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# Low Conviction Rate in Rape Cases: A Critical Analysis

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## ABSTRACT

*At the global as well as domestic level women is considered as a vulnerable class. They are often easy targets of any crime. It is a matter of shame as a society or say world at large that we did not make any device that can change the mindset of society. In the modern era crime against women are increasing day by day ta horrific pace. We have formulated various national laws as well as international regulations to curb these kinds of an act but in practice, these are somehow failed to eradicate the crime. For research, purpose author(s) has selected the offence of rape against women. Rape is an act where one person uses physical force or compels the other to submit to sexual acts without the letter's free consent. It is considered a basic violation of human rights, against the right to life, liberty, dignity and sovereignty of women. From time to time various amendments have been made to make rape laws stringent and harsh. In 2013 and 2018 legislator had made a drastic change in the punishment provisions and prescribed the punishment of the death penalty in some situations. However, the researcher(s) has a strong belief that "law without proper implementation is like a body without a soul". This paper will focus on the functional aspects of law i.e., how far these stringent provisions can achieve their purpose. One of the main concern of the author(s) is the low conviction rate in rape cases. Recent NCRB data has shown that the conviction rate in rape case is below 30%. This paper will deal with the basic and practical hurdles in conviction and will try to give some valuable suggestions in this regard.*

**Keywords:** Rape, Conviction rate, investigation, delayed justice, rate of conviction.

## I. INTRODUCTION

Women in any society whether it is India or any other foreign country forms the important asset of the society as it is the women on whom the continuance or existence of this universe lies. And when we come to India they occupy a more superior position and even at times are compared with the goddesses like Lakshmi, Saraswati, Parvati and others. If we go to the history we find evidence in the Rig-Vedic period where women were treated at par with the

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men and there were instances of Women Vidushis existing at that time who had written many books also. But after the coming of the later-Vedic period, the position of women degraded with the emergence of the Varna system. But after the medieval period, there were many movements led by Indian nationalists which elevated the position of the Indian women through various movements like the sati movement and enacting of various acts like a child marriage restraint act, sati abolition act and establishing of women institutions. Also, women participated in large numbers in the Indian national movement due to the efforts of Gandhi. So attempts were made to incorporate women into the mainstream of society. After the Independence of India, many laws and constitutional provisions were made by the constituent assembly considering the position of women in India, that secured and at the same time promoted the position of the women in society so that they can stand at par with the men in every field of the life. Similarly, effective penal laws were made for the crimes committed against the women in various laws including the Indian Penal Code, 1860 and which has also been time to time been amended to suit the needs of the time and to provide adequate justice mechanism to the women. This is necessary because women form the vulnerable and part of the society and they need to be protected against the various crimes committed against them and not only that they should be provided with an appropriate mechanism through which can they avail justice. As the crimes rates against women are increasing day by day. And in our country which is male-dominated society women need to be given more space so that they are not undermined of their justice.

### **(A) Literature Review**

For this research paper, the researcher has gone through various pieces of literature. The researcher has gone through both primary sources as well as secondary sources for this paper. The primary sources include statutes and decisions of courts. Secondary sources which have helped the researcher include textbooks, reports of NCRB and SCRB, news reports, various online journals, and report of law commission.

### **Primary Sources**

- **Statutes**

For purpose of this paper the researcher has gone through the following Act and amendments passed by the Indian Parliament:

#### **1. The Indian Penal Code, ( Act 45 of 1860), 1860:-**

The Penal code of 1860, contains the penal provisions for criminal offences. It deals with the criminal law, it contains punishment for the offences. Rape is defined in this penal code under section 375. This section has been extensively amended by the Criminal Law (Amendment)

Act, 2013 after the horrific offence of gang rape in Delhi. This amendment was made in accordance with the Justice Verma Committee report. After the 2013 amendment definition of rape has been revised and also added various other elements like medical examination of victims and also added section 166A and 166B which sought to fix the liability upon public servant and hospitals (including private) and make non-compliance the mandatory provisions as punishable offences. Thus The Indian Penal Code helped the researcher to understand the statutory definition of the offence of rape and also in understanding the provisions related to rape and sexual offences.

## **2. Code of Criminal Procedure, 1973**

This is the procedural law that deals with the process of FIR to Judgment. This code helped the researcher to understand the procedural difficulties which play a negative role in the conviction or rape cases. The Code has also been amended by criminal law amendment in 2013 and 2018. After amendment, various provisions have been added to improve the conviction rate, like under section 154 in case of offences against women the FIR shall be registered by a women police officer as well the statement of the victim shall be video graph by police. Further, another section has been added to overcome the procedural difficulties.

## **3. Indian Evidence Act, 1872**

This Act deals with evidence related matter in a criminal trial. After study of relevant provisions researcher has got a critical understanding of the evidentiary value of different things. After the Criminal Law (Amendment) Act, 2013, the evidence of previous sexual experience and the character of an offender is not relevant in this kind of offences. It is introduced in section 53-A.

## **4. Cases decided by different courts**

For this research paper, the researcher has read multiple cases decided by different courts in India.

- **Secondary Sources**

The researcher has gone through the following secondary sources:-

### **1. Text Book**

- a) S.N.Mishra, *India Penal Code*, ( Central Law Publications, Allahabad, 9<sup>th</sup>edn., 2014)
- b) K.N. Chandrasekhar Pillai (ed.), *R.V.Kelkar's Criminal Procedure*, (Eastern Book Company, Lucknow, 6<sup>th</sup> edn., 2014)

- c) Batuk Lal, *The Law Of Evidence*, ( Central Law Agency, Allahabad, 21<sup>st</sup>edn., 2015)
2. Report of National Crime Record Bureau and State Crime Record Bureau.
3. News report

### **(B) Statement of Problem**

Rape is a harsh reality in India. We are moving towards a five trillion economy and we aspire to be Vishay Guru. But when we see the criminal justice system in India then we find the reality of our society. India is suffering from one of the slowest criminal justice systems in the world. The amount of pending cases and the low conviction rate is some of the major problems of our justice system. These two problems have been continuously decreasing the faith in the judicial system. This paper focuses on the problem of a low conviction rate in rape cases. By observing the data given by National Crime Report Bureau (NCRB), 2019, there is 89 case per day, which is a very high rate of offences. This is the data of reported rape offences. As we know that a large amount of crime goes unreported. If crime relates to women then it is a very tough task for the victim to registered F.I.R because of societal pressure as well as the attitude of the police officer of the particular police station. The rate of conviction of rape offence in India is below 30%. After a review of available literature, the researcher has found various loopholes in existing law. These problems are like victims turn hostile, hesitation in reporting of offence, misbehaviour to the victim by police, delay in FIR, lack of awareness about forensic evidence, delay in justice, insufficient number of women police officer, insufficient number of women judges, lack of legislative will. Hence this paper will cover the main reasons behind the low conviction rate in rape cases and will also suggest some effective suggestion for the improvement of the same.

### **(C) Research Hypothesis**

1. Although stringent law has been made to prevent and ensure maximum conviction in rape cases there is a lack of implementation of these laws.
2. Not only investigating agency but and judiciary is also somehow responsible for the low conviction rate.
3. There is a lack of legislation will behind the implementation of laws related to sexual offences.

### **(D) Research Methodology**

The Research methodology adopted throughout the study is mainly doctrinal. The research method adopted throughout the study can be broadly categorized as analytical and descriptive

research.

#### **a. Research Tools**

The researcher has relied on both primary and secondary sources for the present study. The primary sources being relied upon in the present context includes various acts, statutes, case laws rape. Further, secondary sources being relied upon for the study includes various textbooks, scholarly articles, newspaper reports, etc. In addition to the library resources, the researcher has heavily relied upon online sources for the data and other theoretical concepts. Most of the documents being analyzed for the study are available online.

#### **b. General method of Analysis**

A deductive approach is being used in the present study to analyse the research questions at hand and hence to accomplish the research objectives. Logical deductions are drawn upon from the compilation of all the primary and secondary sources of the present study.

#### **c. Modes of Citation**

Throughout the research paper, the researcher shall follow a uniform method of citation. The citation method to be adopted for the present study is the *Bluebook 19<sup>th</sup> edition*.

### **(E) Research Objectives**

1. To know the conviction rate of a rape case in India.
2. To know the existing legal provisions related to rape cases.
3. To find out the practical reasons behind the low conviction rate in rape cases.
4. To Suggest the methods for improvement for ensuring a high conviction rate.

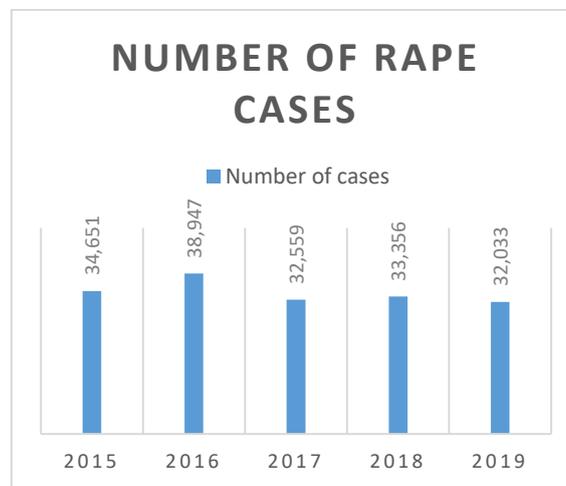
### **(F) Research Questions**

1. What are the existing legal provisions related to rape cases?
2. What are the practical difficulties from the investigation part in problem low conviction rate?
3. What are the difficulties in the collection of evidence?
4. What are the difficulties faced by the judicial system in the trial of rape cases

## **II. PROBLEM OF LOW CONVICTION RATE IN RAPE CASES**

Rape is a harsh reality in India. We are moving towards a five trillion economy and we aspire to be Vishay Guru. But when we see the criminal justice system in India then we find the reality of our society. India is suffering from one of the slowest criminal justice systems in the world. The amount of pending cases and the low conviction rate is some of the major problems of our

justice system. These two problems have been continuously decreasing the faith in the judicial system. This paper focuses on the problem of a low conviction rate in rape cases. Rape is a so reality in India. As per the latest data of the National Crime Record Bureau (NCRB), India reports 87 rape cases per day in 2019. This is the data of reported rape offences. As we know that a large amount of crime goes unreported. It is very difficult in India to file a report of a rape case as in India it becomes a societal matter, there are several problem and question is to face by the victim for which she is not prepared. Also, sometimes the behaviour of police is not good. So, it becomes difficult to lodge an FIR for a victim. As per the NCRB data, there is a very low rate of conviction under rape case i.e., 27.8%

**Fig.1****Fig.2**

[\*Note: Fig.1 and Fig. 2 is based on given data of NCRB, (2015-2019)]

According to the data given by the NCRB, the number of cases in 2015 was 34,651 with a conviction rate of 21.7%<sup>3</sup>. In 2016, the number increases to 38,947 with a conviction rate of 23.9%<sup>4</sup>. In the Year 2017, it is 32,559 with a conviction rate of 32.2%<sup>5</sup> and in the year 2018, it is 33,356 with a conviction rate of 27.2%<sup>6</sup>. As per the latest data available by NCRB, in the year 2019, there were 32,033 cases with a conviction rate of 27.8%.<sup>7</sup>

Accordingly, with the help of the given data, we can analyze that the number of cases is not decreasing. Every year there are more than 30,000 rape cases, and that too which only registered. There are several instances where the cases are not registered as we have already discussed in this paper. Apart from the huge number of cases, the state and the police are not taking it seriously. The law which we have although stringent but unfortunately is it not up to the mark. In the given fig.2, the rate of conviction is shown. The rate of conviction is less than 30% in almost all the year except 2017. But the rate is very low because of the hostility, lack of evidence, poor medical examination, lack of forensic experts family, lack of forensic, pressure, background, the behaviour of police, policing system, and societal pressure etc. This all need to improve for a better conviction rate which then leads to a decrease in the number of rape cases in India.

In the year 2019, Rajasthan alone with 5,997 rape case topped in the list, Uttar Pradesh holds the second position 3,065 cases of rape, while Madhya Pradesh, Maharashtra and Kerala, having 2,485, 2,299, 2,023 cases of rape respectively.<sup>8</sup>

This Data shows that only 28 of 100 accused get convicted. This is the harsh reality of our criminal justice system. There are various reasons for the low conviction rate. Some of them are from the stateside and some are from the social side. Therefore it is necessary to revise rape laws and reasons for low conviction. The major reasons for low conviction are hostile witness issues, lack of forensic labs, lacks of awareness about the forensic evidence, harassment and

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<sup>3</sup>National Crime Report Bureau, crime against women, (Mar. 06, 2021, 09:15 PM),[https://ncrb.gov.in/sites/default/files/crime\\_in\\_india\\_table\\_additional\\_table\\_chapter\\_reports/Chapter%205-15.11.16\\_2015.pdf](https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Chapter%205-15.11.16_2015.pdf).

<sup>4</sup>National Crime Report Bureau, crime against women, (Mar. 06, 2021, 08:48 PM),<https://ncrb.gov.in/sites/default/files/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf>.

<sup>5</sup>National Crime Report Bureau, crime against women, (Mar. 06, 2021, 08:28 PM),[https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202017%20-%20Volume%201\\_0\\_0.pdf](https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202017%20-%20Volume%201_0_0.pdf).

<sup>6</sup> National Crime Report Bureau, crime against women, (Mar. 06, 2021, 08:08 PM),<https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf>.

<sup>7</sup>National Crime Report Bureau, crime against women, (Mar. 06, 2021, 08:02 PM),<https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf>.

<sup>8</sup>Times of India, 'India sees 88 rape cases a day; conviction rate below 30%', (Apr. 02, 2021), 07:09 PM),<https://timesofindia.indiatimes.com/india/india-sees-88-rape-cases-a-day-but-conviction-rate-below-30/articleshow/78526440.cms>.

torture to the victims and their family by the accused, insensitive judges, delay in filing F.I.R, and indifferent prosecutions. There should be a holistic revision of the justice system for the increasing rate of conviction. This paper deals with the various hurdles in line with the trial of rape cases and also suggests some measures for solving the problem.

The criminal justice system of the country is not dependent upon the stringent provisions of law but certainty in punishment. India has a bundle of Laws to deal with the wrongful act of the accused. We can say that there is almost separate legislation on different types of crime. We have the separate Act to deal with prevention of domestic violence, prevention of sexual harassment at the workplace, prohibition of dowry, juvenile justice act, prevention of immoral trafficking, prevention of child marriage and so on. These are the special legislation made for a specific purpose. They are made with the intent to curb criminal activity in society. But we evaluate the practical applications of these laws then we find that the reality is far different from the purpose or intention behind the making of these laws. In the 21<sup>st</sup> century we are struggling to tackle the issues of crime against women, child trafficking, dowry death and others crime. The recent data of the National Crime Record Bureau (NCRB) shows the harsh reality of the Indian criminal justice system. The rate of crime against women is increasing day by day while the conviction rate of those crimes are not satisfactory or can say that they are below average.

According to the data given by NCRB, the majority of the crime were registered under 'assault', 'outraging the modesty', 'kidnaping', 'abduction', 'cruelty', and 'rape'. Therefore, rape is almost one of the top-rated offence against women in India.

### **III. REASONS FOR LOW CONVICTION RATE IN RAPE CASES**

After an extensive review of the literature and on available data and personal experience author has formulated some basic reasons behind the low conviction rate in rape cases. For convenience, we can divide these reasons into five broad categories which are involved in the criminal justice system. These are victims, investigating agencies, judiciary, legislation and society. Now we will discuss different aspects of low convictions rate.

#### **(A) From Victims Perspective**

Victims of rape and their family are the worst sufferer of this heinous crime. They are affected in every aspect like physically, monetary, mentally and societal side also. But victims and their family are also somehow responsible for the low conviction rate. Here are some reasons for the low conviction rate from victims and their family side:-

## 1. Victims turn hostile during the trial

It is the rule of evidence that the statement of victims should be corroborated with circumstantial evidence. But if we apply this rule in rape cases then that will cause serious problem. So there is flexibility in the rule of evidence in rape cases. In rape cases statement of the prosecutrix plays an utmost important role. An accused can be convicted on the sole uncorroborated evidence of the prosecutrix. The Hon'ble Court in the case of *State of Punjab v. Gurmit Singh*<sup>9</sup> held that no women will come to court just to humiliate her owner by alleging that she was raped even she was not, no self-respecting women do so. This case was a landmark judgment that made it clear that in the case of a rape conviction can be done on the sole basis of the prosecutrix's statement. However, in recent cases, the Supreme Court gives some cautious opinion on the reliance on the victim's statement. In recent times various rape cases resulted in the acquittal of the accused not due to poor investigation but due to hostile witness. There are various reasons behind this like threat to the victim and their family, monetary consideration extra. If rape cases resulted in acquittal then it should be a matter of great concern to the justice system as well as society. There is a various example in which victims turns hostile.

One politically highlighted case in which the victim got hostile was the Chinmayanad case. Accused chinmayanad was a minister in the cabinet and belongs to a powerful political party. He was the principal of a private college. A 23 years old LL.M student alleged chinmayand for rape and sexual harassment. She had over 42 video clip to corroborate her allegations. There is a famous case Chinmayanad, this case got highlighted because Chinmayanad was a minister and also a principal of a private college, his student file criminal charges against him of raping, sexually abusing and harassing her. She had several pieces of evidence to prove his side. But after sometimes she turns hostile by saying that she had not made any complaint against Chinmayanad. This is not the only case in which the victim turns hostile. There are several such cases. There is a number of reason for doing so. Like, financial issue, getting the threat, societal pressure, and many more.

According to the data given by the NCRB, the rape case are more in the Dalit society. The record said that every day for Dalit women is raped. This shows the seriousness of the offence and the speedy investigation of the police. The police need to be more focused and determined to control these offences. The famous newspaper 'Hindustan Times' gone through 663 cases

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<sup>9</sup>State of Punjab v. Gurmit Singh,(1996) 2 S.C.C 384 (India).

that are decided by the Delhi High Court and found that in more than 50% of the cases the victim turns hostile. Due to this, there are more acquittals than convictions.<sup>10</sup>

## 2. Family Pressure

It is seen in India that there are many cases in which the victim was raped by their relatives. Due to the relation, the family starts pressuring not to file a complaint against the accused. This sometimes becomes a difficult situation for the victim to get justice. There is one such in which the victim was pressured to hostile because the accused was the friend of her father. This happens due to financial settlement outside the court. The court is not permitting this but they do it and the victim pressurizes to hostile from the case. Sometimes it is also seen that policeman is supporting to the have's people. The advocates in the case Kirti Singh also argue to the court that this needs to be controlled as these hostile cases is increasing. Police need to take some strong steps and the court needs to check this.

### (B) From Investigation Side

The investigation is the most crucial stage in the criminal justice system. The investigation reports and chargesheet submitted by the police officers play the most important role in the trial. Every criminal starts from the registration of F.I.R. Effective investigation requires effective infrastructure like skilled police officers, technologically advanced police station, society friendly behaviour of police and so on. But if we will closely examine the infrastructure of the police station and policing in India we would find that maximum police station has the minimum infrastructure. More than 35% of police station do not have their proper buildings. This paper will also specifically deal with the role of policing in the investigation which is the root cause behind the low rate of conviction.

## 1. Registration of F.I.R

The first step in getting justice to the victim of a criminal offence is to file an FIR. The Indian Penal code, 1860, talks about the registration of FIR in case of cognizable offences under section 154. In *Lalita Kumari V. State of U.P*<sup>11</sup>, Supreme Court expressly held that no police officer can deny registering the F.I.R in cognizable cases. If any information given by the victim or other persons disclosed the commission of cognizable offence then registration of F.I.R is mandatory. However, there are various examples where police had not registered the FIR in the first instances. The Commonwealth Human Rights Initiative (CHRI), which is an international human rights organization, along with the help of the Association for Advocacy

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<sup>10</sup>Ibid.

<sup>11</sup>Lalita Kumari V. State of U.P, (2014) 2 S.C.C 1 (India).

and Legal Initiatives (AALI), which is a women-run rights organization, a report was published which is related to the rape victims and also the gang-rape victim along with their experience. There made this report by interviewing 14 rape victims.

The report revealed the truth of the police station in the registration of FIR. According to this report no FIR was registered after the first complaint and in 11 cases FIR did get registered after much effort. It was revealed in the report that police do not lodge an FIR in several cases. And there are many cases in which they did not lodge an FIR after much effort. There is not a single record that shows that any police office lodge an FIR in the first complaint. It takes two to two hundred and twenty-eight day to lodge FIR. This shows the competency of the police and policing system in India. In the report, it was reported that in 11 cases, writing an FIR was rejected by the police, at the end the advocate approaches the senior police offices to lodge an FIR.<sup>12</sup>The report also suggests that women who had suffered the trauma of the sexual assault. It was also seen that the police discriminate against the victims based on caste, community, gender and family background. In five cases, the intervention of the court is seen, simply to lodge an FIR<sup>13</sup>.

The study of the CHRI and ALII found that the police disobeyed the rape victims and on many grounds such as discrimination against them based on caste and gender. The women's from the Dalit community has to face community discrimination also. It was also stated by the police that they are playing with the law, misusing it, and taking the law in hand. This discrimination of police towards Dalit has no limit, it crosses all boundary, when a police officer said to a Dalit rape victim that you are no so beautiful, no one will rape you or no one will even harass you.

## **2. Hathras gangrape case**

Hathras Gang rape case was the most recent example of how the police are insensitive in dealing with rape cases. Police had even not registered the F.I.R of rape. After hugged protests all over the country state government submitted the case to the Central Bureau Of Investigation. The investigation by the CBI has exposed the lapses and negligence on the part of district police. After taking over the case the CBI had registered F.I.R on October 11 according to the report registered at Chandpa Police Station. The investing agency has said that the officials of the police station had failed to comply with the provisions of 154 of Cr.P.C and did register F.I.R of sexual assault instead of rape. They neither recorded the

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<sup>12</sup> The Wire, < <https://thewire.in/women/uttar-pradesh-police-rape-fir-discrimination04/OCT/2020>>(last visited Feb. 22, 2021).

<sup>13</sup> Ibid.

statement of the victim nor send her for medical examination which has resulted in the loss of valuable forensic evidence.<sup>14</sup>

In Hon'ble Supreme Court in the case of *Budha v. the State of Odisha*,<sup>15</sup> held that *there may be a delay in filing an FIR in Rape cases as the Rape victim is not in a free mental state to face people or not in a condition to lodge an FIR. Even the family member is in mental trauma and facing the bad phase of life. It takes time for a victim to get courage and to expose herself to what and how it happens. So delay in lodging an FIR is normal and police should consider it.*

### **(C) Effect of Non- registration Of F.I.R by police**

*After Criminal Law (Amendment) Act, 2013 and further amendment in 2018, New section 166-A has been inserted which makes the non-registration of F.I.R in cognizable offences punishable. According to section 166-A, if the police officer denies or does not lodge an FIR in cognizable cases, he will be liable for rigorous imprisonment of a minimum of 6 months which may extend to two years. He will also be liable to a fine.*

*Karnataka High Court stating the judgment of Lalita Kumari said that the IPS and all other police officers need to have some basic knowledge of the law. They are still working on the traditional methods. They need to be well trained and they need to learn criminal law. The court also seeks a report by the ADGP about the knowledge of criminal law of the SP's and the ADGP submitted its report to the court by saying that many of the officers do not know criminal law.<sup>16</sup>*

### **(D) Not Aware About Effective Collection Of Evidence**

Collection of evidence comes under the sole domain of investigating agency. In India, there is a lack of effective collection of evidence. Police officers do not have basic knowledge about the collection and treatment of evidence. most cases are resulted in acquittal because of lack of evidence. A detailed standard operating procedure (SOP) was drafted by the National Human Right Commission (NHRC) for the handling and treatment of forensic evidence in the case of sexual offences. Also, these SOP talks about the victim's identity, it should not be disclosed. Based on it, India prepared SOP with the help of the medical team for the handling of evidence in sexual offences. This standard operating procedure is sent to all the states as

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<sup>14</sup> Namita Bajpai, Hathras gangrape murder case, Indian Express, (Dec. 20, 2020, 11:02 PM), <https://indianexpress.com/article/india/hathras-gangrape-case-cbi-files-chargesheet-7109872/>.

<sup>15</sup> *Budha v. State of Odisha*, (2019) S.C.C 262 (India).

<sup>16</sup> Express News Service, Even IPS officer lack basic knowledge of criminal law, Indian Express, (Jan. 20, 2020, 10:08 PM), <https://www.newindianexpress.com/cities/bengaluru/2020/jan/22/even-ips-officers-lack-basic-knowledge-of-criminal-law-2092796.html>.

well as to Union territories. In statement NHRC said:

*“The Commission has come out with this SOP after it observed that in many cases of alleged rape and sexual assault, there is a substantial delay in medical examination, collection and processing of scientific/forensic evidence of the victim of sexual assault. The exhibits are forwarded to the FSL after much delay and by that time, the samples deteriorate/autolyze and become unsuitable for examination. This delay adversely affects the investigation for effective prosecution leading to conviction”<sup>17</sup>.*

Hon’ble Supreme Court in ***In Re: Assessment Of The Criminal Justice System In Response To Sexual Offences***<sup>18</sup>, has asked about the status report of the following:

- a) SOP for taking sample DNA
- b) Forensic odontology for the practitioner.
- c) Adequate number of forensic laboratory (at least one at every ten division)
- d) Availability of scientific expert.

#### **(E) Medical Examination of Victim**

Medical treatment and examination of the victim in a sexual assault case is a very important step not only for immediate relief but also for the collection of scientific evidence. In India, there are not any strict guidelines for the medical examination of the victim. However, the amendments in this regard have been made by parliament in 2013 and 2018. After the 2013 amendment a new section 357-C<sup>19</sup> have been inserted in Cr.P.C which deals with the treatment of victim during medical examination. It is duty of all the hospital irrespective of it’s being public, private or run by central govt. to give the treatment fir and then follow the others formalities and rules. It is also the duty of such hospital to inform the police station about the victim. To make this in stricter sense, the legislation added a new section 166-B, under the code, that whoever violates section 367-C will be punished. The detailed guideline by which the a medical examination and medical report is to be prepared is added by the criminal law amendment Act 6 of 2013 as a section 164-A. Section 53-A was also inserted in the Indian Evidence Act, 1872, which says that the previous sexual experience or the character is irrelevant.

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<sup>17</sup> The Hindu, NHRCH issues SOP for forensic Evidences collected in sexual assault cases, <https://www.thehindu.com/news/national/nhrc-issues-sop-for-forensic-evidence-collection-in-sexual-assault-cases/article33346155.ece#>.

<sup>18</sup>2020 (1) ALT (CrI.) 1 (A.P.), 2020(1)Crimes69(SC).

<sup>19</sup>The Indian Penal Code, 1860, Section 357-C, Criminal Law (Amendment) Act, 2013, Acts of parliament, 1860 (INDIA).

The Hon'ble Supreme Court in the case of *Lilli alias Rajesh and Anr. V. State of Haryana*<sup>20</sup>, held that the “*pre-vaginum examination*” or “*two-finger test*” is the absolute violation of the women's dignity. Also, this test is of no value while deciding. It was observed by the court that in view of the International Covenant on Economic, Social, and Cultural Rights in 1966, the UN takes the stand that the rape victims are entitled to legal support and the necessary recourse. No one should retraumatize them or no one should do an act to disturb her mental peace and one should take care of the integrity and dignity of the victim. The medical examination of the victim is to be done after taking the consent of the people. It should not be inhuman, cruel or unethical manner. According to the covenant, every state is under the obligation to provide the best services for the treatment of the victims. Privacy must be priorities by all the authorities. From the above statement and conclusion, the Hon'ble Court seeks the status report of the following on whether the medical opinion in regards to such offences like rape and any other similar offences is being given in compliance with the:

- a) The mandate was given under sec. 164-A of the Criminal Procedure Code.
- b) According to the definition of rape given under the Indian Penal Code.

The Hon'ble Court also seeks a report from the states about the adoption of the guidelines provided by the ministry of health and family welfare or they have made their guidelines for such victims. The court on emphasizing the use of forensic medico kit asked the state whether the hospital is having a medical forensic kit or not?. There is some more status report were asked by the court for the betterment of the rape victim and to facilitate the medical examination of the rape victim.

#### **(F) Lack of specialized agency for investigation against crime against women**

Crime against women is not similar to other types of crime like theft, murder, abatement etc. Lack of effective and specialized investigating agency is also reasons for the low conviction rate in rape cases and a crime against women.

### **IV. REASONS OF LOW CONVICTION WITH PERSPECTIVE OF JUDICIAL SYSTEM**

#### **(A) Less Number of women Judges**

Indian Judiciary is a male dominating and this can be proved by the officers in the court as the number of Male judges in India is much higher than the female judges in India. There is no female chief justice as of now in India. Although, the Judicial services is not partial in recruitment, as the appointment in the lower judiciary is goes through three-phase of

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<sup>20</sup>Lilli alias Rajesh and Anr. v State of Haryana , (2013) 14 S.C.C 643 (India).

examination, in which the last phase is Interview by the panel. So, in the lower judiciary, it is wrong to say about dominance, as it is about merit. But when we see in the upper judiciary, we found there are very less number of female judges is appointed. There is very little female in Supreme Court as well as in the High Court.

Attorney Journal K.K Venugpal, while emphasizing the role of women and the representation of women in judicial services, he stated that improvement in the judicial system in respect of female judges would take a long time to make a balance. There must be some quick harmonization. He also requested the court to sensitize the old judges and to those who may belong to patriarchal thought, as these judges can deliver the judgments by objectifying women. He strongly emphasizes the training program for lawyers and judges on gender sensitization.<sup>21</sup>

### **(B) Delay in Hearing**

Justice delayed is justice denied. India is witnessed that how justice is being delayed. After the hanging of the four accused of the Nirbhaya case, people are celebrating, ofcourse, it is a matter of celebration, but it is a matter of shame too. The family of the accused id fighting for so long. It lasts for 7 years. After 7 years of fight, mental trauma, anger, anxiety and agitation etc., Nirbhaya finally won. But it is not the only case that took a long road. This case got the media attention as well as people's reactions, agitation, strikes and many things, then also it took too long. There are many cases of rape that takes more than 10 to 12 years. Recently we have seen the celebration in India when in Hyderabad police had encountered 4 accused of rape cases. This kind of celebration shows the decreasing faith of people in the judiciary.

This delay can be understood by the data given by the government itself. The government stated that there is over 2.4 lakh rape, and POCSO cases in India are still pending. Uttar Pradesh representing the highest number of such pending cases with 66,994. Maharashtra reported 21,691 cases followed by West Bengal with 20,511. As per the information received from the high courts, there are a total of 2,44,001 cases pending related to rape and POCSO as of dated 31 December 2019. According to the report given by the High Courts, there were 195 Fast Track Special Courts (FTSCs) were settled but the ministry informed that till now there is no FTSCs in the state of Uttar Pradesh, West Bengal and Maharashtra. These state having the highest number of such case with no FTSCs.<sup>22</sup>

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<sup>21</sup> Ananthakrishnan G, "Improve representation of women in judiciary, sensitize the judges: AG to SC", *The Indian Express*, (Dec. 3, 2021, 09:00 PM), <https://indianexpress.com/article/india/improve-representation-of-women-in-judiciary-sensitize-judges-ag-to-sc-7079925/>,

<sup>22</sup> Asian News International, "over 2.4 lakh cases relating to rape and POCSO pending in courts across country, says government", *India Today* (Mar. 5, 2020, 08:34 PM), [https://www.indiatoday.in/india/story/over-2-4-lakh-cases-relating-to-rape-and-pocso-pending-in-courts-across-country-says-government-1652567-2020-03-05\\_](https://www.indiatoday.in/india/story/over-2-4-lakh-cases-relating-to-rape-and-pocso-pending-in-courts-across-country-says-government-1652567-2020-03-05_)

## V. CONCLUSION

From the above discussion, the researcher has found various reasons for low conviction in rape cases. During research what I have found that we could not criticize only police for low conviction rather than the whole justice system somehow responsible for that. Some of them are from the state side and some are from the social side. Therefore it is necessary to revise rape laws and reasons for low conviction. The major reasons for low conviction are hostile witness issues, lack of forensic labs, lacks of awareness about the forensic evidence, harassment and torture to the victims and their family by the accused, insensitive judges, delay in filing F.I.R, and indifferent prosecutions. We have a plethora of legislation in the criminal justice system especially in crime against women and these laws are very dynamic because when the public demands strict law then the legislation has been accepting their demands. But if we go by the sociological school of jurisprudence or say functional jurisprudence then we will be able to understand that having a law is one aspect and the proper function of law is different and in India, these two are divergent with each other. To curb the difference between law and its proper implementation we need to focus on sociological school or functional school of jurisprudence. Also, another step could allotment of a specific budget to enhance the safety and security of women in public spaces and for conducting a safety audit every state and union territory to redesign the architecture of the towns and cities and assess the vulnerable spots that are most likely to invite VAW. Also, there should be streetlights in the cities since dark areas are prone to facilitate crime as also pointed out by the JVC report. So, all the states must take urgent steps to revamp and strengthen highly efficient public lighting facilities, perhaps using smarter lights. This will spur the safety and security of the urban spaces and boost public confidence. Also, the police to person ratio should be maintained for effective policing in the states. As it is an irony that for VIP person security there are 7 to 8 commandos but for civilians, there are not even sufficient police officers in the police station And among the police officers there should be a sufficient percentage of female police officers. As woman fail to register FIR as male police officers are apathetic to woman related offences so there is a need for female police officers to encourage woman that they should fight for their justice rather than sitting idle and not fighting for the mere reason that what will society say. So after discussing these points the major thing that comes out is that the major problem lies in the implementation of the laws by the executive and due to lack of infrastructural facility in the cities and towns. So there is a need for all parts of the state to work for creating the appropriate environment in which both men and women can learn, grow and develop themselves and achieve what they want in life without any fear and insecurity. And ultimately this is the aim of any law whether

civil or criminal to create a social order in society. There should be a holistic revision of the justice system to increase the rate of conviction.

From the above discussion, the researcher is on the point that all the three hypotheses made for this research paper are stand to be proved.

## **VI. SUGGESTION FOR IMPROVEMENT IN CONVICTION RATE**

After a detailed analysis of the reasons behind the low conviction rate in rape cases, the researcher has formulated the following suggestion for improvement of the conviction rate.

### **1) The first and foremost duty to stop the crime against women lies in society itself.**

Both victims and accused used to live in the same society having all most the same culture. But not only in India but world across women is considered as a second class citizen. This mindset is the main reason behind rape. Society has to sensitize women. Mahatma Gandhi has said: “if you want to change the world, start with yourself”.

### **2) Strict Application of law**

Indian constitution has given equal status to every person irrespective of their religion, race, caste, sex and place of birth. these rights are not given by the constitution but only discovered or we can say regulated by law of land because the right to equality is a human right of every individual which are available by birth. In Indian, there are multiple provisions as well as separate legislation to protect women and children from sexual abuse and violence. But in practical scenario crime against women are increasing day by day. So simply making law is not the solution.

### **3) Increase the Number of Women Representation in Policing of India**

As per the various reports, about 90 % of sexual assaults in India go unreported. The law mandates that report of sexual offences should be registered by a women police officer. But as per the “Status of Policing Report, 2019”, only 7% of India’s police force is women, while less than 1% hold a supervisory position. India has to balance the gender ratio in policing system. In many cases which have been already mentioned in this paper shown the behaviour of male police officer during the registration of report. They are reluctant to register FIR in sexual offences and used to pass derogatory remarks to victims. To curb this problem following measures should be taken:

- (a) Increase the number of women police officer upto 50%.

- (b) Make a separate police station for registration of report of sexual offence and offences against women.
- (c) In every village, there should be at least one women police constable to help the victim.

Development of police infrastructure and change in recruitment process

Lack of adequate infrastructure in policing is the main hurdle for effective investigation.

Following are the suggestion to improve the infrastructure:

- a). Digitalization of police station
- b) awareness about the basic knowledge of the criminal law.
- c) standard building of police station.

### **Recruitment process**

- a) Besides the physical test, there should be a standard examination process.
- b) There should be a uniform selection procedure.
- c) There should be a modification in the syllabus of police recruitment.

Role of government: there needs to be a strong political will for improvement in the conviction rate. Following steps should be taken in this regard:

- a) There should be a reservation of seats in both parliament and state legislature for women.
- b) Member of Parliament as well state assembly including the member of local bodies must be free from any criminal charge.
- c) Increase the number of police.
- d) There should proper and modern procedure for training of police including training of forensic science.
- e) Increase the number of forensic labs.
- f) Establishment of Rape Crisis Centre at the district level.
- g) There should be a specialized branch of the prosecutor in sexual offences.
- h) There should be a single enactment for sexual offences.

### **Role of Judiciary**

1. Expeditious trial of a sexual offence.

2. Special bench in high courts as well as in Supreme Courts for hearing of sexual offences.
3. There should be more regional bench of the Supreme Court across the country.
4. There should be equal representation of women judges in the Supreme Court, High courts and lower judiciary.
5. Some measure should be taken to increase the number of a female senior lawyer in the High Court and the Supreme Court.
6. There must be uniform rules for hearing rape cases all over the country.

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## VII. BIBLIOGRAPHY

### (A) Text Book(s)

1. S.N.Mishra, *India Penal Code*, ( Central Law Publications, Allahabad,9<sup>th</sup>edn., 2014)
2. K.N. Chandrasekhar Pillai (ed.), *R.V.Kelkar's Criminal Procedure*, (Eastern Book Company, Lucknow, 6<sup>th</sup> edn.,2014)
3. Batuk Lal, *The Law Of Evidence*, ( Central Law Agency, Allahabad, 21<sup>st</sup>edn., 2015)

### (B) Case law(s):

1. State of Punjab v. Gurmit Singh, (1996) 2 S.C.C 384 (India).
2. Lalita Kumari V. State of U.P, (2014) 2 S.C.C 1 (India).
3. Budha v. State of Odisha, (2019) S.C.C 262 (India).
4. Re: Assessment Of The Criminal Justice System In Response To Sexual Offences, 2020 (1) ALT (CrI.) 1 (A.P.), 2020(1) Crimes69 (SC) (India).
5. Lilli alias Rajesh and Anr. v State of Haryana , (2013) 14 S.C.C 643 (India).

### (C) Legislations:

1. The Indian Penal Code, ( Act 45 of 1860), 1860
2. Code of Criminal Procedure, 1973
3. Indian Evidence Act, 1872
4. Decided Cases.

### (D) Internet Sources:

1. National Crime Report Bureau, crime against women, (Mar. 06, 2021, 09:15 PM), [https://ncrb.gov.in/sites/default/files/crime\\_in\\_india\\_table\\_additional\\_table\\_chapter\\_reports/Chapter%205-15.11.16\\_2015.pdf](https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Chapter%205-15.11.16_2015.pdf).
2. National Crime Report Bureau, crime against women, (Mar. 06, 2021, 08:48 PM), <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf>.
3. National Crime Report Bureau, crime against women, (Mar. 06, 2021, 08:28 PM), [https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202017%20-%20Volume%201\\_0\\_0.pdf](https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202017%20-%20Volume%201_0_0.pdf).
4. National Crime Report Bureau, crime against women, (Mar. 06, 2021, 08:08 PM), <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf>.

5. National Crime Report Bureau, crime against women, (Mar. 06, 2021, 08:02 PM), <https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf>.
6. Times of India, 'India sees 88 rape cases a day; conviction rate below 30%', (Apr. 02, 2021), 07:09 PM), <https://timesofindia.indiatimes.com/india/india-sees-88-rape-cases-a-day-but-conviction-rate-below-30/articleshow/78526440.cms>.
7. TheWire, <<https://thewire.in/women/uttar-pradesh-police-rape-firdiscrimination04/OCT/2020>>(last visited Feb. 22, 2021).
8. Namita Bajpai, Hathras gangrape murder case, Indian Express, (Dec. 20, 2020, 11:02 PM), <https://indianexpress.com/article/india/hathras-gangrape-case-cbi-files-chargesheet-7109872/>.
9. Express News Service, Even IPS officer lack basic knowledge of criminal law, Indian Express, (Jan. 20, 2020, 10:08 PM), <https://www.newindianexpress.com/cities/bengaluru/2020/jan/22/even-ips-officers-lack-basic-knowledge-of-criminal-law-2092796.html>
10. The Hindu, NHRCH issues SOP for forensic Evidences collected in sexual assault cases, <https://www.thehindu.com/news/national/nhrc-issues-sop-for-forensic-evidence-collection-in-sexual-assault-cases/article33346155.ece#>.
11. Ananthakrishnan G, "Improve representation of women in judiciary, sensitize the judges: AG to SC", The Indian Express, (Dec. 3, 2021, 09:00 PM), <https://indianexpress.com/article/india/improve-representation-of-women-in-judiciary-sensitise-judges-ag-to-sc-7079925/>.
12. Asian News International, 'over 2.4 lakh case relating to rape and POCSO pending in courts across country, says government', India Today (Mar. 5, 2020, 08.34 PM), <https://www.indiatoday.in/india/story/over-2-4-lakh-cases-relating-to-rape-and-pocso-pending-in-courts-across-country-says-government-1652567-2020-03-05>.

#### **(E) Government Report**

1. Crime Report- 2015, National Crime Report Bureau.
2. Crime Report- 2016, National Crime Report Bureau.
3. Crime Report- 2017, National Crime Report Bureau.
4. Crime Report- 2018, National Crime Report Bureau.
5. Crime Report- 2019, National Crime Report Bureau.

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