

Rape Victims in Kerala

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Discussion Paper No. 52

**Kerala Research Programme on Local Level Development
Centre for Development Studies
Thiruvananthapuram**

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English
Discussion Paper

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First published 2003

Editorial Board: Prof. P. R. Gopinathan Nair, H. Shaji

Printed at:

Kerala Research Programme on Local Level Development

Published by:

Dr K. N. Nair, Programme Co-ordinator,

Kerala Research Programme on Local Level Development,

Centre for Development Studies,

Prasanth Nagar, Ulloor,

Thiruvananthapuram 695 011

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www.krpcds.org

Cover Design: Defacto Creations

ISBN No: 81-87621-55-9

Price: Rs 40
US\$ 5

Contents

1.	Introduction	5
2.	A Short Survey of Literature on Rape	9
3.	The Background: Growth of rape cases in India and Kerala	21
4.	Rape Episodes in Kerala	33
5.	Rape Victims and Rapists	39
6.	Police, Judiciary, and Medical Personnel	53
7.	Conclusions and Suggestions	58

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1. Introduction

Gender discrimination is a universal phenomenon. Discrimination against women is more predominant in Asian countries. The Report on Human Development in South Asia (2001) underlines the inherent sex discrimination that exists in Asian society. Gender-biased customs, beliefs, superstitions, behavioural training, and mythology are used as tools to subjugate women and maintain them in oppression. Though all human beings are born with equal physical and mental capability and potential, men, who are in power and authority, which is the hallmark of patriarchy, suppress women. Ironically, women are yet to understand the core issues related to gender discrimination and consolidate their resistance in this matter, mainly due to the internalisation and reinforcement of certain values of an ideal wife, ideal mother, and ideal daughter imposed by social customs and supported by religious teachings. The discrimination starts even before birth; female foeticide and infanticide, neglect of health of the female child, and gender-biased feeding practices are rampant in the life of women. Discrimination is extended to all spheres of life – social, political, economic, and cultural. Gender discrimination is deeply ingrained in the system with the help of the ideology of patriarchy, which “limit[s] and confine[s] women to subordinate roles”. “The culture of patriarchy is deeply entrenched in the region and gender biases are held not only by men but

ACKNOWLEDGEMENTS: The study on Rape Victims in Kerala was rendered possible by the support extended by Kerala Research Programme on Local Level Development (KRPLLD). Dr K. Narayanan Nair, Programme Co-ordinator of KRPLLD has been a great source of inspiration. The members of the Advisory Committee and staff of KRPLLD secretariat have also been very supportive. We thank them all. The success of this study has largely depended on the co-operation of various categories of respondents, particularly the victims of rape and the members of their families. Though our interviews were to them a disturbing reminder of their past traumatic experiences, all of them were co-operative to the maximum extent possible. Others like police officials, lawyers, public prosecutors, judges, doctors, psychiatrists, psychologists, social workers, and representatives of NGOs gave valuable comments on this issue. This helped us to stay focused on the study (We keep their names confidential). We also acknowledge with gratitude the co-operation and assistance of the librarians and staff of Centre for Development Studies, University of Kerala. Institute of Management in Government, State Legislative Library, Police Training College, Bar Association, Loyola College, University Departments at Kariavattom, Law Academy, Law College, and Medical College, Thiruvananthapuram for their whole-hearted support and co-operation and providing all the necessary materials and information. We are also grateful to the officials of the State and District Crime Records Bureaus, State Commission for Women, Police Women's Cell, and Office of the Police Commissioner for providing us with necessary statistical data. Thanks are also due to Ms Santhi Krishnan, Ms Kavitha C, Mr Baby Prasad, and Mr Lukose Jacob who helped us immensely in locating and interviewing the victims; and to Ms Asha Susy George for taking pains in typing several drafts of this report. There are several others who helped us in this endeavour, whom we have not acknowledged by name. Our heartfelt thanks are due to them all.

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also by women”. Women always internalise the concept that the hard work they do for their family is their duty; and therefore any hardship, pain or exploitation attached to it is acceptable.

Kerala witnesses large scale violence against women, including rape in spite of significant social development. Statistics available with various statutory bodies like Crime Records Bureau, State Commission for Women, and Police Women’s Cell reveal that the enormity crimes committed against women in Kerala is alarming.

The study

In order to understand the gravity of the situation related to the crimes committed against women, particularly taking into consideration one of the worst prone crimes, we have undertaken a study on rape victims in Kerala. Secondary sources clearly show that incidents of rape cases are substantially high in Kerala. This, despite the fact that the unreported rape cases would far outnumber the reported ones.

Rape is universally considered an enormous crime against women. In reality, rape “has been described as a primary mistrust of control in a patriarchal society and often used as a mechanism of revenge or punishment” (Human Development in South Asia, 2000). At the same time, rape is also used as a challenge of the honour of the male members of the family in various circumstances. The act of rape occurs usually due to various reasons such as an explosion of pent-up sexual impulse, which is motivated by sex desire, an impulse to punish or hurt the victim, or as part of robbery or terrorist activity by an aggressive criminal.

In the Indian Penal Code, rape is defined in Sections 375 and 376 as an offence cognisable, non-bailable and non-compoundable. Rape is defined universally “as intercourse by force, against the will of a woman”. The offence of rape is legally established by the fact of penetration, however slight. In this context, the term “consent” becomes important and has been misinterpreted often. Thus the trial of rape cases is an interpretation of legal terminologies with a human touch.

Following are the broad and specific objectives of the study:

Broad objective

- (i) The broad objective of this study is to look into the details of gender discrimination and the inherent ideology of patriarchy that influences rape incidents.

Specific objectives

- (i) To study, in depth, the post-rape condition of the victims – physical, mental, social, and moral – and to suggest remedial actions, if necessary;
- (ii) To study the role of the police and the crime-investigating agencies, medical agencies, judiciary, and NGOs in assisting the rape victims and inflicting just punishment on the offenders;
- (iii) To study the familial situation of the rape victims - prior to and after the incident; and

(iv) To propose necessary amendments to the existing rape laws.

Relevance of the study

As stated elsewhere, the incidence of rape is on the increase. The number of cases reported by various agencies substantiates this contention; in fact, the actual number of cases could be much higher as most cases go unreported to the concerned authorities owing to the social stigma attached to rape.

Rape victims are literally outcasts in our society. The members of the victims' families, relatives, and neighbours always keep the victim socially degraded. The media report rape cases in a sensational way, which again affect the social status of the victims adversely. In this context, it is important to understand the magnitude and the reality of the rape cases and to propose measures not only to alleviate the agony of the victims but also to modify systems to support the victims and to prevent rape incidents. It is also important to strengthen the existing structures like police, judiciary, and health care in dealing with such a sensitive social issue. Necessary modifications to the existing laws related to rape also need to be studied.

Methodology

It was originally intended to do 15 case studies of rape victims selected from different districts in the State. Representative samples of the victims would be taken from Scheduled Castes and Scheduled Tribes in order to verify any special vulnerability that these communities face. All the case studies were proposed to be taken from among the cases in which judgements had been pronounced. Personality assessment test with the help of experts was planned to be done to identify personality variables that might have contributed to the rape situation. Recorded data such as police documents, court documents, and newspaper reports were the source materials.

Though identification of rape cases for which judgements had been given and conduct of interviews with rape victims and their family members were rather difficult, we were able to identify 40 reported cases from different police stations, NGOs and State Commission for Women. Out of these 40, we conducted personal interviews of 30 victims. In 19 out of the 30 cases, judgements had been given and in 11 judgements were awaited.

We had to visit the families of the victims several times for personal discussion with the victims, family members, neighbours, and local people. A free-flowing and semi-structured interview schedule was also used during the in-depth interviews. The investigators also observed the non-verbal behaviour and other circumstantial evidences during the interviews in order to do a fairly vivid situational analysis.

We also did detailed interviews with various categories of people involved in the processes of dealing with the reported rape cases such as police officials, doctors, lawyers, judges, police surgeons, psychologists, psychiatrists, social workers, and leaders of women's organisations.

Limitations of the study

The following are some of the limitations of the study:

- (i) Getting into the different components of the study such as identification and personal interviews with the victims posed initial hurdles since social stigma is attached to rape. We were able to surmount this difficulty to a large extent.
- (ii) Unlike other interviews in research studies, repeated visits by the interviewer were necessary to get into the details. Yet it is possible that we have not succeeded in eliciting all the required information.
- (iii) It was rather difficult to obtain court judgements on rape cases from various courts due to strictures pronounced by the Supreme Court for maintenance of complete confidentiality of such cases.
- (iv) It was intended in the study to assess the personality variables of the victims that might have contributed to the rape incidents together with their post-rape behavioural changes. However, this could not be achieved to the desired extent due to the following problems:
 - (a) Interviews with the victims were conducted after several years of the incident and obviously pre-rape personality variables could not be gauged in such a situation (our sample included only cases with court judgements, which took several years for the judgements to be pronounced).
 - (b) Objective and projective measures of personality have to be used to assess the personality variables of the rape victims. Such an assessment is possible only with the help of a team of psychiatrists, clinical psychologists, medical social workers, and psychiatric social workers. Organisation of such teamwork was beyond the purview of the study.

No secondary data were available on rape cases in Kerala. No study on rape cases exclusively of Kerala exists. We had therefore little material to pattern out study or to use as guidelines.

2. A Short Survey of Literature on Rape

Definition of rape

Rape has been defined from various angles. The dictionary meaning of rape is “the act of taking anything by force”. In legal terms rape is a serious offence of indecent assault on a female committed with the intent of knowledge to outrage her modesty. In the Indian Penal Code, rape is categorised under “offences against human body”. But no separate law exists for rape. “Rape is the vilest form of violence against a woman. Perhaps, the only one where the victim, the woman, has to carry the stigma of the society for the rest of her life in spite of the fact that she is not a consenting party to it” (R. L. Gupta). “Rape is an assertion of power and not an act of lust” (PURDR Study, 1999). Violence on women is an extension of ‘patriarchy’, which means ‘male rule’. The two main features of patriarchy are sexual power and supremacy. By rape it is asserted that “dominance is the male temperament and subordination the women’s” (Pandey, 1988). Rape is a conscious process of intimidation by which man keeps woman in a state of fear in the confidence that the victim will not reveal the event to others. It is not like murder to him, though in actuality he murders the life of a woman.

Rape has long been considered a crime against property – the woman as man’s property. Grassroots organising by women has brought about legal and social changes, and rape is now recognised as a crime. Women’s agitation movements have affected governments and bureaucratic machinery in different parts of the world. Rape became an important issue for the newly evolving autonomous women’s movement during the early 1980s (Chaya Datar, 1993). The immediate trigger was the infamous Supreme Court judgement in the Mathura Rape Case. The national level campaign in the Mathura rape case, in which the apex judiciary acquitted the accused, who were policemen, on grounds of lack of proof of resistance offered by the woman and her questionable moral character, brought to light the special responsibility of the state and its agencies in protecting the rights of its citizens. The open letter written by four legal luminaries to the Supreme Court brought out the disadvantages at which the vulnerable sections of society are placed, *vis-à-vis* the state machinery.

Similar cases of custodial rape in the succeeding years, namely, the Rameeza Bee case and the Maya Tyagi case, served to mobilise large sections of women against sexual violence. The state machinery initially responded to the women’s campaigns in the form of the 84th Law Commission’s report and recommendations that prompted the Criminal Law Amendment Bill, 1983, by which custodial rape was introduced as an offence requiring special attention and enhanced punishment.

Though there was progress in the years that immediately followed, several other instances show that the wheel has been rewound. For instance, the rape of Bhavri Bai and the subsequent acquittal of the accused remains another blot on the executive and the judicial systems of the country. The state, entrusted with the task of effecting social change, has shown irresponsibility in protecting the right of a woman, through its inaction and callous handling of the case. In

all the cases, women's groups have vociferously protested against the apathetic system and have been able to secure media support for the cause.

Myths about rape

A lot of myths exist in the society about rape, such as the following:

- (i) Nice girls do not get raped: 'nice' has a circumscribed meaning – girls who do not go out unescorted, who wear dresses which cover their whole body, who never show their ankles in public, and who never laugh loudly but talk in a hushed voice. While none of the mores exist today, the myth remains.
- (ii) Women who get raped are somehow morally corrupt, they are considered to be of loose character and even their tradition is like that. People try to find fault with the victim rather than the culprit. In general, it is implied that "she is looking for sex". Sex is a natural healthy pastime even for women. It is misinterpreted on this premise that man can have sex with any woman and that it is a pastime for women too.
- (iii) Rape is rarely a casual encounter; women ask for it and they get it. If women stay at home, where they belong, they would not get raped. The victim's behaviour contributes towards her own victimisation.
- (iv) Most rapes are false accusations filed by women who are trying to "get even" with some men.
This is a strongly held and prevalent viewpoint. When discussing rape with laymen and women who have had no previous direct contact with the subject, this is their first comment.
- (v) Rape is impossible unless a woman wants it. The victim can resist, ward off attacks and escape. Since she enjoys sex, she consents to it. When detected by somebody, she uses 'vulnerability' as a defence mechanism.
- (vi) An unwilling girl is bound to resist an attempted rape and will not yield her body to a stranger without a struggle.
- (vii) It is impossible to insert a thread into a rotating needle. Similarly, rape is also not possible without the co-operation of women. If a woman continuously resists, rape cannot occur in all its meaning.

All said about rape, there are many persons who hold the view that "since chastity is not the sacred cow it once was, accusing a man of defiling it may get less attention than accusing him of stealing one's stereo set" (Busche, 1994)

The social position on rape discussed in the decision of State of Orissa vs Gangadhar Behuria, 1992 (1) Crimes 441 (Orissa) clears the opinions on the above myths about rape. "Sexual urge or passion for sexual intercourse is a natural human instinct of both the sexes after a certain variable age, which continues for a long period in human life. Restraint and control of passion is a part of civilization. Where restraint falls short and passion becomes uncontrollable, the beastly quality in man or woman is revealed. Sexual acts and ancillaries arousing passion are not made public in our society and are kept secret, confining to the male and female involved in it. Where two persons of opposite sex capable of having sexual relationship remain in exclusion, such urge becomes more natural and passion becomes

uncontrollable unless there is self-restraint. This restraint may be on account of learning, training, difference in age, economic position, in social status or the existence of relationship, which is a social prohibition for any sexual relationship”.

The answer to the mystifications of rape lies in the comments by Justice Fathima Beevi: “Ours is a conservative society where it concerns sexual behaviour; ours is not a permissive society as Western and European countries. Our standard of decency and morality in public life is not the same as in those countries. An Indian woman is now required to suffer indignities in different forms, from molestation to rape. Courts must realise that ordinarily a woman will not stake her reputation by levelling a false charge concerning her chastity” (State of Maharashtra vs C. K. Jain – (1990) ISCC 561). Thus the view that women provoke rape is a perverse one.

Rapist

There exist many theories about rapists, and studies on the rapist are an integral part of the question of rape. The problems of rape could never be understood without an analysis of the rape offender and his motivations (Clarke and Lewis, 1977).

“To the rapist, the act is not ‘love’, not ardour and usually not even passion; it is a way of an outlet for his carnal pleasure” (Busch, 1994). However, he forgets that by this act he is debasing and degrading a woman.

For the normal man, rape is unreal. He finds it difficult to have a sex drive when confronted by a crying, pleading woman who complies with his wishes only because of mortal fear of him. All thoughts of sex, which a normal man equates with fun, romance, and mutual admiration, would leave him if the woman really struggles to get free, especially if she were so clearly expressing repugnance for him. This gives rise to the commonly held view that “there is no such thing as rape”.

Though an average man who respects society behaves as suggested above, the rapist does not depend upon sweet compliance for his sexual excitement. He becomes sexually aroused by a victim’s display of resistance. “Rapist is an individual with his own degree of violence, sadism and explosiveness” (Busch, 1994). Rapists are keenly aware that they are committing a crime and they go to great lengths to keep their identity a secret from the victim. A rapist need not be a born criminal. “Any man can rape any woman and it is not at all necessary that he should basically be a criminal” (Sarkar, 1994). The mental framework/attitude of the rapist is different from that of other offenders. For instance, in other crimes, the criminal tries to devastate the prey and he derives pleasure from the pain inflicted on the victim, for example murder; but in rape cases, the rapist does not want to inflict pain on the victim; in fact, he gets satisfaction and pleasure out of the urge. But he derives pleasure at the cost of the victim’s life.

A man usually takes advantage or opportunity of the situation if he feels that the woman’s mental make up is such that she will not report the matter to anyone. Sometimes sexual incompatibility with one’s wife leads to frustration and urges these men to indulge in rape.

Curiosity is the cause of most teenage rapes and sometimes it is also to wreak vengeance on girls or young women.

Victims of rape

Whatever the myths of rape, the trauma of a rape victim is so intense that no sensible person would be able to agree with the arguments favouring the crime. "To the victim rape is not funny" (Hirsch). The victim faces degradation and social unacceptability. "It is a deathless shame or living with death" (Sharma, 1994). It does not only victimise her, but it also leaves a lifelong stigma on the character and dignity of a woman, causing her and her relatives, pain and agony. The mental torture is so deep that it hardly heals and if it heals at all, it takes a very long time to heal. "The woman generally suffers in silence and endures in shame" (Dr Maharaj-Ud-Din-Mir, 1994).

In the case of an unmarried woman, the stigma acts as a hurdle for a married life and she is looked as an outcaste. For no fault of hers she has to endure all the pain, shame and misery. "The married woman loses the love of her husband and her restoration in the family is jeopardised (Sharma, 1982). The family members never show a positive approach to her. Even children lose the trust and security they reposed in her. In Western countries the victims are viewed as damaged goods. The victims are destined to lead a painful life, irrespective of their age and circumstances. For fear of blame, rape victims often remain reticent and withdrawn. Many a time, they attempt to commit suicide out of grief and self-contempt.

The psychological trauma

The victim's response to rape depends on a number of factors. In a 'stranger' rape, (one in which the victim does not know the offender), the victim is likely to experience strong fear of physical harm and death (Carson). In an 'acquaintance' rape, the reaction is apt to be slightly different (Elison, 1977; Frazer & Burnett, 1994). In such a situation, the victim may not only feel fear, but also feel that someone she had trusted has betrayed her. She may feel responsible for what happened and experience guilt. She may also be hesitant to seek help or report to the police out of fear that she will be held partially responsible.

The age and life circumstances of a victim may also influence her reaction (Adam, Everett and O'Neal, 1992). For a child who knows nothing about sexual behaviour, rape may lead to sexual scars and confusion; particularly if the child is told to forget the experience without thoroughly talking it over first (Brown and Finkelhor, 1986).

For young adult women, rape increases their mental conflicts over independence and separation that are normal in this age group. In an effort to be helpful, parents of such victims may suggest to them various forms of withdrawal such as moving back to the family home, acts which may prevent their gaining mastery of the developmental phase.

Married rape victims with children face the task of explaining these experiences to their children. Sometimes the sense of vulnerability that results from rape renders a woman, at

least temporarily, unable to take care of her children. Husbands and boyfriends may also aggravate or assuage the rape victims' reactions by their attitudes and behaviour. Rejection, blaming, uncontrolled anger at the offender or insistence on quick resumption of sexual activity may increase the negative feelings of the victims.

In five areas women experience stress following rape (Cann, 1988):

- (i) Physical disturbances including hyper-arousal
- (ii) Emotional problems: anxiety, depression, low self-esteem
- (iii) Cognitive dysfunction: disturbed concentration and experience of intrusive thoughts
- (iv) Atypical behavioural acts: aggressive, anti-social actions and substance abuse
- (v) Interference in social relationships: sexual problems, intimacy problems, and further victimisation.

Coping behaviour of rape victims

Research on rape victims conducted soon after rapes has provided clear insights into the emotional turmoil and psychological turbulence they go through in coping with their experiences (Burgess & Holmstorm; 1974, 1976).

Anticipatory phase

This refers to the period before an actual rape when an offender 'sets up' a victim and the victim begins to perceive that a dangerous situation exists. In the early minutes of this phase, the victim often uses defence mechanisms such as denial to pressure and an illusion of invulnerability. Common thoughts at this phase are "rape could never happen to me" or "he does not really mean that".

Impact phase

This phase begins with a victim's recognition that she is actually going to be raped and ends when the rape is over. The victim's first reaction is usually intense fear for her life, a fear much stronger than her fear of the sexual act itself. When the victim later recalls her behaviour during the assault, she may feel guilty about not reacting more efficiently (Symonds, 1976).

Post-traumatic recoil phase

This phase begins immediately after a rape (Burgess & Holmstorm, 1974, 1976). Some victims exhibit their feelings of fear and anxiety through crying, sobbing, and restlessness. Others demonstrate their feelings in a more controlled manner masked by a calm, controlled, subdued façade. Most victims feel guilty about the way they had reacted to the offender and wish they had reacted faster or fought harder. "Excessive self-blame has been associated with poor long-term adjustment (Mayor & Taylor, 1986). Physical problems such as general tension, nausea, sleeplessness, and trauma directly related to the rape are common and result in greater use of medical services (Kimerling and Calhoun, 1994).

Reconstitution phase

This phase begins as a victim starts to make plans for leaving the emergency room or crisis centre. It often ends many months later, when the stress of the rape has been assimilated, the experience shared with significant others, and the victim's self-concept restored. Certain behavioural symptoms are typical during this phase.

- (i) Self-protective activities – such as moving to a new residence. The victim's fear is often well justified at this point because even in the unlikely event that the offender has been arrested and charged with rape, he is often out on bail.
- (ii) Frightening nightmares – in which the rape is relived are – common.
- (iii) Phobias – including fear of indoors or outdoors (depending on where the rape took place), fear of being alone, fear of crowds, fear of being followed, and sexual fears – are often observed to develop immediately following the rape.

Aspects regarding reporting of rape

Though crimes against women had been in existence from very early times, it might be seen that they did not use to be properly or promptly reported to the police till recent decades. One reason for the failure, refusal or reluctance to report was the social restrictions and limitations imposed on the fair sex. Going to the police station, subjecting oneself to police interrogation, and facing a court trial were and continue to be, considered humiliating to women. Women preferred to suffer the crimes rather than setting the law in motion. Though times have changed, the society's attitude has not changed much. Even now the society holds not the rapist as the culprit, but the victim as responsible for the happening, such as, putting the blame on her provocative behaviour or attire. "The attitude of society in such cases is to look down upon the women who become victims of crimes" (Kattakkayam, 1999). Women thus become victims of both the violence and the inimical social and legal attitudes, often indifferent to their plight, and at times, holding them responsible for it (UNDP, 2000). Also, the male view of rape is so prejudiced that the crime is rarely reported to the police even if the offender is known to the victim and to the family.

Women fear that crimes against women, if reported, may get reported by the printed and the audio-visual media resulting in undue publicity. They prefer to 'suffer in silence' rather than 'publicise the incident'. Though educated women come forward to report it, the social consequences of such reporting are often damaging to the victims. The only alternative for a rape victim is to hush up everything lest her family should be put to shame. Moreover, if a case is reported, the victim is required to identify the suspect, a stipulation that may cause problems later on.

Rape and Law

Often rape is considered a law-and-order problem. Sexual abuse, including paedophilia, rape and incest, concerns the society more than any other sexual problem. The concern of the society is reflected in "its preferences for treating coercive sex offenders as criminals rather than patients" (Carson). The society, right from its inception, has devised various means to

control the increasing crime rate. The means employed for prevention of this crime has varied from society to society and in the same society from time to time.

Legal provisions

Sections 375 to 376 D of the Indian Penal Code (IPC) deal with the offence of rape. Statutory rape is the offence consistent of having sexual intercourse with a female under 16 years of age; the offence may be either with or without the female's consent.

Punishment for rape

Punishment for the offence of rape is provided under section 376 of IPC. The maximum punishment that can be awarded for committing the offence of rape is life imprisonment provided the woman raped is not the wife of the offender. Sections 375 and 376 of IPC were substantially changed by the Criminal Law (Amendment) Act, 1983. The amended section 376 now prescribes a minimum punishment of seven years imprisonment for the offence of rape. The same amendment introduced several new sections viz. section 376-A, 376-B, 376-C and 376-D. These new sections were introduced with a view to stopping sexual abuses of women in custody, and care and control by various categories of persons, which though not amounting to rape, were, nevertheless, considered highly reprehensible. Under the amended provisions the accused is presumed to be guilty and the burden to prove non-guilty rests with the accused himself, a clear departure from the earlier viewpoint of law.

Consent

The question of consent is, by far, the most important in a rape case, and the law centres on the term 'consent'. The important aspect on which the defence argues is 'consent' and hence it is of vital consideration. Consent may be expressed or implied. If it is an expressed consent, a case will seldom be taken to court; and even if taken to court it will have to consider whether such consent was likely to have been given by the prosecutrix. If consent is obtained before the act, it is not an offence.

The terms in the statute are clarified through various comments and rulings by the venerable judges on the cases regarding rape. Even now the courts follow the precedents set by the earlier judgements and opinions from individuals of high legal standing. The following are some of the explanations of term 'consent' given in the law on rape:

- (i) Post-sexual intercourse consent is no consent.
- (ii) Consent by fraud or mistaken belief is no consent.
- (iii) Consent given by a person unable to understand the nature of the act is no consent.
- (iv) Consent by a girl under 16 years of age is no consent.
- (v) Passive submission is not consent.
- (vi) Submission under the cloud of fear and terror is no consent.

Consent means voluntary participation on the part of the woman. “Every consent involves submission, but every submission is not an indication of consent” (Arjun Rain vs State, 1960, CrLJ, 849 AIR, 1960, Punj 303). Consent or absence of consent is usually inferred from attendant circumstances.

According to Modi’s Medical Jurisprudence, “an unwilling girl is bound to resist an attempt of rape and is expected to suffer injuries on that account. Absence of injuries rises to an inference that she was a consenting party” (Babu vs State of Rajasthan). Consent or compulsion is to be judged on a consideration of the victim’s statement and other corroborative evidence and attendant circumstances following the act of sexual intercourse (Gopi Sankar vs State of Rajasthan). Defence lawyers use the aspect of consent to win their cases. It is the only offence in which ‘resistance’ or ‘degree of resistance’ is measured as proof of consent to the act.

Penetration

Penetration is sufficient to constitute the sexual act. “Even vulval penetration has been held to be sufficient for conviction in cases of rape”. In Anthony vs Baktavatsahi (1976 Cr. LJ. 929; AIR 1960, Mad. 308), the medical evidence proved that there was penetration, although very slight, and so the offence of rape was deemed complete.

In a case of rape, proof of actual penetration is essential; mere assault will not be sufficient. To constitute the offence of rape it is not necessary that there should be complete penetration of the penis with emission of semen and rupture of hymen. Partial penetration within the *labia majora* of the vulva, with or without emission of semen, or even an attempt at penetration is sufficient to complete the offence (Bhudem Lal vs State 1961 Cr. L.J. 689). In Karichlipa Goudan case (AIR 1942, Mad. 285, 23 Cr. L.J. 576, 199 IC 742) it was held that “conviction in rape cases depends entirely on the credibility of the evidence of the woman; the other evidences are merely corroborative. The only witness who can prove this fact is the victim herself.

According to Modi’s Medical Jurisprudence and Toxicology (17th edition, pp.335), girls below the age of 14 years have very narrow vaginal orifice that even the little finger cannot be admitted. If the vaginal orifice is large enough to conveniently admit two fingers, the hymen may not remain intact; it is then assumed that sexual intercourse has taken place. In case of girls below 14 years of age, the disability of the vaginal orifice has to be taken into account. In the event of penetration these organs cannot escape injuries and at least positive signs of violence will be noticed. If there is a sign of injury, an attempt at rape has been committed. Though rupture of the hymen is by no means an essential medico-legal evidence to predict a sexual intercourse in a case of rape, the courts are cautious in accepting every story of penetration without rupture as amounting to rape (Maharaj Bux Singh vs State of U.P., 989 AIR). In short, penetration is a must for prosecution of the accused person under section 376 of IPC.

Attempt

Attempt to commit rape is also punishable with imprisonment for life. There is a very thin line of distinction between the two expressions 'attempt' and 'penetration'. There are various stages in the committal of an offence. A culprit first 'intends' to commit an offence. In the second stage, he makes 'preparation' for committing an offence. If the attempt succeeds, he has committed the offence and if he fails, he is said to have made an attempt. 'Attempt to commit an offence', therefore, commences as the next step after the completion of preparation. The moment he takes necessary steps towards committal of an offence after preparation, it is said that he has made steps (Abhayanand Misra vs State of Bihar, AIR 1961, SC 1698). Attempt begins where preparation ends. Every act of rape or attempted rape does involve an indecent assault. Punishment for attempt at committing rape is covered under section 511 IPC.

Evidence

Another important aspect of the rape trial is 'evidence' and 'proof'.

Statement of the prosecutrix

In order to establish the charge of rape, the statement of the prosecutrix, who is the victim, is the most important. It is difficult to find eyewitness to the occurrence, as crimes of this nature are committed in secrecy and away from the gaze of others. As a matter of prudence, corroboration is insisted upon. Corroboration may be found through circumstantial evidence and medical examination and/or testimony.

The observation made by the court in the case of Bharwada Bhoginbhai Hirjibhai (sect. P.224, para 9) stands out as a landmark judgement. "In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society". Similarly, the court has appraised in the same case thus (sec. Pp 225-226, para 10): "Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or woman in India make false allegations of sexual assault, because:

- (i) A girl or a woman in the tradition-bound non-permissive society of India would be extremely reluctant even to admit that any incident that is likely to reflect on her chastity had ever occurred.
- (ii) She would be conscious of the danger of being ostracised by the society or being looked down by the society including by her own family members, relatives, friends, and neighbours.
- (iii) She would have to brave the whole world.
- (iv) She would face the risk of losing the love and respect of her own husband and near relatives and of her matrimonial home and happiness being shattered.

- (v) If she were unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family.
- (vi) It would almost inevitably and almost invariably result in mental torture and suffering to herself.
- (vii) The fear of being taunted by others will always haunt her.
- (viii) She would feel extremely embarrassed in relating the incident to others, being over-powered by a feeling of shame on account of her upbringing in a tradition-bound society where, by and large, sex is a taboo.
- (ix) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy.
- (x) The parents of an unmarried girl, as also the husband and family members of a married woman, would want to avoid publicity on account of the fear of social stigma to the family name and family honour.
- (xi) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence.
- (xii) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross-examination by the counsel for the culprit and the risk of being disbelieved, acts as a deterrent”.

The above judgement is inconclusive of all aspects favouring the statement of a victim. Further, it is held that “a prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime”. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix, it may look for evidence, which may lend assurance to her testimony short of corroboration required in the case of an accomplice. If a prosecutrix is an adult and of full understanding, the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. Therefore, ordinarily the evidence of a prosecutrix who does not lack understanding, must be accepted. To insist on corroboration is to equate a woman who is a victim of the lust of a man, with an accomplice to a crime and thereby tantamount to insult of womanhood.

Corroboration

No rule of practice stipulates that there must, in every case, be corroboration before a conviction can be allowed to stand. It would be impossible, as well as dangerous, to formulate the kind of evidence that should be regarded as corroborative. It is not necessary that corroboration should be in respect of the statement of the prosecutrix. It may be in the form of circumstances as well. The requirement of corroboration necessarily lies in the naturalness of the story as unfolded by the victim. Corroboration of each and every part of the statement of the victim is not essential. Corroboration is required in the statement of a victim of rape, who is a child of tender age. The statement of the child victim to her mother after the incident is one form of corroboration, and how much credibility is attached to that statement is a different matter. Necessity of corroboration is a matter of prudence remaining in the mind of the judge (*Rameshwar vs State of Rajasthan*, AIR, 1952, SC 54). Though

corroboration is an essential requirement in rape cases, the court has the discretion to accept the uncorroborated testimony of the victim. Evidence that corroborates the testimony must be independent and must affect the accused by connecting or tending to connect him with the crime. "In evaluating the evidence of the prosecutrix in rape cases, extra care and caution should be exercised to ascertain that the prosecutrix has not cooked up a false case against an innocent person" (Godhvi Ayadan Banesang vs State of Sau, LR, 170). As a part of investigation in rape cases, the victim and the alleged rapist should be subjected to medical examination. Mere finding of spermatozoa on the quilt of the accused, by itself, may not have much evidentiary value but when considered together with the statement of the girl that the accused raped her on the quilt becomes a strong evidence to lend corroboration to the prosecution case (Harendra pal vs Emperor, AIR 1949, Cal. 461, 44 CWN 830). However, it is well known in the medical world that the examination for the presence of semen loses all importance after 24 hours of the performance of the sexual intercourse.

Medico-legal testimony in rape cases

It is difficult for any doctor to furnish his opinion with exactitude and precision on the exact time when the particular injury had been inflicted or the sexual act was perpetrated. The assessment of period of incident as 24 hours prior to the presentation of the victim before the doctor for medical examination is only a rough estimate and it could be even 20 or 18 hours as well. As per the prosecution case, the victim should be produced before the doctor about 18 hours after the incident. When rape is denied by the accused, the allegations can be corroborated through medical evidence on the basis of injuries to the private parts of the victim, injuries to the other parts of the body which develop out of struggle, presence of seminal stains on the clothing of the victim and the culprit, marks of struggle and the presence of semen, at the place of occurrence; in all these cases importance is attached to the subsequent conduct of the prosecutrix.

Age of the girl

Age of the girl is important because in a case of alleged sexual assault where it is alleged that the sexual intercourse was with the consent of the girl, it is for the prosecution to establish that the girl is below the age of 16 years. If it is proved, then her consent is immaterial. So the age is more closely and thoroughly scrutinised. Even absence of injuries or marks of violence, is of no consequence if the prosecutrix is a minor. Ossification test is not held as conclusive evidence for assessment of age. This serves only as a tentative estimation of the age. However, these examinations leading to the estimation of age have legal value; in the absence of direct and more reliable evidence on the point, they serve as the only evidence to be relied upon to base a judgement.

Examination of the accused

Examination of the accused is important to ascertain the physical capability of the alleged rapist to commit the sexual act. The alleged rapist should be a potent man. Generally a male becomes fertile at the age of 13 years and his fertility may last till about 70 to 80 years. Examination of the victim and the accused, coupled with the inspection of the scene of

offence and laboratory tests of clue materials and medico-legal reports are essential to assess the truth or the falsity of the allegations.

Presumption for conduct

When a man is prosecuted for rape or for an attempt to ravish a woman, the defence may make an attempt to emphasise that the prosecutrix was a woman of immoral character. The anti-rape campaign of 1980 after the Mathura rape case resulted in changing this view and brought to focus the question of male violence in rape. The term “patriarchy” emerged in the discussion for the first time. However, the Criminal Law Amendment Act No. 43 of 1983 has changed this respect by inserting section 114-A of the Evidence Act. It cannot be presumed that a woman who is a prostitute cannot complain of rape on the pleas that everybody can take liberty with her person and that therefore statement on this account cannot be taken to be trustworthy. However, the Mathura case, the Bhagpat case, the Maya Tyagi case, and the Rameeza Bee case show that the victims stood stigmatised as ‘prostitutes’, ‘loose characters’, and ‘shocking liars’ and received no sympathy. While some judges make the comments such as ‘flog the rapists’, ‘castrate the rapists’, others keep punishment to the bare minimum (Struggle against Violence, Chaya Datar, 1993).

Conclusion

Of course special privileges are granted to the rape victim under the prevailing laws and rulings. Since there is no uniformity in the interpretation of the law, she has to bear the risk of a negative verdict. The loopholes in the laws and procedures are cleverly manipulated to save the culprits; in most cases, they manage to come out unscathed. In spite of various amendments to the laws, the decisions of various courts show that either the rapists are still being let off on grounds of benefit of the doubt or awarded minimum punishment on various condescending grounds.

3. The Background: Growth of rape cases in India and Kerala

In modern times “aggression has become an endemic facet of human existence” (Menon, 2001), and women and children are the most vulnerable and affected. “The list of crimes that are committed against women seems amaranthine, varying from simple harassment, physical and mental torture, to even denying the very right to exist” (Saxena, 1999). It is sexualisation of torture like rape that stands out as the major crime against women.

India

The Indian rape scenario is horrifying as may be understood from the facts mentioned below.

- (i) A Rape is committed every 54 minutes;
- (ii) Molestation every 26 minutes;
- (iii) Kidnapping or abduction every 43 minutes;
- (iv) Eve-teasing every 51 minutes;
- (v) Dowry death every 1 hour 42 minutes;
- (vi) Criminal offence against women every 7 minutes.

(Source: State of World Population Report, 1999)

In spite of the numerous legislative measures taken by successive governments to counter violence and atrocities against women, the number of reported crimes shows increase year by year (Table 3.1).

All crimes identified under IPC are included in the numbers reported. They are rape, kidnapping and abduction, homicide for dowry, dowry deaths or their attempts, torture – both mental and physical, molestation, sexual harassment (eve-teasing) and importation of girls. The real magnitude of the crime is much higher as a large proportion goes unreported.

Incidence of rape cases in India

Rape cases have risen alarmingly in recent years despite “the government’s watchdog monitoring and the constitutional and legal safeguards provided for women” (Women’s Link, 1999). According to the all-India figures from the National Crime Records Bureau (NCRB), the number of rape cases is spiralling to dizzying heights each year.

The proportion of rape cases to the total number of crimes against women for the past four years has been 12 percent.

Rape situation among the Scheduled Castes and Scheduled Tribes

The reported cases among SCs/STs are comparatively low. This may be taken as a measure of their increased awareness about their rights and their capacity to resist any discriminatory

Table 3.1 Reported rape cases against women (all-India)

	Year	No. of rape reported cases
1.	1971	2,487
2.	1972	2,605
3.	1973	2,919
4.	1974	2,962
5.	1975	3,376
6.	1976	3,893
7.	1977	4,058
8.	1978	4,558
9.	1979	4,300
10.	1980	5,023
11.	1981	5,409
12.	1982	5,427
13.	1983	6,019
14.	1984	6,740
15.	1985	7,289
16.	1986	7,952
17.	1987	8,559
18.	1988	9,099
19.	1989	9,752
20.	1990	10,068
21.	1991	10,410
22.	1992	11,708
23.	1993	12,218
24.	1994	13,208
25.	1995	13,754
26.	1996	14,846
27.	1997	15,330
28.	1998	15,031
29.	1999	15,468
	Total	234,468

Source: Crimes of India, NCRB

practices against them. However, it is also a known factor that the number of cases coming before the courts from among these communities are comparatively low due to non-reporting, caused by various impediments. The rapists and the members of their families, and the law enforcing agencies try to prevent reportage and to suppress progress of reported cases. And a large proportion of cases are settled by compromise, dispensing away the victims on payment of paltry amounts.

The number of rape cases to total crimes against women reported during 1996-'99 is given in Table 3.2.

Table 3.2 Comparison of rape cases against total crimes against women (1996- '99)

Year	No. of rape cases (1)	Total crimes against women(2)	Col. 1 as % of Col.2
1996	14,846	115723	16.3
1997	15330	121265	12.6
1998	15031	131388	11.4
1999	15468	135771	11.4
Total	60,675	504,147	12.0

Source: Crimes of India, NCRB

From 1997-'99, the total number of IPC crimes reported in the case of SC women was 53243 and the number of rape cases accounting for around 9 percent. In the same period, 1030 rape cases against ST women were reported which came to 7.7 percent of the total number of reported cases of violence against them (Table 3.3).

Table 3.3 Comparison of rape cases against total crimes against ST women (all-India), 1997-'99

	Year	No. of rape cases	Total crimes against ST women
1.	1997	315	4644
2.	1998	331	4276
3.	1999	384	4450
	Total	1030	13370

Source: Same as for Table 3.1.

It is evident from the above table that the proportion of total rape cases against ST women to total crimes against ST women was 7.7 percent.

Custodial rapes

Custodial rapes happen in spite of Section 376 of IPC, agitations by women's organisations and amendments in Rape Law. While in 1994, 82 custodial rape cases were registered in India, Orissa with 25 cases topped the list. During 1996 and 1997, six cases annually and in 1998 and 1999, four cases annually were registered (in 1998 one each from Andhra Pradesh, Gujarat, Maharashtra, and Uttar Pradesh and in 1999, two cases from Andhra Pradesh and one each from Haryana and West Bengal). Though the actual number of custodial rapes is likely to be much higher, only a few are come to light and get registered, owing mainly to the influence of police officials who manage to efface evidence and allow the criminals to go scot-free. Of the 27 persons arrested for charges of custodial rape and 19 trials completed, during 1996-'99, none resulted in conviction (Table 3.4).

Table 3.4 Persons arrested and Convicted / Acquitted in custodial rape cases, 1996-'99

	Year	No. of persons arrested	Arrest/Bail pending cases for Investigation	Charge-sheeted	Trial completed	Convicted	Acquitted
1.	1996	12	13	7	1	0	1
2.	1997	6	12	7	3	0	3
3.	1998	8	13	8	10	0	10
4.	1999	1	3	1	5	0	5
	Total	27	41	23	19	0	19

Source: Same as for Table 3.1.

Incest rapes

Though society, culture and law detest sexual intercourse between close blood relations within prohibited degrees of relationship, it is disconcerting to note that incest rape has become a common phenomenon. It is observed that in the year 1999, 398 incest rape cases (2.6 percent) were reported, out of a total of 15468 reported rape cases (Table 3.5).

Table 3.5 Age-wise distribution of reported incest rape cases, 1999: All-India

	Age group	No. of cases
1.	Up to 10 years	36
2.	11-15 years	71
3.	16-18 years	109
4.	19-30 years	146
5.	31-50 years & above	36
	Total	398

Source: Same as for Table 3.1.

Age-wise distribution of rape victims

The fact that the growing tendency of the deviant and defiant behaviour of man in society is manifested as aggressive forms, irrespective of the age of the woman, is clear from the distribution of the rape victims by age groups (Table 3.6).

The above survey of age group of the victims shows that around three-fifths of them are of the age group of 16-30 years; the age group 11-15 years account for more than one-fifth. Even small children, below the age of 10, fall prey to rape, in sizeable numbers.

Rape victims above 30 years come to about 15 percent of the total number of cases. In this age group, about 2 percent of the victims were elderly women above the age of 50 years. Adult women hesitate to report the cases, for fear of loss of face and grave damage to the family and children's future.

Table 3.6 Age-wise distribution of reported rape cases (all-India), 1988-1999

	Year	Below 10 years	11-15 years	16-30 years	Above 30 years	Total
1.	1988	233	1869	5832	1165	9099
2.	1989	369	1965	5646	1772	9752
3.	1990	394	2105	6028	1541	10068
4.	1991	1099	2630	5372	1309	10410
5.	1992	532	2555	7000	1621	11708
6.	1993	634	2759	7033	1792	12218
7.	1994	734	3244	7442	1788	13208
8.	1995	747	3300	7752	1955	13754
9.	1996	608	3472	8281	2485	14846
10.	1997	770	3638	8612	2310	15330
11.	1998	626	3431	8414	2560	15031
12.	1999	600	3069	9908	1891	15468
13.	Total	7346	34037	87320	22189	150892

Source: Same as for Table 3.1.

The fact that the rapists commit the crime without any pangs of conscience is clear as we find rape victims in all age groups. Life is quite insecure for all women – from small children to old haggard women.

Relationship of the rapists and the victims

In most of the rape cases, the rapists were persons known to the victims and their families. In about 7 percent of the cases, fathers or other intimate members of the family or close relatives were themselves the offenders. Neighbours and other persons known to the victims constituted the offenders in more than three-fourths of the cases. Only one-eighth of the offences were the result of offence by strangers (Table 3.7).

Table 3.7. Details of relationship of rapists with victims

	Offenders	Rape cases (No.)	%
1.	Parent/close family member	396	2.6
2.	Relatives	678	4.4
3.	Neighbours	3553	23.0
4.	Other known persons	8366	54.0
5.	Strangers	2475	16.0
	Total	15468	

Source: Same as for Table 3.1.

Though every State ensures free registration of crimes and every effort is taken to register crimes at the police station under whose jurisdiction incidents occur, a large proportion of

cases are unreported due to various reasons including fear of social stigma. Hence, registered figures do not really reflect the magnitude of the crime. Yet, the reported numbers themselves are rising. “Fifty years of independence and still Indian womanhood has remained a case of sociological and institutional victimhood” (K.G. Sreenivasan, *Indian Express*).

Kerala

Kerala is widely considered a model State in India and abroad in terms of social development in spite of its comparatively low per capita income levels. Kerala’s achievements in certain fields like sex ratio, birth rate, infant mortality rate, woman’s life expectancy, literacy rate of women, and use of family planning methods have come up for universal acclaim. According to the 1996 UNDP Report on Gender Development Index, Kerala stands top-most among the Indian States. Out of 137 countries globally evaluated Kerala ranks 80th, a position which is higher than that of India, namely 103rd.

Women constitute 51.42 percent of the population in Kerala according to the 2001 census. The female literacy rate is 87.86 percent, which is much higher than of all-India.

Kerala women are still influenced largely by the religious and social images imposed upon them for centuries. Customs such as child marriage, polygamy, and widowhood have subjugated women of Kerala also, like in any other State in India. The stereotype ideals of women have reduced them to a level of physical, mental, and spiritual subjugation. The dowry system is rampant in Kerala and even educated women comply with this demeaning custom of ‘fixing price money’ (dowry) for themselves. The education received by women has not helped them to come out of the religious customs and traditions, which have kept them in subjugation for ages. The personal laws are still male-oriented.

The internalisation of the idea that a woman’s legitimate place in society is as mother, daughter or wife and that education is just ornamental and not essential to them is widespread in Kerala too. Kerala women tend to be homebound and their individuality is submerged under their domestic roles. In short, Kerala women are not an exception to discrimination on the basis of gender, caste, and class.

Violence against women in Kerala

Crimes committed against women, particularly physical violence, are on the increase in Kerala (Table 3.8).

The total number of crimes against women reported annually increased by more than 30 percent during the 1990s.

Kerala ranks third in criminality rate in India. The total number of cognisable crimes in all the States of India were 17,78,815 in 1998, out of which, Kerala alone accounted for 93,020 (5.2 percent). Crime rate in Kerala lies above the national average level so far as violent crimes are concerned.

Table 3.8 Crimes against women reported in Kerala (1991-2000)

	Crime	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
1.	Rape	197	214	188	193	244	370	579	564	423	552
2.	Molestation	569	523	468	679	826	1129	1512	1768	1643	1695
3.	Kidnapping	73	72	78	105	104	178	149	132	123	89
4.	Eve teasing	5	1	5	3	15	33	90	87	50	69
5.	Dowry deaths (Sec. 304 B)	13	12	8	9	15	23	22	21	31	25
6.	Dowry-related crimes (498-A)	237	290	380	551	676	993	1689	2031	2416	2418
7.	Others*	773	966	767	1005	1433	2244	3265	2870	3057	2678
	Total	1867	2078	1894	2545	3313	4970	7306	7473	7743	7621

* Others include murder, immoral trafficking, wife-battering, child abuse, and desertion

Even in the cases of crimes against women, Kerala has been fast outpacing all-India in the 1990s. The proportion of such crimes in Kerala hovered around three percent of the total number in all-India during the first half of the 1990s; but from 1997 onwards the proportion remained near to 6 percent (Table 3.9).

Table 3.9 Crimes against women (all-India and Kerala)

	Year	No. of crimes against women in India	No. of crimes against women in Kerala	Percentage
1.	1991	74,093	1867	2.56
2.	1992	79,037	2078	2.63
3.	1993	83,954	1894	2.26
4.	1994	98,948	2545	2.57
5.	1995	100,846	3316	3.29
6.	1996	115,723	4970	4.29
7.	1997	121,265	7260	5.99
8.	1998	131,338	7473	5.69
9.	1999	135,771	7743	5.70
	Total	940,975	39146	34.98

Incidence of rape

All forms of violence against women are on the increase in Kerala, as is evident from the figures in Table 3.9. The number of reported cases of rape has been rising quite rapidly during the 1990s (Table 3.10).

Table 3.10 Reported number of rape cases in Kerala (1991-2000)

	Year	No. of rape cases
1.	1991	197
2.	1992	214
3.	1993	188
4.	1994	193
5.	1995	244
6.	1996	370
7.	1997	579
8.	1998	564
9.	1999	423
10.	2000	552
	Total	3524

Source: State Crime Records Bureau

During 1990-2000, the number of reported rape cases increased in Kerala by 217 percent whereas the corresponding increase at the all-India level was much lower, only around 54 percent (Table 3.11).

Table 3.11 Indices of the reported number of rape cases in All-India and Kerala (1990=100)

	Year	Rape cases – All-India		Rape cases – Kerala	
		No.	Index	No.	Index
1.	1990	10068	100.0	174	100.0
2.	1991	10410	103.3	197	113.2
3.	1992	11708	116.3	214	123.0
4.	1993	12218	121.3	188	108.0
5.	1994	13208	131.2	193	110.9
6.	1995	13754	136.6	244	140.2
7.	1996	14846	147.5	370	212.6
8.	1997	15330	152.3	579	332.7
9.	1998	15031	149.3	564	324.1
10.	1999	15468	153.6	423	243.1
11.	2000	NA			217.2

Source: State Crime Records Bureau

Of the 25 States, Kerala, which ranked 13th in rape incidents in 1991, rose to the 10th rank in 1999. Kerala has above-national average rates for reported rape cases in 1998.

District-wise incidence of rape cases in Kerala

The population size of the districts of Kerala varies widely, from 786.6 thousand in Wayanad to 3629.6 thousand in Malappuram in 2001. The incidence of rape cases cannot therefore be

decided on the basis of mere numbers. However, both in terms of absolute numbers and incidence in terms of population size, Palakkad stands way ahead of all other districts.

Table 3.12 District-wise distribution of reported rape cases in Kerala (1998-2000)

	Districts	1998	1999	2000	Total	Population 2001 ('000)
1.	Alappuzha	13	4	18	35	2105.3
2.	Ernakulam	31	34	38	103	3098.4
3.	Idukki	26	23	33	82	1128.6
4.	Kannur	51	25	40	116	2412.4
5.	Kasargod	29	27	22	78	1203.3
6.	Kollam	67	33	49	149	2584.1
7.	Kottayam	35	20	24	79	1952.9
8.	Kozhikode	35	57	39	131	2878.5
9.	Malappuram	46	44	71	161	3629.6
10.	Palakkad	81	57	85	223	2617.1
11.	Pathanamthitta	20	10	7	37	1231.6
12.	Thrissur	44	27	42	113	2975.4
13.	Thiruvananthapuram	46	33	47	126	3234.7
14.	Wayanad	38	28	33	99	786.6
	Total	562	422	548	1532	

Police Women's Cell and Kerala State Women's Commission

With a view to curbing atrocities against women, government machinery including Police Women's Cell and State Commission for Women (SCW) was strengthened in 1996. A Chairperson and a Secretary of IAS cadre head the Women's Commission. The special cell under the police directorate in the 14 districts in Kerala is under the control of one DIG of police with individual cells under the control of a DSP. The purpose of creating such agencies is to help the aggrieved women approach them freely and submit petitions instead of having to go to police stations. Usually women are hesitant to approach police station to file complaints.

The number of petitions received annually in the SCW from 1996-2000 has steadily been on the increase (Table 3.13).

Table 3.13 No. of petitions received in the Women's Commission, 1996-2000

	Year	No. of rape cases	Total no. of cases	Percentage
1.	1996 (since July)	66	1226	5.38%
2.	1997	290	6550	4.43%
3.	1998	389	8926	4.36%
4.	1999	285	6945	4.10%
5.	2000	327	7074	4.62%
	Total	1357	30721	4.42%

Table 3.14 District-wise distribution of cases with State Women's Commission, 1996-2000

	District	No. of rape cases	Total no. of cases	Percentage
1.	Thiruvananthapuram	256	8087	3.17
2.	Kollam	137	3920	3.49
3.	Alleppey	90	2877	2.29
4.	Pathanamthitta	103	1902	5.42
5.	Ernakulam	126	2004	6.29
6.	Kottayam	80	2005	3.99
7.	Idukki	113	1545	7.31
8.	Palakkad	89	2068	4.30
9.	Thrissur	67	1242	5.39
10.	Malappuram	88	1326	6.64
11.	Kozhikode	64	1305	4.90
12.	Wayanad	74	1073	6.89
13.	Kannur	38	816	4.66
14.	Kasargod	32	551	5.81
	Total	1357	30721	4.42

Source: Women's Commission

SC/ST rape cases in Kerala

Table 3.15 shows the number of reported cases of rape of SC women during 1995-2000.

Table 3.15 Rape Cases of ST Women, 1995-2000

	Year	No. of SC rape cases	Total no. of rape cases in Kerala	Percentage
1.	1995	34	244	13.93
2.	1996	33	370	8.9
3.	1997	81	579	13.98
4.	1998	90	564	15.95
5.	1999	56	423	13.24
6.	2000	64	552	11.6
	Total	358	2732	13.1

The percentage of SC rape cases to the total rape cases in Kerala has remained at about 13 percent during the past six-year period.

Table 3.16 Comparison of ST rape cases in Kerala against total rape cases against women

	Year	No. of ST rape cases in Kerala	Total no. of rape cases in Kerala	Percentage
1.	1997	24	579	4.14
2.	1998	23	564	4.07
3.	1999	10	423	2.36
4.	2000	29	552	5.25
	Total	86	2118	4.06

It is observed that rape against ST women accounted for around four percent of the total number of such cases reported in Kerala during 1997-2000 (Table 3.16).

However, it may be noted that the reported number of cases of rape of ST women is small since most of the rape incidents go unreported.

The offenders in the majority of rape cases happen to be persons quite intimately related to or acquainted with the victims (Table 3.17).

Table 3.17 Offenders' relation to rape victims of 1999; Kerala

	Offenders	No. of rape cases reported
1.	Parents or family members	2
2.	Relatives	49
3.	Neighbours	234
4.	Others	138
5.	Total	423

Age-wise distribution of rape cases in Kerala

One peculiarity of rape cases when compared with other crimes against women is that the age of the victim does not contribute in any manner to the incidence of such cases. The picture of Kerala is not very different from that of the other States in India in the matter of age-wise distribution of rape victims (Table 3.18).

The Kerala scenario shows that nearly three-fifths of the victims are in the age group of 16-30 years; the same proportion as in the case of all-India. The next highest group prone to rape is between 11-15 years, which accounts for one-fourth of the total. Cases against children below 10 years of age come to an incredibly significant proportion of five percent. The two incest rape cases reported in Kerala in 1999 were children below 10 years of age.

Table 3.18 Age-wise distribution of rape cases in Kerala: 1998-2000

	Year	Below 10 years	11-15 years	16-30 years	Above 30 years	Total in Kerala	Total in India
1.	1988	0	43	134	28	205	9099
2.	1989	8	53	127	18	206	9752
3.	1990	18	31	93	32	174	10068
4.	1991	16	47	112	22	197	10410
5.	1992	15	58	124	17	214	11708
6.	1993	10	44	109	25	188	12218
7.	1994	9	49	115	20	193	13208
8.	1995	13	89	122	20	244	13754
9.	1996	26	109	196	39	370	14846
10.	1997	34	133	338	74	579	15330
11.	1998	25	146	327	66	564	15031
12.	1999	23	98	251	51	423	15468
13.	2000	22	114	336	80	552	—
	Total	219	1014	2384	492	4109	150892

4. Rape Episodes in Kerala

The State of Kerala born in 1956 has an ignominious record of rape episodes. The kidnapping and raping spree let loose in the 1970s in Avalukunnu *Harijan* Colony Alappuzha district has become notorious. The Thankamani episode in Idukki district, which unfolded in October 1986 where policemen raped *Adivasi* women, was the next. The year 1996 literally shook the conscience of Kerala. The Suryanelli sex racket case of January 1996 revealed the large-scale trafficking of girls under way within the State run by a well-organised mafia network. The flesh traders sell the same girl to several customers, making hell of her life. The flesh trade has assumed wide extraterritorial dimensions and become an iniquitous but lucrative business in Kerala, far more profitable than drug peddling and smuggling; in the latter cases the goods once sold cannot be retained or sold again, but in sex trade, the same woman is sold several times over.

The sex racket cases of Attappadi, Karippur aerodrome, Kovalam, Manarcaud, Kothamangalam, Kollam, Vagamon, Thoppumpadi, and the Calicut Ice Cream Parlour are some of the recent ones brought to public notice by the print and audio-visual media.

The girls are lured on promises of jobs or marriage or access into films and television programmes and duped and subjected to sexual abuse. Once trapped, escape becomes impossible. The girl is drugged or intoxicated heavily, stripped naked, and photographed in the nude. She is gang-raped and then blackmailed. According to Ms Meenakshi Thampan, ex-MLA, “at least 16 to 20 girls have committed suicide in the last three months alone after having been sexually victimised or blue-filmed” (The New Indian Express, 1997). A nauseating aspect of such horrendous episodes is the increasing role played by women themselves in seducing teenage girls into the sex trade. Women are often used as mediators behind the call-girl rackets operated from hotels and women’s hostels.

Even more shocking is the fact that most cases of flesh trade and sale of minor girls happen allegedly with the connivance of the police, politicians, and highly placed bureaucrats. It has become therefore easy for the culprits to escape the dragnet of law with the backup of power, authority, and money. While the victim remains marooned under police ‘protection’ and socially isolated, her character becoming the object of indignant judicial comments, the pimps, the agents, and the rapists wallow free in exploitation.

“There is a black wave of sex crime, a looming underworld here, protected by authorities”, grieved Ms. Sugatha Kumari, former Chairperson of the State Commission for Women. The fact that even mobile phones are used to lure unwary adolescent girls into narcotic abuses and to use them for producing porn films reveals the planned and calculated manner in which this trade is conducted. The raid conducted on 30 August 1997 at a plush brothel and a flat in Thiruvananthapuram found college girls among the victims of rape. “It is not just a case of prostitution or immoral trafficking, but a social atrocity,” commented Justice V.R. Krishna Iyer. The police find it difficult even to book the culprits and reveal their names since the top brass of society with great influence on seats of power are involved in the crime.

Today's Kerala makes it impossible for a woman to move out of home without fear. Even inside home she may feel insecure; any male member, husband, brother, father or son, could turn a potential danger to her. Even in broad daylight it is not safe to travel alone. For instance, see the following newspaper reports:

A third year graduate girl student of the Pandalam NSS College was sexually harassed by her own professors (Pandalam, 07-11-1997); Five criminals gang-raped a housewife in front of her children during the absence of her husband who is working in the Gulf (Kazhakoottam, 13-09-2000); A fisherwoman, while selling fish in the market, was dragged into the bush nearby and gang-raped by four *goondas* after threatening the onlookers with weapons (Thiruvananthapuram, 10-08-2000); A 14-year old tribal girl was raped by a 40-year old man after tying up her mother (Kottayam, 06-10-2000); A mentally handicapped girl was raped by an ex-serviceman who has wife and four children (Thiruvananthapuram, 22-09-2000); A housewife returning from the temple in the rain was dragged into an autorickshaw by three persons and raped in a deserted field (Alappuzha, 30-03-2000); An elderly person raped his daughter-in-law and the victim committed suicide (Neyyattinkara, 08-12-2000); A father raped his 12-year old daughter when she was alone at home (Kollam, 18-11-1997); a six-year old girl was raped by a 17-year old boy after offering her mangoes (Attingal, 19-04-1998); a 11th standard student was sexually harassed by seven boy students of the same school in front of other students and teachers (Kilimanoor, 23-10-2000); three auto rickshaw drivers murdered a physically handicapped woman after raping her (Kollam, 08-03-2000); a forty-year old man raped a four-year old daughter of his neighbour (Thiruvananthapuram, 17-03-2000); a deaf and dumb woman under trial was raped by the driver of the police van inside the van while she was being taken to court (Thiruvananthapuram, 02-08-1996); two sisters working as sales girls in a jewellery store were raped by the employer and an advocate (Kollam, 03-06-1997). The list seems endless.

Each rape incident is a type of its own. In some cases it is rape by physical force - a sudden attack on the victim; in other cases the victim is first lured under some pretext or the other. For example, educated but unemployed girls lured by fake recruitment agencies and poor girls lured by promises of marriage or offer of chance to act in films or TV serials. There are also instances of touts of criminals duping families by false promises of getting their daughters married and then taking the girls to flesh-trade (as was the case in Kariyangad) or of attracting innocent children by offering them toys and chocolates (Valiyathura) and then raping them (as happened in Valiyathura); or alluring women with job offers in the Gulf countries. Incidents like rape of young housemaids by men in the houses of their employment, molestation of girl students by tuition masters, sexual harassment of girls who come for meditation to the church by the priest, and rape of pregnant women during consultation by physicians have been reported in Kerala. Even foreign visitors are not spared.

The rapists hail from all walks of life – doctors, teachers, professors, politicians, bureaucrats, ex-servicemen, workers, college students, vendors – and from all sorts of social and familial relationships – neighbours, acquaintances, strangers, friends, lovers and criminals and even husbands and fathers. Sex offence has no class nor creed. What is really unsettling is the increasing involvement of youth in the crime, particularly youth from affluent families. People are getting increasingly insensitive to rape cases.

The popular responses are found to vary from apathy to downright condemnation of the victims. The victims are branded as immoral not by the public at large alone, but by the rapists, the police, and even the judiciary. In one case, the judgement contained the following remarks: "The victim's lust for sex and money grew presumably, culminating in her craze to have a life of plenty, both in pleasure and pelf; she immersed herself in the activities of a prostitute". As Ms. Ajitha of *Anweshi*, a woman's organisation, who unravelled the Calicut ice cream parlour sex racket case, frustrated by the flaccid response from the government to sex scandals, said, "this is the only instance where the government takes sides with the accused". "Kerala police is freeing a former minister; what to do with the evidence of ongoing sex rackets in view of the politico-bureaucratic black money nexus" (The New Indian Express, 1999). Sex scandals involving ministers is nothing new. The involvement of alleged rape and sexual assaults has been headlined in North India (J.C. Bose case, Hostel case, and Bhanwari case.); but cases of ministers, Member of Parliament, and other prominent public men involved in such scandals in Kerala are reportedly one of the highest in the country.

The most disturbing factor is that instead of apprehending the culprit, efforts are made to play down the incidence of rape. It is accepted that rapists are part of the society and that everyone cannot be a saint. The belief is that "sex is part of our physiology, anatomy, psychology and it is natural too" (Joseph, 1998). It has been even argued that starvation prompts men to commit forcible copulation and that the act cannot be considered a crime. The male chauvinistic society brushes aside the horrible crime as just *streepeedanam* or woman persecution, a new word coined by newspapers. This attitude has led to an incident in Changanassery where a young woman's dead body was taken out of the grave and used for coitus by a necrophiliac.

The crookedness and the criminal mentality of the rapists become obvious by the way they manipulate the situation once their carnal lust is satiated. There are incidents in which the victims of sex crimes themselves create, by their relationship with the offenders or by their unintentional behaviour, situations that result in their victimisation; the rapists, when apprehended, assert that if the victims had not submitted so passively to their entreaties, they would not have committed the crime. The victims are thus indicted further by advancing the argument that the sexual act had been done with their consent. Thus the rapists are considered to be beyond reproach, while the victims are branded the culprits who acquiesce to the act.

Role and attitude of the police in rape cases

It is the role of the police that is of primary importance in the administration of criminal justice. Complicity, corruption, and connivance of the police with the guilty and strong police-politics nexus have provided a fertile breeding ground for crimes.

It is the duty of the police to bring law-breakers before courts of law; but when the police themselves choose not to nab the offender, society loses faith in law and its enforcement agencies. The Kuttippuram railway station incidence on 21 January 1996 is a case in point. A teenage girl found lonely in the railway station at Kuttippuram and permitted by the police to spend the night in the waiting room was found the next morning with injuries of rape. The

police cooked up stories to malign the girl's character and cast a cloud of suspicion about her in the public mind.

The police often fail to collect primary evidence and conduct serious investigation. Padding of evidence and making alterations in FIR is common. Bribe-taking and several other heinous practices are rampant too. Such lax attitude of the police encourages potential criminals while discouraging victims from reporting against the criminals. The victims opt to suffer in silence since they seldom expect dispensation of justice to them from the powers-that-be hand-in-glove with the culprits. In short, callous indifference of the police, police-criminal-political nexus, insensitive judiciary, and erroneous public perceptions about rape and rape victims provide a fertile ground for the proliferation of the crime.

Unwed mothers

A problem which is unique to Kerala of recent times, is the increase in the number of "unwed mothers" among tribal women in Wayanad. There are more than 400 unwed mothers in Wayanad, the district in which 36 percent of the State's tribal population is settled. About 100 children born to them live in Mananthavadi taluk alone (R. Madhavan Nair, *The Hindu*, 1998). Unwed mothers are a common sight in Wayanad. Women became victims of a carefully planned seduction and sexual exploitation project. "Some people revel in exploiting the innocence of tribal women" (Mr Devendra Kumar Singh, District Collector, Wayanad, 1998). Instances of several women getting pregnant from one and the same person have also come to light. These tribal women are so gullible that empty promises of a few bangles or of marriage lure into the trap of deception. Tribal communities refuse to accept women who bear children by non-tribesfolk. When they are ostracised, by their own people, they wander away from their folks and fall easy prey to sexual exploitation. In spite of efforts by the government and various NGOs to rehabilitate them, they continue time and again to become easy prey to lecherous men. Though complaints are filed in police stations, effective action is seldom taken; even conviction of the accused is few and far between.

Conviction rate in India

The statistical data pertaining to the period prior to the promulgation of the Criminal Law Amendment Act in 1983 shows that in India in 1975, 1,69,721 men were held and charged in 2,89,302 cases for offences against women. Only 33,315 of them (less than one-fifth) were convicted by trial courts. In other words, 1,36,406 accused men were acquitted on a variety of excuses including lack of evidence. In 1996, the situation was worse; out of the 1,95,436 men held for various crimes against women, only 32,362, (less than one-sixth) were convicted. In 1998, there was 40.1 percent increase in the number of reported cases of sexual harassment in India over 1997, of which 76.1 percent were investigated; 77.8 percent of the cases investigated were charge-sheeted; 15.8 percent were tried; 6.4 percent resulted in convictions. Trials completed within one-to-three years are 30 percent and two-to-five years are 25 percent. In 1999, the conviction rate to total number of cases tried in courts was 39.6 percent, as against 37.4 percent in 1998 (SCRB).

The number of cases pending trial stood at 83 percent in 1998 and the conviction rate was

4.4 percent only. For 1999 also, the corresponding figures were 82.5 percent and 4.7 percent respectively (Table 4.1). The number of cases acquitted during 1998 and 1999 came to nearly three times the number convicted.

Table 4.1 Disposal of cases by courts on crimes against women

	Details	1998	1999
1.	Total cases for trial including pending cases	58,655 (100.0)	62,466 (100.0)
2.	Cases compounded	232 (0.4)	198 (0.3)
3.	Cases convicted	2577 (4.4)	2952 (4.7)
4.	Cases acquitted	7161 (12.2)	7808 (12.5)
5.	Cases pending for trial	48685 (83.0)	51508 (82.5)

Source: Crime in India, 1999

Again, the laxity on the part of the law and order and the judicial system in the disposal of cases impairs the enthusiasm and the hope of people. They lose interest in pursuing the cases (Table 4.2).

Table 4.2. Details of disposal of cases by police and courts, all-India

		Percentage of disposal of rape cases by Police		Percentage of disposal of rape cases by Courts	
		1998	1999	1998	1999
1.	Disposal	72.2	73.3	17	17.5
2.	Pending	27.8	26.7	83	82.2

While at the all-India level the police dispose of more than 70 percent of the rape cases taken up by them during a year, the courts are able to do so only in about 17 percent of such cases.

Conviction rate in Kerala

The Kerala scenario is also dismal. Out of the total crimes against women reported, 90.6 percent were disposed in 1998 and 81.6 percent were disposed of in 1999; of the charge-sheeted cases, 80.3 percent in 1998 and 91.9 percent in 1999 were disposed of; cases disposed of by courts were 41.1 percent in 1998 and 23.5 percent in 1999; conviction rate is 23.7 percent and 38.2 percent respectively in 1998 and 1999.

Of the total number of cases in courts, only less than 10 percent on the average were convicted; more than three times of the convicted cases were acquitted. It is also observed that the proportion of convicted cases was declining during this five-year period from 20 percent in 1995 to about 7 percent in 1998 and 1999. The proportion of pending cases was mounting from 16 percent in 1995 to 65 percent in 1999.

Table 4.3 Conviction and acquittal of rape cases in Kerala (1995-'99)

Year		Total number of cases	Convictions	Percentage	Acquittals	Percentage	
1.	1995	195	39	20	125	64.1	320.5
2.	1996	261	35	13.4	134	51.3	382.9
3.	1997	350	27	7.7	100	28.6	370.4
4.	1998	515	36	6.9	118	22.9	327.8
5.	1999	487	36	7.4	132	27.1	366.7
6.	1995-1999	1808	173	9.6	609	33.7	352.0

Cases compounded, withdrawn, and pending at court are not included in the total

The victim becomes a laughing stock before the public and suffers indignities and insults when the culprit is acquitted. In cases of rape, already the victim's morals are at stake and after acquittal, she is branded a woman of easy virtue, and held responsible for her misadventure. In contrast, acquittal confers on the accused the image of a 'Good Samaritan'. It is only rarely that rape cases come up for trial, and when they do, the accused manage to obtain acquittal in the majority of cases. Women seldom get justice from the male-dominated system.

It is not the paucity of laws but the dispensation of justice that is at fault. While the law is absolutely clear, it is often rendered ineffective by distorted interpretation and application. Male prejudices of judges often influence the outcome of cases, many of which end in acquittal. About incest rape, once a judge is reported to have refused to accept that a father could molest his own daughter and he ruled that wives who made such allegations suffered from some peculiar psychiatric condition (The New Indian Express, 1999). Whether it is the inefficiency of the legal machinery or the patriarchal conditioning of the judges, what matters is that the offenders grow bolder to indulge in crimes with impunity. The increasing violence against women in Kerala calls for in-depth investigation into the underlying socio-cultural economic and psychological factors.

5. Rape Victims and Rapists

With a view to collecting reliable information on the factors for and circumstances in which rapes take place, we have made an effort to identify the rape victims and conduct interviews with them. For this purpose, victims were identified through various sources like police stations, public prosecutor, media reports, State Commission for Women, Women's Police Cell, and non-governmental organisations (NGOs). In fact, owing to the confidentiality kept in the matter of the cases, in compliance with the Supreme Court directions, it was rather difficult to get the correct addresses. We had to make enquiries in the neighbourhoods after obtaining the names of the localities concerned. The local people helped us spot the victims' houses. Sometimes it was rather difficult to identify the victims since their correct addresses were not known; in some cases the victim's families had changed residence after the incidents; in some others, the victims had come only for short periods of stay in the addresses given to us, many of which were of friends or relatives of the victims.

Of the 45 addresses of the rape victims, which we managed to collect, two were dead – one a child who was raped and murdered and the other a woman who committed suicide after the event. However, both these cases were reported to the police and the court gave judgements. We have interviewed the mother, brothers, relatives, and neighbours in the first case and brothers, relatives, and a neighbour in the second case.

In our endeavour, we visited the families of five tribal victims also. We held repeated detailed interviews with victims, their parents, and other members of the family, relatives and neighbours. Care was taken to interact with the victims personally. Many a time they were reluctant to discuss the matter. In most cases repeated visits had to be made to collect relevant information.

During the interviews, we attempted to understand the post-rape conditions of the victims – physical, mental, social, and moral – and the familial situations of the rape victims prior to and after the incident. For this purpose, we identified cases of victims falling under two categories:

- (i) cases reported in the courts in which judgements were pronounced; and
- (ii) cases in which court proceedings were not taken up.

Of the 30 cases personally interviewed, 20 cases are with court judgements and 10 cases without court proceedings. The victims of the latter category were identified from agencies/organisations – both governmental and non-governmental working for women's welfare such as *Soma*, *Prana*, *Anasuya*, *Destitute Home*, *Shantiniketan*, *Sevika Samity*, *Asha*, and State Commission for Women. For detailed analysis, we selected only 25 cases.

Analysis

We used a structured schedule for interviewing the victims; information was collected on the type of rape and particulars of the rape incident such as place, relationship of the victim

to the rapist, reputation of the victim, age, marital status, religion, caste, occupation, educational level, and type of family of the victim at the time of the incident. To understand the mental condition of the victim, we included questions on the verbal technique used by the rapist preceding the event, the number of persons who raped the victim, mental state of the victim, and victim's response. Questions to probe into the behavioural patterns of the victims, which might have contributed to the event, and to make an assessment of their post-rape experience, were prepared with the help of qualified and experienced psychologists. We included questions to ascertain the motive of the rapist for the crime according to the victim's version and members of the victim's family.

Questions on reporting of the event such as to whom the event was first reported, the reasons for not reporting immediately to the police, and not pressing the charges against the rapist, were also included. The time of reporting is an important aspect according to the laws relating to rape. In order to understand the attitude of the members of the families concerned towards the victim, we asked questions about their reaction to the victim immediately after the incident. To gauge the trauma of the post-rape conditions and the response of the various agencies, questions on reactions of the victims to gynaecological examination, approach of the hospital staff, and the police, and court proceedings were included. Finally, we asked questions about the victims' current lives and on whether they got married after the event and if so, whether they live a happy married life; and if not married, whether they desire to get married.

Victims of rape

Out of the 30 victims whom we interviewed, four were mentally retarded; one was physically handicapped and one an epileptic patient.

Of the 25 cases we identified for analysis, 23 occurred during the 1990s, and one in 1986. In another case, the victim who became mentally deranged after the incident could not recollect the year of the incident.

It is difficult to categorise rape into watertight compartments because one type of rape may have several dimensions to it. For example, in relay rape, the victim might have been first seduced by her lover and only at a later stage, handed over to other persons. Similarly, in most rapes, the victim is physically over-powered before the offence is committed.

In a small number of cases, force is not used and the offence is committed by one person; victims in such cases happen to be mentally retarded persons. Incest rape is one in which the offender is a close relative. In one of the cases we have analysed the offender was the father himself of the girl. The two cases seduction rapes and the one case of relay rape in the list followed kidnapping of the victims. In the seduction cases the victims were girls below 16 years of age who had to yield to pressures and threats of the accused.

Age

The victims of the 25 rape cases came from various age groups ranging from five years to

more than 30 years, as may be seen from Table 5.1. We find that there is some relation between age factor and the type of rape. It is seen that the majority of forced rapes had occurred in the age group of 16-24 years.

Table 5.1 Age of the victims at the time of rape

	Age	Number
1.	5 to 10 years	3
2.	11 to 15 years	10
3.	16 to 24 years	10
4.	Above 30 years	2
	Total	25

Marital status

In 22 cases the victims had been unmarried persons at the time of rape; in two cases they had been married and in one case the victim had been an unmarried person cohabiting with her cousin.

Religion and caste

Religion does not seem to have been a significant factor in rape. The victims belonged to all major religious groups – Hindus, Christians, and Muslims – as well as different community groups. In our sample, 19 were Hindus, four were Christians, and two were Muslims. Thirteen of the 18 Hindu Victims belonged to the backward communities of Ezhava (3), Viswakarma (1), and Nadar (7) and other backward communities (2).

Four Hindu victims were of the Scheduled Castes and one of the Scheduled Tribes (Pulaya-2; Thandar-1; Kuravar-1).

Social class

We have categorised the victims into three classes based on the economic conditions of their families. The majority belonged to the low class; 19 out of 25. The parents of these victims were workers such as unskilled labourers, helper-masons, petty traders, fish vendors, fishermen, coconut pluckers, sweepers, brick-kiln workers, grass cutters or housemaids. Five of the victims belonged to the lower middle class whose parents or other members of their households worked in companies, hospitals, and LIC agents or were small shopkeepers. One victim belonged to the middle class whose father was a driver in an organisation but also owned vast areas of cultivable land.

None of the victims’ families was really affluent. However, rape incidents do happen in rich families too. Chances are that most such incidents do not get reported at all and/or might get settled on compromise between the concerned families themselves.

Family

Out of the 25 cases, 23 belonged to nuclear families; only 2 cases were from joint families. None of the victims were from broken-up families. The popular belief that such incidents normally take place only in families without strong emotional and psychological bonds among their members is thus observed to be unfounded.

Educational level

The majority (80 percent) of the victims were literate (Table 5.2).

Table 5.2 Educational background of the victims

Educational level	No. of victims
Illiterate	5
Primary school level	3
Middle school level	6
High school level	10
Higher secondary school level	1
Total	25

Though no victim had education beyond the higher secondary level, most of them had reached the middle school or secondary levels. Only one victim had education beyond SSLC. Of the illiterate victims, four were mentally retarded and one an epileptic patient.

Occupation

It is observed that most of the victims had been students at the time they were raped. Out of the 25 cases, 13 victims were students, 2 had just finished their studies and had been staying at home and 2 had been housewives; one had been working as a housemaid and 7 were handicapped persons.

Place of incident

The majority of cases brought to court end in acquittals because of the mere fact that the benefit of doubt goes to the accused as the defence lawyers succeed in demolishing the authenticity of the accusation in cases in which the place of incident is not established beyond doubt. The place of incident would help establishing whether the rape was a calculated sexual attack by the accused or not. In more than half the cases, the victims had been in their own residences (Table 5.3).

No. of rapists involved per case

In the majority of the cases only one person was involved in the rape. Out of the 25 cases, in 21 cases, one person each was involved; while in two cases, there were two persons per

Table 5.3 Place of occurrence

Place of rape	No. of rapes
Residence of victim	14
Residence of rapist	3
Secluded place	1
Paddy field	1
Others*	6
Total	25

* Forest – 2; relatives' house – 2; unoccupied/abandoned house – 1; Lodge – 1

each; in one case five persons were accused of rape. In the relay rape cases, two persons and four persons respectively were involved in each incident; and in the gang rape case, five men were involved.

Relationship between rapist and victim

An analysis of the relationship of the rapists to the victims shows that in the majority of the cases the rapists were persons already known to the victims. Only in four cases were the rapists strangers to the victims; in one case the rapist's identity was not known because the rape was carried out in the dark. The known persons included acquaintances, neighbours, close relatives, and lovers (Table 5.4).

Table 5.4 Relationship of the accused to the victim

Rapists	No. of rapes
Acquaintances	3
Neighbours	8
Close relatives	5
Lovers	4
Strangers	4
Unknown person	1
Total	25

Close relatives involved included father (in one case), step-father (in two cases), brother-in-law (in one case), and maternal uncle (in one case).

Strong relation is observed between place of rape and relationship between rapist and victim. In the 14 cases, which happened in the residences of the victims (Table 5.3); except in one, the rapists were neighbours, acquaintances or close relations. In one case, the offender was a stranger to the victim – a meter reader from KSEB.

Influence of alcohol

In 10 out of the 25 cases, the offenders were under the influence of alcohol - according to

the versions of the victims' and their relatives. In the gang rape and the relay rape cases, in which strangers were involved, the rapists had been heavily drunk. In the case of incest rape, in which the father was involved, the offender had been dead drunk at the time.

Reputation of the victim

Of the 25 cases, except in one case, the victims and their families had unblemished social standing. In one exceptional case, the victim had been known to have sexual relationship with a neighbour; but her family had expressed support in the matter. Her family had often quarrels with the local people and spread cooked up stories against them. The victim in this case was gang-raped.

Reputation of the rapist

It is observed that in 12 cases, the rapists had a criminal background and had been either vendors of illicit liquor, thieves and / or habitual rape criminals. In the other 13 cases, the rapists came from families with good social standing; it seems that they committed the crime impulsively taking advantage of favourable situations.

Knowledge of rape

Out of the 25 cases, except in cases in which the victims had been small children or mentally retarded or epileptic patients, all the victims had 'heard' about rape attempts and 'seen' rape in cinema. They had read rape stories in weeklies too, but had no clear idea about the crime. None of the victims except the married ones and the one who cohabited with her cousin had any previous experience of sexual intercourse.

The victims, irrespective of age or social status, were reportedly shell-shocked by the outrage. A few, particularly the small children, were mortally frightened; the majority felt insulted, injured, betrayed, and shamed.

Different methods used by the rapists

The rapists had used different techniques to trap the victims: enticing, seducing, threatening, trapping, and overpowering. Since the event happened unexpectedly, most of the victims submitted to the violation meekly out of fear or shock, without knowing the seriousness of the act. However, there were a few cases in which the victims struggled to keep the rapists away; in one case, the victim fought ferociously, but had to succumb ultimately to the onslaught.

In the incest rape case, the victim was so shocked that she swooned; by the time she regained consciousness, the incident was over. The gang rape victim fought ferociously but was felled to the ground by a team and held down, while the team members raped her by turns. The physically handicapped victim tried to escape; she tried to resist; but was overpowered.

Reporting of the event

In about one-half the cases the victims reported the event to their mothers; in others, close relatives such as grandmothers, sisters and maternal aunts were told of the incidents. There were a few cases in which neighbours came to know of the incident and rushed to the scene of the incident to help the victims. In one case, the heinous act was committed in front of the members of the victim's family; in another, the act was done in revenge of the girl's reporting to the police when she came to know that the man she had eloped with as a habitual rapist.

In all the cases, the victims had reported the cases to the police – in 18 cases immediately and in 5 cases after some delay caused by various reasons such as fear of the offender, fear of social stigma, and publicity and parental rejection. In cases in which the rapists were close relatives of the victims, fear of bringing bad reputation to the family and thereby affecting the other members of the family and fear of others holding the victim herself responsible for the event were the causes. However, in certain cases, the members of the families concerned were forced to report the incident to the police when the rapists made bold to repeat rape attempts sensing that the cases would be hushed up by the victims for fear of making them public. Another circumstance compelling the families to report to the police was when the victims became pregnant.

Though all 25 the cases were reported to the police, in four cases, the victims did not persist with the charges against the offenders. In these cases, the culprits were either their step-fathers or were strangers who could not be identified.

All the families of victims cursed the rapists for bringing them bad name. Some of them had never expected such cruelty from their own acquaintances – relatives and neighbours. In the incest rape case committed by the father, the victim's uncle and her grandmother became so agitated that they even threatened to kill the rapist. Some mothers were anguished about the fate of their daughters and what would befall on them when they (the mothers) would be no more. The following are a few of the responses of the members of the families of the rape victims.

- (i) In single rape cases in which the victims happened to be mentally retarded persons, they were afraid of the bad name the incident would bring to the family;
- (ii) In the pair-rape case, the stepmother and the relatives as well as neighbours blamed the victim and scolded her. In consequence, the victim became mentally deranged.
- (iii) In the gang rape case, the family was genuinely concerned and supportive of the victim.
- (iv) In six of the cases of forced rape, the family members expressed shock and annoyed because the rapists were their neighbours, stepfathers or acquaintances. In the other two they were pained and also worried about the possible indignity that the incident would bring to them.
- (v) In one of the cases of relay rape, the family was indifferent because the victim was cheated by her own lover with whom she had eloped, deserting her mother and brother.

In the other case, the parents sent the victim away to a far away place as a face-saving device for the family.

- (vi) In the cases of child rape, the parents did their best to get the victims out of their trauma inflicted by the offence. In the case in which the rapist was her stepfather, the mother of the victim and her immediate relatives were shocked but felt helpless. In another case in which the rapist was the husband of her maternal aunt the family remained unconcerned because she had kept the incident secret till the time she came to know that she was pregnant.
- (vii) In the cases of the seduction rape, the families concerned initially held the victims responsible though they were scared of possible publicity of the incident. In one case, they found that some of the victims' relatives had been responsible for getting the victim embroiled in a love affair that culminated in the onslaught.
- (viii) In the case of incest rape, the uncle of the victim sent her away to a far off place to keep her beyond the reach of the offender; her own father. Of course the responses and the reactions in these various types of cases are not distinctly different; there are common patterns and considerable overlap among them.

Reaction of victim to gynaecological examination

The victims were embarrassed when asked about the feelings they had during gynaecological examination.

In the child rape cases, the victims fell unconscious because of heavy bleeding (in one case, blankets were used to cover her up till they reached the hospital). Surgery was needed in certain cases, which took hours to put sutures (stitches). Internal organs were injured in some cases. The gang rape victim said that it was a harrowing experience even though she already had two childbirths. In six cases of the victims of seduction and relay rapes, the victims felt betrayed; they had eloped with their lovers in the hope of a secure life, what they received was a treacherous onslaught. Worse still, they were put to a physical check up. One of the mentally retarded victims refused to undergo medical examination; she screamed and struggled to free from the clutches of the nurse and fled the hospital for her life.

Reaction of police

Most of the family members, neighbours and victims said that the police personnel were, on the whole very co-operative and helpful; they themselves gave the victims and their people all the necessary support. They were not rude nor did they misbehave in any manner. In 17 cases, the attitude of the police was very sympathetic and they blamed the rapists who had committed the act. Later, in interviews with them, the police said they thrashed the rapists when caught.

But in five cases of seduction rape and relay rape, the police personnel blamed the victims and the members of their families for the mishaps. In another such case, the police were a little arrogant against the victim and scolded her in abusive terms. In one case, the police

sided with the rapist as the constable who questioned the victim happened to be his friend. The police have not brought the case before the court till this time.

The police, who had been initially helpful and sympathetic, later turned harsh in three cases. The victim's parents said they were even intimidated by the police sub-inspectors, who took sides with the accused. This was because the defence lawyers had influenced the police during the court proceedings. The mother of one of the victims complained that a police sub-inspector had threatened her daughter with dire consequences if she told the truth in the court.

But in none of the cases had the police refused to prepare FIRs nor did they try to mislead the victims. In one case in which the victim was a Scheduled Caste person, the police tried their best to get the rapist marry the victim; but he refused.

Reactions of victims to court proceedings

Of the 25 cases, only 20 cases went to court. The reasons for not reporting the other five cases were not known to the victims and their families. They did not do any follow-up either.

They were scared to face outsiders and embarrassed at telling the story again and again. They were afraid that they would have to go to the court numerous times and wait at the court every time for long hours. The victims of seduction and relay rapes as well as child rape cases said the foul and disgusting court processes, particularly cross-examinations, humiliated them.

Since most of the rape victims were young and had education only up to the secondary level, they had little idea about legal matters or court proceedings. Their parents felt it too embarrassing and tedious even to obtain copies of the judgements. They said while the lawyers of the accused gave their clients proper advice, it was very difficult for the victims to approach the public prosecutor and consult with him since they found him difficult to approach.

All the victims who had to attend courts expressed the opinion that questioning by defence lawyers was an excruciating experience. The defence lawyers presented distorted versions of the events. The victims felt the cross-examinations of their parents cruel and agonising.

In 20 of the cases the relatives and parents accepted the victims in their homes after the incident, in two cases though with some initial hesitation. But in five cases, the victims were downright expelled from home. They held the victims themselves responsible for the events that brought bad reputation to the family.

Though six of the victims entered married life after the event, only one was reportedly leading a happy life. In one of these six cases, the husband deserted his wife; in another the husband turned a pimp and forced her into sex-work. In the other three cases, the husbands keep quarrelling with their wives in the name of the rape incidents. The victims were married away by their parents as quickly as possible after the events, to get rid of the stigma.

The mentally retarded, the physically handicapped, the blind and the epileptic victims remain dependents in their parental homes. The gang rape victim, who had been co-habiting with her cousin, was deserted by him after the event, and is also back to her parents.

In four of the cases in which the victims had children born out of the rape, they could not even think of marriage; they are sure that no man would venture forward to marry them. Yet, at least in one of these cases, the parents are earnestly on the look out for a proposal from a person who would accept and give her a new life in a new world.

Psychological effects of rape on victims

Though the study proposed to conduct Personality Assessment Tests (PATs) on the victims using the Mal-Adjustment Tool, we were not able to do so for reasons already mentioned about the limitations of the study. However, by asking certain questions to the victims, we have tried to gather information on the effects of their post-rape psychological conditions. The interviewers also assessed them through the non-verbal gestures of the victims. The inferences drawn from the interviews are summarised below.

Except for the mentally retarded and the seduction victims, the thoughts of the incidents are haunting them day and night. Their heartbeat goes high and they perspire. They suffer from hallucinations and melancholia. Owing to feelings of inferiority and worthlessness, they shy away from everyone – relatives, neighbours, and friends. The mothers of the child rape victims reported nightmares their children undergo every night. The victims always dread of mishappenings taking place around and tend to keep away from imagined impending danger. The victims are found listless and restless lacking in power of concentration and easily irritable. Some even said that they wanted to commit suicide.

They feel lonely in company and during ceremonies and festivities. They suspect that they are objects of ridicule and targets of jokes. They see a potential rapist in every man. Every rape victim is on the road to psychiatric illness.

None of the victims can stand a rape scene even on a television; they switch the programme off or clear off. The mentally retarded victims giggle at such scenes. The victims who got married and those who turned sex workers lead a life of living death. All victims curse their lives, get easily irritated and emotionally upset and become weary of work. Their lives have become ‘unreal’ mere shadows, their minds fluttering around by-gone days and imagined impending dangers.

Judgements

In 18 of the court cases, judgements have been pronounced. Twelve cases were convicted, and six cases were withdrawn.

Out of the convicted cases, the rapists were convicted for three years in two, for four years in one, for five years in eight and for seven years in one. However, all of them are on bail still giving trouble to the victims and their families.

Six cases were withdrawn after sometime after registration for various reasons - tedious court processes, problems of bringing the victims to court each time, apprehensions about the victims' future and futility of court verdicts on the lives of the victims even in case the accused are convicted. In one case, the case was withdrawn after settlement outside court, the victim accepting maintenance from the accused. In many cases, the initial enthusiasm died down over time. In one instance, the case was abated following the death of the accused.

The following are the findings:

- (i) The majority of the rape cases were committed by brute force and on children and adolescents.
- (ii) Rapists had in a few cases come in the garb of lovers. In these cases, the victims happened to be of 16-24 years of age.
- (iii) Eighty-four percent of the victims had been unmarried at the time of the rape.
- (iv) Rapes occur among all religious and caste groups.
- (v) The majority of the victims belonged to the lower economic strata of the society.
- (vi) The vast majority of the rape cases occurred in nuclear families.
- (vii) Most of the rape victims had education up to the secondary level or less. A few were illiterate and mentally retarded or physically handicapped.
- (viii) The majority of the victims were students or other non-earning dependent members of households.
- (ix) Rape incidents took place, to a very large extent, in the victims' households. The other places were rented buildings, lodges, relatives' or rapists' houses. A small number of rape offences were done in forests, paddy fields or other open spaces.
- (x) The majority of offences were of rape by one individual alone; but there were cases in which more than one person was involved. The number of persons per rape incident had gone up to five in some gang rape incidents.
- (xi) Rape was committed mostly by persons known to the victims - acquaintances, neighbours, close relatives or lovers. Strangers were involved in gang rape and relay rape.
- (xii) Rapists included close relations like father, stepfather, brother-in-law, and maternal aunt's husband.
- (xiii) Rape is committed in a majority of cases under the influence of alcohol.
- (xiv) While almost every rape victim came from a respectable background, a large proportion of the offenders had infamous, criminal backgrounds; they had been thieves, boot-leggers or other types of anti-socials. The rape event was their first sexual experience for most of the victims; they had but vague notions of the crime, gathered from the visual or print media.

- (xv) The victims were scared and shocked when the assailant attacked. Some of them swooned.
- (xvi) The rapists used different techniques to get at the victims: enticement, threat, and abusive language. No rapist had used weapons to over-power their victims.
- (xvii) Except in a very few cases, the victims were not able to raise any effective resistance; they were rendered powerless, emotionally wrecked, and physically over-powered. Those who ventured to resist received serious body injuries.
- (xviii) According to the members of the victims' families and relatives, the offenders had been lying in wait for an opportunity. When the situation was found favourable, they jumped on to it impulsively and committed the crime. The exceptions were the seduction and the gang rape cases. The victims had reported the incident immediately to their mothers and close relatives in the majority of cases; only in one case was the incident reported directly to the police.
- (xix) In a few cases, the victims held back the information for fear of the wrath of parents and social stigma. All the cases were reported to the police, a few after a period of initial hesitation.
- (xx) In some cases, the complainants did not press the charges because the offenders happened to be close relatives, or unknown persons.
- (xxi) In a few cases, the parents sent the victims to far away places for fear of adverse publicity.
- (xxii) The victims who had to undergo gynaecological examination experienced intense pain from bleeding internal injuries. They found the whole experience humiliating and traumatic because they had been already shocked and frightened by the offence. In one case the victim had to undergo abortion too.
- (xxiii) The hospital staff was helpful and sympathetic in the majority of cases. The police turned harsh in a few cases later when they suspected that the victims were being unduly protected by some of their people.
- (xxiv) The victims and their families found the court proceedings tedious, humiliating, and time-consuming. Examinations and cross-examinations proved traumatic.
- (xxv) The defence lawyers, in a few cases, tried to influence the victims' families to withdraw their cases by offering them bribes.
- (xxvi) In the 18 cases in which judgements were pronounced, 11 ended in convictions; 6 cases were withdrawn for various reasons and 1 was abated consequent on the death of the accused.
- (xxvii) The initial interest shown by the families of the victims to take the cases to court is seen to have waned over time, partly due to delays in pronouncement of judgements.

Conclusion

In all the cases of rape, the victims have undergone grave psychological crisis; the trauma is likely to persist all their lives. Rape leaves a permanent scar on the mind and body of the victim. Child victims suffer the greatest; they lose their childhood and turn shattered, gloomy, and withdrawn. Rape victims, looked down upon by society, lead the rest of their lives in ignominy in most of the cases, unmarried and desolate.

Not only the victim but also her entire family is put to shame and humiliation. The social stigma on the family seldom fades away over time. The society shuns contacts and interactions with the family. The society tends to put the blame on the victims for their lack of care and caution rather than on the offenders.

Most rape incidents were planned ones; the perpetrator lying in wait for the opportunity to come. The offenders were found to be under the influence of alcohol in the majority of cases.

It is not true that only criminals, mentally deranged persons or psychopaths commit rape; persons with seemingly good family reputation too indulge in the crime. Rapists get the support of their kinsfolk almost in all cases, who cast aspersions on the victims and their families.

The biggest threat comes not from strangers but from known persons, near relations, friends, and neighbours. The victims may be blamed, in most cases in which strangers were the offenders, for lack of caution. But in cases in which the perpetrators were their intimate relations and friends, the victims were absolutely defenceless.

Victims of rape happen to be of different age groups, but children, adolescents, and young women constitute the main target groups.

While the police was found to be impartial and considerate to the victims, the court proceedings were tedious, cumbersome, and unduly long-drawn. The initial enthusiasm of the complainants dies out when the court procedures tend to become a never-ending process. Besides, conviction in a lower court may be nullified in a higher court. The culprits, the convicted among them on bail from prison, meanwhile roam about freely hunting for new prey.

This is clear indication of the gender bias and patriarchal ideology that influence the Kerala society. In none of the cases have we found the victims receiving support – physical, psychological or moral – from any government or non-governmental agencies. In other words, these victims and their families were left to find their own survival strategies. In this process, almost all of them have undergone untold miseries. Legal assistance would have helped had it come on time; delayed justice is denied justice. However, they are in dire need of support in the form of counselling and rehabilitative measures.

6. Police, Judiciary, and Medical Personnel

In order to draw a complete picture of rape offences, it is necessary to gather information from the law-enforcing agencies (the police, lawyers, judges, public prosecutors) medical personnel (police surgeons, government doctors, psychologists, and psychiatrists), social workers, women's organisations, and NGOs. We have made efforts to collect data from these diverse sources with the help of a pre-tested interview schedule.

Interviews with police officials

Interviews were conducted with 20 police officers (both in service and retired) belonging to different ranks – Head Constable (who prepare the FIR), Sub-Inspectors, Circle Inspector, Deputy Superintendent, Superintendent, Commissioner, and Deputy Inspector General. We have selected the first two categories both from rural and City Police Stations and the rest from Police Headquarters, Police Training College, and Crime Records Bureau. Both female and male officers who had investigated rape cases were interviewed.

Increase in rape cases

The number of atrocities on women, both reported and non-reported, is steadily on the rise in Kerala. These atrocities include molestations, outraging of modesty and rape. Increase in rape incidents is attributed, to a large extent, to the impact of pornographic films, and sex episodes shown in electronic media and increase in the use of drugs, and energizers which have become easily accessible across the counter. The reasons for rise in reporting cases are mainly increasing awareness of laws and human rights among people thanks to the media and the work of NGOs and statutory bodies like the State Commission for Women. The media have become strong and their coverage of extensive atrocities get reported and publicised; the culprits find it difficult to escape public gaze. The local people support the victims to take up the cases to the police and the court for bringing the culprit to book. The attitude of the people to rape has also undergone significant change. Earlier, sex was attached to chastity and virginity and people were reluctant to report the loss of these virtues through rape. But now people have become more outspoken about such matters.

Many police officials feel that people use complaints of rape as a weapon against their foes. Bogus cases are on the increase. In a couple of rare cases, the rapist and the victim (who happened to belong to a Scheduled Caste) came to a compromise in order to get compensation amount from the government. Kidnapping cases of children below 16-years of age are always charged against Section 376 (rape) of IPC.

Socio-economic conditions of victims

Some of the officials feel that socio-economic status and rape have a connection. Usually women and girls from the lower strata of society are the victims of rape. Almost all reported cases are of these strata, living in insecure family environment and unsafe economic conditions. Child rape among indigent sections such as fishermen community and Scheduled Castes in

rural areas is the most common. Poor women living in slums are targeted too. Even sex workers are raped; beggars and street women also become victims. The rapists threaten these victims to submission. Rapists think twice before committing rape on economically well-off women for fear of severe consequences.

There is no guarantee that women of unblemished character would never fall victims of rape. If circumstances are favourable to the offender he might pounce on any woman. There are many cases in which girls and women who were meek and mild were subjected to rape by their close relatives. Rape may be a calculated move or an act of a sudden impulse.

Reporting

In usual practice, the victim is brought by parents and neighbours to report to the police. There are instances where parents bring the victims together with lawyers. If the victims are not brought, the police, after receiving the complaint, take an FIR from the victim by visiting her house. The victim's statement is important in rape cases; so are the statements of the parents and relatives. The lawyers sometimes tutor the victim for presentation of her version of the case. If it is child rape, the police question the victim separately later. Owing to shock, victims might fail to report important points in the FIR; they are added during cross-examination. If the defence were strong, it would be difficult to prosecute the victim.

According to the police, actual rapes seldom go unreported because of gynaecological problems attached to them. If victims happen to come for medical examination, the doctor, in the event of detecting a rape case, refers such cases to the police. Attempts of rape go unreported for fear of the adverse impact reporting would have on the future of the victim. Parents try to hush up the onslaughts on their children if they find that much physical damage was not done to the victim. There are serious cases wherein victims are brought to the police station with heavy bleeding and in an unconscious stage. In such cases the police immediately make arrangements to send them to the hospital.

Another category, which is mostly reported, is kidnapping and rape. The police know that if the girl were a teenager, the case would be in most cases one of elopement. But since she is below 16 years, they attach rape along with kidnapping and a rape case is charged against the accused.

Medical check up

Medical evidence is most important in a rape case. Once the case is reported in the police station, the victims are immediately sent for medical examination. Rape cases are referred only to government hospitals since private hospitals do not attend to such cases. Since eyewitness is absent in most of the rape cases, circumstantial evidence is taken for corroboration. The narration of the victim should have a chain of events to support it. The medical evidence and chemical examination report of the clothes and personal belongings should validate the event. Delay in reporting causes many problems. If the victims wash or take bath, pieces of evidences may get lost. Only immediate medical examination helps the investigation and strengthens the case. Delay would help the culprit.

Response of the police

Police officials state that they register all the cases coming to them and that they do not attach any special attention to rape cases. Some rape cases are followed up through lawyers, some through feminist organisations. Local politicians also interfere. The police send the victims for medical examination immediately and start investigation. The accused in all cases make efforts to abscond.

The police, at times, interfere and advise the victim and the offender to withdraw the case if it happens to be a case of elopement or if the act is with the consent of the girl. They try to conciliate them and bring them to marriage. There are several cases of such happy marriages, though there are also cases of the marriage ending up in divorce. Investigation officers never dissuade them from reporting; they are answerable to queries when the cases come to court.

The police usually enquire about the motivation of the rapist. The rapists normally plead innocent and not guilty. They would say that the girl's people hooked them in a case in order to get the girl married to them; or allege that the cases were forged against them because of property disputes or personal enmity. If it is a brutal rape or a child rape, police arrest the accused with no delay.

It is easy for the police to differentiate between false and real cases. They sense from the narration of the complainant whether or not the case is genuine or imagined. The background of the victim is probed into – her character, persona, family background, caste, and class.

Judgements

In the opinion of the police officials, if evidence is not properly presented before the court, acquittal is inevitable. Circumstantial evidence is mainly relied upon. The victim's statement is important; but in shock, the victim might forget to mention some crucial event. Defence lawyers try to influence the police to turn the case in favour of the accused.

General comments about rape laws

The laws should be implemented for speedy trial and judgement. Since FIR is important, rape cases have to be reported before the Executive Magistrate in the presence of a social worker or a representative of an NGO. Witnesses should be included or produced when reporting is done.

Interviews with lawyers, public prosecutors, and judges

We have interviewed eight lawyers (dealing with criminal cases, six public prosecutors – three from the Assistant Sessions Court of Thiruvananthapuram and three from The Assistant Sessions Court at Nedumangad), two retired judges, and the chairperson of the State Commission for Women. The following is a summary of their opinions.

Judicial process

The judicial process is strenuous and lengthy. Adjournments and long delays depress the victims besides their families. The police complete the investigation and send the report after much delay; added to this is the several adjournments in courts.

Co-operation of the victim and relatives

The victims and the relatives co-operate fully during the trial. The defence lawyers try to influence the witnesses and the police. Sometimes the victims withdraw the case halfway due to pressures from various quarters.

Victimisation of the victim

The victim is not humiliated intentionally; but during court proceedings the lawyers are forced to ask embarrassing questions. There are cases in which the victims have committed suicide while court proceedings are on.

Awarding of punishment to the rapist

The court judgement, whether conviction or acquittal of the accused, would depend on the nature of rape, evidence, prosecution arguments, and the statements of witnesses. Child rape cases, gang rapes, and brutal rapes are normally convicted because medical reports would support the plaintiff's case. Child rapes usually end up in convictions since the aspect of consent does not arise in them. The defence counsel argues on the consent point in all cases in which the victim is above 16 years of age.

Difficulty in prosecuting rape cases

The success of the case in court depends on the way the whole event is presented. Owing to ignorance, there may have been delays in reporting the incident to the police. Delays mar the strength of medical evidence. Since there is likely to be no eyewitnesses for rape cases, circumstantial evidence is most often relied upon. The missing of a small point might lead to failure of the case and acquittal of the accused.

General comments on rape

Defence lawyers have commented that feminist movements and media have coined a new word "*streepeedanam*" and petty cases are inflated to big issues, the majority of which are fabricated cases.

General comments about rape laws

There is no section in the IPC to punish boys under 16 years of age for committing rape; it comes under unnatural offence – section 377. The evidence of physical force is an essential point to establish a rape case. It is the duty of the prosecution to prove the physical force by

detailing the resistance put up; or else it will be construed as consent. Consent is the most important point in rape law around which the fate of a case actually depends. 'Consent' and 'Will' have wider meanings, which depend upon how the circumstances of rape are interpreted.

Another evidence, which is important, is the clothes of the victim, which she wore at the time of the incident. This is the best proof since the semen and vaginal swab seen on the clothes constitute the major pieces of evidence. The delayed reporting in the police station causes problems. The narration of the event is disturbed; medical evidence becomes difficult; as a result, the defence counsel gets a chance to question the veracity of the report. This gives a chance for the accused to escape punishment.

Separate judicial system

All the legal personnel opined that there is need for a special court to try rape cases. Undue delay should be avoided. Speedy trial is a must in rape cases taking into consideration the psychological trauma of the victims.

Interviews with government doctors, police surgeons, psychiatrists, and psychologists

We interviewed six doctors of government hospitals and primary health centres, two police surgeons, six psychiatrists, psychiatric social workers, social scientists and counsellors, and four psychologists in order to collect their views on rape victims and the psychological effect on them.

Medical examination

Medical examination in rape cases is painful because the victim is not prepared for it mentally. The doctors also find it strenuous. The doctors have to note down all the minor details in their reports. In child rape cases the strain is too much. Sometimes it takes hours to finish the examination. There are also cases when the victims are brought in an unconscious state. Moreover, unlike in other cases, doctors cannot postpone the examination and treatment in rape cases.

Whether the victim would come for medical examination immediately after the event or later, depends on the nature of the assault. Victims with injuries and bleeding come immediately. Some adult rape victims appear for medical examination only during advanced pregnancy, some during court procedures and some when they are affected with sexually transmitted diseases. To sum up, in our study, we found that, by and large, the officials in various law enforcement systems and other services carry out their duties with due sense of responsibility. However, there are exceptional cases in which the police colluded with the rapists and harassed the victims. In all our case studies, one common complaint that came up was the tedious and protracted nature of the court proceedings, a hindrance that dampens the spirit of the victims and their families.

7. Conclusions and Suggestions

Contrary to popular belief, the victims of rape are seldom responsible for the incident. In almost all cases, it is the rapist who makes plans and executes the onslaught.

Victims seldom receive any counselling or psychological support during or after the event to tide over the trauma and the physical injuries inflicted by the incident.

Though the police respond positively to cases reported to them, prepare FIRs and send victims for medical examination fairly promptly, under political influence or pressure from the defence lawyers they often tend to twist and turn the cases against the victims.

Court proceedings in rape cases are so cumbersome, time-consuming, and expensive that many complainants withdraw cases before the judgement is pronounced.

Public prosecutors who take up the case of victims are found to be indifferent and lukewarm to the victims. The rapists, often at large on bail, continue to harass and threaten their victims and families.

Though the conviction rate in rape cases is rather high at the Lower Courts, some of them get acquittals at higher courts, on appeal.

Rape is a product of the patriarchal system in vogue that views women an object of pleasure. The gender-biased values are internalised by women too.

The print and audio-visual media are playing an ever-increasing role in promoting violence in society. They play a dual role in the sense that crime and criminals are brought to public gaze quite promptly and extensively. But there is also the danger of overplay of crimes, causing irreparable damage to the honour of victims.

NGOs and women's organisations play little role in the struggle against the rape menace.

Suggestions

- (I) Systematic efforts should be made to organise large-scale awareness programmes and campaigns in order to disseminate gender-just values that should counter the ideology of patriarchy and conservative thinking about sex and sexuality. In order to achieve these, the following measures may be considered:
 - (a) Statutory bodies such as State Commission for Women with the help of NGOs should organise awareness classes in schools and colleges;
 - (b) Necessary budgetary provisions may be provided by the local bodies and People's Planning Programmes for gender-just awareness programmes at the grassroots levels;

- (c) Gender-sensitisation programmes may be organised for law-enforcing agencies, judiciary, and media personnel;
- (d) NGOs need to take special interest in providing awareness programmes, upholding human rights of women;
- (e) Whenever possible, NGOs and statutory bodies should run counselling centres and short-stay homes to provide adequate care and support for rape victims.
- (f) Departments such as Social Welfare Board and Women and Children Committees may take up rehabilitation of rape victims and their dependents.

For tribesfolk

- (i) The Special Mobile Squad (SMS) at Mananthavady, needs to be strengthened;
- (ii) Provisions may be made to provide speedy legal redressal to tribesfolk;
- (iii) A laboratory with the facility for DNA test may be set up in Wayanad. If not, practical arrangements need to be made to collect the blood samples in district headquarters so that they need not go to Thiruvananthapuram for this purpose, as is the practice now;
- (iv) SMS may be provided with adequate funds to conduct DNA test and to provide immediate help to the victims;
- (v) Stringent implementation of SC/ST Atrocities Act is to be enforced;
- (vi) Even if the sexual exploitation is with the 'consent' of tribal women, it should be considered under rape. This is needed because the innocence and vulnerability of the tribal women is being misused.

(II) In order to streamline and consolidate various laws related to rape and its effective implementation, the following suggestions are made:

- (a) Special courts may be set up for speedy trial of rape cases. Such courts should be constituted of judges, lawyers, doctors, psychologists, and representatives of NGOs. The majority of the members should be women. This Special Court should have provisions for legal counselling and aid. Such cases may be disposed of in three months and the accused should not be given bail if the magistrate is convinced that he is likely to influence court proceedings.
- (b) A specified timeframe of six months should be fixed for final verdict from the higher courts of law. Provisions should be made only for one appeal in order to avoid prolonged cases.
- (c) The court, on conviction, shall award adequate compensation for victims. It is necessary to set up a 'Criminal Injuries Compensation Board' for this purpose. The Board may take into account the extent of pain, sufferings, and humiliation suffered by the victim. If the victim becomes pregnant as a result of the incident, compensation amount should be large enough to meet the hospital expenses.
- (d) In the event of the delivery of the child born out of rape, DNA test may be conducted to confirm the biological fatherhood and in the event of confirmation, the rapist may be ordered to pay adequate maintenance till the child becomes major.

- (e) In the event of a rape committed on SC/ST woman, the accused may be booked under the SC/ST Atrocities Act and Protection of Civil Rights Act.
- (f) A legal cell comprising public prosecutors and other lawyers and legal practitioners and representatives of NGOs may be constituted to provide immediate assistance to the victims. This cell should be able to advise the victims on the proceedings of court and assist them to report their grievances to the police.
- (g) The accused should be subjected to HIV test. If found positive, the punishment should be for life imprisonment. In such cases, monetary compensation payable to the victim should be doubled.
- (h) As far as possible, a female officer should question the victim considering the inhibition of the victim would normally have to open up in front of male officers.
- (i) The delay involved at the stage of investigation such as arresting the rapist, receiving the report from the forensic laboratory, and submission of the report by the investigating officer should be minimised. If needed, a special investigation team may be set up for the purpose, in rape cases.
- (j) Any police officer who refuses to refer the cases to the court or make conscious delay in doing so should be punished severely.

Punishment for the accused rapists should be increased to 10 years with appropriate fine, from the present provision of five to seven years. Child rape cases should be dealt with separately and the maximum punishment should be given to the accused. The testimony of the child rape victim should be taken as *prima facie* evidence.

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