alone etc. Date rapes are rapes committed by familiar persons with their victims. Their victims often consent to spending time with them and sometimes consent to some sexual contact. However, when the victim decides to stop the sexual contact or turns down a proposal for sexual contact, it becomes rape.<sup>6</sup> These rapists often deflect responsibility for the assault, claiming it was consensual or that they were unable to stop. Although rapists are being held responsible for their offences, blaming the victim still occurs. The victims of rape are sometimes physically injured, and they are always emotionally scarred.

## VICTIM PRECIPITATION THEORY

A significant portion of the social science literature on rape has been marked by misogynist assumptions and a tendency to blame women for their own victimization.<sup>7</sup> It is assumed that, there often is some reciprocal action between perpetrator and victim.<sup>8</sup> The concept also assumes that the offender rests in a passive state and is set into motion primarily by the victim's behavior, that the victim's behavior is a necessary and sufficient condition for the offense. Precipitation means quick and hurried action -undue, unwise, or rash haste.<sup>9</sup> The term victim precipitation describes those rape situations in which the victim actually, or so it was deemed, agreed to sexual relations but retracted before the actual act or did not react strongly enough when the suggestion was made by the offenders. The term applies also to cases in risky or vulnerable situations, marred with sexuality, especially when the victim uses what could be interpreted as indecency in language and gestures, or constitute what could be taken as an invitation to sexual relations.

Among victim precipitated rapes, as compared with other rapes, higher proportions of white victims; white intra racial rapes; victims between 15 and 19 years of age; alcohol consumption, particularly by the victim; bad reputation of victim; residential proximity between victim and offender and/or place of offense; victims who met their rapist at a bar, picnic, or party; victims who were raped in a site other than their or the offenders' homes; use of coercion by the offender; subjection of victim to sexual humiliation and victim offender relationships involving all categories of primary relationships except those between relatives.<sup>10</sup> There is controversy over the linkage

<sup>6</sup> Baker K., "Once a Rapist? Motivational Evidence and Relevancy in Rape Law", Harvard Law Review, 1997, at 110

<sup>7</sup> Wisan G., "The Treatment of Rape in Criminology Textbooks Victimology", 4(1) An International Journal, 1979, pp.86-99, cited in Ronald J. Berger And Patricia Seales, "Victim Offender Interaction in Rape: Victimological, Situational and Feminist Perspectives", 13(3/4) Women's Studies Quarterly, 1985

<sup>8</sup> Von Hentig, "Remarks on the Interaction of Perpetrator and Victim", 31 Journal of Criminal Law & Criminology, 1940, at 303, in which he dealt with the subject in its general aspects rather than with rape alone. For a theoretical background on the victim precipitation criminal homicide also anchored in Von Hentig's work but containing other classic and modern theoretical statements, see James J. Gobert, "Victim Precipitation", 77(4) Columbia Law Review, 1977, pp.511-553

<sup>9</sup> Webster's New International Dictionary, 2nd ed., 1961

<sup>10</sup> Menachem Amir, "Victim Precipitated Forcible Rape", 58(4) The Journal of Criminal Law, Criminology, and Police Science, 1967, pp.493-502; see also, Menachem Amir, Patterns in Forcible Rape, The University of Chicago Press, Chicago, 1971

between victim precipitation and level of resistance by the victim<sup>11</sup> and is concluded as women who are less traditional in their gender-role orientations are more likely to resist than are women who are more traditional. It is submitted by the propounders of the victim precipitation theory that it is not solely the vulnerable situations but also some characteristics of victim behavior which are important in precipitating the offense. It does not make any offender innocent but allows considering some of these men, at least, less guilty and leads to consider that the victim is perhaps also responsible for what happened to her. However, it seems that victimological theorists have adopted the offender's point of view, converted sexist rationalizations into causal explanations, and reinforced sexist legal practices. Situational theorists have ignored gender-role socialization and have often left the impression that a woman's independence increases her vulnerability to rape.

## FEMINIST CRIMINOLOGY

Sigmund Freud is considered as traditional criminologist who has not only belittled the gravity of crime against women but also considered them as *participis criminis* in cases of rape. Freud bequeathed the notion of rape as a victim-precipitated phenomenon. If, as Freud insisted, women are indeed masochistic, rape-either in fantasy or in fact-can satisfy those self destructive needs. Helene Deutsch, a follower of Freud was the major contributor to the view that the female herself is responsible for her own rape. In this view, psychoanalytic descriptions of female psychology were merely descriptions of the male analysts' fantasies about women. Through Sigmund Freud and Helene Deutsch, it could be established that it was not only the victimologists dealing with victim precipitation but also some psychoanalytical criminologists who have dealt with the concept of victim's precipitation. Lombroso has given the theory of born criminals, if applied to women, as victims, it would certainly mean that women victims too are born victims. It is also quite supportive to the victim precipitation theory.<sup>14</sup>

Feminists have demonstrated the relationship between trivialization of rape and the cultural view of women as inferior and unimportant. The female stereotype includes the notion of a female vulnerability so great that women who have been raped are viewed as scarred for life, and the victims themselves often live according to this cultural expectation. One of the reasons of non-reporting of rape cases is that the police remain skeptical as to whether she consented.<sup>15</sup> Feminists assert the law of rape does not recognize women's right to sexual autonomy as absolute. Instead, rape law reflects the sexually coercive society in which it operates.<sup>16</sup> Though feminists

<sup>11</sup> Pauline B. Bart and Patricia H. O'Brien, "Stopping Rape: Effective Avoidance Strategies, 10(1) Journal of Women and Culture in Society, 1984, at 86

<sup>12</sup> J.B. Miller, (ed.), *Psychoanalysis and Women*, Penguin Books, Baltimore, 1973; J. Mitchell, *Psychoanalysis and Feminism*, Random House, New York, 1974; J. Strouse, (ed.), *Women and Analysis*, Viking Press, New York 1974, cited in Rochelle Semmel Albin, *Psychological Studies of Rape*, 3(2) *Journal of Women in Culture and Society*, 1977, pp.423-435

<sup>13</sup> S. Freud, "Some Psychical Consequences of the Anatomical Distinction between the Sexes", 1925 in J. Stachey (ed.) *Standard Edition of the Complete Psychological Works of Sigmund Freud*, Hogarth Press, London, 1964; see H. Deutsch, *The Psychology of Women: Motherhood*, Grune & Stratton, New York, 1944

<sup>14</sup> See, Lombroso and G. Ferrero, "La Donna Delinquente, Torino, Roux," 1893; Lombroso, "Crime, Its Causes and Remedies," 1911 cited in, Frances Heidensohn, "The Deviance of Women: A Critique and an Enquiry" 19(2) *The British Journal of Sociology*, 1968, pp.160-175

<sup>15</sup> James J. Gobert, "Victim Precipitation", 77(4) *Columbia Law Review*, 1977, pp.511-553, at 517

<sup>16</sup> Ann Norton, "Talking Back To Sexual Pressure", *Whole Earth Review*, 1992, at 111



have taken strong exception over the work of Amir, a student of Marvin Wolfgang, who applied his supervisor's methodology not only to cases of homicide but also to rape too. It became an iconic target for a number of feminists who renamed victim-precipitation as victim blaming.<sup>17</sup> Amir's application of the concept victim precipitation to rape cases has been roundly criticized<sup>18</sup> and rejected in principle by feminists.

Feminist criminology had a radical change, and it arose in large measures as a protest against the domain assumptions of radical criminology. Women, it was said, were raped, abused and assaulted, and their neglect by male criminologists constituted not only a political and sexist affront but an analytic and empirical gap. It was also described as "unwarranted attack and unfounded ideological criticism", that revealed no flaws in the integrity of the idea of victim- precipitation itself, only in its execution, but damage had been done.<sup>19</sup>

#### **Two of the most significant contributions of feminist criminology since the 1970s are the documentation of:-**

- (1) The significant amount of violence against women and girls perpetrated by men and boys.
- (2) How girls' and women's victimizations and trauma, often at the hands of abusive men, are risk factors for their subsequent offending or labeling as offenders.<sup>20</sup>

Carol Smart lambasted the way in which women as offenders and victims had been anathematized, and she proposed their reinstatement within an analytic framework emphasizing the workings of patriarchal power and male myopia.

## **TESTIMONY OF RAPE VICTIM AND OBSERVATION OF COURTS**

In the case of *Bodhisattwa Gautam v. Miss Subhra Chakraborty*<sup>21</sup> the Supreme Court observe that rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of a woman and pushed her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the fundamental rights, namely, the right to life contained in Article 21. It is an offence committed mostly in isolation from the sight of others and eye witness is seldom available in cases of rape. The evidence of a prosecutrix is considered at par with an injured witness whose presence at the spot is probable. If her sole evidence inspire confidence and not shaken in cross examination or otherwise, it is enough to arrive at a conclusion of guilt.

<sup>17</sup> Clark, L. and Lewis, D. Rape: "The Price of Coercive Sexuality", cited in Paul Rock, Theoretical Perspectives on Victimization, Sandra Walklate, 1977

<sup>18</sup> Weis, Kurt and Sandra S. Borges, "Victimology and Rape: the Case of the Legitimate Victim" 8 Issues in Criminology, 1973, pp.71- 115 cited in Vicki McNickle Rose, "Rape as a Social Problem: A Byproduct of the Feminist Movement", 25(1) Social Problems, 1977, pp.75-89

<sup>19</sup> Fattah, E., "Victimology. Past, Present And Future", Criminology, 2000

<sup>20</sup> Joanne Belknapsource, "Offending Women: A Double Entendre", 100(3) The Journal of Criminal Law and Criminology, 1973

<sup>21</sup> AIR 1996 SC 922

The most horrific case on gang rape leading to the amendment in criminal law was *State v. Ram Singh & Ors* and *Pawan Kumar Gupta v. State*<sup>22</sup> popularly known as Delhi rape case awarding death sentence to the accused person except the juvenile in conflict with law. But, when one objectively goes through the judgment, and compares the case on the line of victim precipitation the question no. 11 becomes very- very important that "Aapne puri ghatna key dauran 100 number par phone karne ki koshish ki ya police picket dekh kar chillaye?" Which was answered as "Ghatna shuru hone se pehle ladai-jhagde ke dauran hi un logon ne hamare phone cheen liye the isliye phone karne ka mauka hi nahi mila. Main aur mera dost chilla rahe the lekin shayad bahar kisi ne suna nahi". The answer mentions that first of all they fought with the accused persons and then after they were subjected to torture and rape. Meaning thereby that the victim precipitators will certainly attempt to drag the case as one of the cases of victim precipitation.

### **Testimony**

Disbelieving over the statement of victim has been prevalent in a country like USA. The Chicago police training manual, as recently as 1973, instructed officers that the first thing to do is determine if the woman, who reports the rape, is lying. This suspicion of the victim typically continues throughout the legal process.<sup>23</sup> The critics of corroboration requirements advocate that the elimination of all special rules concerning rape cases not applicable in other criminal cases.<sup>24</sup> Corroboration of the victim's word is not required by law in order to convict an offender of any other crime; therefore, any distinction between an uncorroborated charge of kidnapping, assault or robbery, and an uncorroborated charge of rape should be abolished.<sup>25</sup> In this view, the jury can weigh the credibility of the testimony and determine if there is enough evidence to support the defendant's conviction.

Victim precipitation theory in case of rape, treats the victim as an accomplice to the crime, which is contradicted by the Supreme Court in number of cases and it is settled now that there is no legal compulsion to look for corroboration of the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix if there is absence of circumstances which mitigate her veracity. But, still not only the High Court's but also the Supreme Court is passing verdicts contrary to the settled position, by observing that court cannot rely upon victim's statement as gospel truth. The journey of controversy over the sanctity of victim's statement can be traced back from the judgment of *Rameshware v. State of Rajasthan*<sup>26</sup> The most celebrated observation of Fazal Ali and Vivian Bose JJ, may be quoted as "the rule, which according to the case has hardened into one of law, Is not that corroboration, as a matter of prudence, except where the circumstances make it save to disperse with it, must be present to the mind of the judge". In this case the judges were of the opinion that the High Court was right in not requiring the corroboration beyond the statement of the child to her mother. It is enough to make it safe to act on her

<sup>22</sup> MANU/DE/0649/2014

<sup>23</sup> Grimstad, Kirsten and Susan Rennie (eds.), *The New Womans Survival Catalog*, Coward, McCann and Geoghegan Berkley Publishing Corporation, New York, 1973

<sup>24</sup> Ross, Susan C., "The Rights of Women: The Basic ACLU Guide to Women's Rights", Avon Books, New York, 1973

<sup>25</sup> Wood, Pamela Lakes, "The Victim in a Forcible Rape Case: A Feminist View", 11 American Criminal Law Review, 1972, pp.335-354

<sup>26</sup> AIR 1952 SC 54



testimony. In this case the appellant Ramesher was charged with committing rape on a young girl of 8 years age. The learned judges set aside the acquittal and restored the conviction and sentence. The SC upheld the decision of HC.

The law, which was perceived as almost settled in the year 1952, still remains unsettled due to different approaches of judges regarding the victims of rape. Still there is a great controversy over the victim's statement in rape as to whether her testimony should be regarded as gospel truth or not. Two judges of Supreme Court opine two different views on a same day in different occasions.<sup>27</sup> Speaking on strengthening laws to tackle crimes against women while addressing a seminar on 'Improving Criminal Investigations' the then Chief Justice of India Justice P. Sathasivam said the statement of a rape survivor should be enough to secure conviction. He was of the opinion that "In our country, no girl will go to the police station and say she was raped by this man. When it comes from the heart, the presiding officer should accept her testimony and conviction can be based on it". Whereas, A bench of justices H.S. Bedi and J.M. Panchal said while primacy has to be given to victim's statement, there can be no presumption that she is telling the ultimate truth as the charge has to be proved "beyond reasonable doubt" as in any other criminal case. They opined that we are conscious of the fact that in a matter of rape, the statement of victim must be given primary consideration. But, at the same time, the broad principle that the prosecution has to prove its case beyond reasonable doubt applies equally to a case of rape and there can be no presumption that a prosecutrix would always tell the entire story truthfully.

Against this backdrop, the paper mentions some of those cases in which it has been shown that it is the judge particular that turns the settled position into unsettled situation. For example, *In State of HP v. Raghubir Singh*<sup>28</sup> the bench of Dr. A.S. Anand and N.P. Singh held that conviction can be recorded on the sole testimony of the prosecutrix if her evidence inspires confidence and there is absence of circumstances which mitigate her veracity. Further, in *State of Punjab v. Gurmit Singh*<sup>29</sup> the court held that in cases involving sexual harassment, molestation etc. the court is, duty bound to deal with each cases with utmost sensitivity. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration.

In the case of *State of Punjab v. Gurmit Singh & Ors*<sup>30</sup> the bench of Dr. A.S. Anand and S. Sagir Ahmed observed that crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victim of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim; a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or

<sup>27</sup> The Hindu, 9th February, 2014

<sup>28</sup> (1993) 2 SCC 622

<sup>29</sup> (1996) 2 SCC 384

<sup>30</sup> Ibid.

insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. Justice Anand also held that, a girl, in a tradition-bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect upon her chastity had occurred, being conscious of the danger of being ostracized by the society or being looked down upon by the society. In this case duty of court during cross examination of the victim of sexual assault was also highlighted. Further, J. Anand expressed strong disapproval of the approach of the trial court and it's casting a stigma on the character of the prosecutrix as "a girl of loose morals or such type of a girl."<sup>31</sup>

In the case of *Ranjit Hazarika v. State of Assam*<sup>32</sup> the Supreme Court again observed that the court must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to

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<sup>31</sup> Id., at 401

<sup>32</sup> (1998) 8 SCC 635



the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.

In *State of Orissa v. Thakara Besra & Anr*<sup>33</sup> the court held that the rapist degrades the very soul of the helpless female and therefore the testimony of the prosecutrix must be appreciated in the background of the entire case and in such case, non-examination even of other witnesses may not be a serious infirmity In the prosecution case particularly, where the witnesses had not seen the commission of the offence. It was also observed that the court may look for some assurances of her statement to satisfy judicial conscience. The court should examine the border probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix like she was raped on 12 PM or 6 PM on the Basis of which the accused was acquitted.

In *State of UP v. Pappu*<sup>34</sup> the bench of Arijit Pasayat and S.H. Kapadia JJ, held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual interaction. It may not be a ground to absolve the accused from the charge of rape. The court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. Further the bench relied upon the case of *State of Punjab v. Gurmit Singh*.

In *Vijay Alias Chinees v. State of Madhya Pradesh*<sup>35</sup> the bench of P. Sathasivam and Dr. B.S. Chauhan JJ, held that court may convict the accused on the sole testimony of the prosecutrix and relied upon *Wahid Khan v. State of MP* where the bench of J.M Panchal and Deepak Verma JJ, opined that it is also a matter of common law that in Indian society any girl or woman would not make sure allegations against a person as she is fully aware of the repercussions flowing therefrom. It would indeed be difficult for her to survive in Indian society which is of course, not as forward looking as the western countries are. The court also mentioned that corroboration is not the *sine qua non* for convictions in a rape case.

Approach of judiciary towards the cause of women is quite significant leading towards ultimate conviction or acquittal of the offender. In *State of UP v. Munesh*<sup>36</sup> a bench of P. Sathasivam and Ranjan Gogoi held that our primary concern is about the devastating increase in rape cases and cases relating to crime against women in the world. Although the statutory provisions provide strict penal action against such offenders, it is for the courts to ultimately decide whether such incident has occurred or not. The court should be more cautious in appreciating the evidence and the accused should not be left scot free merely on flimsy grounds. Though the high court has allowed the appeal filed by respondent accused and acquitted him of all the charges and also rejected the capital sentences references.

<sup>33</sup> AIR 2002 SC 1963

<sup>34</sup> (2005) 3 SCC 594

<sup>35</sup> (2010) 8 SCC 191

<sup>36</sup> AIR 2013 SC 147

In the instant case, the accused had committed rape, which repels against moral conscience as he chose a girl of 11 year to satisfy his lust and subsequently murdered her, who had gone alone from her house at about 5:30 PM on 5/3/2002 to prepare cow-dung cakes in the cremation ground of Jatavs<sup>37</sup>. The followers of victim precipitation theory may argue that since she had gone alone therefore she was raped. The law on the issue whether a conviction can be based entirely on the statement of a rape victim has been settled by this court in several decisions<sup>38</sup> and could be concluded as "Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."

Contradicting with the cases on relying over the sole testimony of the victim, the bench of R.V. Ravindran and B. Sudershan in *Radhu v. State of Madhya Pradesh*<sup>39</sup> observed that, the court should, at the same time, bear in mind that false charges of rape are not uncommon; there have also been rare instances where a parent has persuaded a gullible or obedient daughter to make charge of a rape either to take revenge or export money or to get rid of financially liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case. Observed that, the court should, at the same time, bear in mind that false charges of rape are not uncommon; there have also been rare instances where a parent has persuaded a gullible or obedient daughter to make charge of a rape either to take revenge or export money or to get rid of financially liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.

*In Rajoo & Ors v. State of M.P*<sup>40</sup> the Supreme Court had the occasion to observe that the evidence of the prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally, her statement, at best, is adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication.

In *Tameezuddin alias Tammu v. State*<sup>41</sup> H.S. Bedi and Aftab Alam observed that it is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. In *Dinesh Jaishwal v. State of Madhya Pradesh*<sup>42</sup> the Supreme Court observed that, though evidence of the victim prosecutrix is liable to be believed save in exceptional circumstances, but to hold that a prosecutrix must be believed irrespective of improbabilities in her story, is unacceptable.

In *State of HP v. Mano Singh*<sup>43</sup> the court held that testimony of the prosecutrix is not

<sup>37</sup> State of Haryana v. Basti Ram AIR 2013 SC 1307

<sup>38</sup> (2008) 2 SCC (Cri)

<sup>39</sup> AIR 2009 SC 858

<sup>40</sup> (2009) 15 SCC 566

<sup>41</sup> (2010) 2 SCC (Cri) 60

<sup>42</sup> 2011 Cri.L.J. 121 HP



inspiring confidence and prosecution case becomes doubtful in view of the observation of SC made in *Radhu's* case. Here, the court observed that if victim prosecutrix of 16 year of age was alone at the time of occurrences and she appears to have consented for the sexual interaction with the accused respondent, therefore the appeal was dismissed. The decision of *State of UP v. Munesh* was adverted to and followed in *State of Rajasthan v. Meena*<sup>43</sup>. In this case the judgement was delivered by the bench of A.K Patvaik and Chandramauli Kr. Prasad. The bench opined that the conviction can be based on the sole testimony of the prosecutrix, if found to be worthy of credence and reliable and for that no corroboration is required. It has often been said that oral testimony can be classified into three categories, namely, wholly reliable, wholly unreliable and neither wholly reliable nor wholly unreliable. In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration, this principal applies with greater vigor in case the nature of offence is such that it is committed in seclusion. In case prosecution is based on wholly unreliable testimony of a single witness, the court has no option then to acquit the accused. In the background of the aforesaid legal position, the court considered that the statement of the prosecutrix was wholly unreliable because at the time of cross examination she could not explain the discrepancy in her statement. Therefore the court upheld the decision of acquittal of the accused by the trial court.

The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspect and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weigh but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration. Therefore the convict appellant was given the benefit of doubt and accordingly he was acquitted of the charge and set at liberty.

## CONCLUSION AND SUGGESTIONS

A first step towards including rape in a psychology for women is correction of the biased manner in which mental health professionals have designed rape research. Such a methodological change would indeed be revolutionary. After a scientific revolution, many old measurements and manipulations become irrelevant and are replaced by others instead. In order to achieve this, scientists must acknowledge such bias as a scientific and methodological issue and not only a feminist one. The hope is that, as the methodologies change, the paradigms change, and the world itself changes with them.<sup>44</sup> Victim Precipitation theory in case of rape could be seen as statements made by *Abhijeet Mukherjee and Others* after the famous *Nirbhaya's* rape case means applications of victim precipitation theory in rape will only ridicule

<sup>43</sup> 2013 (2) SCALE 479

<sup>44</sup> T. S. Kuhn, "The Structure of Scientific Revolutions", 2nd ed. University of Chicago Press, Chicago, 1970

the victim and bring mockery of justice and nothing else. The court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before an order of conviction.

Some victimologists have warned against the tendency to overdo the emphasis on the role of the victim and reach the conclusion that the victim is the real criminal.<sup>45</sup> Feminist critics have objected most strenuously to the concept of victim precipitated rape. The entire concept of victim precipitated rape should be abandoned because it confuses precipitation and responsibility with women's vulnerability. Feminist theories of victim offender interaction in rape can serve as an important corrective to recent research by explicating the link between this interaction and the structural dimensions of sexual inequality and gender role socialization. There are three theories propounded by feminist scholars to encounter victim precipitation, situational contingencies and victim resistant theories *i.e* feminist oriented symbolic interactionism; feminist theories that conceptualize rape as a violent act; and feminist theories that conceptualize rape, including its violence, as an expression of male sexuality.<sup>46</sup> It is submitted by them that rape is a crime, whether it be date rape, intra-familiar rape, acquaintance rape, stranger rape or spousal rape. Rape is rape.

At last it can be concluded that the victim precipitation theory, if not understood correctly, does seem to imply that the victim is to blame. When read and applied properly, it theorizes that the victim's action and/or behaviors, whether intentionally or not, contributed to their victimization. If the woman gets raped, proponents of the victim precipitation theory are in no way implying that the victim caused the rape to occur. What the theory is saying is that this woman's passive precipitation may have influenced the dynamic of the situation thereby rendering her a sheep. They want to submit that the potentially hazardous situation was not created by either the man or the woman alone; it was formed by the dynamic interaction between the two people. Therefore, it is submitted that, in the present scenario neither one should be absolutely governed with the concept of traditional Indian woman in each and every case because now contradictions are also being experienced. Neither the pro women nor the anti women rather the just approach is the need of the hour.

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<sup>45</sup> Drapkin, I., and E. Viano, (eds.) *Victimology: A New Focus*, Lexing Ton Mass, 1974

<sup>46</sup> MacKinnon, C.A., "Feminism, Marxism Method, and the State: Toward Feminist Jurisprudence". 8(4) Journal of Women in Culture and Society, 1983, pp.635-658