

# Rape

- Offence Against the Body & Integrity of a Person.
- Wide amplitude to include all forms of penetration.
- 'Non-consensual' act.
- Statutory Rape: 18 years (with or without consent)
- Marital Rape Exemption Clause (Exception 2).



# Aggravated Forms- Enhanced Punishment

- Custodial Rape- Police/Public Servant/Prison/Hospital
- By Person of trust or authority or control
- In situation of strife/violence
- Pregnant Woman
- Under 16 years of Age
- Disabled women
- Causes serious physical harm or endangers the life of the woman
- Repeats the offence on the same woman
- Rape causing death or persistent vegetative state
- Gang Rape
- Repeat Offender.



## Criminal Law (Amendment) Act 2013

### New Offences



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# New Offences

- Outraging of Modesty- S.354- Enhancement of Punishment to Five years
- Sexual Harassment- S. 354A new definition to take care of issues of eve teasing-unwelcome sexual advances or overtures-

Issues in Workplace have been addressed by the Sexual Harassment Act 2013.

- Stalking-S 354D- following, monitoring or contacting woman against her wish
- Voyeurism- S. 354C- watching or capturing and dissemination of the image of woman in private act
- Disrobing a woman- S. 354B- assaults or uses criminal force to disrobe a woman.
- Acid Throwing(gender neutral) –S. 326 A and B; Causing grievous hurt by administering acid



## Victims' Rights- Code of Criminal Procedure

### Access to Justice

- Constitutional Guarantee under Art 32, 226
- Where Police Officer refuses to record information relating to an offence, Cr.P.C. entitles the Victims to approach the higher authority or Magistrate with the same.
- Punishable Offence under Section 166A

### Legal Representation

- S.12(1) of the Legal Services Authorities Act, 1987 entitles every person "who has to file or defend a case:" to approach legal services
- The victim of a crime may move the government to appoint a special prosecutor for a given case though S. 301(2) mandates that such lawyer of the private party "shall act under the directions of the Public prosecutor...and may, with the permission of the court, submit written arguments after the evidence is closed in the case." S.24(8) Code of Criminal Procedure 1973.

### Confidentiality & Identity Protection

- So far as rape victims are concerned are S. 228A Indian Penal Code, 1860 prohibits the disclosure of the identity of the victim in any publication concerning the offence,
- S. 327Cr.P.C.1973 provides for in camera proceedings in trials

### Appeal

- the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."S 372 Cr.P.C.

### Compensation

- Compensation under Section 357 and 357 A Cr.P.C. 1973
- Art 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of relief from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Art 21 secured is to mullet its violators in the payment of monetary compensation.



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# Other provisions

## Attendance( S. 160)

- Not in police station
- Only in residence

## Completion of Investigation(S. 173 (1A))

- Child Rape- Within 3 months

## Recording of Statement in Court(S. 273)

- Victim not confronted by accused

## Proceedings(S. 309)

- Day to Day proceedings
- In rape, trial maybe completed within 2 mths



# POCSO Act 2012

- Comprehensive law to provide for the protection of children from offences of sexual assault, sexual harassment and pornography
- Safeguarding the interests of the child at every stage of the judicial process by incorporating child- friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated courts.
- The Act came into force with effect from 14<sup>th</sup> November 2012.





## Judicial Decisions

*Sexual violence is not only an unlawful invasion of the right of privacy and sanctity of a woman but also a serious blow to her honour. It leaves a traumatic and humiliating impression on her conscience-offending her self-esteem and dignity. ...It indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. It is a crime against basic human rights, and is also violative of the victim's most cherished of the fundamental rights, namely, the right to life contained in Article 21 of the Constitutions. The courts are, therefore, expected to deal with cases of **sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely.***

***Pushpanjali Sahu v. State of Orissa, (2012) 9 SCC 705: (2012) 3 SCC (Cri) 1238: (2012) 119 AIC 39.***



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- Even a **woman of Loose morals** and easy virtue has the right to protect her dignity. Her evidence cannot be rejected on that ground alone. *Narendra Kumar v. State* AIR 2012 SC 2281
- A victim of an offence is **not a partner** to the crime. She stands at a much high pedestal than an injured witness. *State of UP v. Pappu* AIR 2005 SC 1248



- Admission of two fingers and hymen rupture does not indicate that the prosecutrix is habitual to sexual intercourse; *Narayamma v. State of Karnataka* (1994) 5SCC 728
- The **two finger test** and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with **gender**-based violence. *Lillu @Rajesh v. State of Haryana* AIR 2013 SC 1784



- In a case of rape or attempt to rape, the conception of **compromise** under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation. Any kind of liberal or thought of mediation in this regard is thoroughly and completely sans legal permissibility. **Shyam Narain v. State (2013) 7 SCC 77.**



## *Sudesh Jhaku v. KCJ* 1998 CriLJ 2428

- In cases of child sexual abuse :
  - No abuse and harassment of the witness.
  - handle the proceedings with considerable sensitivity and ensure that the trial is fairly conducted.
  - Breaks during questioning may also be given
  - Use of screen
  - Proceeding should be in camera.
  - Allow a supportive person like a social worker or other friendly but "neutral" adult visible to the child, or even sitting beside a young child who is testifying.



*State of Punjab v. Gurmit Singh*  
AIR 1996 SC 1393

- - No unnecessary remarks on the character of the prosecutrix,
  - Cross examination not become a means of harassment,
  - Privacy of the prosecutrix is maintained and
  - Female judges are appointed in trials.



# Role of Different Agencies

- **National Commission for Women ( State Commissions at State Levels)**
  - Statutory Body dedicated to the cause of Women
  - Established since 1992
  - Undertakes various functions to further the cause of Women
    - ☐ Investigative & Interventionist
    - ☐ Evaluative
    - ☐ Review of Laws/ Policies
    - ☐ Research and Advocacy



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# Civil Societies & NGOs

- Participation of civil society helps in bringing significant improvements in lives of Women;
- Individuals and groups help to foster opinion, generate support and work towards collective concerns.
- Roles include:
  - Watchdog
  - Advocate
  - Service Provider
  - Expert
  - Capacity Builder
  - Incubator
  - Representative
  - Citizenship Champion
  - Solidarity supporter
  - Definer of Standards



# Towards securing Gender Justice

- NGOs have played a key role in the development & progress of women, securing their rights, achieving economic independence and effectuating adequate welfare and rehabilitation of women who have been victim of violence;
- Key improvements made in field of education, health and nutrition, economic well-being ;



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# Families

- Basic Institution for the survival, protection and development of the child
- Plays a very significant role in the overall growth and development of the child
- Family is responsible for the preservation of identity, socialization and acquisition of values, freedom of expression and association, maintenance of privacy and discipline;
- It is also an essential agent for creating awareness and preservation of human rights and respect for human values;
- Realization of rights and maintenance of human dignity are the responsibility of family



# Thank You!!



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