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**Enhancement of Punishment not a Remedy to Protect the Women
Against Sexual Offence**

Nishtha

ABSTRACT

“Yatra nareshu pujoyantey ramantey tatra dewata

Yatreto too na pujoyantey sarva tatrafla kriya”

As we belong to that society which believes in concept that every particle possess god and every act is regulated by “shakti” and shakti is nari. People worship “shakti” for her kripa, at the same time men in society forget her shakti incarnation and ruin her life for his lust. As the nation witnessed through nirbhaya, kathua and unnao, etc when lust overpowered the bhakti for shakti. When men forget that the nari is shakti to whom he keep worshipping for her blessings. Being citizen of India researcher is glad to analyse that judiciary and legislature is vigilant and working for protection of women, which made India, a first country in the world which work so much in protecting women against sexual violence. Indian Penal Code which already contained rape as offence under section 376 had been change many times till now to make it more severe offence to deter offender and make it a exemplery in society, rape is made punishable with 10 years imprisonment to life imprisonment for whole natural life of offender or with death. In 2013 through justice verma committee, many acts has been incorporated in IPC as an offence against women dignity like section 354A to 354D. through kathua rape case section 376(3), 376AB, 376DA and 376DB has been inserted to make rape and gang rape against women under 12 and 16 years severly punishable. On the recommendation of judiciary, legislature made amendment in CrPc to make speedy investigation in rape cases within 2 months and appeal should be dispose of within 6 months in rape case. Judiciary and legislature are working well and fast in making women protected, many police squads has been made to protect and remedy the victims, many PCR running day night on the roads of delhi to drop women safely at their home is sign of authority is doing well. Now, its our turn. What changes we want to protect women is required to inculcate in us, we need to teach our son to respect not only your sister and mother but to respect others as well. The researcher will add conclusion and suggestion at the end of research paper.

“Yatra naryastu pujiyante ramante tatra devata

Yatrete too na pujiyante sarva tatrafla kriya”

The researcher starts the paper through a famous quotation from the Manu smriti which says god (Devine source of energy) only abodes where women is respected however unlike to this whenever women is disrespected all ventures and undertaking go in smoke. In our country and our culture women is given status of MAA (creator of a being) ,SHAKTI, DEVI ,even in law we symbolise justice through the statue of LADY JUSTICE but contrary to this is what we see when we give a glance at the present scenario is nothing but the spreading of the germs of communicable and contiguous disease and the severe symptoms of violence against women could be seen through the wide cases of female foeticide, sexual offences against girl child, stalking, acid attack, outraging her modesty travelling from one brain to other , from one body to other, from one family to other, from one city to other. ²

It was December 16, 2012 one of the darkest day in the history of the country , when six men, including the driver of a private bus, assaulted, gang raped, and threw a 23-year-old female paramedical intern from the moving bus in New Delhi. After this pathetic news became public, thousands of Indians protested against it. While the nation was still debating whether the justice system should be “fair” to the accused only (i.e., given one contradictory piece of evidence, the accused be acquitted) or also to the victim who would remain stigmatised throughout her life , the victim died on December 29, 2012, and today even after 7 years of the incident the criminals are yet alive and the death penalty is not yet executed and still they are filling mercy petition . Even though after this incident J.S Verma committee was set up to make new recommendations on the criminal law for rape . However, after which the Criminal Law (Amendment) Act, 2013 provides death sentence in case of rape . In spite of the possibility of such a stringent punishment, cases of rape from the country continued to be reported in the media. Worse still, another case of rape and murder of a 7 year old girl child of kathua district in Jammu and Kashmir shocked the whole nation, again provoking mass protests, which landed up again into more harsher punishments for rape with young girl child’s below the age of 12 years with rigorous imprisonment of 20 years or L.I or Death, and rape with girl above 12 years with imprisonment of life or death, probe and trial to be completed within 2 months and no anticipatory bail for the accused and what not .we were still not out of that trauma that again another dark screaming night in our country ,on 28th November again an innocent girl was sacrificed for the lust of few. The country cried no more Nirbhaya . This time it was Dr. Priyanka Reddy,a veterinary doctor who was under the clutches, she was scared when she saw tyre of her bike got punctured ,she had anticipation of some mishappening so she called her sister expressing her FEAR. She was under fear even before the offence which latter on turned into the dark reality , gang rape by 4 of them and learning from the Nirbhaya in which offenders were caught because they left the victim alive ,BURNED HER ALIVE

¹ Shoppe, Dev. “Sloka Yatra Naryastu Pujiyante Ramante Tatra Devata with Meaning.” Devshoppe, Devshoppe, 4 June 2017, www.devshoppe.com/blogs/articles/sloka-yatra-naryastu-pujiyante-ramante-tatra-devata-with-meaning.

² <https://www.sciencedirect.com/science/article/pii/S0970389614000287>

The forgoing incidences and the public protests on these incidence received a lot of media attention and started debates on the nature of social justice in India. The public protests show that many citizens were ready to punish the offenders and raise voice against a deteriorating social order in India, particularly against rising crime rates against women and the lack of interest of the police to restore law and order.³ These offence against women and the public protests on these incidence raised several interesting questions that had remained un investigated so far. What are the motivations of people in punishing the offender and his groups? What is the result of the public protests against these crimes? Are the motives behind and outcomes of public protests the same in a country where social order has been improving or where social order has been deteriorating alarmingly

In the research , we sought answers to two important questions.

(1) What is the reasons, people want to punish the perpetrators of a heinous crime against a woman?

(2) How is the effect of public protest on the punishment goals pursued moderated by the prevailing social order (i.e., crime and punishment rates at a particular point of time) ?

To find solution of these questions, we relied on the present day social-functionalist structure of people as principled theologians, reliable prosecutors, and pragmatic politicians .

In the social-functionalist approach, people have always been living in interdependent collectives. For effective functioning of their collectives, moreover, they need developed accountability procedures: Who should report back to whom for what and under what circumstances? Examples of the accountability procedures are the constitution of a rustic , the laws of the land, religious scriptures, and social traditions. Since they're considered to be of transcendental significance, members of the collective

(a) righteously protect them,

(b) respond themselves to those accountability demands, and

(c) time to time place those responsible demands on others .

Due to the challenge of the (a), (b), and (c) roles that make people into intuitive principled theologians, pragmatic politicians, and prudent prosecutors, respectively.

Principled theologians rigidly defend the accountability procedure to reiterate its sacred status; pragmatic politicians, in contrast, conveniently benefit of the loopholes within the accountability procedure for his or her self-interests. Between these extremes of rigidity and flexibility vis-à-vis the accountability procedure lie prudent prosecutors. While placing responsible demands on others, prudent prosecutors punish a wrongdoer to the extent they can justify it to the collective. The prudent prosecutors punish offenders to the extent of social order which ought to be "... related to their view of the way the globe

³ Dutta, Prabhash K. "Hyderabad Rape Victim May Not Get Speedy Justice. Nirbhaya Case Reminds Why." India Today, 3 Dec. 2019, www.indiatoday.in/news-analysis/story/why-nirbhaya-case-offers-little-hope-for-speedy-justice-to-hyderabad-rape-victim-1624661-2019-12-03.

either works, or the way they believe it should work” . The method of punishing the offenders sometimes by the way the society works and sometimes by the way the society should work makes prudent prosecutors appear as fair but biased. To us, however, punishing a wrongdoer consistent with the view of the way the collective functions and may function reflects a compromise of the prosecutorial mindset with the flexible politician and rigid theologian ones, respectively.

We hypothesised that public protests, as seen within the aforementioned rape cases of Delhi and Mumbai, intensified the punishment goals with the offender. Goals to punish are often victim-oriented, society-oriented, or both. Retribution may be a victim-oriented goal because it makes the offender suffer relative to the harm inflicted on the victim . In contrast, deterrence may be a society-oriented goal because it prevents future similar crimes within the society . The reasons for punishing an individual offender should be represented by two correlated but distinct goals of deterrence of and retribution for the offender..

It is ironical to state that our criminal jurisprudence fails here, the main object is to create fear in the mind of offender but what we see is fear in the mind of women of the country, her parents, her spouse before sending her anywhere out of her house. Almost every girl of the country is asked by her guardians to return before sunset .This may sound orthodox but it's the truth ,and if these are the circumstances then slogans like “BETI BACHAO BETI PADHAO” go in vein when the BETI of the country is not secured , because even if she somehow takes birth and gets secured from female foeticide and grows and starts going to school ,she and her parents are scared from doing so because of incidents seen in Kathua District and if somehow she completes her education and starts working then incidents like NIRBHAYA and HYDRABAD RAPE CASE are waiting for her. This is an alarming condition where we find our legislative, executive and judicial system failing in controlling the deteriorating condition of the country which could be very evidently seen through the latest amendments ,slow procedural set up in convicting to protect the rights of the accused and leaving the victim and her whole family and other women and their families traumatised for their whole life, there has to be some table turner . I would rather term these offences as more of a “PSYCHOLOGICAL OFFENCE” where main reason behind the offence is the ill psychology and fixed disrespectful temperament of the offender towards women considering her fragile object meant for fulfilling there lust. Our SARKAR can protect us from only the physical offences through various legal codes but these psychological offences can be only and only protected through SANSKAR. By SANSKAR I mean the basic human values to be inculcated specially in the youth of the country ,as the youth is said to be the future of the country. Today we see the youth of the country grabbing things from internet,social media any random stuff irrespective of their age group and under proper supervision ,which leads to such PSYCHOLOGICAL DISORDERS .

Women is getting victimized of the offence since time immemorial. The structure of the ethics, values, morals, culture of the society are in such a way so as to promote exploitation of this segment which is actually the root of the society. “*The concept of STRUCTURAL VIOLENCE was introduced by Johan Galtung in 1969. It refers to a form of violence wherein some definitions-a-structure-of-social-institution social institution may harm people by preventing them from meeting their basic needs*”. Violence against women has become a global epidemic by which women has suffer physically, psychologically, sexually and

economically. Johan Galtung in *“Violence, Peace and Peace Studies”*, 1969 has rightly remarked *“when one husband beats his wife, there is a clear case of personal violence, but when one million husbands keep one million wives in ignorance, there is structural violence”*.⁴ India is slow in finding solution against violence on women, but the heinous gang- rape in Delhi December 2012 known as “nirbhaya” case wake up the Indians from their deep slumber on this issue. Structural violence is the root cause of destruction of society. Everyone has to take combine step to fight against this violence whether it is N.G.O or the sufferer or her family member.

WHAT IS STRUCTURAL VIOLENCE?

Johan Galtung proposed structural violence in 1969. It is a kind of violence in which some social structure may harm people by restricting them from meeting their basic need, according to Galtung, instead of showing a physical image, structural violence is an *“avoidable impairment of fundamental human needs.”* This term was made to bring to the limelight the level of damage and harm it may cause to the lives of people which is in various form greater than that caused by inter- and intra-nation wars and armed conflicts. Women suffers alot from structural inequalities because of the intersection of gender with existing conditions such as poor health, inadequate education, and care.Lack of good data on violence against women and due to the existence of the public and private division leads to structural violence.

“Johan Galtung in “Violence, Peace and Peace Studies,” 1969, has rightly remarked “when one husband beats his wife, there is a clear case of personal violence, but when one million husbands keep one million wives in ignorance, there is structural violence.”

STRUCTURAL VIOLENCE: INDIA'S PERSPECTIVE

India is slow in protecting woman against crime and inequalities, it is in still process for providing freedom and protection much before after independence. But still it is yet to be completed. After the 2013 gang rape people were in anger, they carried out mass protest which was peaceful like candle march. Blaming inefficient governance, political aims, inefficient department and rule of law. Woman in India face the challenge of male centric society, weak and slow legal justice system.

India belongs to countries which has lowest sex ratio in the world. According to the 2011 census, the sex ratio was 940 women to 1000 men which is a definitely improvement over the 2001 census where the ratio was 933 women to 1000 men. The sex ratio is worst in the north western state of Punjab, Rajasthan, and Haryana. This gap is 12% at the time of birth which increases to 25% in childhood. The answer of this missing number is lie in sex-selective abortions and neglect of young girls during their infancy, denotes to a

⁴ Sinha, Parul, et al. “Structural Violence on Women: An Impediment to Women Empowerment.” *Indian Journal of Community Medicine : Official Publication of Indian Association of Preventive & Social Medicine*, Medknow Publications & Media Pvt Ltd, 2017, www.ncbi.nlm.nih.gov/pmc/articles/PMC5561688/.

preference for male children as compare to female children. This preference is also evident in the literacy rate of 2011 census, which shows that 82% of the males to be literate compared to 65% females. Women of India suffer violence in the form of domestic violence, cruelty by husband and in-laws, dowry death, rape and, abduction . *“The National Crime Record Bureau statistics provides that an Indian woman is most unsafe in her marital home with 43.6% of all crimes against women being “cruelty” inflicted by her husband and relatives”*.⁵

Violence against women is being prepared and committed irrespective of level of society in which she is living, even it may be at any institutional level or community level.

In Indian society, violence against women is erupting like volcanoes lava. It exists almost everywhere and this eruption is most severe than right behind the doors of every homes. Women behind the closed door of homes, which we consider safe for her safe, are beaten, tortured and killed. It is occurring everywhere whether it is metroplitian, city, town or rural areas Irrespective of social classes, genders, racial lines and age groups. It is a kind of legacy which is keep passing on from one generation to another. Unfortunately that is the theme of 21st century around which women in a free country, live. It tells about status of past present and future government in taking social challenges. To punish the offenders, the government of India has been trying to show its support towards women. There is place for financial assistance, dedicated banks and more in union budget. These are important and praiseworthy steps. It does not matter how economically independent the educated urban woman becomes or how extensive rural outreach programs works at improving feminine hygiene and maternal care, the narrative always move to the safety or the lack of it. If we can prevent the violence from being committed then we can ensure safe and happiest place for women.

Social workers are working with great variety of role and organisations, capable to work at all three levels viz: primary, secondry and tertiary prevention, early detection, intervention and preventing violence against women through working at every level of the society, which is at individual level or community level, at work place or at institution or at the various structure in which we live. Social workers are at ideal position and dedicated to social justice and have knowledge and skills to contribute to the prevention, early intervention and crisis response of violence against women. This can be resulted through direct service, policy initiatives, research, and advocacy for the structural changes needed that otherwise maintain and reinforce the determinants of violence against women.

Social workers work at different levels when addressing the problem of violence against women. These

- clientele level, to address the needs of the client
- ministerial level, suggesting and supporting for changes in their own organizations
- Societal level, suggesting change at a government and policy level

⁵ “Crime in India 2016.” *Ncrb.gov.in*,
ncrb.gov.in/StatPublications/CII/CII2016/pdfs/Crime%20Statistics%20-%202016.pdf.

- Personal level, to make their practice ethical, attending the root cause of discrimination and not regenerate inequitable gender rules

To address the issues of violence against women there is need of well defined and planned, developed and supported social service. Social service workers are experienced and well equipped to examine, make analysis and understand the complex and different reasons that violence is perpetrated against women and which make them to support communities in changing societal behaviors and preventing violence against women. Social service workers play a vital role in providing counseling and referral services to look after and providing treatment of physical, mental and psycho social health of the victim of violence against women. The most important is to create an environment where women and girls are comfortably share the problem of being a victim of violence is an essential first step to providing care and treatment. Social service workers may become government advocates and for victims as well, they play a vital role in obtaining justice by working closely with law enforcement agencies.

STATISTICS ON OFFENCE OF RAPE AND EFFECT OF NEW LEGISLATION ON IT

The National Crime Record Bureau which is the an agency of the Government of India knows as NCRB as well, collected the data on offence. It has collected data and made statistics on offence of rape in India. Even though many of the rape offence goes unreported due to social stigma and honour of the family. Offence of rape accounted 12% of the crime against women. If see the data published by the NCRB the rate of crime against women is 55.2% in 2016 which is increased as compare to the year of 2012 when it was 41.7%. Reporting of rape cases is increased to 4 in every one hour in 2016 which was 2 in every hour in the year of 2007. There is increase in the reported rape cases by 88% from 20,737 in 2007 to 38,947 in 2016. In 2016, out of 39,068 rape victim 43% were girls below 18 years.⁶

After the nirbhaya incidence legislative organ instantly came in action and Justice verma committee gave its recommendations on the various acts which should constitute the sexual offence against women, many of them was incorporated in Indian Penal Code and made offence like insertion of *section 326A voluntarily causing grievous hurt by use of acid. Etc* which is made punishable *with imprisonment of either description for a term which shall not be less than ten years but which may be extend to imprisonment of life and with fine.* Section 326B *voluntarily throwing or attempting to throw acid* which is made punishable with *imprisonment of either description for a term which shall not be less than five years which may e extend to seven years and shall also liable to fine.* Section 354A *sexual harassment and punishment for sexual harassment, section 354B assault or use of criminal force to woman with intent to disrobe , 354C voyeurism , 354D stalking,* section 375 had been substituted with other definition to make other act as rape which was not such before criminal law amendment act 2013, punishment of rape increased under section 376(1) to seven years imprisonment which may extend to life imprisonment for life and fine. Other section in Indian Penal Code had been substituted

⁶ "Crime in India 2016." *National Crime Record Bureau*, ncrb.gov.in/StatPublications/CI/CI2016/pdfs/Crime%20Statistics%20-%202016.pdf.

to make it stringent punishable offence to deter offender to commit such an offence like section 376A *punishment for causing death or resulting in persistent vegetative state of victim which is made severally punishable with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person natural life or with death, and section 376D gang rape is made punishable same as section 376A, where as section 376E provides punishment for repeat offenders imprisonment of life which shall mean remainder of that person natural life or with death.*⁷ The Criminal Law (amendment) Act 2013 introduced to made the rape offence severally punishable with stringent punishment to deter offender to commit such heinous crime against women in India. When the nation was recovering the loss of nirbhaya incidence in 2013 with hope of offender be punished and judiciary set an example for future so that no evil will raise his head again, but in the year 2017, 17 years old girl was gang raped in unnao and she was raped several time and after few months in the year of 2018 the kathua rape case shocked the nation where a 8 years old girl was abducted, gang raped and murdered, it was brutal incidence these two cases revealed the gap in criminal law of the country which was criminal law amendment Act 2013 was failed to fill. Rape with minor girls and that was gang rape shivered the mass, it is a big question on the criminal law of our country, after having Indian Penal Code and The Protection of Children against Sexual offence Act why these offences are committed? Even the criminal law amendment Act 2013 increased the punishment in Indian Penal Code.

To fill the gape and to make offence of rape more stringent punishable Criminal Law (Amendment) Act, 2018 was introduced to amend *the Indian Penal Code, Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973 and the Protection of Children from Sexual Offences Act, 2012.*

In Indian Penal Code section 376 *sub section 1 is amended to increase imprisonment from seven years to ten years, sub section 3 is inserted in section 376 to punish any person who commit rape on women under age of sixteen years with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.* Section 376A *inserted to punish any person who commit rape on women under age of twelve years with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death.* Section 376DA *inserted to punish one or more person who raped woman under sixteen years of age, constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, and section 376DB to punish one or more person who raped woman under twelve years of age, constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death.*⁸

⁷ "The Criminal Law Amendment Act 2013." *iitk.ac.in*, www.iitk.ac.in/wc/data/TheCriminalLaw.pdf.

⁸ "The Criminal Law Amendment Act 2018." *Mha.gov.in*, mha.gov.in/sites/default/files/CSdivTheCriminalLawAct_14082018_0.pdf.

The changes in the Code were made to deter offender, to protect the women, as it is based on the deterrent theory of punishment in which it was said that the people won't commit crime because they are scared to being caught and punished as to avoid effect of crime that is punishment, people dissuade to commit crime if the punishment is swift, severe and certain. Punishment to one make the impact in mind of being punish in future offender .

“In an essay by Daniel S. Nagin “Deterrence in the twenty-first Century” written in the year 2013, he has explained few points relating to deterrent theory which can be summarized by stating that the fear of being caught is far more dreadful than the draconian punishment, when the legal system has been successful in punishing a criminal it has shown its power in getting hold of the criminal, this alone shall act as a fear psychosis in the minds of the other criminals. It is also the police force who helps in deterring a crime. The strategies used by the police such as sentinels and hot spot policing are effective. A criminal's behaviour is likely to be affected by seeing a uniformed policeman with handcuffs and a pistol rather than the strict penal provisions on paper.”⁹

According to NCRB data there was successively increase in the rate of rape against women as researcher already discussed above. Even though, Criminal Law (Amendment) Act 2013, made the Indian Penal Code more stringent on punishment for rape. It can be seen that the Criminal Law Amendment Act 2013 is proven weak.

Even after the Criminal Law (Amendment) Act 2018 where gang rape was made punishable stringently, nation heard the news of hyderabad rape case in which 26 years old veterinary doctor was gang raped and burnt alive.¹⁰ This shows that offender are not scared of being punished from stringent punishment as it showing no effect, offender are fearless they commit crime and if anything goes against them then they do not hesitate to kill the victim, as this happen with the unnao rape case victim when the victim was going to rae bareli court to attend hearing, five people including two accused of raping her beat her thrashed her and set ablaze.¹¹ Accused were out on bail and they did not hesitate to commit another offence they had no fear they had to repentence. Here, researcher found that offenders are not scared of punishment they have such mindset that whatever will be the consequences they do what they have decided.

⁹ “The Deterrent Theory of Punishment .” *Iilsindia.com*, www.iilsindia.com/blogs/2017/07/20/the-deterrent-theory-of-punishment/.

¹⁰ Khan, Omar. “Four Men Confess to Gang Rape of Woman They Later Burned Alive, Indian Police Say.” CNN, Cable News Network, 30 Nov. 2019, edition.cnn.com/2019/11/30/asia/india-gang-rape-intl/index.html.

¹¹ Kumar Abhishek Shivendra Srivastava. “Unnao Rape Victim Thrashed, Stabbed, Burnt Alive: Haunting Details of the Case.” *India Today*, 6 Dec. 2019, www.indiatoday.in/india/story/unnao-rape-victim-thrashed-stabbed-burnt-alive-haunting-details-of-the-case-1625633-2019-12-05.

Conclusion

Researcher found that the law legislature and judiciary is performing their duty efficiently and law bound manner, it can be analysis from Criminal Law Amendment Act 2013 and 2018 and death conviction of the nirbhaya's convict. It is a question why there is such incidence, like kathua, unnao and hyderabad after such criminal amendment act 2013 and 2018. The answer is nation has done what it can do through legislature and judiciary here what require is, society has to take responsibility to protect girls. Responsibility is require to shift from "**sarkar to sanskaar**" society should teach the boy that protect and respect the other girls as they do with their own sister. Society is required to come in front to protect woman and I am sure this will work.