

# ● WOMEN AND RAPE LAWS:A SOCIO-LEGAL SLUGFEST TO CHANGE THE MINDSET OF SOCIETY



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## **Abstract**

*Every Indian woman has a very specific and unique role in the social unit called family. After a long journey of sufferings, she could mark reasonable recognition within the four walls of the family and outside in the society. Now she actively participates in every decision-making process whether it be within the family or outside the family in her professional life. India though known for its diversity and unity both, has now also been known to be a place where most women are struggling in an ultra-modern society creating a quirky eerie to her dignity stigmatizing her status in society. On one hand we have Constitution of India which provides right to life with dignity and liberty under the obligation of fundamental rights, but on the other hand women are struggling to attain this right it is provocative and full of vendetta in this incumbent judicial system, right to life with dignity is guaranteed by the State, due to some ill-intentioned people this fundamental right is thwart. As a matter of security where at one side state provides security to women against actions of such ill-intentioned people on the other side the most common crime against women is sexual assault in the present day society which is not only a crime against the body of women but also creates ill impact to her mind and it shelve the egalitarianism, as society puts one major obligation to women is principle of maintaining piety of her body and mind, therefore due to sexual assault her body and mind are considered impure for marriage association and all this belief inculcate in the mind of rape victims, which put a woman in a dark sphere of her agony life. Hence it can be presumed society plays a crucial role to maintain guaranteed dignity promised to every woman by our Constitution. "No Constitutional promise can prevail without stupendous society" The authors will try to unleash and ascertain that how women in ancient society did not face such a hate from the side of then society, and what was the reason that women were under great time in Ancient Indian society. Further authors will analyze various legal and judicial aspects including psychotic disorders to understand the whole concept.*

## **Key words-**

*Rape Law, Criminal Psychology, Criminal Law Amendment, Trauma of rape victims, Male psychology in sexual assaults.*

## **Introduction**

When we talk in legal sermonize about crime the broad spectrum is occupied by gender based crime i.e. crime against women in the society, for reasoning out this question of crime against women in society we can start analysing from primitive or ancient Indian societies where condition of women were great because we have evidences that they could take part in administration, they were also entitled for higher education, they were equally entitled for participation in 'Vedic Yagyas', some of the examples of such females

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are Apala , Ghosha, Gargi, etc. However, in general also women had good participation in societal actions. When we start analysing in a comparative manner the crime against women in ancient society with that of present-day concept, in general we will find that in those days civil wrongs and crimes were intermingled, we can also understand this through an example like in civil wrongs progenies of VilomVivaha (Anuloma or Pratiloma) were not in good position because they were not entitled to live in the village and the only crime observed against women which we can assess here, was Raksha Vivah, wherein a man would forcefully consume a female against her will and without her consent.

The ancient Indian society was unassuming enough which we can assess with some incidents like when the Yavan invaders arrested women after they concord the area/jana, they use to consume the women and then release them from their custody, after which women without second doubt were again adopted back by the society after following the ritual of purification as described in Deval Smriti.<sup>1</sup> It is important to briefly explain that this smriti is specifically devoted to the purification of Brahmins, Kshatriyas, Vaishyas and Shudras that was taken away by 'mlecchas'. The Vigyanishwer developed purification ritual and a large ceremony was held at the bank of river Saraswati.<sup>2</sup>

In Mauryan period, Chanakya<sup>3</sup> explained that we must follow deterrent policy against wrong doers, further he explained that capital punishment cannot be given to a Brahmin, while others may be granted capital punishment, for Brahmana's if they were found indulged in doing sexual offences against a woman then in such a condition engraving the vagina as a symbol of penalty on their forehead or banishment was suggested. So, the whole society treats him accordingly and no atonement granted for this action of Brahmin. Therefore, we can assess that condition of women was much better in ancient ages as then they had all rights to live with human dignity.

Medieval period of India, saw a different condition of women in society as there was deterioration due to continuous invasion and establishment of rulers who had different cultures, it was the period of struggle for culture and religion both, hence the rights of women were curtailed, and many more unprecedented practices started to minimise the rights of women in then Indian society. All this was happening in the medieval society because crimes against women were increasing rapidly.

During the period of British India many reformists and activist started to work upon the poor social conditions of female in the society who were considered as the marginalized section of the society during this period and many reforms were also started for betterment of women. As reported by various travellers' ratio of sexual crime against female body were increasing rapidly in the society and, that is how later in British period

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<sup>1</sup>Devala Smriti at, <https://archive.org/details/devala-smriti/mode/2up>, visited 14/08/2022.

(36. Now, I will proclaim a greatly auspicious expiatory rite. This rite is for women who were captured by mlecchas with force and then raped wherever they were taken.

37. I will explain the appropriate rite for all the Brahmin, Kshatriya, Vaishya and Shudra women who were abducted by the barbarians.)

<sup>2</sup>Mishra. Dr Jaishanker, Prachin Bharat Ka Samajik Itihas, Bihar Hindi Granth Academy, January 2013.

<sup>3</sup>The Position of Women in Kau?ilya's Arthasastra at, <https://www.jstor.org/stable/44252408>, visited 14/08/2022.



all such actions were placed in Indian Penal Code, but psychology of offenders and victim should also be considered when we are analysing the action of crime for punishment or fixing the criminal responsibility. We have objective to develop such society in which male and female must be equal in all aspect of human dignity.

### **Statement of Problem**

As very rightly said by Manu in Manu Smriti no society is complete unless and until every house has a woman with a glowing face because her glow is the mirror to the inside conditions of heart and soul but as pointed out in the introduction part also this glow vanishes away when forceful physical relations are made with any women. Though this fact is also established rape has taken place in all the periods whether it be ancient or modern, the only change is how she is treated after rape. Ancient society is named ancient today but was more modern as they had a concept of acceptance of such females through the process of purification as mentioned in Devala Smriti, even we have seen in the Mauryan time symbolic vagina engraving on forehead of rapist was done as punishment to make him feel embarrassed in the society. Modern society is a society of failure because these raped women are staying in the society with the stigma of being robbed out, we have failed stringent laws as they are unable to bring back glow on the face of raped women. Today women are physically raped once and socially raped hundred times in the name of getting justice and media trial. The gravity of pain increases day by day and her inner beauty, glow decreases day by day. Now the question arises what should be done to restore her back completely to the pre rape stage and who should be held responsible for not letting this happen. Hence this article.

### **Research Objectives**

1. To analyse the safety of women with safeguards.
2. To estimate the gravity of physical, mental, and emotional pain in every rape.
3. To determine various psychotic disorders to be the causative factor behind many rapes.

### **Research Questions**

This leaves some unanswered questions mentioned below-

1. Whether the present socio-psycho societal structure is the root cause of rape against women?
2. Whether mental ailment or psychotic disorder a defence in sexual crime against women?
3. Whether the proverb "criminals are born criminal",<sup>4</sup> applicable in sexual crimes against women too?

### **Present Socio-Psycho Societal Structure and Rape Laws in India**

At the very outset of this article authors would like to create clarity about what the law in India was and how the law changed with changing scenario of the society in perspective of crime against women and specifically rape. To make this understandable let us start

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<sup>4</sup>The 'born criminal'? Lombroso and the origin of modern criminology at, <http://www.historyextra.com/period/victorian/the-born-criminal-lombroso-and-the-origins-of-modern-criminology>, visited 20/08/2022.

with some incidences which brought out the law as it stands today. Authors for this would take you to a journey of events bringing about all said above in modern world.

Let us start dealing with the first research question. In the month of May, 2020 when a heinous incidence marked spot light of the nation this was not glorifying enough to be known but was an urge to be disclosed being heart of historic event when academia for the first time intervened for some important changes in Criminal Laws, this query statement will take no longer than a second to recall the incidences of Mathura rape case<sup>5</sup> and its aftermath resulting in first Criminal Law Amendment Act, 1983. This brings a very important question on the surface whether Amendment of 1983 could really make any change for the women as far as the matter of rape is concerned?

Yes, we are focusing on police the safeguards who are supposed to administer the law and order within every state territory, as every state are duty bound to provide security to the citizen, but the history calls that police which is hands of State and Administration have been found engaged many a times destroying the modesty of woman. Incidents chronologically from present scenario the spotlight brings focus on 19th October 2020 when all the news channels outburst with a shameful event where and 20 year old accused of murder alleged that she was repeatedly raped by police officials for 10 days behind the bars in Mangawan town of district Rewa in Madhya Pradesh this incidence could find some light when a legal team comprising of four members, Additional District Judge, Law Officer and Two Lawyers visited prison on 10th October 2020 for inspection and where the women narrated her misery to the team subsequently she also told that she has narrated the incidents to prison warden but she did not believe her besides she also told that accused cops had threatened to implicate her father in the murder case if she talked about it to anyone.

Taking you to the starting journey point authors would bring your attention to a case famously known Mathura rape case an incidence similar to the incidence of 19th October 2020 where a young orphan woman Mathura who lived with her brother Gama worked as a labourer at house of Nishi. Mathura subsequently developed physical relations with Nishi's nephew Ashok. They decided to get married to each other but after report filed by Gama on March 26, 1972, about Mathura's kidnapping all concerned parties were brought before the police at the police station from where except Mathura, everyone walked out after recording their statements around 10:30 p.m. Now when all others left after statement the first appellant Ganpat who apparently asked Mathura to stay back in the Police Station closed the door and switched off the lights and took her to washroom and raped her, after Ganpat the second appellant Tukaram after enjoying with Mathura's body tried to rape her but could not do so as he was heavily drunk. When time passed family called out name of Mathura from outside but there was no response, when Mathura came to family she narrated everything which subsequently called for quick medical examination where it was asserted that her age was between the bracket of 14 to 16 years and it was found that her hymen revealed old rupture with no injury on her body and on doctor's advice first information report was filed. Matter instituted in Session court and acquittal was given to the accused believing Mathura to be habituate to sex and that it was not a rape. Contrary to view of session judge about



presence of semen the Bombay High Court held this was because of a simple fact that Mathura was examined when around 20 hours were passed and when examination took place meanwhile it can easily be presumed that she had taken a bath to clean herself and also said to the usage of word "gentleman" for accused of rape by Session Court is perplexing that how while convicting the accused for rape this Court has referred to them as gentleman.

Further, in the year 1979 striking down the judgment of Bombay High Court by restoring acquittal of accused policemen and agreeing to the Session Courts view of 'consensual sexual intercourse' where it was asserted that as Mathura did not raise an alarm for any help it means that she impliedly consented to sex. Supreme Court also agreed with Session Courts viewpoints that she was "habitual to sex" and entire story to sound "Virtuous before Ashok" who was waiting for her lover outside the police station. She was a shocking liar because she could not point out exact appellant who had raped her, hence one who can go against her initial testimony by changing accused from Tukaram to Ganpat possibly can smartly lie about everything else too and the court declared that this alleged intercourse was a "peaceful affair".

The aftermath of this Judgment stirred up the nation with sleepless nights to many and resentment largely from the nation including legends in academics demanding for more sensitivity towards the feeling of victim putting their human rights and dignity. The outburst of repulsion was in the form of an open letter to then Chief Justice of India by legendary academicians of renowned university of the nations and the open letter ended up in the form of Amendment Act, 1983. Now, here we need to know how rape laws stands in India.

### **Interpretation of Rape Laws**

Here when we only focusing upon rape laws as they stood before 2013 Amendment in Criminal Law as its specifications would be discussed later in order of chronology. According to Section 375 of Act of 1860 this heinous action called rapes is a forceful process of intercourse by a man upon women (not being his wife and if wife then under fifteen years of age) without her consent which means free from any undue influence or coercion at the same time also important to mention here that provided she is mature enough mentally i.e. having sound mind, physically i.e. she has completed sixteen years of age and also not intoxicated losing her mental stability.

If above action in absentia of mentioned conditions been done by any man then he shall be punished as per IPC, section 376 of Act of 1860 which provides rigorous imprisonment to any such rape criminal for not less than seven years extending to imprisonment for life and if this man is in position of authority as police officer, public servant, management person or staff member of Jail, remand home, institution for women and children, hospital or if the women raped is pregnant or if her age is less than twelve years or where offender along with others committed gang rape in pursuance of common intention, then the provision calls for punishment of rigorous in nature not less than period of ten years extending to imprisonment of life.

### **Criminal Law (Amendment) Act 1983**

After Mathura act, this first criminal law amendment had brought evident changes in Section 376 of Act of 1860 by adding clauses A, B, C and D. Where A is punishment given to man for raping own wife during judicial separation, B is punishment for raping

custodial woman by public servant, C is punishment for raping inmates of Jail, remand home and other such institutions by superintendent and D is punishment for raping women in hospital by hospital management/ staff members. Stern changes have also been made in Section 228 of Act of 1860 protecting respect and dignity of raped women by keeping her identity undisclosed and whosoever by a medium of print publishes her identity (name), shall be punished with the term extending to two years. This is the reason why in entire judgment of Delhi gang rape case victim has been mentioned as 'Nirbhaya'.

Now before we move forward to discuss another big fat amendments in the further years, we should again go through another incidence involving public servant as an accused that is of a case<sup>6</sup> where a young female Vimla a student of class VIII, studying in the same class from last three years alleged that the appellant who is apparently a teacher in the same school had brought her into fear of failing in the class again and did intercourse with her. Vimla conceived and was taken to a hospital in Satna by appellant where abortion took place. The prosecutrix came back and filed first information report and give statement that she is only thirteen and half years old but her statement proved to be untruthful as she was found above eighteen years of age and as per this finding Court categorically held that teacher was not at all guilty of rape crime as prosecutrix was a consenting party in the said matter but the learnt trial judge had an opinion that the school in question was a government school and teacher serving in school was public servant in this capacity hence crime was committed under section 376-B of Act of 1860 and sentenced him to imprisonment (rigorous) in nature for two years with fine of rupees 1000.

So let us again understand to find out more situation where rape done by people in authority as stands today after under rape law. Rape according to Amendment Act of 2013 is an offence against human body and is categorized in Chapter XVI in Act of 1860 from Section 375 to Section 376(A-E). Section 375<sup>7</sup> defines at first that who commits this crime and on whom. Rape is committed by a man on a woman (both the terms man and women are defined under Section 10<sup>8</sup> which says male or female human being of any age group is considered men and women) here again author would like to clarify rape is an offence against woman by man hence rape laws punishment would be given to man if proved guilty but again what about man who falls in category of child below age of seven and twelve years as defined in Section 82 and 83 of the Act of 1860. Section 82 is *Doli incapax* and Section 83 is *Doli capax*.

We should also consider the Victim -Offender theory, even though Under Indian Penal code we do consider criminal Intention but not the effect on victim's mind we should also consider it to make the conclusion on nature of Penalty, Judicial care should be for both victim and offender.

In Indian law child below age of seven years is in his infancy a period of life which is considered as a period of defect of understanding wherein a child below seven is under

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<sup>6</sup>Omkar Prasad Verma v State of Madhya Pradesh (2007)4 SCC 323

<sup>7</sup>Section 375 of Indian Penal Code, 1860

<sup>8</sup>Section 10 of Indian Penal Code, 1860 - "Man". "Woman" - The word "man" denotes a male human being of any age, and the word "woman" denotes female human being of any age.



natural disability to differentiate between righteous and wrongful action, good and bad. This can better be understood by understanding psychological aspect of child given by Swiss psychologist Jean Piaget who says it is incredible to see development of child's ability to think and to find reasons for that, this is also famously called as Cognitive development.<sup>9</sup> Development of cognitive skills of child is divided into four stages:

- Sensorimotor (Birth to 2 years),
- Pre-operational (2-7 years),
- Concrete Operational (7-11 years) and
- Formal Operational (11 years and above).

In first two stages child recognizes his own body and learns to use language with object classification by single feature, in the third stage he learns object classification with several dimensions with ability to think logically about object and events and then in the last fourth stage he starts thinking logically about abstract issues and understand it hypothetically.

Like this when psychological aspects are applied in legal Section 82<sup>10</sup> of Act of 1860, we can understand that this child is in his pre-operational stage and where his thinking is only egocentric and also it is very difficult for him to understand viewpoint of others hence we can now understand why below seven years of age no child is punished for his crimes. Discussing further about Section 83<sup>11</sup> of Act of 1860, which take the bracket of age group above seven and below twelve, children of this age bracket are more in concrete operational group where though they form mental representation of series of actions but still they can only relate to concrete objects to which they have direct sensory access else not, hence here we can understand that though child can draw map route but would not be able to follow as they have no overall picture of the same and purely becomes question of child's level of understanding. When we discuss about the interpretation of Section 83 it is supported by above psychology that no child above seven years and below twelve years shall be punished as proved he is not able to comprehend his action with consequences. Further understanding children within the bracket of above 12 and under 18 years of age, when we consider this age bracket neither they fall in class of immature mind nor they can be considered fully matured, for a better understanding of this statement we shall refer to section 2(12)<sup>12</sup> and 2(13)<sup>13</sup> of Act of 2015 which at first will clarify what are these class under eighteen human considered as and how law looks upon them if at all they come in conflict with law? This provision of

<sup>9</sup>Atkin & Hilgard's, Introduction to Psychology, 16th edition, Cengage Learning, 2019.

<sup>10</sup>Section 82 of Indian Penal Code, 1860- Act of a child under seven years of age- Nothing is an offence which is done by a child under seven years of age.

<sup>11</sup>Section 82 of Indian Penal Code, 1860- Act of a child above seven and under twelve of immature understanding-Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

<sup>12</sup>Section 2(12) of Juvenile Justice (Care and Protection) Act, 2015- "Child" means a person who has not completed 18 years of age.

<sup>13</sup>Id, Section 2(13) - "Child" means a child who is alleged or found to have committed an offence and who has not completed 18 years of age on the date of commission of offence.

section 2(12) of Act of 2015 earlier appeared as section 2(k) in Act of 2000.<sup>14</sup> This section explains as to who is child or juvenile for the purpose of this Act, accordingly a child or juvenile is someone who is below eighteen years of age, this legal provision is also in consonance with Section 3 of Act of 1875 that defines majority age of an Indian, where unless any particular personal law applies and who is domiciled (not necessary that every resident is domicile but every domicile is resident) in India shall attain majority at completion of his eighteen years of age but there is also an exception that minors who are under the guardianship that is appointed by Court such minor shall attain majority once he complete his twenty first birthday. Next is interpretation of section 2(13) of the same Act which says any child who is alleged to do or who has been found doing any action which is an offence under criminal law will be considered as juvenile in 'Conflict with Law' if at the date on which he was alleged or found doing crime, has not completed the age of eighteen years. Therefore, as per the law age of majority by both Act of 2015 and 1875 shall be eighteen and not even a single day less than that shall be considered for any reason whether it is majority or considering punishable for crime. After learning all about the various age brackets from under seven to even one day less than eighteen no imprisonment can be awarded by any law. Now understanding both the section 2(12) and 2(13) in a psychological aspect of delinquency<sup>15</sup> in this age covers a broad range of behaviour like unacceptable social behaviour of bunking school, like status offence of consuming alcohol and heinous criminal acts of rape and murder. Youth crime occurs due to many causative factors like biological, psychological and socio-environment factors. As done for the previous children author would put emphasis on psychological factors for understanding reason for criminal action as serious as sex crimes. Psychologists have found now that there are incontrovertible evidences that adolescence period is of significant changes in brain structure affecting brain functions. Maturation of brain is at substantial level in both aspects. There are noteworthy four structural changes- Firstly, due to decrease in gray matter in prefrontal region of brain; this is a process through which unused connections between neurons are eliminated, this process takes place in early adolescence resulting in major improvement in basic cognitive skills and logical reasoning. Secondly, activity of neurotransmitter- dopamine that happens around puberty through which emotions are processed resulting experience of reward and punishment, this activity also initiates in early adolescence. Thirdly, there is an increase in white matter in the prefrontal cortex for initiating the process of myelination in which a white fatty substance sheathed the nerve fibre improving efficiency of brain circuit. The process of myelination continues till late adolescence and early adulthood, and this is responsible for higher order cognitive functions like planning ahead, risk weighing and making complicated decisions. Fourthly, after initiation of myelination there is increase in strength in connections that regulate emotions. Here the most effective to mention is strengthening connections establishing self-control making cable networking region in brain. Now let's understand that due to above mention four structural changes in brain what are the predominant functional changes with the help of test done via Functional Magnetic Resonance Imaging (fMRI). Firstly, while performing task of self-control, an adult brain uses a wider

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<sup>14</sup>Juvenile Justice (Care and Protection) Act, 2000.

<sup>15</sup>Kumar.Navin, "Criminal Psychology", Lexis Nexis, 2015.





network of brain as compared to adolescence which makes self-control easier. Secondly, crucial changes are seen the way brain responds to rewards and punishments, interestingly differences are more consistently observed when anticipating reward than in reality receiving it actually. Heightened sensitivity is anticipated to rewards motivate adolescents to engage in acts of risk like fast driving, experimentation with drugs etc. Thirdly, responding to arousing stimuli is very high during adolescence and gradually peer pressure declines as they grow into adulthood and then they become better able to put brakes on impulses that are aroused by friends. Though, after understanding that why adolescents behave the way they behave but still psychologist not able to get answer to the most prominent question that when adolescent brain becomes adult and when brain of adolescent is developed to handle public policy as if at all the brain accelerator is pressed before a good braking system in place it would not be surprising that commission of crime peaks around the age of sixteen. This can also be seen that it is approximately this age only (+-) one year when adolescent or juvenile start experimenting with alcohol, marijuana, automobile crashes and attempts of suicide.

Here it will be fault of author not to discuss the landmark '*Nirbhaya*' case.<sup>16</sup> Before the authors discuss about the involvement and treatment of Juvenile in this case it is utmost important to see gravity of circumstances through running facts this case also becomes credible mentioning here as it is originator of Justice J.S. Verma committee formulated to suggest valid amendments in present law dealing with sexual crime more sternly in future to come resulting in Criminal Law Amendment, 2013. The running facts would more be based on the medical report of the female raped indicating brutality of inhuman human's. This incident took place in on 16 of December, 2012 in National Capital of India (Delhi), as already mentioned above this case is also known as '*Nirbhaya*' case, as original name of the victim not to be disclosed. *Nirbhaya* (Victim of rape) along with her friend after watching movie in a mall, caught the bus back to her home from Munirka bus stand at around 8:30 p.m. in a cold winter night wherein her male friend who was beaten badly by iron rods and she was brutally raped (Vaginal penetration, Rectal penetration, unnatural oral sex, putting hand and iron rod in vaginal and rectal region to pull out her internal body organs) and assaulted by six men who were already present in the bus (one of them treated as a Juvenile in conflict with law in this case). After all enjoyment was over, the victim along with friend both robbed with all possible dignities were thrown naked out of the moving bus at Mahipalpur flyover where from the police took both victims in serious condition to Safdarjung Hospital, Delhi for immediate treatment, as both were profoundly bleeding. Reports of doctor further clarified deep bite marks were present on her breasts, inner thighs, lips and also on private parts of her body. Talking particularly about the juvenile who was treated as one conflicting with the law under section 2(13) of Act of 2015 was released after three years of institutionalization and placed in some part of country as a measure of rehabilitation, also suggested in Beijing Rules, 1985 to lead a normal life whereas other five co-criminal, where one committed suicide and rest four were punished with death sentence marked the difference between fixing criminal responsibility between juvenile and adult offenders. This law abiding action of juvenile not being tried as an adult co-offenders called for a lot of outcry from public, which on suggestions made by Verma Committee report resulted

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<sup>16</sup>Mukesh and another vs. State (NCT of Delhi), (2017) 6 SCC 1.

in Amendment Act of 2015 treating any juvenile between the ages of 16 to 18 committing heinous crime to be dealt as an adult.

Before we move further here at this juncture it becomes evident to understand 2013 amendment which is mentioned below-

### **Criminal Law (Amendment) Act 2013**

After '*Nirbhaya*' ferocity of incident reins by Justice J.S. Verma's Committee who suggested in its report that turned into Amendment Act putting more stringent provisions relating to women like inclusion of offences for sexual harassment, assaulting woman to disrobe, capturing/watching women in private acts (Voyeurism), or following woman and her contacts for personal interaction despite her repeated express disinterest. This amendment extend from previous section of rape that explained merely penetration to sexual intercourse constitutes rape but the new section reads rape to be one which can be non-penetrative including oral sex and section also exempts medical intervention as one act not constituting rape. Report suggested various criminal actions under statute, which were pressing need, and finally placed in Amendment Act, but all the above actions are based on some mental or behavioural disorder on that basis of behaviour we can categories several kind of rape in Law, like Penetrative rape, Statutory rape (no penetration only touch to vagina) Marital Rape, Date rape (during an exploratory platonic romantic meeting between man and woman) Gang rape, male rape. J.S. Verma committee considers all such psychotic behaviour under the law. Our view is that committee was known to the pressing need of affected society therefore they consider as crime. And they believe that criminal are born criminal, all mentally decorated men may not do attempt of sexual assault only those who are born criminal but this theory of criminals are born criminal is partially accepted because having along debate so we cannot apply in a crude form, it required refining. Further this theory is based on genetic behaviour of pattern for which we required data but we have even no single homogenous group of rapist population as there are multi-factorial causative factor, which operate differently. Here we observed 100 medical reports therefore we categorized in some homogenous disorder. So that theory of criminals are born criminal is partially accepted because we required time line data so cannot apply, it required more data refining to prove or disprove theory of Lombroso in case of rape offenders.

Some Myth about rape: when we are exploring behavioural aspects we should consider myth about rape in our society, like Women ask for sex by the pattern they dressed and behave, they enjoying being raped, women are raped only by stranger, women could avoid being raped if they really want to, rapist are crazy animals,

**Mental Ailment or psychotic Disorder of offender:** Since last three decades several reports suggest that mental health issues underlie sexual violence and offending particularly rape we are discussing some of them which are directly falling under:

#### **1. ICD 10 for sexual preferences:**

Till now we have looked upon mind-sets as to why are different ages crime and criminals are looked upon differently in the eyes of law but these ages are tender ages as we have seen it is completely in formation state not properly letting the person understand his behavioural outcome, but the same is not the case when we discuss about adult doing it on females. Hence adults are punished under the penal provisions of the law. Having said this it also becomes utmost duty of author to explore that what makes an adult to



enter into crime like rape and outraging the modesty of women. One important factor is social psychological factor by which individual are influenced by actual social conditions of their life. One thing to be noted here that no individual commits crime in isolation. Criminals are deeply affected by influential factors like family, community, religion, society and sometime governmental functioning also. Criminal who have been exposed to sexual activities in their early ages directly or indirectly are often seen indulged more towards forceful sex with females. When said forcefully sex it does not only tend towards sexual activity with other female but also includes wife in the form of marital rape. Other than social factors impacting mind of person to commit crime there are more abnormalities for creating sexual preferences for opposite gender pushing such person to have forced sex. These psychological disorders by ICD 10 (International Classification of Diseases and Related Health) under disorder for sexual preferences are as follows:

**2 Fetishism-** State of mind of a person attracting towards non-living object stimulating his sexual desire and gratification. Fetishes are human body extensions like clothing, footwear and some texture of rubber, leather etc. Fetishism is exclusively limited to males where they are aroused sexually by any female wearing these extensions of his choice.

**3 Exhibitionism-** This is a persistent tendency again only in males to expose their genitalia to strangers or even anyone in public place. This is exclusively limited to heterosexual males who are exposed to females. This ends up in action followed by masturbation. Important is that this behaviour is manifested generally at the time of stress and urge is difficult to control as excitement is very high as often seen.

**4. Voyeurism-** Also known as *Scoptophilia*. This is again persistent behaviour to look at people engaged in sexual activity specially undressing. This is also high excitement ending to masturbation and also this peeping act is not known to people who are being observed. Though now it is considered as criminal action after 2013.

**5. Paedophilia-** Sex craving for children of Pre pubertal or early pubertal ages. It can be in some cases craving only for male child or in some cases it can be only female child or it can also be for both. Again it is male dominant disorder. It also include men molesting own children and children's friend and peers.

**6 Sadomasochism-** Infliction of pain or humiliation as a preferential factor for sexual arousal falls in this category. If one only pleased by receiving pain it is masochism and on other side if only pleasure by providing pain it is sadism. It is normal occurrence in a pleasant sexual activities but regarded as psychological disorder if becomes the source for erotic arousal. It is also treated as cruelty if done by and for one partner pleasure only.

Sexual maturation disorder- Conflicting with failed sexual identity in adolescent finding it changing or also considered as state leading to any kind of identity and sexual preferences issues leading to high level tension in continuing relations with partners.

**7. Paraphilia-** It is more prominent in males and means desire for abnormal kind of love making and it includes behavioural pattern of fetishism, sadomasochism, pedophilia, voyeurism and exhibitionism leading sufferer to involve in Criminal action of sexual offences.

There are other six different motivating dimensions also to focus on rapist like-

Opportunistic rapist , Anger rapist , sexual rapist , sexually non sadistic rapist, sexually sadistic rapist, vindictive rapist , Very importantly all the above mentioned ailment behaviour does not adversely affect the intention of wrong doer, he think wrongfully and do accordingly, he can control himself because he know that it is wrongful action, and law violating, he must not get defense of his mental ailment except medically certified ailment, which should be testified by the Law of Nation by the help of judicial system, our point of submission is these ailment must be recognize and cure it by first family so we can stop or minimize such offence against women and help in making of egalitarian society promised by our constitution of India.

### **Conclusion**

Psychological impact on victims as per many studies have now come to consensus that the victim of rape other than the social and physical stigma of rape also suffers many psychological deep-rooted impact in fact the impression of these is such that it leads to heart breaking after effects like suicidal attempt and many psychiatric disorders. Even some guidelines are available for rape victims for their medico legal care, but the way of handling is not satisfactory therefore post traumatic care are more prominently observed, affecting females raped in childhood and adult ages of their life. Mother of all psychological impact on victim originate from the myth of society based on sexual assault against women makes her unholy and disrupt her piousness, we need to break this to avoid any psychiatric disorder and try to develop a judicial care for such victim. A close room psychiatric handling of victim, for some months may be one option to make aware the society at large that rape is an offence because it is against her will or without her consent which is forcefully done by male but in its repercussion it does not makes her unholy anyway and also not to make sexual offences as a sensitized matter from the female perspective to bring her in extremely highlighted or neglected world but rather we need to hold men as an unholy character for doing such an shameful act with the body and mind of any female. As it should only be the offender to be punished and not the victim to be victimized again and again.