

## Compensation and Restorative Justice in Offences Against Women for Realization of SDGs: An Analysis of Grievance Redressal Mechanisms in the Criminal Justice System of Andhra Pradesh

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### ABSTRACT

This study examines the efficacy of the crime controlling laws and victim welfare policies together with the judicial decisions to identify the gaps in promotion of healing and reparation mechanism for elimination of offences against women and also to secure peace in the society, to fulfill the United Nation's SDGs 5 and 16. Since the corresponding author is a Judicial Officer, and acquainted experience with examining victims of sexual offences while prosecution of offenders, Auto-ethnography method has been opted for study. Information from public domains, research publications, print media publications, and findings of the Judiciary, discussions with the Judicial Officers who had conducted trials of offences against women, has been collected as secondary source of information. Microsoft Excel was used for creating charts to present the data in an organized manner. The authors have reviewed literature, acknowledged the sources, made a systematic study of the information, and concluded to make the findings invaluable in this area. The study provides invaluable insights into the effectiveness of the grievance redressal mechanisms in realizing SDGs. The results observe that both the restorative justice system to which compensation is the key element, and retributive justice approach to which the punishment is the main component, are crucial for the Criminal Justice System for elimination of violence against women, to promote access to holistic justice, and to secure peace in society. The study underscores the significance of the offender-victim-community mediation for swift restoration of the victims, besides retributive justice for prevention of re-victimization of victims, and victimization of offenders.

**Keywords:** Compensation, Mediation, Rehabilitation, Victimization, Sustainable Development Goals.

## INTRODUCTION

The concepts of women victimization, victim compensation, retributive justice, and restorative justice are not new to the Indian society. They are prevalent in one form or the other though varies from ages to ages. Since the ages of Satya Harischandra (*Krita yuga* famous as *Satya yuga*<sup>1</sup>), Ramayana (*Treta yuga*<sup>2</sup>) and Mahabharatha (*Dvapara yuga*<sup>3</sup>) till the modern age (*Kali yuga*<sup>4</sup>), women are being subjected to brutality in several ways. The story of legend Satya Harischandra in which his wife Taramati (known as Chandramati in *Andhra Pradesh State*<sup>5</sup>) was sold out by him though reluctantly into bondage, highlights that woman was treated as property, and was subjected to exploitation in '*Satya yuga*' times. During the period of *Ramayana*<sup>6</sup>, Goddess *Seethamma*<sup>7</sup>, wife of King of *Ayodhya* Lord Rama was abducted and abused by demon King Ravana of Sri Lanka. In *Mahabharatha*<sup>8</sup> times, *Draupadi*<sup>9</sup>, wife of Pandavas was disrobed and abused in the Hastinapura King's Court by Dussasana and Duryodhana who were the sons of the King. In modern days, it was alleged that the leader of the opposition *Dr J Jayalalitha*<sup>10</sup> was attacked barbarically in the first quarter of 1989 in the Tamil Nadu State Assembly.

The Criminal Justice System (CJS) appears to be always discriminatory and incomplete. It seemed that the pain of the victim Goddess Sita was healed by the King of Ayodhya Lord Rama through killing of the offender Ravana, and accepting her to join his marital life. But during the process, the victim Sita was also subjected to an ordeal to prove her innocence and thus she was re-victimized. This indicates that the ancient law put a liability on the women victim to prove purity. Furthermore, in the subsequent days in the same period, the retributive justice system of either punishing the offender or restorative justice approach (RJA) of rehabilitation of the victim was not practiced when Goddess Sita was humiliated and re-victimized of abuse by a citizen. Instead of awarding punishment to the offender, Sita was banished without conducting any trial into the false accusation, and without giving a fair opportunity to prove her blamelessness. Goddess Sita was thus deprived of her *rights to marital life and freedom of expression*, and was consequently re-victimized for severe mental agony in those days in the absence of fair CJS.

Even in the age of Mahabharata, the victim compensation and restorative justice mechanism can be viewed as unsystematic and discriminatory, or deemed as not in practice. The King Drutharashtra who was the direct witness to *Draupadi*'s assault by his sons neither punished the offenders nor made them participate in the restorative justice system (RJS) to apologize for their acts towards the victim, but simply granted compensation in the form of returning the land to victim's spouses. Under such circumstances, the pain out of the victimization was carried for decade still the husband of the victim defeated and assassinated the offenders to fulfill the aspiration and to uphold the dignity of the victim. Hence, it can be understood that the capable victims were taking the law into their own hands to make the offenders and their dependents victimized to get healing from sufferings, or else were remaining as silent sufferers in those days. The law appears to be a silent spectator in the Mahabharatha period.

The realm in '*Kali Yuga*' can be divided into mainly Gupta dynasty, Maurya dynasty, Mughal Empire, British colonial period, and Modern era. Women were vulnerable to exploitation and torture in the early Kali yuga. They faced brutal and diverse acts of aggression. Child Marriage, Sati Sahagamana (Self-immolation), and Male birthright supremacy were few forms of hostilities against women in this era. In Maurya realm, cruelty against women was not less infuriated. Asura Marriage (a forceful marriage known as Bride-price marriage), husband's second matrimony with other woman after 8 years of first marriage, if first wife did not give any birth, husband's freedom to have several marriages till blessed with male issue, were some forms of hostilities victimizing women in those days. In Mughal Period-seclusion from public view (known as Purdah system), Monogamy, banning of widow's marriage, and Restrictions on women learning were other form of aggressions towards women. In British colonial era, though cruelty against women could not take its end fully, but can be said as lessened in effect.

Indeed, in the modern era too, the period in which the restorative justice mechanism is said to have been an integral part of CJS, it appears that it is not implemented in a true sense as is evident from the incident of Dr J Jayalalitha's victimization. There is no literature available indicating that the State had initiated enquiry to prosecute the offenders or to make the offenders render their apologies and to suitably compensate for restituting the victim, or to prove the innocence of offenders of false accusation. Thus, it can be predicted that the State is negligent towards providing justice to the women victims, inspite of expectations that it should promote access to justice and to eliminate offences against women by strengthening its institutions in the lines of UN's SDGs.

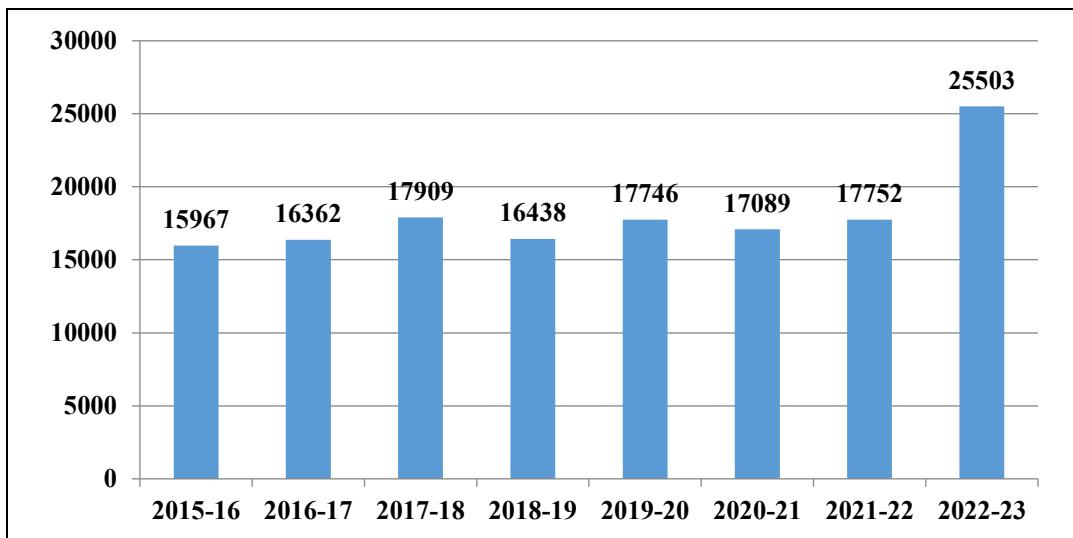
When the situation of even high profile women as elucidated above is so pathetic at every era, the condition of the underprivileged or unprivileged women can easily be visualized. The National Crime Records Bureau (NCRB) states that 2022 witnessed approximately 4,45,256 cases against women offences which amounts to precisely 1,220 cases per day. It indicates that the actual gendered violence will be more than the officially

registered cases. The National Commission for Women (NCB) reported that 28,811 grievances were registered with it in relation to the offences against women in 2023 involving harassment other than domestic violence and deprivation of women right to dignity. It has also been reported that during this digitalized world, the women are being more subjected to grave molestation through obscene messages using social media platforms like Instagram, Face Book etc., in addition to rape incidents reported as committed by fellow-colleagues, teachers and doctors at workplace.

On the other hand, the successive governments claim that they are committed towards empowerment of women but controlling of offences against women will be possible only when the people are made to change their patriarchal mindsets, and when the social, economic and political position of women is enhanced. The Government of India states that the 'public order' is a subject under the Seventh Schedule of the Constitution of India which empowers the respective State and Union Territory governments to fortify the life and possessions of the citizens including women through policing and other existing laws. It extends support in efficiently thwarting and handing crimes against women and girls through numerous initiatives. But the researchers argue that the CJS suffers from serious underfunding and understaffing, and continues to be very slow causing enormous delay in delivery of victim justice. Despite of important achievements for decades, yet majority of the women who are victims of crimes against women remain elusive. Most of them hesitate to seek help of the appropriate authorities for compensation and restorative justice. This may be because of unawareness of the rights available to them, or fear of societal consequences, or expenditure involved in it, or unfaith in the investigation process and justice delivery systems.

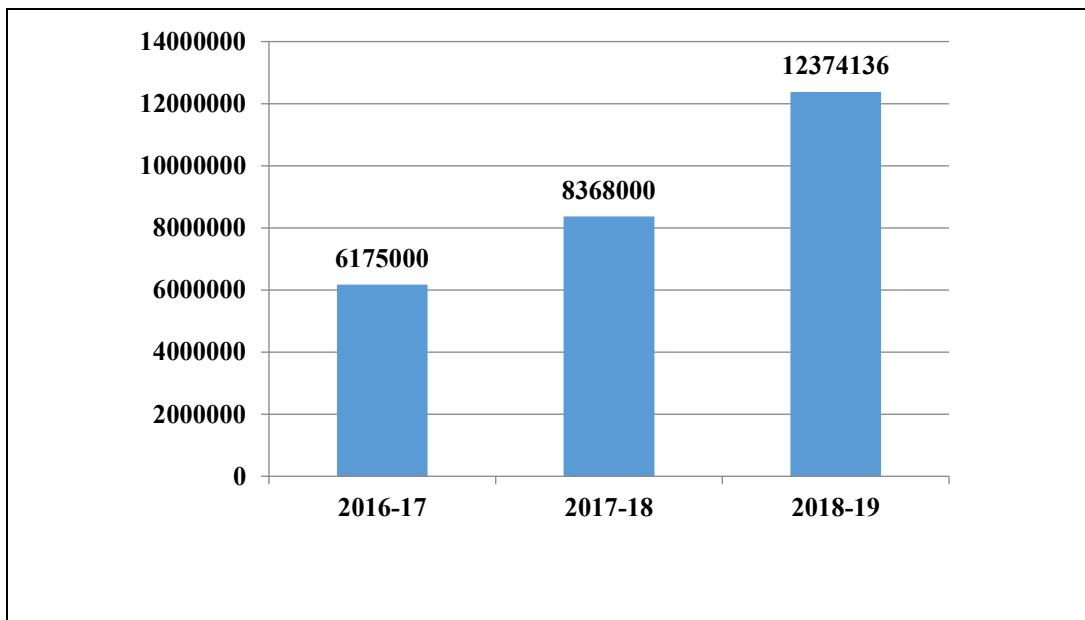
### Offences against Women in Andhra Pradesh State

The NCRB reported that the Andhra Pradesh State is in 6<sup>th</sup> position in 2022 in the violence against women with 25,503 cases which is 70 cases per day, with an increase of 43% from the previous year 2021 with 17,752 cases. The 2020 has recorded 17,089 cases. In 2019, it was 17,746 cases. In 2018, it was 16,438. In 2017, it was 17,909. The records also indicate that there is a steady increase in the rate wherein a total of 16,362 cases in 2016, and 15,967 in 2015. These offences are included the deaths due to harassment of dowry, subjected to rapes, abetment of suicides, killing of children, husband's cruelty, sexual harassment, etc.



**Figure. 1:** Number of Crimes reported in relation to the Offences against Women in Andhra Pradesh State

The above data shows that except on one or two occasions, the crime rate is not controlled where multitudes of women are victimized because of the offences against women. However, the data of the National Legal Services Authority (NLSA) indicates that in all crime cases victims of various offences including the offences against women, altogether an amount of Rs.61,75,000/- in the financial year (FY) 2016-17, Rs.83,68,000/- in FY 2017-18, and Rs.1,23,74,136/- in FY 2018-19 was awarded under various Victim Compensation Schemes in the State. Even out of the small number of 42 applications, only 7 in FY 2016-17, 22 out of 59 cases in FY 2017-18, and 75 against 128 cases in FY 2018-19 were only resolved which shows the enormous delay in restoration of victims.



**Figure. 2:** Amount awarded to the victims of all offences including victims of offences against women offences from the financial years 2016-17 to 2018-19

Furthermore, the present Criminal Justice System (CJS) in which the Victim Compensation (VC) and Women Victim Restorative Justice Approach (WVRJA) are integrated is also denounced of futile in attending the needs of the victims for - seemliness treatment, protection from impairment, access to enforcement mechanism, legal aid, and financial assistance to restore swiftly. Therefore, the current study is aimed to scrutinize the existing penal laws and welfare policies meant for prevention of offences against women as well as compensation and restorative justice to the victims in the Andhra Pradesh State, to compare them with those available in the external jurisdiction, and to identify best practices for enhancement of women protection and welfare.

### Objectives

1. To detect the intercontinental and constitutional perspectives outlining the rights available to the citizens in getting justice;
2. To examine the efficacy of the crime controlling laws and victim welfare policies together with the judicial decisions related to victim compensation and restorative justice;
3. To identify the gaps in promotion of healing and reparation mechanism;
4. To identify best schemes for restoration of victims from other jurisdictions; and
5. To propose or affirm appropriate policies for enhanced status of sufferers of sexual offences; and to accomplish the sustainable development goal of elimination of offences against women.

### METHODOLOGY

Since the corresponding author was a lawyer, and as currently serving as a Judicial Officer, and acquainted experience in examining victims of sexual offences while prosecution of offenders, Auto-ethnography method has been opted for this study. In addition, the researchers have collected information from the Constitution of India, reports available in the public domains, scholars' publications in various journals, print media publications, and findings & decisions of the Judiciary in various case laws. Finally, the researchers had discussions with legal experts and judicial officers who had conducted trials of such offences to gather additional insights and to validate the findings. Microsoft Excel was used for creating charts to present the data in an organized manner.

### DISCUSSION

#### Violence against Women: Definition & Scope

According to the United Nations (UN), the term 'violence against women' means and includes any act of gender-based viciousness that results in, or is probable to result in - harm either physically, sexually or psychologically or agonizing a woman in public or personal life. Such act may be a threat, bullying or illogical deprivation of freedom. The term can also be used to portray a wide range of acts, including emotional abuse,

slaughter, rape, sexual harassment, sexual attack, physical assault, mauling, molestation, pestering, strained prostitution, genital defacement, and pornography.

The extent of most common forms of cruelty against women refers to close associate hostility, sexual mistreatment by non-cherished associates, trafficking, abuse of labor, and debt burden. It is also not limited to rape in war, bodily and sexual aggression against prostitutes, sex selective abortion, female infanticide, and the purposeful desert of girls. There are several latent perpetrators such as husband, parent and other relatives, nearby residents, and men in higher authority or power. Majority forms of aggression are not inimitable incidents but are enduring, and can even carry on for years. In view of its sensitivity, 'violence against women' is more or less commonly under-reported. Yet, the commonness of such hostility proves that millions of women are suffering from violence or living with its consequences.

According to Sec. 2(l)(y) of the *Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023* (previously known as *The Code of Criminal Procedure 1973*), 'victim' means any individual who suffered some loss or hurt caused by reason of any act or oversight of other individual who includes the protector or legal heir of such victim.

### **Significance of the Restorative Justice Approach (RJA) in CJS**

Restorative Justice is a move towards criminal justice which considers any act of impairment against an individual or society as a crime. The interpersonal misbehavior imposes a compulsion on the perpetrator to revamp harm and to reinstate the sufferers to their previous status (Zehr 1990). It provides benefits to the victims that are not available in traditional adversarial righteousness. Victims are prioritized for a crucial position in the process of justice aiming that they should get information on their victimization ending with poignant restoration and apology (Sherman and Strang 2003). It would not only provide a substitute to prosecution and incarceration, but also hold criminals responsible to meet requirements of victims and the society (Porter 2005:1). It reduces stress and traumatic related harm to the victim. It provides a balancing approach through participation and mediation of all the stakeholders i.e. victim, offender and the community in the CJS. Tony Marshall signifies that healing justice is a development in which all the parties to an offence would collectively resolve as to how to compact with the consequences of the crime and its insinuation for the future. It emerged as a substitute to the conventional justice (UN, 2002) with a holistic and more inclusive strategy to minimize the psychological damage of the victims by meeting their needs (Strang, 2002; Wemmers & Cyr, 2005; A. Wemmers & Cyr, 2005; Zehr, 2005).

The RJA is therefore said to be an inspiring principle based on 'the saint has a past and the sinner has a future'. It is targeted at reinstatement, renovation and healing, as divergent to the vengeance and sentence. Compensation which serves as a means of restoration of the victim is the main component of the RJA. The RJA allows victims to voice and aid them get well soon from the effects of crime.

### **Meeting Ends of Victim Justice: A Challenge to the State**

The number of victims rises because of the leading of the offences against victims and it will undoubtedly pose a challenge to the State to offer reparation, rehabilitation and righteousness to numerous victims. Abduction against Goddess Sita in Treta Yuga lead to the killings of people of Sri Lanka and Ayodhya kingdoms, and Assault against Draupadi in Dvapara Yuga witnessed the assassination of millions of people of Hasthinapura and surrounded kingdoms. In the recent past, *Manipur State*<sup>11</sup> had witnessed the massive gang rapes and massacres because of sexual violence against two women. Moreover, the victims of offences against domestic violence, sexual assault by associate and non-associates, and sexual abuse at workplace are increasing year to year in this contemporary society. Therefore, it can be a gigantic challenge for the State to control law and order; to identify, prosecute and punish the real offenders; to prevent re-victimization; to thwart victimization of criminals; and to provide compensation, rehabilitation and restoration to bona fide victims, if the violence against women is not prevented.

## **ANALYSIS**

### **Objective-1: State's Obligation to Guarantee Abolition of Cruelty against Women**

The UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) 1979, and subsequently the UN Declaration on the Elimination of Violence against Women 1993 imposed obligation on States to ensure eradication of cruelty against womenfolk. The State should ensure that women are allowed to rights and ideology in respect of parity, safety, freedom, honesty and stateliness of human beings. It should recognize that violence against women is impediment to the accomplishment of fairness, growth and tranquility. Offensiveness against womenfolk is a violation of their basic rights.

This convention and declaration have underscored the necessity for having an unambiguous and inclusive description of hostilities against womankind, an apparent affirmation of the privileges to be implemented to guarantee abolition of all kinds of cruelty against womankind, a promise regarding State's responsibility, and a promise by the intercontinental society to the abolition of aggression against women.

Furthermore, the UN's Sustainable Development Goal (SDG)-5 requires the States to culminate all types of discrimination against females in all places; eradicate every type of violence including trafficking, sexual assault and abuse against all females in every sphere, public or private; end every form of harmful practice, such as child marriages, compelled weddings and female genital defacement. The SDG-16 requires the States to meaningfully diminish all types of cruelties and allied deaths in all places, to culminate exploitation, ill-treatment, trading and all kinds of violence against harassment of children; to encourage the rule of law at national and intercontinental levels; and to safeguard access to justice equally for all by the year 2030.

Every State is therefore to allow women to get equally entitled of all human rights<sup>12</sup> that include the rights to - life, liberty, equality, protection, free from discrimination, health, just and favorable conditions at workplace. It should secure protection of women from subjection of ordeal, malicious, ruthless or humiliating dignity.

### ***Constitutional Liability on the State to Protect Women Against Discrimination and Violence***

The Indian Constitution declares that sex-based discrimination is unconstitutional. It contains exclusive provisions for improving the status of the women. Females are to be treated equally on par with males<sup>13</sup>. Discrimination against sex is prohibited<sup>14</sup>. Women are to be given equal opportunities in education and public employment<sup>15</sup>. Women being the citizens are entitled to right to life<sup>16</sup> in which right to dignity<sup>17</sup>, and right to health<sup>18</sup> and right to livelihood<sup>19</sup> are integrated. Woman trafficking is prohibited<sup>20</sup>. State is to secure the right to vocation to persons of all genders equally<sup>21</sup>. State should ensure all genders same pay for same work<sup>22</sup>. State should confirm humane working conditions and maternity benefits to women<sup>23</sup>. It is the primary obligation of every inhabitant to relinquish practices insulting stateliness of women<sup>24</sup>.

### **Objective-2: EFFICACY OF THE EXISTING LAWS AND POLICIES**

#### ***The Bharatiya Nyaya Sanhita (BNS) 2023 (previously, the Indian Penal Code 1860)***

This is the prime punitive law in the Indian CJS that prevents and controls the crimes including offences against the women. It has introduced a chapter on "Offences against Woman and Child". It declares that all provisions of POCSO law will be invoked if rape is committed on a minor. The major offences against women, and punishments thereon, as contained in various provisions of this law, are provided hereunder:

- a. Whoever commits rape shall be castigated with painstaking incarceration for ten years or for life, and to fine<sup>25</sup>. Committing rape on below 16-years aged woman is a crime and whoever commits shall be castigated with rigorous imprisonment upto 20 years, or for life. The guilty is further imposed with a monetary fine which will be awarded as compensation to the aggrieved women to meet medicinal and resettlement expenses adequately<sup>26</sup>. Similarly, committing a rape on below 12 years aged girl is a crime which the guilty shall be punished with tough imprisonment for a minimum of 20 years or life captivity with fine or sentenced to death. The fine should be adequate and should be awarded to the victim to meet treatment and reintegration expenses<sup>27</sup>.
- b. A person is guilty if committed sexual intercourse by employing deceitful means which includes encouragement, false promise for job, promotion, or wedding, and marrying by hiding identity. He is liable for 10 years imprisonment. Fines may also be imposed as an additional punitive measure<sup>28</sup>.
- c. If a woman is subjected to gang rape, every guilty person shall be deemed as committed crime individually, and shall be punished with rigorous captivity for at least 20 years, the term of which can be extended to life detention, and with fine. The fine should be reasonably adequate to meet all the medical and rehabilitation expenses of the victim. The fine is required to be granted to the survivor as reparation for restoration<sup>29</sup>.
- d. Stabbing or use of unlawful force against a female intending to outrage her shyness is an offence for which the offender shall be castigated with 1 to 5 years of incarceration, and also be fined for compensating to the victim<sup>30</sup>.
- e. Sexual harassment is an offence. The guilty who commits sexual harassment in any form i.e. bodily contact and advances concerning undesirable and open sexual proposal or request or insist for intimate relations or displaying sexually explicit material or exhibiting pornography content against the wish of a female, is liable for retribution with painstaking detention upto 3 years or a fine or both. A person if makes obscene comments shall be guilty of the sexual stalking for which he shall be castigated with incarceration upto 1 year, or with fine, or with both<sup>31</sup>.

- f. Attack or use of illegitimate power to a female intending disrobing or forcing her to be nude, is an offence, and the guilty is liable for punishment with imprisonment for at least 3 years but can be expanded to 7 years. He is also accountable to pay fine<sup>32</sup>.
- g. Voyeurism is also an offence and whoever observes, or grabs images of a female participating in a clandestine act to which she typically expects of not being observed by any individuals including the wrongdoer, or broadcasts or circulates such depicts, shall be castigated with captivity for at least 1 year, but can be expanded to 3 years. He shall also be liable to be imposed a fine in the first occasion. For the subsequent offences, he shall be castigated with detention of at least 3 years, the term of which can be expanded to 7 years, and shall also be imposed fine<sup>33</sup>.
- h. If a wedded woman, in seven years of her matrimony, succumbed to death because of burns or bodily injury or unusual circumstances as vulnerable to unkindness by her partner or his relatives for dowry, each of the guilty is liable for punishment with at least 7 years imprisonment or for life<sup>34</sup>.
- i. Marrying again during a lifetime is an offence. The guilty will be sentenced with incarceration upto 7 years along with fine<sup>35</sup>. However, there is an exception to this where it is not an offence when the complainant spouse is continuously absent from the marital life of partner for 7 years or shall be presumed to be deceased. Whoever commits offence by obscuring the information of the previous wedding from the individual, with whom the subsequent wedding is performed, shall be chastised with incarceration upto 10 years. The guilty shall further be imposed with fine<sup>36</sup>.
- j. Whoever induces any child to illegitimate sex with other individual is culpable, and is liable for confinement upto 10 years. He shall also be liable to be imposed a fine<sup>37</sup>.
- k. Buying a child for prostitution is an offence and the guilty is liable for punishment for at least 7 years which can be furthered to 14 years, and is further liable to pay a fine<sup>38</sup>.
- l. Importing a female of below 18 years intending of seduction to illicit sex with other individual, shall be liable for captivity upto 10 years, in addition to fine<sup>39</sup>.

Women offences are also identified and penalized under various special laws including Commission of Sati (Prevention) Act 1987, Dowry Prohibition Act 1961, Indecent Representation of Women (Prohibition) Act 1986, Immoral Traffic (Prevention) Act, 1956, and Protection of Women from Domestic Violence Act 2005.

### **The Andhra Pradesh Disha Act 2019**

This is an initiate of the Government of Andhra Pradesh State towards prevention of crimes against women through harsh punishment of the guilty in a time bound manner. This law requires the State to complete investigation in 7 days, trial in 14 days and to complete trials in 21 days. It provides death sentence for the offences of rape and gang rape. This legislation also conducts trials and penalizes the offenders for the offences of sexual assault as well as harassment against women and children. It conducts trials of the offences fallen under Sec. 509 of BNS. This law empowered the State to constitute special investigating teams and courts to investigate and to deliver justice quickly.

### ***The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013<sup>40</sup>***

This code was created aiming deterrence of harassment on sexual reasons at workplace. It protects all the human rights of the women at work, to work with seemliness in the lines of the rights granted by the UN-CEDAW 1979 as was promised by India on 25/06/1993. Physical touch, insisting or requesting for sexual intercourse, uttering lewd comments, showing explicit content or adult-oriented content or any other unwanted physical, vocal or non-vocal conduct of sexually suggestive material are included under the expression of 'sexual harassment', and made the offenders guilty for punishment.

This law mandates all employers to form an Internal Complaints Committee (ICC) to look into the grievances of working women, and to attempt to settle the matters first through conciliation failing which to conduct comprehensive enquiry to arrive at definite conclusion. If the allegation against the accused is proved, the ICC should propose action against him as per service rules. The ICC shall also determine and recommend adequate compensation to be paid by the accused to the victim towards her mental trauma suffered, career disruption, and medicinal expenses because of the offence committed by the guilty. However, the ICC should consider the financial position of the accused in determining the quantum of compensation to be paid to the victim.

### ***The Protection of Children from Sexual Offences (POCSO) Act 2012<sup>41</sup>***

This Act requires the State to secure protection to the progeny from crimes of sexual exploitation, sexual attacks, sexual pestering and pornography. It directs the State to institute Special Courts for examination of such crimes. It prevents enticement or compels a kid to involve any illicit sexual activity; to thwart the manipulative use of kids in sex work or such kind of prostitution services; and to avoid the abusive use of brood in pornographic activities and materials, and to address these offences.

Under this law, if any person penetrates his penis, genitalia or any other object into the vaginal canal (yoni) or applies his jaws into the vaginal canal, jaws, anal canal, urethra of the kid or makes the kid to do so, such individual is liable for retribution with incarceration for at least 10 years or life imprisonment, and fine. The fine imposed should be adequate and paid to the aggrieved kid for medical and rehabilitation purposes.

This Act also states that if any police officer commits forced intercourse or lethal penetration using deadly weapons or harmful material causing the kid to mentally sick or fatality, shall be liable for painstaking incarceration for at least 20 years or life which shall mean confinement for the rest of customary life. He is liable for imposing fine, or sentence of death based on the seriousness of the crime.

If any police officer or whoever commits aggravated sexual attack taking advantage of kid's physical and mental status or having knowledge that the kid is pregnant or attempts to sex and to kill the child, or attempts to sex and makes the child naked in public, is liable for chastisement with imprisonment of minimum 5 years that can be extended to 7 years. He shall further be liable to be imposed a fine for compensating the aggrieved kid for restoration purpose. Using the kid for adult content is also an offence under this Act.

#### ***The Protection of Women from Domestic Violence Act (2005)<sup>42</sup>***

This Act directs the State to secure constitutionally guaranteed rights of women to the victims of violence happened within the family. It empowers the Judiciary to direct guilty person to pay economic respite to the aggrieved women compensating medical expenses incurred and the losses experienced by them and their children in consequence of intimate partner violence. It requires that the financial relief shall be sufficient, just and realistic and dependable living standard to which the aggrieved women are accustomed.

This legislation authorizes the Magistrate to order reasonable amount either to be paid in lump sum or monthly basis for maintenance under Sec. 144 of the BNSS compliant with the nature and circumstances of the crime. If the offender fails to make payments, the Magistrate shall order employer of the criminal, to pay to the aggrieved women or to deposit the amount with the court out of the wages or any amount that has been accumulated to the account of the criminal towards the financial respite to be paid by the offender. In conjunction with other respires, the Magistrate may favorably consider the application of the victim, and can order the offender to compensate the victim of the agony.

#### ***The Indecent Representation of Women (Prohibition) Act 1986<sup>43</sup>***

This regulation is aimed prohibition of shameless depiction of women through advertisement, publication, writing, painting, and figuring and in any other manner. It prohibits a person from printing or causing to print or arranging or participating in the publication or demonstrating of any announcement that contains offensive depiction of females in any context. It also prohibits selling, disseminating, propagating or sharing any manuscript, leaflet, document, glide, picture, script, depiction, paint, photo, or figure containing filthy demonstration of females in any manner. The law-breakers shall be sentenced with incarceration upto 2 years along with a fine on first conviction, and in the subsequent guilty verdicts, the incarceration shall be 6 months to 5 years, along with fine.

#### ***Victim Compensation, Rehabilitation, and Restorative Justice Administrative System (RJAS)***

#### ***The Bharatiya Nagarik Suraksha Sanhita 2023<sup>44</sup>***

This legislation provisioned crime victim compensation. As per the provisions contained in this law, the Court while awarding a punishment inclusive of death penalty to the offender, can also impose fine on the offender to compensate to the victim the expenses that the victim appropriately incurred during the trial period, and the loss or injury sustained by the act of the offender<sup>45</sup>.

It states that every State Govt. in coordination with the Central Govt. shall have to devise a definite plan with adequate funds for allocating compensation for restoration of the needy survivors or needy survivors of the deceased women victims who sustain loss in any form in consequence of an offence for restoration. The District Legal Service Authority (DLSA) or the State Legal Service Authority (SLSA), soon after receipt of the recommendation from the Court for compensation, shall enquire the status of the aggrieved survivors and fix the proportion of compensation to be paid to them. If the Trial Court is contented that the compensation granted u/s 395 of BNS is not sufficient for restoration of the survivors or where the accused is acquitted but the survivors require rehabilitation, it may recommend compensation from the State. This law also endeavors to award compensation to the victims in the cases where the criminals are untraced or unidentified. It mandates the LSAs to complete enquiry in 2 months and to grant suitable compensation to the survivors. The compensation may be payable by the State besides the payment of fine imposed on the offenders and awarded to the victim under various penal provisions<sup>46</sup>.

This law further mandates all private and public hospitals to offer first aid followed by treatment at free of cost to the victims of crimes who are covered under Ss. 64, 65, 65, 66, 67, 68, 70, 71 and 124 of the BNS, and also to the victims who are covered under Ss. 4,6,8,10 of the of POCSO Act 2012<sup>47</sup>.

### **Legal Services Authorities Act 1987<sup>48</sup>**

Under this law, LSAs at various levels including national, state and district, were created to administer and extend legal help to the sufferers of sexual exploitation and trafficking during rescue and trial, besides awarding compensation under Sec. 396 of BNSS. The LSAs are expected to conduct social audit and monitor the rehabilitation facilities. They should also arrange programs to spread understanding in the communities particularly in susceptible groups through panel lawyers and para-legal volunteers, and programs for sensitizing police, advocates, prosecutors, government and judicial officers involving NGOs, educational and civil society organizations. They are directed to bridge a platform for victim-offender mediation as mandated to provide alternative dispute resolution (ADR) services to promote speedy justice and to prevent victimization of offenders through the acts of victims, which are similar to the provisions of the UN-SDGs.

Towards this direction, the Andhra Pradesh State has an executive mechanism at various levels, consisting of SLSA, DLSAs and Mandal Legal Services Committees (MLSCs). Additionally, Lok Adalats<sup>49</sup> ensures fair justice. Moreover, Alternate Dispute Resolution Centres (ADRC) and Mediation Centres (MC) exist in each district.

The LSAs are empowered for grant of compensation for instant first aid as deemed fit taking into view the surgeries undergone or to be undergone by the victim of acid attacks, and may also award the actual medical expenditure incurred. Rs.3 lakhs at the minimum can be granted as compensation, and it can be increased by 50% more if the victim is below 14 years of age.

### ***Other Schemes meant for the Welfare of the Victims of Offences Against Women***

#### ***NALSA (Victims of Trafficking and Commercial Sexual Exploitation) Scheme 2015***

The goal of this central plan is to extend legal support to the survivors of women trafficking in rescue and reintegration. It also aims to extend financial and social passages to these vulnerable sections to enable them to get benefitted by all social welfare schemes which are typically accessible to normal citizens. This plan safeguards dignity of the victims of sexual crimes, and preserve their fundamental *Right to Life*. It ensures that all the government schemes such as Housing Scheme, Health Scheme, Food Security Scheme, Education Scheme, Livelihood or Skill Development Scheme, Child Care Development Scheme, Jan Dhan Scheme<sup>50</sup>, Aadhaar Scheme<sup>51</sup>, Voter Card Scheme<sup>52</sup>, Self-Help Group Membership Scheme, Legal Aid Scheme, Para-Legal Volunteers (PLVs) Scheme, Village Legal Care and Support Centres Scheme, Victim Compensation Scheme are available to the victims of offences against women. Under this Scheme, a team with lawyers, PLVs and social workforce is constituted to oversee these activities.

#### ***NALSA Compensation Scheme for Women Victims/ Survivors of Sexual Assault/ other Crimes - 2018***

This is a model central plan under the Code of the BNS 2023 to provide compensation to the victims and or dependents of the victims. Husband, parents, grandparents, unwed daughter and kids are included in the term 'dependents' category. It requires the State to create a Women Victim Compensation Fund (WVCF) by accumulating funds from the Central Victim Compensation Fund (CVCF), State Victim Compensation Fund (SVCF), amount paid by the wrongdoers as fine, and donations received in discharge of Corporate Social Responsibility, to pay compensation to the crime women victims or her dependents. Under this scheme, women victim compensation up to Rs.5 lakhs to Rs.7 lakhs, all medical expenses, and rehabilitation support will be awarded. This scheme shall have to be implemented by the NALSA in collaboration with SLSAs.

#### ***Andhra Pradesh Victim Compensation Scheme (2018)***

This is a State scheme which has been made available as per the regulations under Sec. 357A of Criminal Procedure Code (CrPC) 1973 (replaced by Sec. 395 of BNSS). It provides funds to offer compensation to all the needy victims of crimes including the victims of acid attacks, rapes, and dowry harassments, or their dependents for their sufferings and losses in consequence of a crime.

#### ***Nirbhaya<sup>53</sup> Fund Scheme 2013***

The Govt. of India created this fund aiming to improve the safety and security of women. It established One Stop Centre to provide speedy support to the victims. As on Feb. 2022, an amount of Rs.9549.04 crores has been appraised by the Empowered Committee, but an amount of Rs.6212.85 crore has been allocated out of which 4241.91 (68.27%) crore has been spent. Upto the financial year 2023-24, a total amount of rs.7212.85 crore has been allocated, out of which Rs.5212.85 crore has been allocated for the period between 2015-2016 and 2023-24. Rs.5448.045 corres has been utilized across the nation which is around 75% of the allocation<sup>54</sup>.

#### ***Contribution of the Judiciary for Women Victim Justice***

The Judiciary started recognizing the RJA as an alternative system for determining the punishment and has been utilizing it in resolving criminal cases where the perpetrators are bound to restore the victims through a Peace Agreement.

In the *Budhadev Karmaskar*<sup>55</sup> case (2022), the Supreme Court (SC) ruled that the sex workers are entitled to a dignified life as provisioned under *Right to Life* guaranteed by the Constitution, and hence the State is to enlarge plans for providing them with technical and vocational training. In *Mohd. Firoz vs. State of Madhya Pradesh case*, the SC established an important principle highlighting the significance of the restorative justice that will give an opportunity to the criminals to become socially responsible citizens. It has held that restorative justice shall be balanced with retributive justice.

In *Nipun Saxena & Another v. Union of India & Others*, the Apex Court underscored the importance of devising a compensation scheme for the benefit of the victims and their surviving family members. It has opined that the compensation amount shall not be distorted or inefficiently used, but is truly to be made accessible for restitution of the victims. The trial Judge should pass orders of investing the compensation amount in a capital-accumulation account to be helpful for the child victims. The Apex Court ordered that every State Government shall have a VCS for the aggrieved individuals of sexual offences and acid attacks in the lines of the NALSA 2018 scheme and that the States are at liberty to add many more such schemes.

In *Parivartan Kendra vs. Union of India and Others* case, the Apex Court in 2015 directed all the private hospitals to provide free treatment which is inclusive of medicines and expensive reconstruction surgeries, to acid attack victims. It has also held that in addition to this, the Government shall have to pay a minimum of Rs.3,00,000/- to these victims, and shall explore enhancement depend on the need. It has obligated the State to take upon complete accountability for both the immediate treatment and further rehabilitation of these survivors. Subsequently in 2024, the Delhi High Court held that no hospital shall refuse free medical treatment to the victims of rape and acid assaults. It has ordered that every hospital should arrange display boards with the content that "Free out-patient and in-patient medical treatment is available for victims/ survivors of sexual assault, rape, gang rape, acid attacks, etc.".

### **Objective-3: GAPS IN PROMOTION OF HEALING AND REPARATION MECHANISM**

The RJA reflects a mounting promise to improving the justice process. It is integrated in Panchayat system, *Lok Adalat* and arbitration regulations through which the grievances are settled amicably. However, this expedition is not lacking its difficulties. Fund mobilization, accessibility concerns, execution difficulties, and the fragile balance amongst the rights of victims and offenders throw challenges to the effective functioning of compensation and restorative justice mechanism. The necessity to assure fiscal sustainability and navigate cross border adds the challenges.

Furthermore, ensuring healing of victims of cruelty relies on different aspects. The readiness of the State to extend efficient redressal and restoration responses and the standard it set for providing access to the victims are very crucial. There are concerns about the individuals directly involved. The level of faith that the individual has in relation to receiving healing services offered by the system, the query as to whether the individual lives in the locality where the offence happened, and whether all the required measures are taken in terms of grievances, evaluations and documentations are important. Besides, it is vital to determine whether the victims of sexual offences would prefer restorative justice in place of retributive justice.

### **Objective-4: SCHEMES FOR RESTORATION OF VICTIMS FROM OTHER JURISDICTIONS**

As per the provisions of the BNSS and in compliance with the regulations of the BNS, every State Government enacted victim compensation schemes for speedy restoration of victims. However, the *Odisha*<sup>56</sup> State Government has a better victim compensation system which serves two objectives, one is extending fiscal support as immediate relief to the victims and the other one is subsequently providing housing, mentoring, medical aiding, educating and vocationally training to the needy victim for swift reintegration. This concept of the Odisha is not merely providing compensation to crime victims, but also to extend a holistic support to meet the ends of victim justice. It improves the victim conditions that arose from the offence with the support right from financial support to restorative assistance services.

The South Africa Justice Delivery System proposed victim reparation grants to the victim or to the dependents of the deceased victim. The amount will be calculated taking into account the cost of living. It can be based on 3-principles, one is to acknowledge the suffering, secondly to enable access to requisite facilities, and thirdly to allow subsidies for daily living costs to improve socioeconomic circumstances.

The Victim-Offender Mediation approach has been widely used in the United States and Canada aiming reducing of post-traumatic stress symptoms and increasing of victim satisfaction. Brazil and Argentina is following restorative circles where the victims, offenders and community are involved facilitating settlement of grievances through discussion. It has been viewed that this system would promote healing, accountability and community reparation. The New Zealand is following Family Group Conferencing method where the victims, offenders and

their family members participate in the discussions to plan for reparation. Vermont and some other countries like Rwanda and Democratic Republic of Congo follow Community Reparation Boards to bring the stakeholders to a platform to cure the loss caused by the acts of the offenders, and to develop reparative plans.

#### **Objective-5: CONCLUSION & SUGGESTIONS**

The compensation and the restorative justice approach in which mediation of victim-offender-community is involved would play a vital role in overcoming these difficulties, preventing re-victimization of victims, victimization of offenders and saving financial resources of the State. The State has rightly given priority of balancing both the retributive as well restorative justice systems as is evident from the penal provisions which were contained in various criminal laws, compensation which is one of the most important element in restorative justice is involved in the form of imposing fine on the perpetrators for compensating the victims for their speedy recovery and reintegration. In the penal provisions, retributive justice punishment has also been provisioned for each offence to remove the harmful criminals from the society which is required to serve as a deterrent to potential perpetrators discouraging them from committing offences again and again taking advantage of the restorative justice softness, and would restrain others from committing similar crimes.

The study concludes that -

1. Women victimization is often leading to communal rivalries resulting to displacement of people, brutal gang rapes and slaughters of innocents. It is a gigantic challenge for the State to control law and order; to identify, prosecute and punish the real offenders; to prevent re-victimization; to thwart victimization of criminals; and to provide compensation, rehabilitation and restoration to bona fide victims.
2. Though restorative justice works better in restoration of the victim and renovates the offender to a certain extent, but without adequate punishment, criminals may not take the law very seriously that may lead to repeat of crimes. The leniency may re-victimize the survivors making them suffer if their sufferings are not being taken stringently. It can perpetuate a culture of impunity undermining trust in the CJS and emboldening potential criminals. Hence, while the process of restorative justice, the retributive justice which serves as a punitive measure cannot be neglected.
3. For any given society, both the retributive as well as restorative justice systems are required in a balanced way for an inclusive justice system. Retributive justice provides chastisement and upholds social order in the society. Restorative justice prioritizes repairing damage, reintegrating the aggrieved individuals, and rejuvenating the society. By coalescing both the strategies - the CJS can balance castigation and rehabilitation, effectively addresses the divergent needs of the stakeholders, and promote holistic justice.

It is suggested that -

- a. There is a need to focus on prevention of bad incidents than providing justice after the loss. In order to menace the violence against women, use of alcohol should be strictly prohibited. Sexual content in the movies and media channels should be censored. The television channels and movies are to be encouraged to promote themes that condemn aggression and elevate healing of the victims. Pornography sites should be blocked and such movies should be strictly banned. Child marriages shall be discouraged. Well-organized and responsible law and order institutions such as administration, police and judiciary are to be ensured. Similarly the existing laws are to suitably be amended so that mental sickness shall not be a reason for nullifying the marriage. Code of conduct for communicating with opposite sex at the workplace should be outlined and strictly adhered to. As the development of human rights, limited liability of offenders, indefinite compensatory mechanism, societal influence and socioeconomic status are the major obstacles weakening the victim justice approach, the State should focus on these concerns. Moreover, prohibition of alcohol, restriction in misuse of advanced technology, censoring pornography movies, controlling media in broadcasting porn and violent themes, promotion of brotherhood relations among religions, enhancing the liability of the offenders in restoration of aggrieved persons, and sensitizing of victim justice laws against women offences help curbing the crimes against women; and sincere implementation of victim welfare schemes with adequate funds and staff would meet the ends of justice.
- b. The States may follow the Odisha model of restoration system of providing housing and employment to the women victims in addition to the immediate medical relief and monetary help, for their swift integration.
- c. The State is to encourage young researchers with adequate funds to conduct empirical studies to find out the status of the victims of women offences for taking up measures to enhance their living status. The State is to see the distribution of funds for restoration of victims in a vigilance

angle and confirm that the funds are reaching and are spending for survivors and or survivors of victims.

- d. The State shall further improve the mechanism for quick disposal of applications received for restoration. The State may seek funds from BRICS alliance-nations for funds under south-south cooperation.
- e. The liability of the perpetrators shall be increased to the maximum extent that he will take care of the entire responsibility of well-being of the survivors of the crime victims. If his financial status is not in a position, he should work and reimburse the State expenditure, and the State is not restricted by the Constitution from making any laws taking away the rights of the perpetrators to secure peace and harmony in society.
- f. The Corporate Social Responsibility shall be mandated for contribution to the Victim Compensation Fund every year out of the percentage of their incomes.
- g. All the industry and institutions including Higher Educational Institutions shall allocate adequate funds in their annual budgets managed by their Internal Complaints Committees (ICCs) to be spent for the victims of sexual offences at their respective workplaces.
- h. Free treatment ordered by Supreme Court for the survivors of the victims of offences against women such as sexual assault, acid attacks, etc. in all hospitals including private hospitals shall be strictly adhered to.
- i. The State shall have to take complete responsibility to strive towards elimination of all kinds of offences against women, to secure access to justice for all, and to secure peace and harmony in society through various means including strengthening of institutions in the lines of the SDGs.

## NOTES

1. It is the first of the four Hindu ages characterized by truth and righteousness.
2. It is the second Hindu age, characterized by a mixture of good and evil.
3. It is the third Hindu age, marked by a decline in righteousness and truth.
4. It is the fourth and current Hindu age, characterized by darkness, ignorance, and chaos.
5. It is one of the States of India.
6. It is an ancient Indian epic poem revealing the story of Lord Rama and his ultimate victory over the demon King Ravana.
7. Seethamma, known as Sita, is the wife of Lord Rama, famous for devotion, loyalty, and purity.
8. It is one of the epics of ancient India, exploring the themes of duty, morality, and the struggle between good and evil.
9. She is the wife of five Pandava brothers, famous for courage, wisdom and strong character, and legendary heroine of the Mahabharata.
10. She was an Indian politician served as the Chief Minister of Tamil Nadu State in India. She was the Leader of the Opposition for some time.
11. It is one of the States of India
12. *UN Declaration on the Elimination of Violence Against Women*, Art. 3.
13. Constitution of India, Art. 14.
14. *Id.*, Art. 15.
15. *Id.*, Art. 16.
16. *Id.*, Art. 21.
17. *Francis Coralie Mullin vs The Administrator, Union Territory of Delhi*, 1981 AIR 746, 1981 SCR (2) 516.
18. *Consumer Education and Research Centre vs Union of India*, 1995 AIR 922, 1995 SCC (3) 42.
19. *Olga Tellis vs Bombay Municipal Corporation*, 1986 AIR 180, 1985 SCR SUPL. (2) 51.
20. Constitution of India, Art.23.
21. *Id.*, Art. 39(a).
22. *Id.*, Art. 39(c).
23. *Id.*, Art. Art. 42.
24. *Id.*, Art. 51.
25. Bharatiya Nyaya Sanhita, Sec. 64.
26. *Id.*, Sec. 65(1).
27. *Id.*, Sec. 65(2).
28. *Id.*, Sec. 69.
29. *Id.*, Sec. 70.
30. *Id.*, Sec. 74 .
31. *Id.*, Sec. 75.
32. *Id.*, Sec. 76.

33. *Id.*, Sec. 77.

34. *Id.*, Sec. 80.

35. *Id.*, Sec. 82(1).

36. *Id.*, Sec. 82(2).

37. *Id.*, Sec. 96.

38. *Id.*, Sec. 99.

39. *Id.*, Sec. 141.

40. Act No. 14 of 2013.

41. Act No. 32 of 2012.

42. Act No. 43 of 2005.

43. Act No. 60 of 1986.

44. Act No. 46 of 2023.

45. Bharatiya Nagarik Surakhsa Sanhita, Sec. 395.

46. *Id.*, Sec. 396.

47. *Id.*, Sec. 397.

48. Act No. 39 of 1987.

49. It is a people's court in India that provides an alternative dispute resolution mechanism, aiming to settle cases through conciliation and compromise, thereby reducing the burden on the formal court system.

50. It is a government scheme to provide financial inclusion and access to banking services for the unbanked and under-banked population in India.

51. It is a 12-digit unique identification number issued by the Central Government to every resident of India, aiming universal identity and providing access to government benefits.

52. It gives unique identity and proof of citizenship issued by Election Commission of India for an eligible Indian, enabling to exercise right to vote in elections.

53. It refers to a gang rape happened in 2012 in Delhi. This case led to widespread outrage and sought reforms towards sexual violence.

54. Lok Sabha Unstarred Question No.35 (Feb. 2, 2024).

55. Criminal Appeal No(s).135/2010, SC, decided on May 19, 2022.

56. It is one of the 28 States in India.

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