

# **SEXUAL ASSAULTS: AN ANALYSIS OF NIRBHAYA EFFECT**

Indradev Shukla<sup>1</sup> (IPS), Sourabh Shukla<sup>2</sup>

<sup>1</sup>Joint Commissioner of Police/Security, Delhi

<sup>2</sup>Student, Center for law and legal Studies, Guru Govind Singh, Indra Prastha University Delhi  
idshukla2000@yahoo.com

“Woman is the companion of man, gifted with equal mental capacities. She has the right to participate in the minutest details of the activities of man, and she has an equal right of freedom and liberty with him. She is entitled to a supreme place in her own sphere of activity as man is in his. This ought to be the natural condition of things and not as a result only of learning to read and write. By sheer force of a vicious custom, even the most ignorant and worthless men have been enjoying a superiority over woman which they do not deserve and ought not to have. Many of our movements stop half way because of the condition of our women *“Mahatma Gandhi”*.

“Rape, sexual assault, eve-teasing, and stalking are matters of serious concern – not only because of the physical, emotional and psychological trauma which they engender in the victim but also because these are practices which are being tolerated by a society ostensibly wedded to the rule of law”. Chairman of the committee for criminal amendments”- **Hon’ble Justice J S Verma. January 2013.**

**Abstract--** The women safety in our patriarchal dominant society always remained compromised on account of various factors and social stigma. The Independence India has tried hard to execute its equal right as enshrined in the Constitution, some what it did not materialize as desired. Among all women related crimes, maximum crimes are related with three section of IPC ie 376, 354,509 and POSCO as well as I T Act(Cyber cases).The study reveals that strict legislations which have been brought in 2013, implemented but the mindset of the perpetrators of crime even after Nirbhaya case have not changed. The crime occurrence remained exponential besides unreported crimes. During last 5 years, women activities in all fields have increased, resulting in sexual crimes also. Thus proper check and balance from all stake holders did not remain effective.The Justice delivery system could not pose a deterrent effect and remain very costly.In the discussion certain reasons and remedies have also been suggested as well as subject matter is sensitive in nature, other constitutional authorities have also been requested to look into the matter as to have a safe place for women and Children.

**Key Words:** Patriarchal, POSCO, Nirbhaya, Rape, Crime.

## **INTRODUCTION**

On the night of 16<sup>th</sup> December 2012 around 09:30 P.M., after returning from the screening of a film, a woman alongwith her male companion were waiting at Munirka bus stop for a conveyance to ride back home at Dwarka. Around this time a white colour off duty chartered bus passed them and offered to give them ride to Dwarka. They boarded the bus, in which six persons including a minor were already seated. Soon, they noticed that bus had taken a different route than normal. When they objected, the six occupants passed indecent comments on the girl. This resulted in a scuffle between them and other occupants of the bus. They were badly beaten and the girl was gang raped by these six people. The victims were thrown out of the moving bus in half clothed and bloodied state. Around at 11 P.M., a passerby admitted them to Safdarjung Hospital. The girl was airlifted to a Singapore’s Mount Elizabeth Hospital by the government for further treatment as her condition remained critical. She succumbs to her injuries on December 29, 2012. This incident triggered a massive protest in various parts of the capital and other places of the country. Taking cognizance of the gravity of the situation, the central government constituted a judicial committee headed by former Chief Justice of India, Sh. J.S. Verma, six days after the incident. The committee submitted its report in 29 days. The committee’s recommendation covered a range of offenses such as stalking, voyeurism, and intentional touching etc. for inclusion in the law. It also recommended stringent punishment for rapist and suggested the addition of a definition of ‘gang rape’ in the law.

## OBJECTIVE

This study is aimed at probing the deterrent effect in the society for sexual crime subsequent to the amendment in penal laws after the Nirbhaya case. The analysis is mainly focused on crimes registered under IPC Section 354, 376, and 509; POSCO Act, and IT Act.

## LEGAL POSITION

a) The three member judicial committee headed by Chief Justice Sh. J.S. Verma held 'failure of governance' as the root cause of the sexual crime. It criticized the government, police, and public for their apathy. The committee's ten point recommendation is as follows:

- i) *Punishment for Rape:* The panel has not recommended the death penalty for rapists. It suggests that the punishment for rape should be rigorous imprisonment or RI for seven years to life. It recommends that punishment for causing death or a "persistent vegetative state" should be RI for a term not be less than 20 years, but may be for life also, which shall mean the rest of the person's life. Gang-rape, it suggests should entail punishment of not less than 20 years, which may also extend to life and gang-rape followed by death, should be punished with life imprisonment.
- ii) *Punishment for other sexual offences:* The panel recognized the need to curb all forms of sexual offences and recommended - Voyeurism be punished with up to seven years in jail; stalking or attempts to contact a person repeatedly through any means by up to three years. Acid attacks would be punished by up to seven years if imprisonment; trafficking will be punished with RI for seven to ten years.
- iii) *Registering complaints and medical examination:* Every complaint of rape must be registered by the police and civil society should perform its duty to report any case of rape coming to its knowledge. "Any officer, who fails to register a case of rape reported to him, or attempts to abort its investigation, commits an offence which shall be punishable as prescribed," the report says. The protocols for medical examination of victims of sexual assault have also been suggested. The panel said, "Such protocol based, professional medical examination is imperative for uniform practice and implementation."
- iv) *Marriages to be registered:* As a primary recommendation, all marriages in India (irrespective of the personal laws under which such marriages are solemnized) should mandatorily be registered in the presence of a magistrate,. The magistrate will ensure that the marriage has been solemnized without any demand for dowry having been made and that it has taken place with the full and free consent of both partners.
- v) *Amendments to the Code of Criminal Procedure:* The panel observed, "The manner in which the rights of women can be recognized can only be manifested when they have full access to justice and when the rule of law can be upheld in their favor." The proposed Criminal Law Amendment Act, 2012, should be modified, suggests the panel. "Since the possibility of sexual assault on men, as well as homosexual, transgender and transsexual rape, is a reality the provisions have to be cognizant of the same," it says. A special procedure for protecting persons with disabilities from rape, and requisite procedures for access to justice for such persons, the panel said was an "urgent need."
- vi) *Bill of Rights for women:* A separate Bill of Rights for women that entitles a woman a life of dignity and security and will ensure that a woman shall have the right to have complete sexual autonomy including with respect to her relationships.
- vii) *Review of the Armed Forces Special Powers Act:* The panel has observed that the "impunity of systematic sexual violence is being legitimized by the armed forces special powers act." It has said there is an imminent need to review the continuance of AFSPA in areas as soon as possible. It has also recommended posting special commissioners for women's safety in conflict areas.
- viii) *Police reforms:* To inspire public confidence, the panel said, "police officers with reputations of outstanding ability and character must be placed at the higher levels of the police force." All existing appointments need to be reviewed to ensure that the police force has the requisite moral vision. The panel strongly recommended that "law enforcement agencies do not become tools at the hands of political masters." It said, "Every member of the police force must understand their accountability is only to the law and to none else in the discharge of their duty."

ix) *The role of the Judiciary:* The judiciary has the primary responsibility of enforcing fundamental rights, through constitutional remedies. The judiciary can take sue-moto cognizance of such issues being deeply concerned with them both in the Supreme Court and the High Court. An all India strategy to deal with this issue would be advisable. The Chief Justice of India could be approached to commence appropriate proceedings on the judicial side. The Chief Justice may consider making appropriate orders relating to the issue of missing children to curb the illegal trade of their trafficking etc.

x) *Political Reforms:* The Justice Verma committee observed that reforms are needed to deal with the criminalization of politics. The panel has suggested that in the event, cognizance has been taken by a magistrate of a criminal offense, the candidate ought to be disqualified from participating in the electoral process. Any candidate who fails to disclose a charge should be disqualified subsequently. It suggested lawmakers facing criminal charges, who have already been elected to Parliament and state legislatures, should voluntarily vacate their seats.

The report was discussed in Parliament and its few suggestions were accepted and took a shape of new criminal law (amendments) Act 2013.

b) **Criminal law (amendments) 2013**

Effect of Verma commission has made drastic amendments in Criminal laws i.e. Indian Penal Code, Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012. It has made total insertion of 30 sections altogether. These are, IPC (Sections 100, 166 A, 166 B, 228 A, 326 A, 326B, 354 (A, B, C, D, ), 370, 370A, 375, 376 (A, B, C, D, ), 509; Cr.P.C (Sections 26, 54 A, 154, 160, 161, 164, 173, 197, 198B, 273, 309, 327, 357(B, C)), Indian Evidence Act ( Section 53 A, 114 A, 119, 146) and POSCO Act section 29). Hence it was ensured that stringent and deterrent punishment through speedy justice should be provided to the society for example after filing charge sheet in rape cases, trial should be completed within two months.

c) **The Juvenile Justice (Care and Protection) Act 2015**

The Act has made stringent provision against juveniles who are between the ages of 16-18 years to be tried as adults for heinous offences. Juvenile Justice Boards (JJB) and Child Welfare Committees (CWC) will be constituted in each district. The JJB will conduct a preliminary inquiry to determine whether a juvenile offender is to be sent for rehabilitation or be tried as an adult. There was lot of hue and cry that as per NCRB data, minors of 16-18 age groups have committed more heinous crimes, but Parliamentary standing committee's (Dr. Satyanaryan Jatiya, Hon'ble MP) views that NCRB data is only based upon FIR, not on conviction, hence cannot be relied upon. But Parliament has overlooked and amended the JJ Act.

d) **Nirbhaya Fund**

An additional budget of rupees 10 billion corpus was made for protecting dignity and ensuring safety of women in the country in 2013. The fund was meant for utilization by the Police for the purpose of ensuring better security applications or emergency response system etc. in the country besides awareness drive among the public. Thus various measures were taken under statutes to strengthen the law enforcement agencies and criminal justice system on one side and public awareness, gender sensitization on other side. Women police and over all women ratios in jobs have been also been increased in terms of better empowerment. The question is still to be answered whether the above changes have brought desired results? In this regard, NCRB data may through some light.

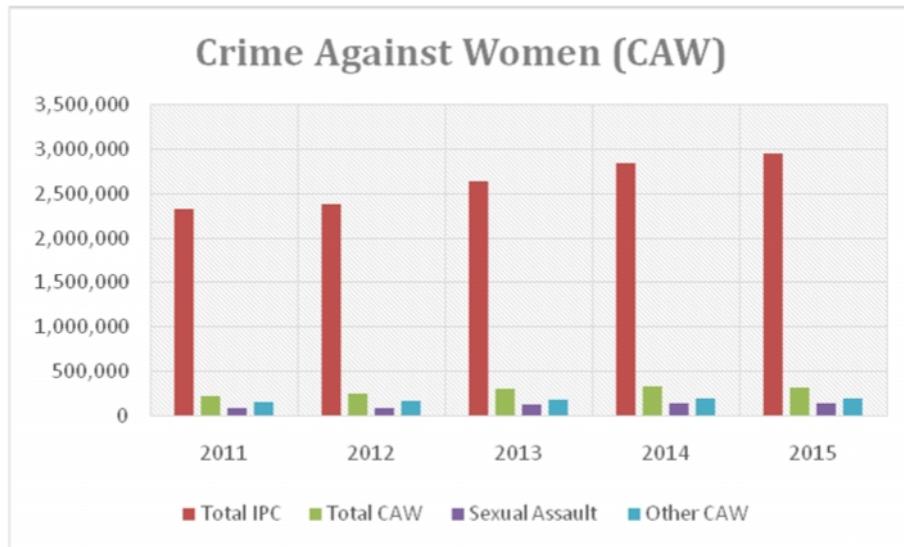
e) **Trend of disposal of the cases on crime against women – 2015**

The disposal of cases in the year 2015 has been considered as to come closure to understand the deterrent effect over sexual assault of criminal justice system. Total under investigation cases in 2015 were 471327 (327394 (2015) + 144914 (Previous U/I) in which investigation in 314078 cases was completed. Thus 66 % investigation was completed and about 34% approximately 1.5 lakhs cases remained as a backlog for next year. It can be seen that back log cases are nearly same number of cases which are registered every year under above mentioned four sections. Thus there is a need of serious efforts to complete the investigation. Data revealed that 4583 cases of assault on women with intent to outrage her modesty and 2624 cases of rape, police have submitted false case report. Although data is provided by States but such a huge number of false report and that too in rape case requires third party audit as to know the veracity of the system.

Data further reveals that police has charge sheeted 245341 out of 471327, i.e. total crimes against women, which is approximately 52%. It means half of the registered crime is with Police i.e. closed or under investigation. There were total pending trial cases 1227187 (982582 PT of the previous year and 245341 send for PT during 2015) which itself is a huge number. The rate of disposal by the court is approximately 30,000 per year and registration is also much more for the same year. The conviction was secured in 27844 cases in 2015, which is approximately 11.39% with respect to charge sheet cases. There were 1080144 cases remained pending trial. This data also reveals that maximum accused is on bail. It's a dissatisfaction situation towards creating a deterrent effect among accused.

**Table-1: Crime against women**

Year	Total IPC Crime	Crime against women		
		Sexual Assault	Other crimes	Total
2011	23,25,575	75,744	1,43,398	2,19,142
2012	23,87,188	79,447	1,64,823	2,44,270
2013	26,47,722	1,17,035	1,78,861	2,95,896
2014	28,51,563	1,32,937	1,92,390	3,25,327
2015	29,49,400	1,30,192	1,84,383	3,14,575


**Fig.-1: Total IPC Crime V/s Crime Against Women**

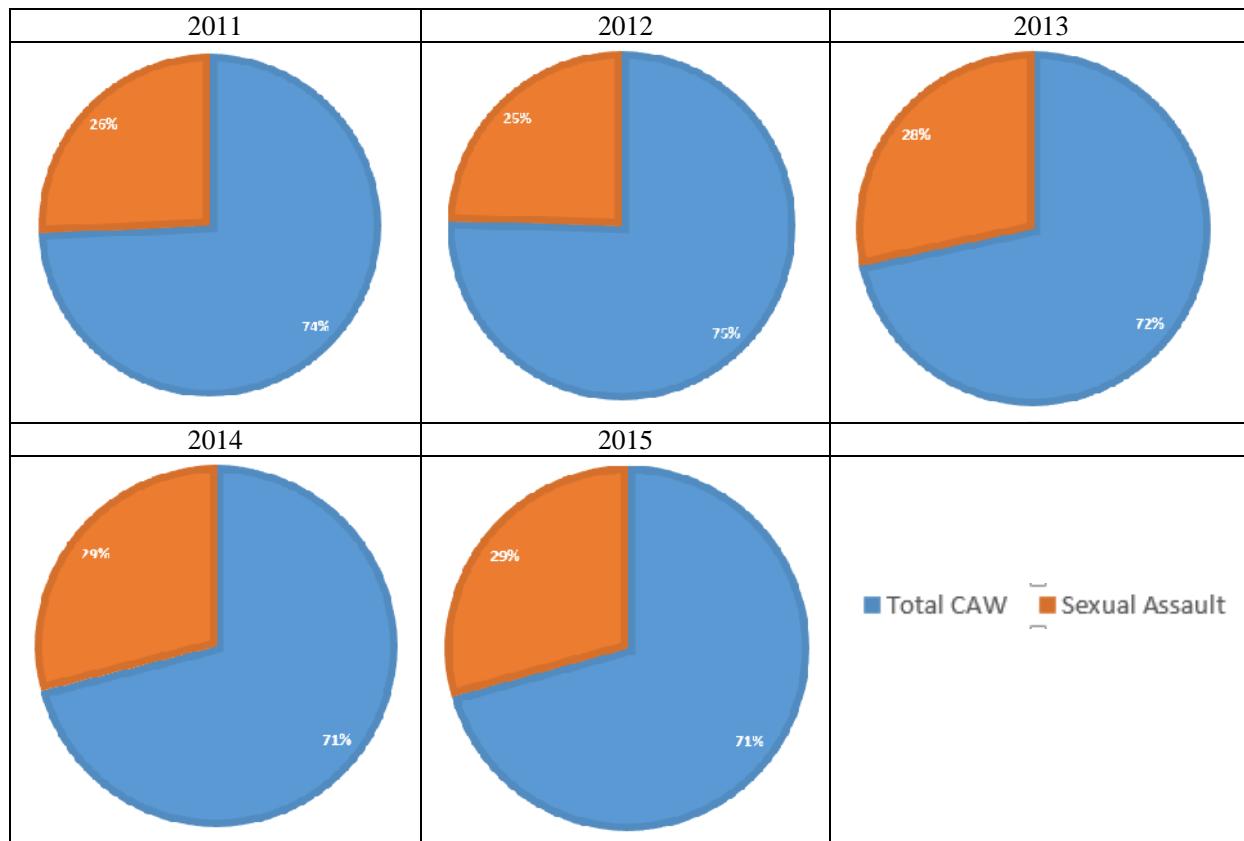


Fig.-2: Crime Against Women Vs Sexual Harassment

Table-2: Crime against women (Place wise)

S.N.	Place	Number of cases
1	Office Premises	119
2	Other Places related to work	714
3	Public transport	315
4	Other places	7,537
TOTAL		8,685

Table-3: Crime against women-Cases registered under various sections of IPC

S. N.	IPC	2011	2012	2013	2014	2015
1	376	24,206	24,923	33,707	36,735	34,651
2	3,76,511	0	0	0	4232	4434
3	354	42,968	45,351	70,739	82,235	82,422
4	509	8,570	9,173	12,589	9,735	8,685



## ANALYSIS AND CONCLUSION

The Data 2011 to 2015 revealed that there are an increase in reporting of rape, the attempt of rape, the outrage of modesty and insult to women cases. The crime situation prior to December 2012 and after it till 2015 shows an increasing trend. Infact, molestations have gone doubled in 5 years in the country. Similarly, POSCO and IT Act cases which have been recently introduced, have also contributed about 1500-2000 cases yearly. Growing incidents of acid throwing cases have made society unsafe especially when it is thrown in broad day light at public places like bus stands and railway stations etc. In another way it can also be said that pro-active registration of offenses, victims sensitization have also contributed towards more reporting which were earlier suppressed due to social stigma. The Data reveals that in sexual assault cases in -spite of stringent and deterrent laws, the desired result towards the safety of women and girl child have not been achieved and it remained as a major challenge for the government and society.

## REASONS AND REMEDIES

There may be several reasons and remedies but few urgent reasons and remedies are discussed below, which requires an attention of all stake holders in the Government and Society as to make society safer for women and the girl child. Few suggestions are as follows.

1. Unreported cases and social stigma: There is no mechanism to know or quantify a number of unreported crimes, probably they are much more than registered. These unreported cases make moral boosting for accused.
2. NCRB data and third party audit: The data are provided by States/ UT's. Besides few checks and balances, there is no strong system in the Bureau to have accurate data. Thus to have a clear picture there is a need for third party audit, which will help in authenticating the data.
3. Registration and Reporting of Crime: Both courts and Police stations for a victim of sexual assault are somewhat unfriendly. Justice has become very costly and sometimes impossible and even beyond thinking. Victims in our social setups have a tendency of not telling anyone and they suffer. The present criminal justice system needs an R&D in depth where reporting of crime should be reported like other crimes at least. There is a need in behavioral changes in Police and other stake holders in the spirit of laws. Non-registration/ burking of crimes, keeping unending inquiries, frequent calls by Police at Police stations, maligning the image of victims on the name of Character etc. is one of the reasons for moral boosting of accused.
4. Lack of empowerment to women: For such plight lack of empowerment is itself more contributory. Dependency in patriarchal society gives no place to face such heinous crime and the battle ultimately is to be fought alone by none other than victims herself.
5. Pleasure and Pain versus reformatory theory: There is more pleasure and gain than pain for the accused. Thus reformatory theory for such criminals is not holding good. For example passing bulgur comments, molesting a girl, how can be justified with unemployment, illiteracy or poverty etc.? Law has its origin in society and society by and large never allowed such acts of an accused. Thus, even present criminal law which has been enacted in 2013, does not see the deterrent effect for them. It could be suggested that besides quick decision on punishments, certain rights/facilities which have been conferred can also be withdrawn/suspended simultaneously of the accused like subsidies, passport, driving license, educational loan and any kind of jobs benefits by Government as well as private employers. This also requires a study by Penologist.
6. Compensation and Parents: - In our country where family structure is very strong may be nuclear or joint, generally, Parents are aware of the behavior of their child. They may have several reasons for not correcting for which ultimately whole society is paying. Thus a substantial compensation upon parents by courts can be imposed as deterrent measures. Infact there can be a window to be provided to parents to inform authority for taking such correctional and preventive measures against their wards. The present compensation system u/s 357 CR.P.C is made available in rape and acid attack cases are covering physical injuries only besides nominal fines. It requires a deep study.

7. Hot-spot analysis on daily basis by Police: -All crime prone areas can be mapped and accordingly deployments of the man power and PCR vans to be made. It has been seen that deployment is generally static, requires scientific calculations and dynamic.
8. Use of Technology and modernization of Criminal Justice System: - Roads, streets, lanes, parks and public places should be illuminated. 100 number and CCTV must be effective. Police Wireless and mobile networks, as well as monitoring rooms, should be prompt in communications.
9. Predictive Policing: There are a number of Business tools in the market, can be used to predict crime, accordingly, preventive measures can be taken. In fact based upon crime data, an analysis can be made to identify potential criminals and abettors. A detail surveillance registers can be opened ward wise /beat wise with all details along with photographs and fingerprints. The staff of Police station can be sanitized to watch on these elements. A briefing and debriefing is necessary with SHO and senior officers so that effective action can be taken.
10. Effective use of National crime database (NDC) at NCRB: In view of Crime Criminal Tracking network system (CCTNS) program implementation, where the majority of states have already successfully implemented, both databases i.e. state data center (SDC) and NDC can be utilized for making the criminal profile as a deterrent measures. All India criminal nexus can be broken by utilizing NDC, especially in cases of Organized interstate criminals gangs.
11. E- Court and Pendencies: -About 1.5 lakhs cases under investigation every year at Police stations and around 10 lakhs Pending trial as on 2015 where in disposal on and the average is hardly 30,000 a year suggest drastic steps be taken. In the same back ground, it can also be seen that except in few heinous crimes like rape or acid attacks, in all sexual assaults accused are on bail and moving unrestricted, have become a threat to the victims as she( victim) also stays in same vicinities. Further appeal over appeal in spite of lesser convictions, the present system of justice is in favor of accused. In general, situation is not satisfactory at all. There are few cases where exemplary punishments have been given but majority cases victims are at receiving ends. Perhaps e-courts and speedy disposal with stringent punishment may give relief to the society. Here it would be better that court may start accepting case papers through CCTNS only rather than physical copies. Himachal state has already started in this direction.
12. Reporting of crime u/s 154 cr.p.c and 164 Cr.P.C. (court's confession)- physical presence at Police station and court. The section requires the presence of complainant at Police station where her signature/ thumb impressions to be taken after the complaint is read to her or to her relatives who passes cognizable information. As per amended criminal Acts and IT Act, electronic records have been accepted as an evidence. The immediate presence at Police station for lodging complaint can be dispensed with and complaint can be registered if disclosing cognizable facts. Complaint sent through e-mail may be accepted for inquiry and a notice u/s 41 Cr.p.c.(amended) can be issued to the accused before the arrest. I/O( Lady officer only) can reach to the victim at the earliest for verifying the facts. Such FIRs may be treated under sensitive category and may not be allowed view or copies by any person on NDC/SDC citizen portal. Connected person can be given FIR copy at the time of verification of their roles by I/O. The public display should not be allowed as to avoid security risk. The court may also like to proceed with Video conferencing or any other authentic electronic medium rather securing physical presence. This requires legal study preferably by Law commission to suggest remedies.
13. The apathy of the society: It has been noticed that, people who are witnessing such incidents ,not interfering to protect the victims. They prefer mum and even not passing information to Police. It is basically due to unwanted harassment by system . Society is major stake holder and their inertness will not make a success of any program towards the safety of women. They need to be motivated and protected on the line of accident victims under the law.
14. Vishakha V. State of Rajasthan: A land mark decision of Hon'ble S C of India on the safety of women at work places and formation of committees have also remained mostly a paper work, thus diluted deterrent effect. It requires an urgent audit by concerned Head of the Govts. so that rotten employees can be thrown out rather than rewarded being kept in the same place in the same organization.



15. Restriction over the unwanted use of social media: - It is true that social media is widely used by youngsters, even minors for learning and committing such crime. In today's world, it is not difficult to locate, mapped and find out people who are frequent visitors of such sites. The question may be related to privacy of the people but somewhere a line has to be drawn as to identify potential criminals so that surveillance can be mounted and a balance with victims' rights can be secured. After all, prevention is better than cure.

### BIBLIOGRAPHY

- [1] Constitution of India
- [2] IPC, Cr.P.C, POSCO,IT,, I.E Act .
- [3] Juvenile and Justice (care and Protection) Act 2015.
- [4] Nirbhaya Judgment of Hon'ble S C of India.
- [5] Hon'ble Justice J S Verma commission report.
- [6] Criminal (amendments) Act 2013.
- [7] National crime Records Bureau.
- [8] Criminology and Punishment-