

## **“A Functional Analysis of the position of Women in Indian Context & various sexual offences against Women”**

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### **Abstract**

This paper describes the sexual offences against women down the ages. Offences against women has always been a cultural practice. In our ancient great land, a woman is the personification of a goddess, a symbol of love and devotion to the gods. We were all born in a way that demands the highest dignity and reverence for the fairer sex. Sadly, this is not expressed in the current statistics but warrant introspection. Abuse and the growing violence against women are encountered in some way or the other by all around the world. It points to the enormity and thoughtfulness of the monstrosity that has been committed against women in recent years. A proof of this existence is the global fight for the extinction of violence against women. There are several legislative provisions that prosecute the criminals who commit sexual offences against women. Violence against women is very serious problem and it requires immediate action from all sections of society. To prevent the sexual offences against women is not the sole duty of the government rather every person is responsible to prevent it because it affects the various fundamental as well as legal rights of the women. Women constitute almost half of the population of our country but they suffer most in the society because of different types of violence against them. However, as a survivor of many sexual crimes, the Indian Penal Code makes provisions for women.

### **1. INTRODUCTION**

#### **1.1 Status of Women in Ancient India**

Social differentiations are characteristic of any human being in society. One distinction is based on gender. Men have the role of earning a living and women have the responsibilities of reproducing family heirs and managing the home. A historical understanding of women's status in ancient Indian society indicates that the women's position was not pleasant. It shows women didn't have the same status as men.

The Indian patriarchal society that dominates the country's people's social, political, and economic lives has never encouraged women in any field; it was confined to kitchen only. Woman lacked education and she was not sure of her rights.

#### **1.2 Status of Women down the Ages**

##### **1.2.1 Women in Ancient India**

Evidences are available about the worship of the mother goddess in ancient Indus valley civilization of India. At that time mother was worshipped. Women had respectable place within the society during the Rig Vedic period. The success of religious ceremonies has earned them respect.

Young girls' education has been seen as a significant marriage qualification. Monogamy was the common norm of society and during this period bigamy was in norm, but only in the aristocratic classes.

However, since the son performed the last rites and carried on the lineage, the women were expected to bear sons as a patriarchal structure. Widows were able to re-marry under certain circumstances. Divorce was not practiced in this period. The Rig Veda says the widow was entitled to marry her husband's brother again. Unmarried daughters had right on her father's property but this right was not granted to married daughters, according to Rig Veda.

Due to its high literary and artistic achievements, the Gupta Empire is considered as the classical period of Indian civilization in 320 to 750 AD. Some knowledge on elite women's roles comes from the Kama Sutra, a manual on the many ways of obtaining gratification, a valid aim for householder Hindu men, or the second level, of their lives. Women were supposed to be taught, offer sexual gratification and receive it, and to be faithful wives<sup>1</sup>.

The Gupta age literary evidence indicates that girls of high families as well as those who stay in hermitages read works on ancient history and myth. Girls residing in royal courts have also had experience in singing and dancing. *Vatsyanana* draws an image of a good wife that may be taken during that time as a representation of the real life. Some extolled Sati but others strongly disapproved.

### **Women in Vedic Literature**

There is evidence during the early Vedic period to suggest that women were given respect in household life. Women and their husbands were given opportunities to make sacrifices together. Unless he was accompanied by his wife, a man could not become a spiritual whole. It was believed the gods would not consider a bachelor's offered content. There was no practice for sati in this time.

The growing family was one economic unit without the division of labor according to profession or gender. This could explain the improved status of women in terms of access to education, religious rights, freedom of movement, etc. The limits of his social, political, and religious freedom were set by Vedic writings that included Brahmana and Upanishads.

During the post-Vedic process the birth of a daughter, which was not a source of anxiety during the Vedic period, became a disaster source for the father. Thus, it was said that in the family the birth of a son was regarded as happiness, while the daughter was regarded as the source of the misery of society.

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<sup>1</sup> Kumari, Ranjana, "Introduction" in *Friedrich Elbert Stiftung (ed.), Women in Politics-Forms and Processes* 1-13 (Har-Anand Publications, New Delhi, 1996).

### 1.3 Women's Status in Medieval India

**1.3.1. Women in Middle Age India:** Indian medieval history extends for 500 years. This is primarily Muslim rulers' culture. Their rule in India is divided into two Eras; the Sultanate Age of Delhi and the Mughal Period. Razia Sultan, the only woman ever to have held the Delhi throne. Gulbadan Begum was an extremely poetic woman, who wrote "Humayun-nama".

The social movement of Indian women was limited by the arrival of Muslims in India. They were forbidden to hold public office and were not permitted to perform religious duties as equal men. Another social injustice that existed during this time of society was child marriage. Women were used as instruments of sexual pleasure. There was no limit to the number of women a man could take, even among Hindus, and a Muslim man could have many wives.

### 1.3.2 Bhakti movement

It has emerged during the Middle Ages produced a new class of men and women who thought less about gender inequality. Throughout the Bhakti movement, even female poet-saints played a significant role. Nevertheless, within the predominantly male-dominated society, many of these women have had to struggle for recognition. Injustices and the patriarchal order were not a significant concern of those poet-saints themselves.<sup>2</sup>

### 1.4 Modern Period

The British established their rule in India, modernization began in India in the 19th century. The status of women in India was at an all-time low when the British came into power. For Muslim women, Purdah was used extensively. Women who danced had lucrative careers. Soon the whole Hindu temple was clearly consisted of *devadasis*.

The British way of life had begun to encourage the Indians. The British government has taken decisive steps to reform the caste-based Indian civil society. There were some educated Indians who opposed the British attempt to change the oppressive social order of India.

### Modern India

The era of Modern India refers from 1700 A.D. to 1947 A.D. Women in modern India were largely influenced by reform and upliftment programs which were largely influenced by western democratic and liberal ideology. In 1882, the Hunter Commission also emphasized the need for women's education. The universities of Calcutta, Bombay, and Madras (now Kolkata, Mumbai, and Chennai) did not require

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<sup>2</sup> Das, Shrimati, and M. M. Dhalayat, 25.1 "Pace Makers of Development Women in Indian History: Past-Present—A Critical Review." 38-49 *Humaniora*.

girls' admission until 1875. Only after 1882 was it permitted for girls to go to higher education.<sup>3</sup>

Since then, there has been steady progress among women in the field of education. Women in India suffered during the 19th century from disadvantages such as child marriage, the practice of polygamy, selling of girls for marriage purposes, extreme constraints on widows, lack of access to education and restriction of themselves to domestic and child-bearing roles.

**The Widow Marriage Act** finally came into force in 1856. The tradition of child marriage has become another kind of feminist image. The Indian Reforms Association was founded in November 1870 by the efforts of Keshav Chandra Sen. In 1846 the girl's unmarried age was only ten years old. That was extended to 12 years in 1891, with the adoption of the Age of Consent Act. In 1930, the minimum age was increased to 14 years under the Sharda Act.

The women gradually began to realize their potential in India. As a result, she's begun to break down walls and won a respectable world place. Today's Indian women have excelled in a variety of fields. "There is no space, where Indian women remain unconquered. Everywhere, whether it's politics, sports, culture, literature, technology, its women's power all along".<sup>4</sup> Given development, the very fact that women are still required to perform their roles as wives or mothers along with being successful, putting household priority above everything else.<sup>5</sup>

But the view has not changed much. The vast majority of illiterate women still exist and are married before the age of 18. The Indian woman must submit to all the charges against her, and men must still encourage and accept women as equal partners on the way to the country.

## **2. SEXUAL CRIMES AGAINST WOMEN**

### **2.1 Introduction**

Abuse and the growing violence against women are encountered in some way or the other by all around the world. It points to the enormity and thoughtfulness of the monstrosity that has been committed against women in recent years. A proof of this existence is the global fight for the extinction of violence against women.<sup>6</sup> Changes in

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<sup>3</sup> *Ibid.*

<sup>4</sup> Radha Kumar, *The history of doing: An illustrated account of movements for women's rights and feminism in India 1800-1990* (Zubaan, 1997).

<sup>5</sup> Rekha Pande, *The History of Feminism and Doing Gender in India*, available at: [http://www.scielo.br/scielo.php?script=sci\\_arttext&pid=S0104-026X2018000300905](http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0104-026X2018000300905), (Visited on 28 February, 2020).

<sup>6</sup> Sarmah, Mridula, and Subhasish Mahanta. "Crime against women in India with reference to the Indian Penal Code." *6.2 The Clarion-International Multidisciplinary Journal* 96-102 (2017).

living conditions, lifestyle, economic growth inequality, shifts in social culture and insufficient respect for traditional values are leading to a dangerous environment for women as a result of which crimes against women are growing. Moreover, these incidents are a matter of serious concern and their framework is absolutely necessary so that India's women can live in an environment free of violence, denigration and heinous crimes with reverence, honor, integrity, equality and peace.

There are several legislative provisions that prosecute the criminals who commit sexual offences against women. However, as a survivor of many sexual crimes, the Indian Penal Code makes provisions for women.

### **Sexual offenses against women**

The Indian Penal Code lists sexual offenses against women under a separate head covering the following offenses under their respective sections

**2.1.1 Sec 354. Attack or criminal force against a woman who intends to outrage her modesty.** - Whoever assaults or uses criminal force against any woman who intends to outrage or realize it is likely to outrage her modesty, shall be punished with imprisonment of any form for a duration of two years, or with fine, or both.

#### ***Rupan Bajaj & Anr Deol. v. Kanwar Pal Gill Singh & And & Anr.*** <sup>25</sup>

This case, known as "the butt-slapping case," was one of the high-profile incidents that was most criticized. Mrs. Rupan Deol Bajaj, an Indian Administrative Services Officer belonging to the Punjab Cadre, then served as Special Secretary; Finance lodged a complaint with the Inspector General of Police, Chandigarh Union Territory, alleging the commission of offenses under Sections 341, 342, 352, 354 and 509 of the Indian Penal Code by Mr. K.P.S. Gill, Director General of Police, Punjab on J. The final ruling came in 2005, after the Supreme Court lodged an SLP, which eventually limited the sentence to probation. An opinion on the lenient judicial practice against the elite members of the community can be created from this event.

The Court also found the judgment given in the *State of Punjab v. Major Singh*<sup>26</sup>, where it held that any act committed against or in the presence of a woman is clearly indicative of sex according to the traditional conceptions of mankind which must fall within the mischief of section 354.

### **2.1.2 Sec. 354C Voyeurism**

Any person viewing or recording a photograph of a woman committing a private act in cases where he or she is expected to be testified by the perpetrator or another person at the behest of the perpetrator or distributing the photograph shall be penalized if he or she is found guilty of.

Definition-1- For the purposes of this section, "private act" includes an act of surveillance performed in an area where, in some cases, it may be necessary to provide confidentiality in which the genitals, back or breasts are exposed or covered only in underwear; or when the victim is using the laundry room; or when the victim commits an unusual sexual act.

Definition 2- When a victim consents to the abduction of a photograph or act, but does not consent to its distribution to third parties and if that image or action is still distributed, such dissemination will be considered an offense under this section.

### **2.1.3 Kidnapping and Abduction**

Section 366 of Indian Penal Code- Kidnapping, abducting or inducing a woman to induce her marriage, etc. — Anyone who kidnaps or abducts any woman with the expectation that she will be compelled, or who knows that she is likely to be compelled to marry any person against her will, or to be forced or seduced into illicit intercourse, or who knows that she is likely to be forced or seduced into illicit intercourse, shall be punished with imprisonment of either description which may extend to 10 years.

Section 366A of the Indian Penal Code [366A. Minor Girl Procurement— Whoever, by any means whatsoever, induces any minor girl under the age of eighteen to leave any place or act with the intention that such girl may be, or realizing that she is likely to be, coerced or seduced into unlawful intercourse with another person, shall be punished with imprisonment that may extend to that of another person.

### **2.1.4 Rape of Woman**

375. Rape. — A man is said to commit "rape" who has sexual intercourse with a woman, except in the case hereafter, in circumstances falling under any of the following six descriptions: —

(First)—against her will.

(Secondly) —Without her permission.

(Thirdly) — With her permission, whether she has received her permission by placing her or any person she is interested in in fear of death or hurt;

(Fourthly)—With her permission, if the man knows that he is not her husband, and her permission is given because she believes that he is another man to whom she is married, or believes that he is married in law.

(Fifthly) — With her consent, if, at the time of giving such consent, she is unable to understand the essence and effects of that to which she gives consent by reason of her insufficiency of mind or addiction or administration personally or by some other stupefying or unsafe substance.

(Sixthly)-With or without her permission, whether she is under the age of seventeen.

(Seventhly)- When she is unable to communicate consent.<sup>7</sup>

### **Sexual intercourse**

A very significant case which led to definite modifications in the section is *Sakshi v. Union of India*<sup>8</sup>, The Union of India, the Ministry of Law and Justice and the New Delhi Police Commissioner Sakshi, an NGO focusing on violence against women, asked the Supreme Court of India to rule that "rape" under India's statutory rape law (Indian Penal Code or IPC, section 375) covers all types of coercive penetration.

The Court's decision called on the Indian Parliament to amend the rule, stating: "The petitioners [Sakshi]'s recommendations will advance the cause of justice and are in the general interest of society. Child abuse and rape incidents are rising at an unprecedented pace and thus adequate legislation is urgently needed in this regard. We hope and trust that Parliament will pay serious attention to the petitioner's points and make effective legislation with all the promptness it deserves. "During the Sakshi case, the Court directed India's Law Commission to examine and respond to the issues Sakshi raised.

That exercise culminated in India's Law Commission's 172nd Report (on a study of rape laws, March 2000). The Study recommended that the "rape" offense be replaced by "sexual harassment," making the crime gender-neutral and applicable to a variety of other than forcible penile / vaginal penetration sexual offences.

The rape law in India under Section 375 is amended and covers all forms of sexual harassment.

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<sup>7</sup> Dhingra, Sumati, Criminalisation of Marital Rape in India (May 11, 2015), *available at*: SSRN: <https://ssrn.com/abstract=2604919> or <http://dx.doi.org/10.2139/ssrn.2604919>, (Visited on March 20, 2020).

<sup>8</sup> AIR 2004 SC 3566.

In *State of Punjab v. Gurmit Singh*<sup>9</sup> a young girl under the age of 16 was kidnapped by the three accused in a car from her school, and she was threatened with death if she raised an alarm. She was forced to drink liquor, in spite of her reluctance. Then, each of them in turn raped her under the threat of being killed if she persisted in raising an alarm. She kept quiet, because of the danger. After committing sexual assault on her repeatedly, they left her near the location from where she had been abducted the next morning.

Interestingly, Ludhiana, the additional judge, acquitted all of the accused on both charges of abduction and rape disbelieving the rape narrative of the prosecutrix and owing to delay in FIR. Allowing the State appeal and holding the accused liable for rape because the complainant did not comply voluntarily with the act at any time, the Apex Court held that the sexual contact was against her will and therefore the accused is liable under Section 376, IPC for committing rape

In *State of Uttar Pradesh v. Chotey Lal*<sup>10</sup>, the Supreme Court clarified that, given her resistance and opposition, the term 'against her will' will normally mean that the intercourse was performed by a man with a woman.

### **3. CONCLUSION AND SUGGESTIONS**

Violence against women is very serious problem and it requires immediate action from all sections of society. To prevent the sexual offences against women is not the sole duty of the government rather every person is responsible to prevent it because it affects the various fundamental as well as legal rights of the women. Women constitute almost half of the population of our country but they suffer most in the society because of different types of violence against them. We all participate in the violence against women in some or different forms cruelty against women such as, beating, rape, Human Trafficking etc. There are following measures which can be taken into consideration to prevent violence against women.

#### **Measure which can be taken by everyone**

1. Everyone must make himself aware about the practices & kinds of violence against women in the society. Laws which prevent violence against women.
2. Everyone should meet their legislators and leaders and Advocate for tougher laws against offender of violence against women.
3. Everyone must know about dating violence and sexual offences which affects women.

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<sup>9</sup> 1996 AIR 1393.

<sup>10</sup> (2011) 2 SCC 550.



4. Sexual harassment should be discussed in schools. Children should be made aware about the good touch and bad touch.
5. Victim of violence must be encouraged to come forward so the offender can be punished.
6. Everyone should be aware about gender equality and gender justice.
7. Everyone should be made aware about the fundamental duties specially the duty which provides regarding renouncing the practices which are derogatory to the dignity of women.
8. Everyone should respect dignity of women.
9. Respect the right of women “to say no”.
10. Respect women’s right to disagree or have their own opinion.
11. After the violence against women or girl child, society should not blame for such violence.
12. No questions should be raised about the character of women.
13. Media should play a sensible role while dealing with the issue relating to the sexual violence against women.
14. Everyone should know that how different violence is inter connected with each other.
15. Be aware that such violence is happening in our own community.
16. Learn about power and control tactics to prevent sexual violence.
17. Everyone should seek permission before having physical or sexual contact with women.
18. Everyone should feel that sexual offences are about power and control, not about sex.
19. Teach younger generation that they should respect their partner and their friends.
20. Society should stand with victim and play very sensible role towards such victim.

Point out approaches based on best research available to help societies and states avoid and mitigate sexual harassment. Many of the strategies focus on reducing a person's chances of engaging in sexual violence. The following table lists the methods and their corresponding approaches.

There is some evidence that a brief cognitive-behavioral treatment conducted shortly after attack can speed up the pace of psychological trauma-related harm improvement. Often victims of sexual abuse blame themselves for the incident after it happens, and it has also been shown that resolving this in psychological counseling is crucial for rehabilitation.

The non-governmental sector has primarily provided organized therapeutic support for those experiencing sexual abuse, especially rape crisis centers and various women's and

men's organisations. Inevitably, the number of sexually assaulted victims with access to such resources is limited. One solution for expanding access has been the establishment of telephone helplines, preferably free ones. For example, in the first five months of “Stop Woman Abuse helpline” in South Africa responded 150,000 calls.

### **Services for offenders**

There are few services outside the criminal justice system that combat sexual violence offenders, primarily targeting men accused of male-on-female sexual harassment, who comprise a large portion of sexual violence criminal cases. A popular response of people who commit sexual abuse is to deny both that they are guilty and that what they do is violent. These interventions, found primarily in developed nations, work with male perpetrators to make them accountable and socially accountable for their actions. One way to do this is by interventions targeting male sexual perpetrators.

### **Prevention initiatives Community-based activities**

Many research-based rape prevention initiatives have been validated and confirmed by experimental studies. John Foubert's Plan for men, also known as the One in Four, focuses on empathy for perpetrators of rape and sexual harassment circumstances. Men who took part in the program committed 40 percent fewer acts of sexually coercive activity and any sexual coercion committed was eight times less serious than a control group. Participants showed more satisfaction with intervention and a greater willingness to intervene as a bystander. Victoria Banyard's “Bring in the Bystander” focuses on bystanders. The curriculum includes a brief portion of empathy induction, and a dedication to potential action. Participants demonstrated increased efficacy of bystanders, increased willingness to participate as bystanders and reduced tolerance of rape myths MVP: Jackson Katz's Violence Prevention Mentors often focus on bystanders by empowering people to be involved bystanders. The software teaches participants through hypothetical scenarios. Results recorded in research literature include reduced rates of discrimination and increased expectation that participants may be able to avoid violence against women. Dorothy Edwards' Green Dot curriculum frequently focuses on bystanders and teachers using both motivational speech and peer education. Participation in the curriculum is related to decreases in the perception of rape stereotypes and enhanced bystander intervention.

### **Legal reform**

Legal reforms implemented in many ways included:

- widening the definition of rape;
- changing the rules on sentencing and evidentiary admissibility;
- dropping the criteria for corroborating victim accounts.

International treaties are significant in that they set national law requirements and provide a forum for local groups to advocate for legal reforms.

- The Convention on the Elimination of All Forms of Discrimination against Women (1979);
- The Convention on the Rights of the Child (1989) and its Optional Protocol on the Selling of Children, Child Prostitution and Child Pornography (2000);
- The Convention on Transnational Organized Crime (2000) and
- The Convention on Transnational Organized Crime (2000);

A vast number of international agreements set behavioral norms and limits, including conflict behaviour, that require provisions in national legislation. The International Criminal Court's Rome Statute (1998), for example, includes a broad range of gender-specific offences, including abduction, sexual exploitation, enforced prostitution, forced abortion and forced sterilization. This also includes other types of sexual violence which constitute an infringement or serious violation of the Geneva Conventions of 1949, as well as other forms of sexual violence comparable in severity to crimes against humanity. The incorporation of gender crimes in the provisions of the legislation is a significant historical change in international law.

### **Measures to deter certain types of sexual abuse**

Human trafficking Initiatives to deter trafficking in persons for sexual purposes generally aimed at developing economic programs for women at risk of trafficking in some countries;

In addition, many government initiatives and NGOs are establishing resources for trafficking victims Department will approach women entering the country to work in the entertainment or domestic service sectors. The Department will advise women on their rights and responsibilities, and on available means of protection from sex violence, exploitation and procurement. Trafficking victims willing to cooperate with the judiciary in prosecuting traffickers can be given temporary residency permits in the country. In State, homes for victims of trafficking should be set up. An anti-trafficking center has been founded in Mumbai, India to promote the arrest and prosecution of traffickers, and to provide assistance and information to women trafficked.

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**V. WEBSITES**

- <http://indiankanoon.org>
- <https://ssrn.com>

**LIST OF ABBREVIATIONS**

➤ UDHR-	Universal Declaration of Human Rights
➤ UN-	United Nations
➤ NHRC-	National Human Right Commission
➤ FIR-	First Information Report
➤ NC-	National Commission
➤ Cr.L.J.-	Criminal Law Journal
➤ AIR-	All India Report
➤ SCC-	Supreme Court Cases
➤ SCC(J)-	Supreme Court Cases (Journal)
➤ IPC-	Indian Penal Code
➤ NGO-	Non-Government Organization
➤ UOI-	Union of India
➤ UPA-	United Progressive Alliance
➤ NDA-	National Democratic Alliance
➤ INLD-	Indian National Lok Dal
➤ NAC-	National Advisory Council
➤ PCR-	Protection of Civil Rights
➤ Cr.P.C.-	Criminal Procedure Code

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