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*Sexual Assault: A Social Evil for  
Women*

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## **ABSTRACT**

The Republic of India being in the forefront and carrying the baton of Democracy is still unable to do justice to the Principles of gender Equality enshrined in the Constitution. So even after being one of the world's largest democratic countries in the world with approx 1.2 billion people, India has only 48% of women who are frequently vulnerable towards inhumane sexual offences like Rape, Sexual Assault etc. due to their **unequal social status** unlike men.

Women have always been an **open book for men**. The codified laws and punishments for the benefit of women have yielded results though on a shorter note. The Delhi Gang Rape Case was a waking call to the Indian Judicial System which in turn replaced the word 'Rape' in Sec 375 of the Indian Penal Code, 1860 to 'Sexual Assault' through the Criminal Law Amendment Act, 2013 by J. Verma Commission thereby increasing its ambit. The word 'Sexual Assault' is basically derived from two root words: 'Sexual' meaning any activity relating to sexual desire of a human being and 'Assault' meaning any activity posing a threat of getting harmed or injured within one. Acts like **penetration** of penis or any object or any part of the male body within the vagina, mouth, urethra or anus of any person, application of force or touching private organs constitute 'Sexual Assault'. Indian Laws on Sexual assault have become more stringent than ever. On the other hand, the definition of 'Rape' has been extended beyond penile vaginal penetration to all forms of non-consensual penetrative sexual acts by men.

Thus various **sexual offences**, their punishments in the present context of the Indian Penal Code and ways of social upliftment will be discussed in the paper with the path of reformation to follow in the context.

**Keywords:** unequal social status, open book for men, sexual offences, penetration

### General Meaning of Sexual Assault

The word 'Sexual' means "any activity involving characteristic of sex, sex organs and their functions"<sup>1</sup> and 'Assault' means a violent physical or verbal attack i.e. any act by an individual which puts the person in front of him in the sudden fear of getting hurt.<sup>2</sup>

According to legal terms the former means "an unlawful threat or attempt to do bodily injury."<sup>3</sup>

Thus the term "Sexual Assault" means an involuntary sexual act in which a person is threatened<sup>i</sup>, coerced<sup>ii</sup> or forced to engage in any sexual activity where they have no consent.<sup>4</sup>

### Sexual Assault: An Indian Aspect

According to Sec 375 of the Indian Penal Code, the definition of "Sexual Assault" has three aspects:<sup>5</sup>

- **Clause (a):** The perpetrator<sup>iii</sup> and victim<sup>iv</sup> of the offence are gender neutral
- **Clause (b):** Penetration<sup>v</sup> by-
  - i. penis<sup>vi</sup> into anus, mouth, vagina or urethra
  - ii. object into anus, mouth, vagina or urethra
- **Clause (c):** Manipulation<sup>vii</sup> of any part of the body of another person so as to cause penetration into the vagina, urethra, anus or any part of the body of such person or makes the person do so with him or any other person.

### Consent according to Indian Penal Code

According to Sec 90 of the Indian Penal Code,

'Consent' is not such consent as it intended by any section of this code, if the consent is given by a person under fear or injury, or under a misconception of fact, and if the person doing the act

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<sup>1</sup> <http://www.thefreedictionary.com/sexual>

<sup>2</sup> <http://www.thefreedictionary.com/assault>

<sup>3</sup> <http://www.thefreedictionary.com/assault>

<sup>4</sup> [http://en.wikipedia.org/wiki/Sexual\\_assault](http://en.wikipedia.org/wiki/Sexual_assault)

<sup>5</sup> <http://www.lawyerscollective.org/wp-content/uploads/2013/02/CHART-MAPPING-LEGAL-CHANGES-REGARDING-SEXUAL-OFFENCES-.pdf>

knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

**Consent of insane person-** if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

**Consent of child-** unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

In cases of **sexual offences**, the age of consent of girls or women has been changed to **16 years from 18 years**.

The age of consent at first was **16 years** in the Indian Penal Code. But after the **Criminal Law Amendment Bill, 2012** and the **Criminal Law (Amendment) Ordinance, 2013**, the age of consent has been changed to **18 years**.

#### Sexual Assault: A Statutory Offence in India

The word **'statutory'** means an act prescribed enacted or authorized by a statute.<sup>6</sup>

The word **'statute'** means a written law passed by a legislative body.<sup>7</sup>

According to **Sec 40** of the Indian Penal Code, the definition of **'offence'** denotes *a thing made punishable under this code*.

In **general** the word 'offence' means a violation or breach of law, custom or rule etc.<sup>8</sup>

Thus the term **"statutory offence"** means offences violating statutes and not common law. Common law offences violate decisions made by judges in courts or other governing bodies in a particular case law.<sup>9</sup>

The definition of "Sexual Assault" has been included in Sec 375 of the Indian Penal Code after the amendment in the year 2013. Thus it is a statutory offence in India.

<sup>6</sup> <http://www.thefreedictionary.com/statutory>

<sup>7</sup> <http://legal-dictionary.thefreedictionary.com/statute>

<sup>8</sup> <http://www.thefreedictionary.com/offence>

<sup>9</sup> <http://www.ask.com/question/what-is-a-statutory-offence>

## Sexual Assault: A Globalized Aspect

Unlike India, “Sexual Assault” is also a statutory offence in various other countries like:

- United States
- Canada
- England
- Ireland
- Scotland

### United States

The United States Code includes 2 kinds of Sexual Assault:<sup>10</sup>

- a) **Sexual Abuse**- This includes involving a person into sexual activity without consent by application of **threat** or other **fear tactics**.
- b) **Aggravated Sexual Abuse**- This includes involving a person into sexual activity without consent by application of **force** or threat or **fear of death**.

According to **Rape, Abuse and Incest National Network (RAINN)** of USA<sup>11</sup>, “Sexual Assault” is an “*unwanted sexual contact that stops short of rape or attempted rape. It includes sexual touching and fondling<sup>viii</sup>.*”

The **National Centre for Victims of Crime** has defined the term “Sexual Assault” in the following way:

*“Sexual Assault takes many forms including attacks such as rape or attempted rape, as well as any unwanted sexual contact<sup>ix12</sup> or threats. Usually a sexual assault occurs when someone touches any part of another person’s body in a sexual way, even though clothes, without that person’s consent.”<sup>13</sup>*

### Canada

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<sup>10</sup> <http://medical-dictionary.thefreedictionary.com/Rape+and+Sexual+Assault>

<sup>11</sup> <http://www.rainn.org/>

<sup>12</sup> <http://medical-dictionary.thefreedictionary.com/Sexual+Contact>

<sup>13</sup> [http://en.wikipedia.org/wiki/Sexual\\_assault](http://en.wikipedia.org/wiki/Sexual_assault)

**Sexual Assault** is defined as an assault of a sexual nature that violates the sexual integrity of the victim. According to the **Supreme Court of Canada**, there are certain factors to be considered: <sup>14</sup>

- a) The part of the body touched
- b) The nature of the contact
- c) The situation in which the contact occurred
- d) The words and gestures accompanying the act
- e) All other circumstances surrounding the act
- f) Any threats that may or may not be accompanied by force

According **Sec 271** of the **Criminal Code of Canada**<sup>15</sup>, everyone who commits a sexual assault is guilty of-

- a) an indictable offence<sup>x1617</sup> and is liable to imprisonment for a term not exceeding 10 years and, if the complaint is under the age of 16 years, to a minimum punishment of imprisonment for a term of one year; or
- b) An offence punishable on summary conviction<sup>x18</sup> and is liable to imprisonment for a term not exceeding 18 months and, if the complaint is under the age of 16 years, to a minimum punishment of imprisonment for a term of 90 days.

### England

England has no written constitution. According to **Rape Crisis**, a registered charity and the national umbrella organization of England and Wales<sup>19</sup>, Sexual Assault can be defined as “*the act of physical, psychological and emotional violation, in the form of sexual act, which is inflicted upon someone without consent. It can involve forcing or manipulating someone to witness or participate in any sexual acts, apart from penetration of the mouth with penis, the*

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<sup>14</sup><http://www.edmontonpolice.ca/CommunityPolicing/PersonalPropertyCrimes/SexualAssault/WhatisSexualAssault.aspx>

<sup>15</sup> [yourlaws.ca/criminal-code-canada/271-sexual-assault](http://yourlaws.ca/criminal-code-canada/271-sexual-assault)

<sup>16</sup> <http://www.findlaw.com.au/faqs/1188/what-is-the-difference-between-a-summary-and-indic.aspx>

<sup>17</sup> <http://www.thefreedictionary.com/indictable>

<sup>18</sup> <http://www.findlaw.com.au/faqs/1188/what-is-the-difference-between-a-summary-and-indic.aspx>

<sup>19</sup> <http://www.rapecrisis.org.uk/>

*penetration of the mouth with the penis, the penetration of the anus or the vagina (however slight may be), with any object or penis, which is rape”.*<sup>20</sup>

### Ireland

According to **Section 2** of the **Criminal Law (Rape) (Amendment) Act, 1990**, “Sexual Assault” is an indecent assault on a male or female. The maximum sentence is 10 years imprisonment or 14 years if the victim is under 17 years of age.

“Aggravated Sexual Assault” is a sexual assault involving serious violence or the threat of serious violence, the maximum sentence for which is life imprisonment.<sup>21</sup>

### Scotland

According to **Section 3** of the **Sexual Offences (Scotland) Act, 2009**, “Sexual Assault” means –

- 1) If a person (“A”)-
  - a) without another person (“B”) consenting, and
  - b) without any reasonable belief that B consents,

does any of the thing mentioned in sub section (2), then A commits an offence, to be known as the offence of sexual assault.

- 2) Those things are that A-
  - a) penetrates sexually, by any means and to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B
  - b) intentionally or recklessly touches B sexually
  - c) engages in any other form of sexual activity in which A, intentionally or recklessly, has physical contact (whether bodily contact or contact by means of an implement and whether or not through clothing) with B,
  - d) intentionally or recklessly ejaculates semen on B
  - e) intentionally or recklessly emits urine or saliva on B sexually

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<sup>20</sup> <http://www.rapecrisis.org.uk/rapeampsexualviolence2.php>

<sup>21</sup> [http://www.citizensinformation.ie/en/justice/criminal\\_law/criminal\\_offences/law\\_on\\_sex\\_offences\\_in\\_ireland.html](http://www.citizensinformation.ie/en/justice/criminal_law/criminal_offences/law_on_sex_offences_in_ireland.html)

- 3) For the purposes of paragraph (a) of subsection (2), penetration is a continuing act from entry till withdrawal of whatever is intruded ; but this subsection is subject to subsection (4)
- 4) In a case where penetration is initially consented to but at some point of time the consent is withdrawn, subsection (3) is to be construed as if the reference in it is a continuing act from that point of time.
- 5) without prejudice to the generality of paragraph (a) of subsection (2), the reference in the paragraph to penetration by any means is to be construed as including a reference to penetration with A's penis.<sup>22</sup>

#### Advent of the need for law on Sexual Assault

The need for the law on “Sexual Assault” was first being felt after the case *“Sakshi Vs Union of India”*<sup>23</sup>, when a writ petition was filed under **Art 32** of the Indian Constitution in the form of Public Interest Litigation (PIL) in the year 2004 before the Supreme Court of India, by **Sakshi**, (a Delhi based NGO) an organization to provide legal, medical, residential, psychological, or any other help or assistance to women specially who are victims of any kind of sexual abuse, violence or harassment with a plea to increase the ambit of the word ‘penetration’ as mentioned in **Art 375** of the Indian Penal Code.<sup>24</sup>

#### Advent of the definition of Sexual Assault

##### Delhi Gang Rape Case

The Delhi Gang Rape Case on 16<sup>th</sup> December, 2012 was a waking call for the Indian Judiciary.<sup>25</sup> On 16<sup>th</sup> night, a 23 year old physiotherapy intern named **Jyoti Singh**<sup>26</sup> and her friend, **Avnindra**

<sup>22</sup> <http://www.legislation.gov.uk/asp/2009/9/section/3>

<sup>23</sup> AIR 2004 SC 3566, 2004 (2), ALD Cri 504

<sup>24</sup> <http://www.indiankanoon.org/doc/1103956/>

<sup>25</sup> [http://en.wikipedia.org/wiki/2012\\_Delhi\\_gang\\_rape](http://en.wikipedia.org/wiki/2012_Delhi_gang_rape)

<sup>26</sup> <http://indiatoday.intoday.in/story/delhi-gangrape-victims-friend-relives-the-horrifying-84-minutes-of-december-16-night/1/309573.html>



**Pandey<sup>27</sup>** were on their way back home when they boarded a bus from **Munirka bus stop**. There were 6 men in the bus along with the driver who looked alike passengers. After boarding, the doors and the windows were shut. This seemed shocking to the victim's friend and finally the dispute arose when the bus changed her route and was heading towards a wrong way. The victim's friend tried to intervene but he was hit by a metal rod at the back of his head and his clothes were torn. He was left semi-conscious and in the mean time the girl was being raped and beaten by a metal rod. But still the driver continued to drive the bus. After beatings and rape ended both the persons were thrown out of the bus and they were lying on the road unclothed and blood stained. The driver allegedly tried to run the bus over the girl but she was being removed by her friend. The perpetrators cleaned the bus but police impounded it the next day.

Medical reports later showed that she suffered serious injuries in her abdomen, intestine and genitals due to inhumane torture. A blunt shaped object (Suspected the iron rod) was being used for penetration which was later being investigated as a blunt L-shaped iron rod used for wheel jack handle by the police. Later on two blood-stained metal rods were discovered by the police.

Though the male victim recovered but unfortunately the female victim died 13 days after the incident due to serious injuries.

#### **Accused and the charges against them in the case**

The accused were:<sup>28</sup>

- a) Ram Singh, the bus driver
- b) Mukesh Singh, brother of Mukesh Singh
- c) Vinay Sharma, an assistant gym instructor
- d) Pawan Gupta, a fruit seller
- e) Akshay Thakur , he came to Delhi seeking employment
- f) An unnamed juvenile

The accused were charged with the following offences:<sup>29</sup>

- a) Rape

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<sup>27</sup> <http://indiatoday.intoday.in/story/delhi-gangrape-victims-friend-relives-the-horrifying-84-minutes-of-december-16-night/1/309573.html>

<sup>28</sup> [http://en.wikipedia.org/wiki/2012\\_Delhi\\_gang\\_rape/](http://en.wikipedia.org/wiki/2012_Delhi_gang_rape/)

<sup>29</sup> [http://en.wikipedia.org/wiki/2012\\_Delhi\\_gang\\_rape](http://en.wikipedia.org/wiki/2012_Delhi_gang_rape)

- b) Murder
- c) Attempted murder of the male victim
- d) Kidnapping
- e) Robbery
- f) Assault
- g) Destruction of Evidence

### Places of arrest

Ram Singh and Mukesh Singh were arrested in Rajasthan though they were mainly the residents of Ravi Camp in South Delhi.

Vinay Sharma, the assistant gym instructor and Pawan Gupta, the fruit seller were arrested in Delhi.

The unnamed juvenile from Badayu Uttar Pradesh was arrested in Anand Vihar Terminal in Delhi.

Akshay Thakur who came to Delhi to seek job was arrested in Aurangabad.

### Conviction

On 10<sup>th</sup> September, 2013, four of the adult victims (Mukesh Singh, Vinay Sharma, Pawan Gupta and Akshay Thakur) were sentenced with **death penalty**.<sup>30</sup>

Ram Singh, who was driving the bus, committed suicide in the Tihar Jail.

The sixth accused (unnamed juvenile) was declared as 17 years 6 months old on the day of the crime by Juvenile Justice Board and was sentenced for three years of imprisonment in a reform facility on 31<sup>st</sup> August, 2013 including the eight months he spent during the trial.

J. Verma Commission passed **the Criminal Law Ordinance, 2013** which replaced the word **'Rape'** in **Sec 375** of the Indian Penal Code by the word **'Sexual Assault'**.<sup>31</sup>

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<sup>30</sup> [http://en.wikipedia.org/wiki/2012\\_Delhi\\_gang\\_rape/](http://en.wikipedia.org/wiki/2012_Delhi_gang_rape/)

<sup>31</sup> <http://kafila.org/2013/02/05/the-criminal-law-ordinance-2013-on-sexual-assault-cut-paste-and-shock-pratiksha-baxi/>

This resulted in the **advent** of the term “Sexual Assault”.

#### Sec 375 of the Indian Penal Code according to the Criminal Law (Amendment) Ordinance, 2013

**Sec 375** has been defined as below:

**Clauses (a-c)** define “Sexual Assault” as penetration of bodily parts or other objects into bodily orifices without consent.

**Clause (d)** holds that a person commits “Sexual Assault” if he/she applies mouth to the penis, vagina, anus, urethra of other person or makes other person to do so with him or any other person without consent.

**Clause (e)** holds that when a person touches the vagina, penis, anus or breast of the person or makes the person touch the vagina, penis, anus or breast of that person or any other person he commits “Sexual Assault”.

#### Exceptions to Sec 375 of the Indian Penal Code

The following are the exceptions:

- a) **Sexual Intercourse** or Sexual Acts by **men with their own wives** who are not below 18 years of age is **not** “Sexual Assault”
- b) In case of “**Marital Rape**”, **wives cannot prosecute** husbands for “Sexual Assault” but **husbands can prosecute** their wives.
- c) The definition of “Sexual Assault” **does not include** penetration or touching for **proper hygienic** or **medical purposes**. The use of the word ‘hygienic’ is totally mysterious as it can allow a crafty advocate to convert a “Sexual Assault” into proper hygienic penetration.
- d) This ordinance **does not exclude** the “**two finger test**”.

### Meaning of the word 'Rape' after the Criminal Law Ordinance, 2013

Unlike "Sexual Assault", the definition or the scope of the word 'Rape' has become much broader. It includes all forms of **non-consensual penetrative sexual acts by men beyond vaginal penetration.**

### Distinction between 'Rape' and 'Sexual Assault' in India

Rape	Sexual Assault
1. It was under Sec 375 of the Indian Penal Code before the Criminal Law Ordinance, 2013	1) It has replaced the word 'Rape' and is included under sec 375 of the Indian Penal code after the Criminal Law Ordinance, 2013
2. The definition is much broader.	2) The definition has a narrow and restricted aspect.
3. 'Rape' can only be exercised by men over women.	3) 'Sexual Assault' is gender neutral and can be exercised by both men over women and vice versa.
4. It includes all forms of non-consensual penetrative sexual acts by men beyond vaginal penetration i.e. the definition is not only restricted to penetration in the vagina of women.	4) Acts like penetration of penis or any object or any part of the male body within the vagina, mouth, urethra or anus of any person, application of force or touching private organs constitute 'Sexual Assault'.

### Kinds of Sexual Assault

The activities falling under "Sexual Assault" are:

- **Rape-** This includes all forms of **non-consensual penetrative sexual acts by men beyond vaginal penetration.**

- **Groping-** **Touching** or **fondling** of another person in a sexual way (including through clothing) using the hands without other person's consent.<sup>32</sup> Touching a person's body who has given **consent** during sexual activity, during **massage** or **medical examination** is not groping. The term extends to clumsy, selfish or inappropriate sexual touching where there is **absence of consent** of the victim.<sup>33</sup>

#### **Areas of the body groped**

##### 1) In case of **females-**

- a) buttocks
- b) breasts
- c) thighs

##### 2) In case of **males-**

- a) penis
- b) testicles
- c) Buttocks of a man

- **Forced kissing-** The word 'kissing' means to touch or caress with the lips to show affection, love and greeting.<sup>34</sup> Forced kissing includes kissing a person forcefully i.e. **without consent.**
- **Child Sexual abuse-** The other name for child sexual abuse is **child molestation.** The word molestation means disturbance, annoyance or subjection to unwanted or improper sexual activity.<sup>35</sup> It is a form of child abuse<sup>xii36</sup> in which an adult or older adolescent<sup>xiii</sup><sup>37</sup> uses a child for sexual stimulation.<sup>38</sup>

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<sup>32</sup> [http://en.wikipedia.org/wiki/Sexual\\_assault](http://en.wikipedia.org/wiki/Sexual_assault)

<sup>33</sup> <http://en.wikipedia.org/wiki/Groping>

<sup>34</sup> <http://www.thefreedictionary.com/kiss>

<sup>35</sup> <http://www.thefreedictionary.com/molestation>

<sup>36</sup> [http://en.wikipedia.org/wiki/Child\\_abuse](http://en.wikipedia.org/wiki/Child_abuse)

<sup>37</sup> <http://en.wikipedia.org/wiki/Adolescence>

<sup>38</sup> [http://en.wikipedia.org/wiki/Child\\_sexual\\_abuse](http://en.wikipedia.org/wiki/Child_sexual_abuse)

**Sexual stimulation** is any stimulus that leads to sexual arousal i.e. sexual desire and **orgasm**<sup>xiv 39</sup>.

Physical sexual stimulation consists of touching of sensitive zones of body or the erogenous zones.

#### **Forms of physical sexual stimulation**

- a) **Masturbation**- This includes the sexual stimulation of one's own genitals usually to the point of orgasm with hands, fingers, everyday objects or sex toys.<sup>40</sup>
- b) **Erotic massage**- This includes massages techniques by a person on another person's erogenous zones i.e. sensitive zones to enhance sexual arousal.<sup>41</sup>
- c) **Sexual intercourse**- This includes the insertion of male penis into the female vagina for sexual pleasure or reproduction in case of human beings. The other name for sexual intercourse is vaginal intercourse or vaginal sex.<sup>42</sup>
- d) **Hand job**- This includes the manual stimulation of male's penis by someone else usually to the point of orgasm or ejaculation<sup>xv43</sup> for sexual pleasure.<sup>44</sup>
- e) **Fingering**- This includes a type of sexual activity that involves penetration using one or more fingers in the genital parts. This is basically prevalent among females that include insertion of fingers in the vagina or rectum.<sup>45</sup>

#### **Forms of child sexual abuse**

- a) asking or pressuring a child to include in sexual activities
- b) indecent exposure of the genitals, female nipples etc
- c) forcing a child to produce child pornography

with the intent to gratify one's own sexual desires.

#### **Place of occurrence**

- a) home
- b) school
- c) work places where child labour is prevalent

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<sup>39</sup> <http://en.wikipedia.org/wiki/Orgasm>

<sup>40</sup> <http://en.wikipedia.org/wiki/Masturbation>

<sup>41</sup> [http://en.wikipedia.org/wiki/Erotic\\_message](http://en.wikipedia.org/wiki/Erotic_message)

<sup>42</sup> [http://en.wikipedia.org/wiki/Sexual\\_intercourse](http://en.wikipedia.org/wiki/Sexual_intercourse)

<sup>43</sup> <http://www.thefreedictionary.com/ejaculate>

<sup>44</sup> <http://en.wikipedia.org/wiki/Handjob>

<sup>45</sup> <http://std.about.com/od/glossary/g/Fingering.htm>

- **Sexual Harassment-** This includes bullying or coercion of a sexual nature, or the unwelcome or inappropriate promise of rewards in exchange of sexual favors.<sup>46</sup> The definition varies with jurisdictions of each and every country. In **India**, according to **Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)**, “Sexual Harassment” at a workplace is violation of-

- a) women’s right to equality (Art 14 of the Indian constitution)
- b) right to life (Art 21 of the Indian Constitution)
- c) right to liberty (Art 21 of the Indian Constitution)

It creates an insecure and hostile work environment and therefore prevents them from achieving their goal and growth.<sup>47</sup>

#### **Acts under Sexual Harassment (whether directly or by implication)**

- a) Physical contact or advances
- b) A demand or request for sexual favors
- c) Making sexually colored remarks
- d) Showing pornography
- e) Any unwelcome physical, verbal or non-verbal conduct of sexual nature

- **Domestic Violence-** It is also a form of sexual violence which is predominant against women especially in India. Victimization continues in India even after the protected legislation against women under the “Protection of Women from Domestic Violence Act”.<sup>48</sup>

#### **Punishment of Sexual Assault in India after the Criminal Law Ordinance, 2013**

The following are the punishment that has been prescribed in the Indian Penal Code after the Criminal Law Ordinance, 2013:

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<sup>46</sup> [http://en.wikipedia.org/wiki/Sexual\\_harassment](http://en.wikipedia.org/wiki/Sexual_harassment)

<sup>47</sup> <http://www.slideshare.net/sukanya.patwardhan/law-the-sexual-harassment-of-women-at-workplace>

<sup>48</sup> [http://en.wikipedia.org/wiki/Domestic\\_violence\\_in\\_India](http://en.wikipedia.org/wiki/Domestic_violence_in_India)

- a) According to **Sec 376 (1)**, in cases of ‘Sexual Assault’, the punishment is **imprisonment for 7 years** to **life imprisonment** along with **imposition of fine**.
- b) According to **Sec 376 (2)** which talks about **aggravated sexual offences** that include-
- i. Sexual Assault by a police officer
  - ii. Sexual Assault committed by armed forces
  - iii. Sexual Assault by a public servant
  - iv. Sexual Assault by management or staff of jail or other place of custody
  - v. Sexual Assault by management or staff of hospital on persons admitted in hospital
  - vi. Sexual Assault by guardian, relative, teacher or any person in authority or trust
  - vii. Sexual Assault by a person in position of social or economic dominance
  - viii. Sexual Assault on pregnant woman
  - ix. Sexual assault on person incapable of giving consent
  - x. Sexual Assault on a person below 18 years of age
  - xi. Sexual Assault on person suffering from physical or mental disorder
  - xii. Sexual Assault causing grievous harm, maiming disfiguring or endangering life,

the punishment is **imprisonment up to 10 years** to **life imprisonment** along with **imposition of fine**.

- c) According to **Sec 376(A)**, in case of ‘Sexual Assault’ causing **death** or **persistent vegetative state<sup>xvi49</sup>**, the minimum sentence of imprisonment has been doubled from **10 to 20 years** which is extendable to **life imprisonment without parole<sup>xvii</sup>** or death penalty.
- d) According to **Sec 376(B)**, in case of ‘Sexual Assault’ by husband over wife after separation the imprisonment is for **2 to 7 years** along with **imposition of fine**.
- e) According to **Sec 376(D)**, in case of ‘Sexual Assault’ by a gang, the punishment is imprisonment for **20 years** to **life imprisonment and compensation for medical and rehabilitation expenses**.
- f) According to **Sec 376(E)**, the punishment for **repeat offenders** is life imprisonment without parole or death penalty.

Changes in the Provisions of Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 after the Criminal Ordinance (Amendment), 2013

<sup>49</sup> [http://en.wikipedia.org/wiki/Persistent\\_vegetative\\_state](http://en.wikipedia.org/wiki/Persistent_vegetative_state)



**The Code of Criminal Procedure, 1973**

<b>Sec 198 B</b>	<b>Cognizance in case of Marital Rape</b>	Complaints of Marital Sexual Assault under Sec 375 B can only be brought by wife against husband. This section is only applicable for <b>separated couples</b> .
<b>Sec 273</b>	<b>Evidence not to be taken in front of accused</b>	When a person below 18 years has been subject to sexual offence or sexual assault and at time of recording evidence of that person, the court must ensure that he is <b>not confronted by the accused</b> .
<b>Sec 327</b>	<b>Camera Proceedings</b>	Camera proceedings should be restricted to <b>sexual assault cases</b> only.
<b>Sec 357</b>	<b>Order to pay compensation</b>	The person convicted for rape or acid attack <b>will not have to pay compensation</b> for medical expenses.

**The Indian Evidence Act, 1872**

<b>Sec 53 A</b>	<b>Evidence of character of previous sexual experience not</b>	The sexual experience includes all sexual offences including <b>rape and sexual</b>
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	relevant in certain cases	assault.
Sec 114 A	Presumption as to absence of consent in certain cases of rape	The certain cases of rape include all the new provisions added on rape and sexual assault.
Sec 146	Questions lawful in cross examination	Questions in case of cross examination of victims should not include his or her general moral character or his past sexual experience with any person.

### Preventive Measures of Sexual Assault

The preventive measures of sexual assault for both victims and culprit are as follows:<sup>50</sup>

- a) **Psychological care and support:** The victims of the sexual assault should undergo various counseling sessions, therapy and support group initiatives to recover from their trauma.
- b) **Programmes for perpetrators:** Sexual Assault is mostly prevalent in industrialized countries where the offenders are mostly male. But the problem lies with the fact that

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<sup>50</sup> [http://en.wikipedia.org/wiki/Initiatives\\_to\\_prevent\\_sexual\\_violence](http://en.wikipedia.org/wiki/Initiatives_to_prevent_sexual_violence)

they always act as deterrent in admitting their offence. So special programmes should be arranged in order to admit their crime and they should be punished publicly in order to make them realize their fault and make them feel guilty. This is known as the 'Reformative' form of punishment.<sup>51</sup>

- c) **Legal reforms:** In various countries certain laws have been made regarding 'Sexual Assault' which says that whenever it happens the whole incident should be reported to the police station in order to prevent such violent acts and prevent the victims in a much better way. However other reforms include:
- i. Broadening the definition of 'Rape' (which also took place in India)
  - ii. Reforming the rules on sentencing and admissibility of evidence
  - iii. Removing the requirements of victim's accounts to be corroborated (1983, amendment to Canadian Laws)
- d) **Ban on advertisement:** Most importantly, a ban on publishing and telecasting offences of sexual violence should be stopped immediately in order to prevent other people from committing such offences.
- e) **International Treaties:** Various International Treaties regarding prevention of sexual violence are:
- i. the Convention on the Elimination of all Forms of Discrimination Against Women (1979)
  - ii. the Convention on the Rights of the child (1989) and its Optional Protocol on the Sale of the Children, Child Prostitution and Child Pornography (2000)
  - iii. the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (1984)

## Conclusion

After the Delhi Gang Rape, though the rape laws and laws regarding other sexual violence have been broadened and changed a lot, the Indian Judiciary still remains reluctant in fields of punishment. So day by day the victims and offenders of sexual violence are increasing. Hence it is posing a serious threat to common people specially girls. The Indian Judiciary is outdated

<sup>51</sup> [http://www.legalserviceindia.com/articles/pun\\_theo.htm](http://www.legalserviceindia.com/articles/pun_theo.htm)

**machinery** in respect of punishing offenders including sexual offenders. Standing in this 21<sup>st</sup> Century even, women are an **“open book”** for men as always has been. This is due to discrimination on gender and inequality between the standards of both men and women. According to various people **“Sexism is a social Disease”**.<sup>52</sup> Giving men a higher seat has always been a common norm of most of the societies. With technological advancement though the world is becoming modern, but the mentality and outlook regarding **“Gender and Inequality”** remains the same. Hence besides legal reforms, this outlook should be immediately changed in order to attain a healthy society and make women feel safe and more protected.

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- <sup>i</sup> **Threaten** means the act of expressing or indicating the feeling of danger or harm
- <sup>ii</sup> **Coerce** means the act of forcing, compelling or pressurizing an individual to do a certain act against his or her will
- <sup>iii</sup> **Perpetrator** means the person responsible for or the person who has committed a certain act
- <sup>iv</sup> **Victim** means a person who is harmed or injured by another
- <sup>v</sup> **Penetration** means the act or process of inserting or perforating something
- <sup>vi</sup> **Penis** is the male reproductive organ in higher vertebrates which is used for transfer of sperm during sexual intercourse. In humans and most other mammals it is made up of erectile tissue and is used for urination
- <sup>vii</sup> **Manipulation** means the act of arranging, managing, controlling or operating in a skillful and shrewd manner
- <sup>viii</sup> **Fondling** means the act of caressing, touching, pulling, massaging or kneading.
- <sup>ix</sup> **Sexual contact** means the touching of the victim's or defendant's or any intimate part of a person's body or the intentional touching of the clothing covering for the purpose of sexual arousal or gratification.
- <sup>x</sup> **Indictable Offence** means an offence which can be tried on indictment by a judge and jury at the crown court. The word 'indictable' means liable to be accused or cause for such liability.
- <sup>xi</sup> **Summary conviction** is being sentenced in cases of **summary offences** which are tried by a judge alone. They cannot be tried by a jury.
- <sup>xii</sup> **Child abuse** is the physical, sexual or emotional maltreatment or neglect of a child.
- <sup>xiii</sup> **Adolescent** means a person who is going through the transitional age of physical and psychological development that will last from puberty to adulthood.
- <sup>xiv</sup> **Orgasm** is the sudden discharge of accumulated sexual tension during the sexual response cycle resulting in muscular contraction of the pelvic region leading to sexual pleasure.
- <sup>xv</sup> **Ejaculation** means the sudden discharge of semen from the urethra of the male penis during orgasm.
- <sup>xvi</sup> **Persistent Vegetative State** means a state of disorder of consciousness where the victim suffering from severe brain damage is in a state of partial arousal rather than true awareness. The condition of first 4 weeks is called **vegetative state** and after that **permanent vegetative state** or **persistent vegetative state**.
- <sup>xvii</sup> **Parole** means the time period in which a prisoner is released before his estimated time of conviction.

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<sup>52</sup> <http://www.indiatogether.org/c/gender-violence>